

DRAFT

(Revised by Legislative Working Group thru 3/6/17)

(Sent to EDs on 3/6/17; Comments incorporated thru 3/9/17)

(Revised Letter to Tom Nies 3/10/17)

**CCC GENERAL COMMENT LETTER ON MSA
REAUTHORIZATION**

Date

Dear _____:

On behalf of the Council Coordination Committee (CCC), I offer the following comments on the reauthorization of the Magnuson-Stevens Act (MSA). These comments were developed during the CCC's most recent meeting on February 28 – March 1, 2017, and identify issues that may affect the ability of the Councils to fulfill their responsibilities under the MSA. The CCC reviewed previous CCC and Council comments, as well as, H.R. 200 – “The Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” introduced on January 3, 2017 by Congressman Young (R-Alaska) and referred to the House Natural Resources Committee.

Although our discussions were informed by draft legislation, most of our comments are general in nature and do not include recommendations for specific legislative language. Due to both time limitations and differences in perspectives, we have not developed consensus positions on all of the topics that are being considered as part of MSA reauthorization. The following sections summarize the CCC's consensus positions on a number of high-priority topics.

Management Flexibility

Rebuilding Plans

In general, the CCC believes that the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would improve the ability of Councils to achieve management objectives. We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts.

We agree that exceptions to rebuilding requirements should be limited in scope and carefully defined. Ideally, such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines.

Management of Mixed Stocks

Some of the Act's more prescriptive management requirements pose particular challenges for the management of mixed stock fisheries and may not integrate well with ecosystem approaches. While the current National Standard guidelines allow for a mixed-stock exception to the "overfished" definition, the statutory basis for this is unclear and would benefit from clarification in the reauthorized Act.

Transboundary Stocks

The CCC believes that the addition of language that would allow the Councils to develop annual and in-season quota trading programs for international and national transboundary stocks will improve the ability of the Councils to achieve harvest and management objectives. The CCC also recognizes the potential for increased enforcement from recommendations of the Presidential Task Force Combating Illegal, Unreported, and Unregulated (IUU) Fishing; however, we are awaiting implementation of regulations to determine their effectiveness.

Data Limited Fisheries

The CCC believes that further consideration of exemptions, or alternatives to, the existing ACL requirements for data-limited species could improve the Councils' ability to provide stability in setting harvest limits. The ad hoc methods used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms for data-limited stocks.

Definition of "Overfished"

The CCC believes that an alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors. The current MSY-based definition can be problematic when applied to data-limited fisheries or mixed-stock complexes. Furthermore, the term "overfished" can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other factors. Not all of the Councils agree that "depleted" is an appropriate term to replace "overfished" with. Some have noted that "depleted" has specific meanings in a number of other statutes, including the Endangered Species Act and the Marine Mammal Protection Act, and that care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.

Transparency

The CCC believes that a transparent public process is critical to maintaining public trust, so that decisions of the Council and the SSC are clearly documented. This need can be met in a variety of ways, such as by webcasting meetings, audio recording of meetings, or detailed minutes of meeting discussions. However, budget problems are very real, and written transcripts are costly. Video recordings of large meetings may not add substantive content, as they will not capture presentations and motions, which are the most critical visual aspects of meetings. Streaming video may also degrade the quality of webcast audio. While the technology for webcasts is rapidly evolving, live broadcasts generally require strong Internet connections to be effective. In the context of Council meetings, which are often held in remote locations near fishing ports, the Councils have little ability to predict or control the quality and cost of the Internet connection. Consequently, requiring the use of webcasts "to the

extent practicable” will allow Councils to achieve greater transparency within budget and operational constraints.

Additional approaches to improving on the public transparent process described in MSA include defining more specifically how it is achieved in Councils’ Standard Operating Procedures

NEPA Compliance

Fishery management involves fairly rapid cycles of adaptive management in which information about changing conditions is addressed through adjustments to the management program and regulations. The necessity for National Environmental Policy Act (NEPA) analysis of these actions results in requirements that duplicate those in the Magnuson-Stevens Act (MSA) and other applicable law, including additional comment periods that delay implementation of these actions, which were developed through the open and transparent MSA process. Ensuring NEPA compliance for marine fishery management actions has been costly and time-consuming for Council and NMFS staff and has limited the Councils’ abilities to pursue other regulatory activities. In addition, the CCC notes that there have been instances where compliance with NEPA has hindered adequate compliance with MSA in terms of providing comprehensive analysis to Councils prior to their taking final action due to the difficulty and time required to complete NEPA analyses. Although the 2007 MSA reauthorization attempted to align the requirements of the two laws more closely through the addition of Section 304(i), the CCC does not believe what has been called for in the Act has been accomplished.

Catch Share Programs

The CCC believes that Councils should maintain the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive requirements for conducting a referendum is likely to increase the administrative burden for the Councils and may reduce the Councils’ ability to implement the appropriate management program for their fisheries that could include modification of existing catch share measures or new catch share measures.

Collection and Use of Fishery Data

In general, the CCC believes that Councils should be granted a reasonable degree of flexibility in the development and implementation of monitoring programs (electronic and otherwise) so that those programs may be tailored appropriately for each fishery and the needs of each region.

Electronic Monitoring

Our ability to manage fisheries effectively depends on having access to timely and accurate data. The CCC believes the development of electronic monitoring technologies and the utilization of other emerging technologies could be beneficial to U.S. fisheries – in terms of data collection, and in terms of the potential to reduce the cost to fishermen and governmental entities. New technologies may be an additional method of collecting and analyzing timely fisheries data at a reduced cost. However, introducing additional national-level regulations to govern the use of electronic monitoring beyond the current constraints of the Act (e.g., the National Standards) may be counterproductive due to a number of factors, including funding and resource constraints, variability among fisheries, and the rapid evolution of technology. In addition, the costs of new technologies should be taken into account when implementing new programs or technologies.

Recreational Fisheries

Data quality and availability continue to be among the greatest challenges for the management of recreational fisheries. Given the importance of accountability, effective monitoring is critical for the successful management of recreational fisheries. While NOAA's Marine Recreational Information Program (MRIP) has provided some improved statistical methodologies to reduce sampling bias, the program has only been partially implemented, and it has done little to increase the precision of catch estimates. Addressing this problem will require increased sampling rates, which can only occur with increased funding. The Councils are examining additional technologies that should be encouraged to get better data.

Other Federal Statutes

The CCC believes that an amendment to the MSA that ensures all federal fishery regulations are promulgated under the Council or Secretarial process established under MSA section 302 would ensure rational management of our fishery resources throughout their range. Under the MSA, the Councils are charged with managing, conserving, and utilizing the Nation's fishery resources as well as protecting essential fishery habitat, minimizing bycatch, and protecting listed species within the United States Exclusive Economic Zone. This is done through a transparent public process that requires decisions be based on the best scientific information available. This time-tested approach has made U.S. fisheries management highly successful and admired throughout the world.

If changes to Council-managed fisheries (for example changes to the level, timing, method, allowable gear, or areas for harvesting management unit species) are required under other statutory authorities such as the Antiquities Act of 1906, the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the National Marine Sanctuaries Act of 1972, such restrictions or modifications to those fisheries should be debated and developed under the existing MSA process. In addition, all actions by the Councils are currently subject to review by the Secretary of Commerce to determine consistency with MSA and all other applicable laws. This current review ensures that Council actions – including those that could be made as a result of requirements of other statutes – will continue to be consistent with all relevant laws. Making modifications to fisheries through the MSA process would ensure a transparent, public, and science-based process. When fishery restrictions are put in place through other statutes, frequently the fishing industry and stakeholders are not consulted, analyses of impacts to fishery dependent communities are not considered, and regulations are either duplicative, unenforceable, or contradictory.

General comments

I would like to close by reiterating some general thoughts regarding the reauthorization process. These represent some general tenets that we believe should be considered relative to any change in the MSA, in order for the Councils to fulfill their responsibilities:

- Avoid across the board mandates that could negatively affect one region to address a problem in another region. In addition, modifications to the Act should be national in scope with reasonable flexibility to address region-specific issues. Modifications to the Act which are specific to one region or one Council undermine the national scope of the Act and should be carefully considered especially with respect to how these modifications might affect operations in other regions.
- Legislation should allow for flexibility in achieving conservation objectives, but be specific enough to avoid lengthy, complex implementing regulations or “guidelines”.

- Legislation should be in the form of intended outcomes, rather than prescriptive management or scientific parameters.
- Legislation should avoid unrealistic/expensive analytical mandates relative to implementing fishery management actions.
- Legislation should avoid constraints that limit the flexibility of Councils and NMFS to respond to changing climates and shifting ecosystems.
- Avoid unfunded mandates, and/or ensure that Councils and NMFS have the resources to respond to provisions of legislation.
- Preservation and enhancement of stock assessments and surveys should be among the highest priorities when considering any changes to the Act.

Thank you for the opportunity to provide these comments on MSA reauthorization. Please don't hesitate to contact me if you have any questions or would like clarification on any of the comments above. We appreciate your continued interest in the perspectives of the regional fishery management councils, and we look forward to future involvement in the MSA reauthorization process.

Sincerely,

Dr. John F. Quinn, Chairman