

The Honorable Doc Hastings  
United States House of Representatives  
1203 Longworth House Office Building  
Washington, D.C. 20515-4704

The Honorable Mark Begich  
United States Senate  
111 Russell Senate Office Building  
Washington, D.C. 20510-0201

Subject: Priorities regarding the reauthorization of the Magnuson-Stevens Act

Dear Chairman Hastings and Senator Begich:

Thank you for your request for Pacific Fishery Management Council comments on the reauthorization of the Magnuson-Stevens Act (MSA). The Pacific 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. Under current MSA provisions, the Pacific Council has ended within one year any overfishing that has inadvertently occurred, all depleted stocks have been rebuilt or are on strict rebuilding schedules and are making progress towards healthy levels, and none of the over 100 West Coast fish stocks are experiencing overfishing. The Pacific Council believes large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

Despite the demonstrated effectiveness of the MSA, the Pacific Council believes there are areas that can be refined in order to improve marine fishery management in the United States and internationally. Participants at the Managing Our Nation's Fisheries 3 conference held in Washington, D.C., this past May developed 128 "findings" that represented ideas for improving marine fishery management. While many of these ideas were not intended for statutory consideration, many were. Within these, some were quite minor, while others were more substantial. The Pacific Council has heard feedback on these ideas from its Legislative Committee, Scientific and Statistical Committee, advisory subpanels, technical teams, and the public, and has identified some general priority topics at this time. The priorities are labeled as "highest priority" and "lower priority," but are not in priority order within those categories.

### **Highest Priority**

Although the items below are listed as high priority, it should be noted these are very general recommendations focusing on areas for improvement and do not represent specific statutory language proposals. The Council lacked the time to develop more detailed policy statements on these issues; however, we plan to do so in the future, assuming the legislative schedule allows.

*Improve rebuilding requirements for overfished stocks:*

- *Address the discontinuity associated with the ten-year rebuilding requirement.*
- *Don't "chase noise" in rebuilding plans (in other words, temper immediate reactions to changes in stock assessments that may merely be statistical "noise," rather than a significant status change).*
- *Address "rebuilding as soon as possible" problems associated with properly taking into account the needs of fishing communities.*

The MSA currently requires that rebuilding take as short a time as possible, after due consideration of the effect on fishing communities, with a maximum rebuilding time of 10 years if possible. Alternatively, for long-lived stocks that cannot rebuild in 10 years, rebuilding must occur in the time to rebuild if there were no fishing, plus one generation time. This requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. However, it is important to note the purpose that rebuilding programs are designed to increase stock sizes to provide for biological stability and the attendant future economic benefits.

Some believe that the current focus on rebuilding in a certain amount of time results in overly restrictive fishery management that is unnecessarily harmful to fishermen and fishing communities, and that more flexibility is needed to optimize multiple goals. The 10-year rule, where stock rebuilding must occur within 10 years if possible, leads to an awkward and discontinuous policy that disrupts fisheries for little conservation gain. If a stock can rebuild in 9 years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, rebuilding a fish stock in far worse condition that requires 11 or more years to rebuild causes less economic disruption. This is illogical and potentially disastrous for fishing-dependent communities.

In addition, uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to dire consequences to fisheries and fishing communities ("chasing noise"). This disruption is especially problematic when analytical results vary small amounts, both up and down, due to assessment uncertainty.

Rebuilding as soon as possible, taking into account the needs of the fishery communities, has been interpreted by Courts as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. Solutions may be as simple as changing the word

“possible” to “practical.” At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities.

*Stocks that were designated as overfished, and that were then determined never to have been overfished, should not be held to rebuilding provisions.*

The data and scientific approaches used to determine stock status evolve and improve, and revisions to past stock status are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.

For example, in 2000, a stock assessment indicated that widow rockfish on the West Coast were below the minimum stock size threshold (MSST) that triggers an overfished status designation. Accordingly, the stock was declared overfished and a rebuilding plan put in place. However, subsequent assessments in 2005 and 2007 estimated that the biomass had never dropped below the MSST and thus the stock had never been overfished. Despite the best available science, uncertainty regarding MSA requirements and the assessment results resulted in the fishery remaining under a restrictive rebuilding plan until 2013. Continuing to manage widow rockfish under a rebuilding plan, even though the stock was never overfished, resulted in social and economic impacts to fishing communities and industry. It also represented a significant expenditure of Council resources to construct and maintain a rebuilding plan, and the new catch share program was unnecessarily complicated by the overfished declaration of widow rockfish and its subsequent rebuilding plan.

*Include a carryover exception to allow annual catch limits to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from a Council's Scientific and Statistical Committee that such a carryover provision will have negligible biological impacts.*

As part of their business planning, fishermen need to know whether they may carry over surplus and deficit harvest from one year to the next. In the past there has not been a consistent policy regarding this decision. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.

*Better align and streamline the National Environmental Policy Act (NEPA) and §304(i).*

While a mandate to include streamlining of the NEPA and MSA processes was included in the 2006 reauthorization of the MSA, it has not yet been addressed. The current process is inefficient, requiring substantial additional work to satisfy duplicative NEPA and MSA mandates. This unnecessarily delays implementation of regulations and burdens management resources that could be used more efficiently.

*Explore more flexibility for “data-poor” or “data-limited” species where the precautionary approach limits information on stock performance under higher catch rates.*

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, the current model calls for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. There is concern from fishermen who believe fish to be in great abundance based on their observations, but who are restricted from catching the fish because lack of scientific data causes an overly-conservative ACL. It can also lead to severe economic consequences when a rarely-caught stock about which little is known appears occasionally in a healthy mixed stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in catch, creating a bottleneck species that closes or substantially reduces an otherwise healthy fishery.

*Provide flexibility in requirements and qualifications for NMFS-certified observers to ensure that a sufficient pool of observers is available.*

Current requirements and qualifications for NMFS certified observers may be too restrictive regarding formal education and full independence provisions. There have been difficulties in providing a sufficient pool of observers that should be addressed.

### ***Lower Priority***

The Council has also identified the following priority areas that we ask you to take into consideration in drafting new legislation.

- *Designate one Commissioner seat on IATTC Commission for PFMC*
- *Address rebuilding requirements when environmental conditions may be a predominant factor in a stock's decline.*
- *Include a viable mixed stock exception.*
- *Replace the term "overfished" with "depleted" to account for non-fishing causes of stock size below minimum stock size threshold.*
- *Consider a national standard for habitat: "Minimize adverse impacts on essential fish habitat to the extent practicable."*
- *Explore options to improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.*
- *Amend MSA to change "vessels" to "vessel" in the IUU certification section.*
- *Make a consistent distinction between "overfishing" (a measure of fishing rate) and "overfished" (a measure of abundance).*
- *Enhance enforcement capabilities for international fisheries, including at-sea and in port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity.*

Thank you again for the opportunity to comment. The Pacific Council appreciates your dedication to West Coast fisheries and the communities that depend on them. Should you or your staff have any questions about the enclosed report or require additional information, please don't hesitate to contact me at any time.

Sincerely,

D.O. McIsaac, Ph.D.  
Executive Director

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Cc: Council Members  
Council Advisory Body Members  
RFMC Executive Directors