



Pacific Fishery Management Council

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

Subject: Pacific Fishery Management Council Perspectives on the Magnuson-Stevens Act
Reauthorization Discussion Draft

Dear Chairman Hastings:

Thank you for your request for Pacific Fishery Management Council (Pacific Council) comments on your discussion draft of a bill to reauthorize the Magnuson-Stevens Act (MSA).

As we have noted before, 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. The Pacific Council believes large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

The Pacific Council has heard feedback on the Discussion Draft from its Legislative Committee, advisory subpanels, and the public, and has developed the following responses and recommendations that we ask you consider as this important legislation moves forward.

Discussion Draft Section 3. Flexibility in Rebuilding Fish Stocks.

Section 3(a)(1), Page 2. *States that except in “highly dynamic fisheries,” Councils may phase in a rebuilding plan over a three-year period to lessen economic harm to communities, and in some situations may phase in ending overfishing over a three-year period.* The Pacific Council endorses statutory flexibility to phase in rebuilding plans over three years in limited situations, but does not recommend altering the current requirement to end overfishing when it is detected. In defining the term “highly dynamic fisheries,” we recommend that fisheries for long-lived, slow-growing species like yelloweye rockfish be clearly outside the definition.

Section 3(a)(2)(A), Page 2. *Replaces “possible” with “practicable.”* The Pacific Council endorses this change.

Section 3(a)(2)(ii), Page 2. *States that “Rebuilding may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation...”* The Pacific Council endorses the deletion of the ten-year rebuilding time requirement and supports this maximum standard tied to

the biology of the fish stock (one mean generation time).

Section 3(a)(2)(B)(ii)(1)-(V) Pages 3-4. *Makes exceptions to rebuilding requirements.* The Pacific Council agrees with exceptions due to changing environmental conditions, depletion due to international fisheries outside U.S. control, and a mixed stock exception that would rarely be instituted. However, the Pacific Council does not support broad exceptions that might be exercised frequently or that might weaken incentives to conserve stocks for long-term sustainability.

Section 3(a)(9), Page 5. *States that a Council may terminate a rebuilding plan if the Council determines the fishery is not depleted (timed at either two years after the plan amendment takes effect, or when the next stock assessment is completed).* The Pacific Council recommends language specifying that stocks later determined never depleted (overfished) should not be held to rebuilding provisions, a matter not specifically addressed by this draft language. 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.

Section 3(b), Page 5. *Extends the length of emergency regulations.* The Pacific Council supports this provision.

Discussion Draft Section 4. Modifications to the Annual Catch Limit Requirement.

Section 4(a)(4)(A)-(B), Page 8. *Authorizes multispecies complexes and multi-year catch limits.* The Pacific Council recommends language specifying that a carryover exception 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 the Scientific and Statistical Committee (SSC) that such a carryover provision will have negligible biological impacts. However, it appears the Discussion Draft language goes beyond achieving this goal, and the Pacific Council did not discuss the additional language and its ramifications.

Discussion Draft Section 5. Distinguishing Between Overfished and Depleted.

Section 5(a)-5(c), Page 9. *Replaces the term “overfished” with “depleted,” defines the term, and requires the annual Report to Congress to differentiate between stocks that are depleted due to fishing and those that are depleted for other reasons.* The Pacific Council supports the change in terminology, but does not support the proposed definition of depleted, recommending the same definition currently used for “overfished” in the National Standard 1 guidelines.

Section 6. Transparency and Public Process for Scientific and Management Actions.

Section 6(b). Page 10-11. *States that Councils must, to the extent practicable, a) provide live broadcasts of each Council meeting, and b) post audio, video, and a complete transcript of each Council and SSC meeting on the web within 30 days of the meeting.* The Pacific Council currently provides live broadcasts of each Pacific Council meeting and prompt posting of a listing of Pacific Council decisions, meeting minutes, and the voting log on the Pacific Council website. SSC meeting minutes are also made available reasonably quickly. We do not support a requirement for video of Council meetings, posting complete Council transcripts, or posting a

broadcast or transcript of any type for Council advisory bodies, including the SSC and the more than 20 others convened routinely by the Pacific Council.

Section 6(c)(1), Page 11. *States that any fishery management plan, amendment, etc., that is prepared in accordance with the MSA shall be considered to satisfy the National Environmental Policy Act (NEPA).* The Pacific Council supports this provision conceptually, having strongly supported the need for NEPA streamlining and process efficiencies that is in the current MSA but remains unfulfilled. However, we recommend that additional provisions in Section 303 be required in addition to this provision in the Discussion Draft to accomplish the streamlining and efficiency needs while still ensuring that the essential benefits of NEPA are maintained, such as requiring a reasonable range of alternatives and thorough assessment of environmental impacts prior to final Council decision-making.

Section 8. Data Collection and Data Confidentiality.

Section 8(a)(1), Page 15-16. *States that within six months after passage of the Act, the Secretary, Councils and Pacific States Marine Fisheries Commission will develop objectives, regulations, etc. governing the use of electronic monitoring for data collection and monitoring purposes with Councils allowed to establish standards independently if not otherwise done in six months....* The Pacific Council is not opposed to general electronic monitoring standards per se, but strongly believes that any timeline requirement or elaborate standards not inhibit progress currently underway at any Council.

Section 8(a)(2), Page 16. *States that regulations under this subsection shall not include provisions authorizing use of electronic monitoring for law enforcement.* The Pacific Council does not support this provision. The Pacific Council would like to highlight that it is currently seriously considering an electronic monitoring model that uses camera video to audit fisherman logbook recordings of discards, which could be viewed as an enforcement activity. Further, electronic monitoring and law enforcement are closely related in many ways, and it is unclear how this provision would apply to such changing technology as vessel monitoring systems, which is a vital law enforcement tool.

Section 8(b), Page 17. *Requires the Secretary to work with the Councils and NGOs to develop video survey technologies and expanded use of acoustic surveys.* The Pacific Council supports this provision, while noting the need for additional funding to make it effective.

Section 8(c), Page 17-21. *Defines confidential information and provides guidance on what data and analyses should not reveal about fishery participants; reduces distribution of bycatch information for certain fisheries; does not revise current language requiring data to be aggregated or summarized to prevent disclosure of business or personal identity. In addition, Section 8(c)(5) [p.21] prohibits the use of vessel-specific or aggregate data for the purposes of marine spatial planning under EO 13547.* The Pacific Council recommends there be no reduction in allowances for data aggregation or distribution of bycatch information, which is important to the Council decision-making process. The Pacific Council recommends improving access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis {need more specificity}. In addition, the Pacific Council is concerned that the prohibition on use of data for marine spatial planning could have unintended

consequences, including reduced protection for key fishing areas.

Section 8(e), Page 23. *Provides a percentage of the IUU asset forfeiture fund for new data collection activities.* The Pacific Council generally recommends supporting this provision, provided that it does not redirect funds away from National Marine Fisheries Service priorities.

Section 13. Ensuring Consistent Management for Fisheries Throughout Their Range.

Section 13 (a)-(b), Page 29. *States that in case of conflict between the MSA and the National Marine Sanctuaries Act, the MSA shall control; and any restriction on management of fishery resources that is necessary to implement a recovery plan under the Endangered Species Act shall be done under the MSA.* The Pacific Council strongly supports the MSA and NMSA language. The Pacific Council also supports consistent management of Endangered Species Act (ESA) throughout the range of fish stocks, but 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.

Other Council Priorities and Other Issues Not Addressed in the Discussion Draft

The Pacific Council recommends that the next version of House legislation incorporate the following matters, which were omitted from the Discussion Draft.

- Extend state management authority for the Dungeness crab fishery off the West coast consistent with the recommendations in the Washington letter.
- Expand state enforcement authority to all non-tribal vessels that fish directly offshore of the territorial sea within the state given boundaries.
- Revision of rebuilding plans should not be required consequent to minor changes in stock status (executing an extensive revision process due to “statistical noise”).
- Provide clarity to better allow Councils to take into account the needs of fishing communities in developing rebuilding plans, without needing to demonstrate “disaster” level impacts before modifying the most stringent conservation alternative.
- Explore more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries.
- Designate one Commissioner seat on IATTC Commission for the Pacific Council.
- Provide greater flexibility in observer requirements.
- Add a national standard for habitat to minimize adverse impacts on essential fish habitat to the extent practicable.
- Direct the Secretary to identify nations that are not compliant with Regional Fishery Management Organization measures and take steps to impose trade sanctions on those nations in accordance with existing MSA provisions such as 16 U.S.C 1826b “High Seas Driftnet Fisheries Enforcement Act.”
- Provide protection to the productivity of U.S. fisheries fishing on international stocks when other countries belonging to Regional Fishery Management Organizations do not comply with internationally agreed-to provisions.
- Enhance enforcement emphasis for international fisheries, including priority for the U.S.

Exclusive Economic Zone and adjacent high seas areas, at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity.

- Change “vessels” to “vessel” in the IUU certification section.

Thank you again for the opportunity to comment. Should you or your staff have any questions about the enclosed report or require additional information, please don't hesitate to contact me or Ms. Jennifer Gildea at any time.

Sincerely,



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Executive Director

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Cc: Pacific Council Members
Mr. Dave Whaley
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