

Current Status of Council Magnuson-Stevens Act Reauthorization Priorities

The following list of priorities for MSA reauthorization, and the contextual information provided, is based on Council action in September 2013 and June 2014; Council advisory body comments made in June 2014; Legislative Committee reports; and Council letters on MSA priorities sent to Representative Doc Hastings and Senator Mark Begich.

Rebuilding

1. **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.**^{1, 3, 4, 5, 6}

The MSA requirement to rebuild as soon as possible, taking into account the needs of fishing communities, has been subject to Court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. It has been said that a solution 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 when reducing catches in a rational stock rebuilding plan.

2. **Revision of rebuilding plans should not be required consequent to minor changes in stock status (executing an extensive revision process due to “statistical noise”).**^{1, 3, 4, 5, 6, 7}

Uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to expensive revisions in rebuilding plans and unwarranted consequences to fisheries and fishing communities (“chasing noise”). This disruption is especially problematic when analytical results vary by small amounts due to assessment uncertainty, and vary both up and down without changes in true status over time.

3. **Address the discontinuity associated with the ten-year rebuilding requirement.**^{5, 6}

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 biologically possible. Alternatively, for 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 that the purpose of rebuilding programs is to increase stock sizes to provide for biological stability and the

attendant future economic benefits to the same fishery-dependent communities negatively impacted by the rebuilding program.⁵

While a strict 10-year rebuilding requirement is appropriate in some situations, focusing on rebuilding in a certain amount of time can also result in overly-restrictive fishery management that is illogically and unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. The 10-year rule, where stock rebuilding must occur within 10 years if possible, can lead to an unsound, discontinuous policy that can grossly disrupt fisheries for little conservation gain. If a stock can rebuild in nine years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild, and less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.⁵

4. Address rebuilding requirements when environmental conditions may be a predominant factor in a stock's decline. ^{1, 5, 6}

Rebuilding exemptions should include a category that clearly specifies instances when a rebuilding plan is not required, either because fishing is not the cause of the stock's depletion, and/or because fishing restrictions cannot correct the depleted condition.¹

5. Stocks later determined never depleted (overfished) should not be held to rebuilding provisions. ^{2, 4, 5, 6}

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 negative 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.

6. **Address social and economic issues such as ‘possible’ to ‘practicable’ in MSA section 304(e)(4)(A)(i).**

Other Council comments on rebuilding:

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).⁴

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 Council does not support broad exceptions that might be exercised frequently or that might weaken incentives to conserve stocks for long-term sustainability.⁴

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.⁴

Data-Poor Species

7. **Explore more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries.** ^{1, 3, 4, 5, 6, 8}

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, current requirements call 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. While this is a logical approach in some regards, there is concern it may be overly conservative. 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 the catch of healthy species, creating a bottleneck species that closes or substantially reduces an otherwise healthy fishery.⁵

The HMSAS favors provisions calling for Councils to identify data-poor species and prioritize them for the U.S. Secretary of Commerce, who will then develop a plan to conduct stock assessments as soon as possible.²

Need additional flexibility to address scientific uncertainty. Need to improve methods to determine ACLs in low data situations, and properly discriminate between poor, good, or medium-quality science; the best available science is not always good enough to set harvest limits.⁸

NEPA

8. **Better align and streamline the National Environmental Policy Act (NEPA) & MSA section 304(i).**^{1, 2, 5, 6}

There is a need to more closely align NEPA and MSA requirements and streamline the process, as required in Section 304(i). This is an unfulfilled requirement in the current law. Examples of problems in the Pacific Council process include difficulty in completing biennial groundfish specifications in a timely manner, and the chafing gear regulation clarification.⁸

The current process is inefficient, requiring substantial additional work and process to satisfy duplicative NEPA and MSA mandates. This unnecessarily delays implementation of regulations and burdens management resources that could be used more efficiently.⁵

The language in [MSA reauthorization bill] HR 4742 mirrors the approach outlined in a draft white paper discussed by the Council Coordination Committee at their annual meeting in May 2014, which recommends integrating the policy objectives and key requirements of NEPA directly into the MSA. This recommendation proposes that the MSA be amended by adding a section to the end of Section 303, Contents of Fishery Management Plans. This new section would incorporate the key parts of NEPA into the MSA, including the requirement to prepare “a detailed statement” on “the environmental impact of the proposed action.” It is important to emphasize that the objective is not to “get out of” complying with the intent of NEPA but rather to incorporate the important aspects of NEPA directly into the MSA. This change would enable a substantially more efficient fishery management process while ensuring that the objectives of NEPA are fully met.¹

Observers

9. **Provide flexibility in requirements and qualifications for NMFS-certified observers to ensure that a sufficient pool of observers is available.**^{2, 3, 4, 5, 6}

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.⁵

Carryover

10. **Specify that a carryover exception allow ACLs 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 SSC that such a carryover provision will have negligible biological impacts.**^{1, 2, 3, 4, 5, 6}

As part of their business planning, fishermen in catch share programs need to know whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past there has not been a consistent policy

application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.⁵

State Authority

11. **Extend state management authority for the Dungeness crab fishery off the West coast.**^{1, 4}
12. **Expand state enforcement authority to all non-tribal vessels that fish directly offshore of the territorial sea within the state given boundaries.**^{1, 3, 4}

Overfished, Depleted, Depletion

13. **Replace the term “overfished” with “depleted” to account for non-fishing causes of stock size below minimum stock size threshold.**^{5, 6}
14. **Make a distinction between “overfishing” (a measure of fishing rate) and “overfished” (a measure of abundance).**^{5, 6}

Highly Migratory Species

15. **Designate one Commissioner seat on IATTC Commission for the Pacific Council.**^{1, 3, 5, 6}
16. **Enhance enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and provide assistance to developing countries in their enforcement capacity.**^{1, 3, 4, 5}
17. **Change “vessels” to “vessel” in the IUU certification section.**^{1, 3, 4, 5, 6}

Confidential Information

18. **Improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.**^{4, 5, 6, 8}

Mixed Stock Exception

19. **Include a viable mixed-stock exception.**^{5, 6}

The Groundfish Advisory Subpanel (GAP) notes that National Standard 1 guidelines are not explicit in allowing a [mixed-stock] exception. The GAP suggests that if it is referenced and available to use, a clear allowance should be included in the MSA.²

Habitat

20. **Add a national standard for habitat to minimize adverse impacts on essential fish habitat to the extent practicable.** ^{4, 5, 6, 7}

Seafood Labeling

21. **Implement stricter imported seafood labeling requirements in the US market** ^{6, 7}

OTHER PRIORITIES AND POSITIONS

This section includes positions that are related to priorities, that were set aside for later consideration, or that were brought up by advisory bodies.

ACLs

1. Clarify MSA language about the SSC recommending true biological point estimate overfishing limits, and not policy decision-dependent catch limits related to social, economic, or management performance cushions (ACLs), or policy decision-dependent assessments of the size of scientific inaccuracy risk buffers (currently identified as an acceptable biological catch limit).^{1, 3}
2. Need to consider ways for dealing with layers of precaution which sell achieving the optimum yield short, such as averaging ACLs over time.⁸
3. Limit changes to ACLs to within 10-15 percent in order to smooth scientific uncertainty (for stocks that show highly variable scientific estimates for the same year, such as bocaccio).⁸
(Related to Priority 2)

International Negotiations and Closed Sessions

4. Clarify in Section 302(i)(A)(3) that Council discussion of international negotiations, such as proposals and counter proposals in the recent the US-Canada Albacore Treaty negotiations, are clearly an eligible topic for discussion during closed sessions of Council meetings.^{1, 3}

Non-Governmental and Recreational Data

1. Both versions of the Senate draft called for Council SSCs to develop guidelines for the greater use of data from non-governmental sources, including fishermen, fishing communities, universities, and research institutions so that some of this data could be used as the best scientific information available. The HMSAS favors this provision.² Also, expand cooperative research between fishing community and scientists.⁷
2. HR 4742 required Federal-state partnerships to develop best practices for implementing recreational fishery data collection programs and create a grant program to improve these programs, as well as requiring the National Research Council to study recreational data survey methods. The HMSAS favors this.²

VMS

3. The HMSAS suggests only vessels greater than 24 meters in length should be required to carry vessel monitoring systems. In addition, the HMSAS agrees with the provisions in the Senate draft calling for Councils to review fishery management plans to determine where electronic monitoring can be used instead of human observers.²

Penalty Funds

4. The HMSAS strongly favors HR 4742's provision calling for a portion of penalty monies to be used for data-poor fisheries and cooperative research. The Senate version indicates such monies should be used to increase enforcement, and also would raise the maximum penalty from \$100,000 to \$180,000; the HMSAS strongly opposes such provisions.²
5. Currently, the fines from any illegal, unregulated, and unreported vessel caught operating in the Western Pacific region are provided to a fund that can be drawn on by the Western Pacific Council. Such a system should be pursued for the Pacific Council area.⁸

Alternative Management of Recreational Fisheries

6. Both Senate drafts provide authority for the Councils to use alternative fisheries management measures in recreational fisheries. The HMSAS favors this.²

Referendum for IFQ programs

7. HR 4742 would provide for a referendum before the Secretary can approve or implement a catch share program coming from certain Councils. The HMSAS strongly recommends that such a provision include the Pacific Council (for fisheries other than the trawl rationalization program).²

Items that the LC proposed keeping but that were not carried on by the Council

All from the September 2013 Legislative Committee report.

1. Include a transboundary stock rebuilding exception.
2. Extend annual species exemption to short-lived species.
3. Require explicit consideration of the impact of forage fish to the ecosystem and fishing communities to inform OY and ACL decisions.
4. Improve the List of Fisheries process; MSA Section 600.747 rules for the List of Fisheries have been in place since 1979. The LC recommends updating and streamlining these rules to be a more direct, efficient, and effective, and consistent with Council goals and objectives.⁸
5. Strengthen EFH consultation process.
6. Modify Council process to improve participation of small-scale and community sectors, e.g., State Fisheries Improvement Projects, National Fish & Wildlife Foundation-funded projects
7. Define subsistence fishing in the MSA, and expand recognition of tribes and indigenous people engaged in subsistence fishing.

Sources

1. June 30, 2014 letter to Rep. Hastings & Senator Begich. This letter commented on the Hastings & Begich drafts of the MSA and discussed Council priorities.
2. Summary of June 2014 AB comments on MSA reauthorization
3. June 2014 LC report
4. March 2014 letter to Rep. Doc Hastings
5. Nov 2013 letter to Senator Begich and Rep. Hastings (listed high and low priorities for MSA reauthorization).
6. Sept 2013 blog post reporting on Council action (17 priorities)
(<http://www.pcouncil.org/2013/09/27233/council-discusses-priorities-for-msa-reauthorization/>)
7. Sept. 2013 LC report. This included the original matrix of priorities that was discussed by the Council.
8. April 2013 LC report. Early version of priorities before Council discussion.