



CALIFORNIA WETFISH PRODUCERS ASSOCIATION

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June 20, 2014

Ms. Dorothy Lowman, Chair
And Members of the Pacific Fishery Management Council
7700 NE Ambassador Place #200
Portland OR 97220-1384

RE: Agenda Item C.3.d. – Summary Comments on Magnuson-Stevens Act (MSA) Reauthorization Legislation

Dear Ms. Lowman and Council members,

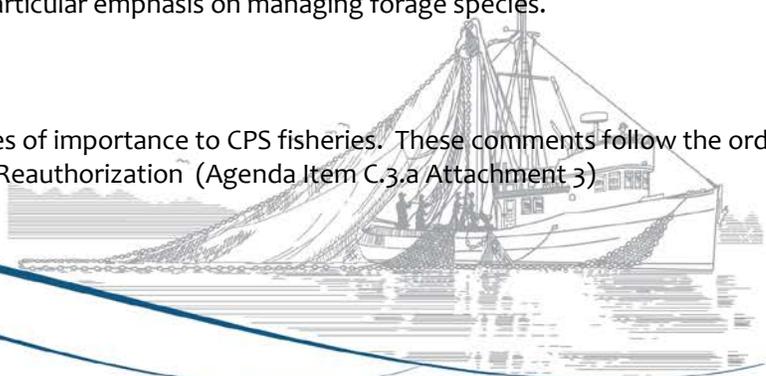
The California Wetfish Producers Association (CWPA) represents the majority of coastal pelagic species (CPS) 'wetfish' fishermen and processors in California. I have reviewed the extensive Council briefing materials on this subject, including Agenda Items C.3.a Attachments 3 and 4 in the June Briefing Book, PFMC staff comparison of HR 4742 and the Senate Discussion Draft. On behalf of California's wetfish industry, we would appreciate your consideration of our concerns, as well as supplemental comments submitted independently by Dr. Richard Parrish.

To begin, it is important to recognize the precautionary nature of fishery management policy under the current MSA, as well as the visionary management of coastal pelagic species on the west coast, implemented more than a decade ago. For example, the Pacific sardine harvest control rule pioneered efforts to incorporate ecosystem considerations into fishery management. Harvest guidelines for all CPS leave 75 percent or more of the estimated biomass in the ocean for other marine life. By and large, the MSA as written is working well to conserve the nation's marine resources. However, the MSA mandate to achieve optimum yield also means conserving the nation's fishing communities.

It appears that the House and Senate discussion drafts, while attempting to address comments made during the Managing Our Nations Fisheries Conference (MONF), have approached MSA reauthorization from opposite ends of the same goal: to prevent overfishing and to assure healthy ecosystems, fishery resources and fishing communities. HR 4742 addresses the need for more flexibility in the rigid timetable to rebuild overfished stocks, in consideration of the socio-economic needs of fishing communities, while the Senate - Begich discussion draft focuses on achieving ecosystem-based fishery management, with particular emphasis on managing forage species.

As always, the devil is in the details.

Following are summary comments on key issues of importance to CPS fisheries. These comments follow the order of the Working Draft PFMC staff analysis of MSA Reauthorization (Agenda Item C.3.a Attachment 3)



Section 2(a) Findings – Begich Discussion Draft

[Senate New – (11)] This statement does not recognize the precautionary management of CPS on the west coast, nor does it accurately reflect U.S. fishery management generally. There may be “few constraints on the rapid development of new fisheries...” in international waters, but such development is precluded in the U.S. We agree with many other commenters who recommend deleting explicit discussion of forage in MSA reauthorization. Singling out poorly defined “forage” species for special treatment is unnecessary.

Section 2(b) Purposes – Begich Discussion Draft

[Senate New (5)] Provides for adoption of ecosystem-based fishery management goals and policies. However, the prescriptive structure is problematic. Current ecosystem models are not yet advanced enough to model the dynamic fluctuations of CPS. Ecosystem modelers acknowledge that these models are not intended to be used to set harvest limits. The PFMC is already addressing ecosystem-based management (EBM). Councils should maintain the flexibility to address EBM on a regional level.

Section 2(c) Policies – Begich Discussion Draft

[Senate (4)] Expands the definition of bycatch – encourages methods to avoid bycatch, which is problematic for CPS (see definitions)

Section 3(2) Definitions – Begich Discussion Draft

[Senate (2)] Expansion of the definition of ‘bycatch’ to include incidental catch, any “non-targeted” fish, is problematic for CPS. CPS are fished as a complex, and catches frequently include mixed CPS in substantial amounts, virtually all of which are desired and marketed. These “incidental” CPS catches should not be termed “bycatch”. The definition of ‘bycatch’ in HR 4742 simply encourages practical methods to avoid waste.

Concerns with the definition of ‘depleted’ and ‘depletion’ included in both HR 4742 and the Senate – Begich discussion draft. In an attempt to address concerns expressed at MONF regarding the use of the term “overfished” in situations where stocks decline due to natural cycles, not fishing, both House and Senate discussion drafts adopted the term “depleted”. The House version replaces “overfished” with “depleted” throughout, while the Senate version incorporates “otherwise depleted” as an add-on wherever “overfished” appears.

We appreciate the recognition that other forces besides fishing may cause natural stock declines, but the use of the word “depleted” without further explicit definition could result in serious unintended consequences – including lawsuits.

The current definition of ‘overfished’ in regulation: 104-297 (34) *“The terms “overfishing” and “overfished” mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis...”*

The Senate discussion draft defines “depleted” parallel to the existing regulatory definition of overfished, and inserts “or otherwise depleted” wherever “overfished” appears in statute.

However, HR 4742 substitutes “depleted” for “overfished” throughout, but changes the definition significantly: *“The term ‘depleted’ means, with respect to a stock of fish or stock complex, that the stock or stock complex has a biomass that has declined below a level that jeopardizes the capacity of the stock or stock complex to produce maximum sustainable yield ...*

At the very least, HR 4742 should clarify that “depleted” refers to declines not attributed to fishing and the definition should mirror the current definition of overfished, i.e. jeopardizes the capacity of a fishery to produce [MSY]...

As Dr. Parrish pointed out in his comments, the word “depletion” has an accepted scientific definition that is not associated with MSY at all, but rather, the population size with no fishing:

“The term ‘depletion’ means with respect to a stock of fish that the population size (or other index of the stock’s reproductive potential) is a proportion of the estimated average or median long-term population size with no fishing.”

Please review the discussion in Dr. Richard Parrish’s comments relating to the use of the term ‘depleted’. The bottom line: if the term “depleted” remains in the MSA, this term needs explicit clarification to ensure it is not misused.

Dr. Parrish suggested the following definition: **“The term depleted means, with respect to a stock of fish in a fishery, that the stock is below the population size defined as overfished in the stock’s fishery management plan.”**

[Senate (18A)] Also the definition of ‘forage fish’ in the Senate discussion draft as “any low trophic level fish” is highly problematic – not only for CPS but for many other fisheries as well. Quoting from Dr. Parrish’s comments:

“The term low trophic level fish is not defined in the MSRA. Note that a herring is a higher trophic level animal than a wolf. Wolves feed on herbivores; herring feed on a mixture of herbivores, primary carnivores and secondary carnivores. Small Pacific mackerel, Pacific whiting and rockfishes are all ‘relatively’ low trophic level fishes that feed primarily upon zooplankton. Adult Pacific mackerel, Pacific whiting and rockfishes eat a wide variety of invertebrates and fishes. The adults of these species play a very significant role in energy transfer from lower to higher trophic levels throughout their lives. Which of these species is a forage fish?”

As noted above, the singling out of [inadequately defined] forage species for special consideration in the MSA is not warranted, in light of existing precautionary management.

Section 5 Ensuring Consistent Management

[HR 4742 (a)(b)] HR 4742 includes important clarification that the MSA controls fishery management in the case of conflict with the National Marine Sanctuaries Act and Antiquities Act of 1906, and “ To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fish in the exclusive economic zone that is necessary to implement a recovery plan under the Endangered Species Act of 1973 (16 U.S.C 1531 et seq.) shall be implemented—

- (1) using authority under this Act; and
- (2) in accordance with processes and time schedules required under this Act

We strongly support this clarification.

Title III – 16 U.S.C. 1851

Section 302 Councils / SSC

[Senate new (g)(1)(B)ii } ... specifies that the SSC shall “develop a control rule to derive annual recommendations for ABC for a forage fishery which account for the importance of forage species to managed fish... and provide a **minimum reference point** to determine when a forage fishery should close...”

In light of the vague definition of ‘forage fish’, I suspect this section will cause heartburn for many fisheries in addition to CPS. Again, the special treatment accorded forage fish in the Senate discussion draft is unwarranted and unnecessary. This forage section does not acknowledge the highly precautionary management policies already in place. The SSC already approves harvest guidelines for CPS. Moreover, CPS harvest control rule formulas already account for the importance of these species as forage by setting harvest limits that leave at least 75 percent of the stock in the ocean for ecosystem needs. Preliminary ecosystem modeling indicates that CPS fisheries harvest less than 4 percent of the planktivorous biomass, which is only part of the total forage pool. Minimum reference points are already established in stocks where data are available. In many highly dynamic, short-lived stocks (such as market squid) or lightly fished species (such as jack mackerel), reliable data do not exist to establish status determination criteria (SDCs).

[HR 4742 new (m)] – **CONSIDERATIONS FOR MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIREMENTS.**

The addition of this section in the House MSA draft provides guidance and flexibility to Councils:

- (1) to consider the changes in the ecosystem, within prescribed limits, and economic needs of fishing communities, and
- (2) (2) to limit Annual Catch Limit (ACL) requirements for special fisheries, including
 - (A) Ecosystem component species
 - (B) Fisheries for species that have a life cycle of one year [or less -- such as market squid]
 - (C) Stocks for which more than half of a single year class will complete its life cycle in less than 18 months, and fishing mortality will have little impact on the stock.

This section also provides for multi-year ACLS and defines Ecosystem Component species. These provisions are important as they provide flexibility. (A), (B) and (C) are particularly relevant to CPS, and we support the inclusion of this section in the final MSA.

Section 303 Contents of FMPS

(a) Required Provisions

[Senate new (14)] In the case of a fishery for a forage fish...

Again the Senate discussion draft attempts to insert prescriptive, onerous, and unnecessary elements singling out special management of forage fish by adjusting ACLs by “the feeding requirements of dependent fish” and so forth. This section attempts to codify a long-running ‘forage’ campaign mounted by certain ENGOs, seeking management that deducts forage set asides off the top of harvest quotas. This is highly problematic for several reasons –

- Inadequate definition of ‘forage fish’ (in reality, all species are forage for something else at various life stages...)
- the inability to assess the complete forage pool, which includes many unfished stocks equally important to the ecosystem
- the acknowledgement of ecosystem modelers that models are not intended for use in setting quotas

It is noteworthy that PFMC staff footnoted the “substantial amount of work” required if this section were implemented. Substantial and very costly!! This section, along with all reference to ‘forage fish’ as a group deserving special attention should be deleted from the final MSA. All species are important, and all should be treated equally.

Section 303B Fishery Ecosystem Planning Authority (Senate Discussion Draft)

This section, while ostensibly encouraging Council development of Fishery Ecosystem Plans, provides highly detailed requirements for FEPs that “SHALL” be included after MSA reauthorization, but then makes the development of FEPs discretionary. This seems contradictory. First, if Councils may (or may not) develop FEPs at their own discretion, perhaps the content should be left flexible so each Council can address its own regional needs.

At the very least, Section 303B(b), Required Provisions – should be revised to state that FEPs “MAY” contain the elements listed.

Section 304 Action By the Secretary 16 U.S.C. 1854

(e) Rebuilding [overfished] [depleted] Fisheries:

We concur with the Council’s recommendations to differentiate between causes of “depletion”, as specified in HR 4742. The House version also provides flexibility in the time frame to rebuild a stock from a low level, whether overfished or reduced by natural or other non-fishing causes.

The Senate draft contains terms that are not well defined, i.e. “minimum time’, and ‘stock size threshold’.

Please read the discussion on this point in Dr. Parrish’s comments. The current intent is that minimum time is measured given the average productivity of the stock. Dr. Parrish suggests rewording the Senate version: (1) “the sum of the minimum time required to rebuild an affected stock of fish using the stock’s expected reproductive success under the existing environmental conditions and the mean generation time of the affected stock...”

Section 305 Other Requirements

[Senate new (k)] Consumer information regarding sustainably caught fish

We appreciate the inclusion of this provision as it highlights the success of the MSA in conserving U.S. fish stocks.

Section 307 Prohibited Acts 16 U.S.C. 1857

[Senate new (R)] The Senate discussion draft, in an attempt to address seafood fraud, makes it unlawful for any person “to make or submit any incomplete, invalid or false record... of any fish or fish product (including false identification of the species...)”

Considering the myriad regional names given to various fish species, and regional rules, i.e. permissible labeling of 13 rockfish species as “Pacific snapper” in CA, this provision could be a problem unless guidance is also given, such as requiring some standardized naming convention, such as the FDA Fish List.

Section 404 Fisheries Research 16 U.S.C. 1881c

[HR 4742 new (e)] We appreciate the inclusion in the House draft of support for cooperative research activities, as specified here and in Section 318 – Cooperative Research and Management Program

[Senate new (e)] Stock Assessment Plan

We concur with the Council’s concerns regarding the wording of this section. Each Council should establish its own stock assessment schedule, based on regional fisheries and regional needs.

These comments highlight the major issues / comments / concerns in reviewing MSA reauthorization language to date. Other issues may surface as the two Congressional bodies work to meld the two versions into a cohesive unit. Meantime, we thank the Council for considering our point of view on these issues. The key take-away is the intent of MSA – optimum yield strives to conserve a balance: healthy ecosystems and also vibrant fishing communities.

Best regards,



Diane Pleschner-Steele
Executive Director

Ms. Dorothy Lowman, Chair
And Members of the Pacific Fishery Management Council
7700 NE Ambassador Place #101
Portland OR 97220-1384

RE: Agenda Item C.3.d Comments on Magnuson-Stevens Act (MSA) Reform
Legislation

Dear Ms. Lowman and Council members,

I submitted the following comments to Senate Commerce Subcommittee staff regarding the Senate Magnuson-Stevens Act Reauthorization Discussion Draft. I would appreciate the Council's consideration of these comments in your further deliberations and recommendations to Congress regarding reauthorization of the MSA.



Richard Parrish
Fisheries Biologist

Comments on Magnuson-Stevens Act Reform Legislation
Richard H Parrish
May 7, 2014

Before presenting my comments I feel the need to describe my background in commercial marine fisheries. I am a retired NMFS fisheries biologist with 47 years of experience in marine fishery science and management. In addition to my 31 years with NMFS I have worked extensively for the State of California, The Sultanate of Oman, and several commercial fishing companies and organizations. I have a PhD in Fisheries from Oregon State University with minors in Oceanography and Statistics. I was an author of the Fishery Management Plan for Coastal Pelagic Species in the Pacific Council and am heavily involved in both the present CPS Plan Revision and current initiatives for Ecosystem Management in the California Current System.

My comments and page numbers refer to the Staff Working Draft - April 3, 2014.

Section 3 Changes in findings, purposes and policy.

Page 4. Line 18. There is no supporting evidence that there has been any recent development of new fisheries for forage species in the areas managed by the Fishery Management Councils. In the Pacific Council there has not been a development of a new fishery for a forage species since the anchovy fishery in the 1960s.

Section 4 Definitions.

Page 8. Line 6.

“(8A) The terms ‘depleted’ and ‘depletion’ mean, with respect to a stock of fish in a fishery, that the stock is of a size that jeopardizes the capacity of the fishery to produce the maximum sustainable yield on a continuing basis.”

The proposed definition of the term ‘depletion’ is contrary to the established usage and the above change in definition will cause significant confusion.

Depletion, as presently used in many fishery management plans and stock assessments, is completely independent of the MSY population level or overfishing. The accepted scientific use of the term ‘depletion’ refers to the size of the population in relation to the unfished state. The reference point for the term is the unfished (virgin) population size or biomass (i.e. a depletion of 1.0); however, in some stocks, female spawning biomass or reproductive output is used. For example, the 2013 Pacific Hake Assessment reports that during 2004 -2013 the depletion of the hake female spawning biomass varied from a low of 0.204 in 2009 to a high of 0.723 in 2013.

The term depletion should either be removed from (8A) or defined by its present usage. For example:

“The term ‘depletion’ means with respect to a stock of fish that the population size (or other index of the stocks reproductive potential) is a proportion of the estimated average or median long-term population size with no fishing.”

The addition of the term median is necessary as it is being increasingly used for stocks like the Pacific Hake that have significant environmental variation.

The term ‘depleted’ has not been generally used in fishery management and it presently has no generally accepted meaning. In the context of the Magnuson-Stevens Act the definition of ‘depleted’ should refer to the population size that is now used to define an overfished stock.

Suggested wording for (8A).

“The term depleted means, with respect to a stock of fish in a fishery, that the stock is below the population size defined as overfished in the stock’s fishery management plan.”

Page 8. Line 13. “The term ‘forage fish’ means any low trophic level fish “

The term low trophic level fish is not defined in the MSRA. Note that a herring is a higher trophic level animal than a wolf. Wolves feed on herbivores; herring feed on

a mixture of herbivores, primary carnivores and secondary carnivores. Small Pacific mackerel, Pacific whiting and rockfishes are all 'relatively' low trophic level fishes that feed primarily upon zooplankton. Adult Pacific mackerel, Pacific whiting and rockfishes eat a wide variety of invertebrates and fishes. The adults of these species play a very significant role in energy transfer from lower to higher trophic levels throughout their lives. Which of these species is a forage fish?

Page 14. Line 20. The term forage fish is not adequately defined in the MSRA. See above.

Page 15 line 3. (iii). THIS SECTION SHOULD EITHER BE OMITTED OR APPLIED TO ALL ACTIONS OF THE SSCs.

This section implies that the Science and Statistical Committee does not have to 'carry out the requirements' of other subparagraphs in a transparent manner; allowing for public involvement in the process"

Why is transparency in the management of fisheries for forage species (as yet undefined) more important than transparency in the management of fisheries for non-forage species?

Page 18. Line 12. Again forage fish is defined as a low trophic level fish but low trophic level is not defined.

Ecosystem FMP

Page 24 line 5. to page 26 line 25. There is an extensive treatment of ecosystem plans; however, it appears that if the Council approves an ecosystem plan before the reauthorization is completed it will not have to conform to the new provisions.

Page 24 line 5 (b) REQUIRED PROVISIONS.

A series of 'required items and actions' is listed under this section and more are listed in (c) ASSESSMENT AND UPDATING OF PLANS. However, section (d) RULE OF CONSTRUCTION states that nothing in this section shall be construed as requiring a Council or the Secretary to exercise the discretionary planning authority provide by this section.

If a Council does not have to create an ecosystem plan it appears counter-productive to have a long list of required provisions, as any single provision could cause a Council to not create an ecosystem plan or to exclude individual species or species groups from the plan.

The largest problem with the Required Provisions section is that that many ecosystem components have geographical ranges that extend outside of US

Territorial waters. There are many species that have only a minor percentage of their habitat range inside of US waters.

This will result in the Councils excluding many important species from an ecosystem management plan.

Page 20 (d) REBUILDING OVERFISHED AND OTHERWISE DEPLETED FISHERIES.

As mentioned above the term ‘depleted’ is simply a rewording of the present definition of ‘overfished’. The new term ‘depleted’ is apparently introduced to cover a situation where a fishery is not overfished, however, natural or human induced environmental variation has resulted in the population biomass falling below the overfished biomass level. Note that this situation could also occur with species that are not harvested.

Global warming is coming and it will cause some species to have much reduced population sizes and productivities. How will the proposed revision of the rebuilding requirement be handled when this occurs?

The intention of the proposed addition of ‘otherwise depleted’ appears to be based on the recognition that natural and human induced environmental variation is capable of reducing the size of exploited marine species. What happens if an, ‘otherwise depleted’ stock in a multi-species fishery is not capable of recovery due to an altered environment? What happens if a by-catch species is otherwise depleted? Does this mean that a single or multi-species fishery will have to be permanently closed?

The ‘fix’ of the rebuilding issue appears to be worse than the original.

Page 31, line 22. (ii) (I). This section could have been used to qualify the rebuilding time by acknowledging the fact that a stock may be otherwise depleted due to climate change, or other human induced environmental variation. Unfortunately the proposed wording completely ignores the source of depletion.

Neither the “minimum time” nor the ‘stock size threshold’ that a stock must be rebuilt to is well defined.

Minimum time:

What appears to be intended (and is currently in use) is the minimum time that a stock would take to recover to some threshold level given the **average** productivity of the stock. Without the inclusion of ‘average’ the minimum time would be the time it takes to recover with the maximum productivity of the stock.

A wording similar to the following would correct the ‘minimum’ problem:

(I) the sum of the minimum time required to rebuild an affected stock of fish using the stocks expected reproductive success under the existing environmental conditions and the mean generation time of the affected stock of fish,

Stock size threshold

The act does not state which ‘stock size threshold’ the rebuilding plan is based on. Alternative thresholds could include, MSST, MSY biomass, proxy MSY biomass, some specified depletion level or the ‘new’ depleted population level.

If the term depleted were better defined (see above) this stock size threshold could become the generic rebuilding target.

Page 61 line 16 (45) Stock assessment.

Stock assessments, as developed in the Pacific Council, do not include feeding habits or habitat preferences and there is no evidence that the inclusion of these factors would improve the accuracy of the assessments. Therefore, the beginning of the section should be reworded to establish the fact that a stock assessment may include all of the below but that it does not necessarily include all of them.

Ecosystem models will require stock assessments of major stocks that are not presently fished, therefor fishing for the stock (page 62 line 3) should not be a necessary requirement for a stock assessment.

Suggested re-wording.

(A) a range of life history characteristics for the stock, that may include—

“(i) the geographical boundaries of the stock; and

“(ii) information on age, growth, natural mortality, sexual maturity and reproduction, feeding habits, and habitat preferences of the stock; and

“(iii) fishing for the stock.”.

STOCK ASSESSMENT PLAN SECTION 404

Page 62. Line 18. (i) the reasonable schedule for updating a stock should include the biology, characteristics and “exploitation level” of the stock. Unexploited or lightly exploited stocks do not need to be assessed as often as heavily exploited stocks.

Page 64 Line 10 (B) (i) Same comment. Add “exploitation level.”