

North Pacific Fishery Management Council

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Agenda Item G.1
Supplemental Attachment 13
November 2017

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Senator Dan Sullivan
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Sullivan:

Pursuant to a request from your office (via email from Erik Elam dated 9/22/17) to provide comment on several pieces of fishery related legislation, I am responding on behalf of the North Pacific Fishery Management Council (NPFMC or Council). Specifically, we were asked to comment on the following bills:

- S. 1322 American Fisheries Advisory Committee Act
- S. 1323 Young Fishermen's Development Act of 2017
- H.R. 200 Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act
- S. 1520 Modernizing Recreational Fishing Management Act of 2017
- H.R. Discussion Draft (Huffman): Strengthening Fishing Communities Through Improving Science, Increasing Flexibility, and Modernizing Fisheries Management Act

S.1322 The American Fisheries Advisory Committee Act

The NPFMC uses fishery research information in its analyses of proposed management actions, and in making informed conservation and management recommendations. As such, the Council benefits from well-designed scientific studies. The S-K proposal review process has been subject to criticism over who does the reviews, the criteria used to evaluate reviews, the timing of the request for proposals, the limited ability to provide review, and transparency of the process. This draft legislation addresses some of these concerns by establishing a formal committee process for decision-making, and making the evaluation criteria more explicit. A comparison of how the proposed structure compares with the existing proposal funding process would be helpful to understand how improvements made by the legislation would affect the quantity and quality of information that feeds into the scientific analyses used for policy decisions by the Council.

The NPFMC notes that under the legislation, representation of Alaska fisheries on the American Fisheries Advisory Committee may be very limited (possibly only one or two members). Further, representation from tribal or indigenous communities -- as well as membership from the conservation community -- is lacking (unless included in the group as marine scientists). While the responsibilities of the Committee include developing a Request for Proposals and reviewing applications, it appears that only 2 of the 25 members of the Committee represent fisheries research expertise. And given that the criteria for funding establishes that applicants must have the requisite technical capabilities to carry out the project, and that

projects have sound design and a methodology for evaluating the success of project, it would seem appropriate for Committee members to have that experience to make those evaluations. This additional representation would benefit the Councils work in that the research would consider perspectives from a wider variety of stakeholders.

The NPFMC believes that it may be very challenging for the committee to evaluate the scientific design and methodology of these proposals. The NPFMC notes that the North Pacific Research Board (NPRB) utilizes a separate Science Panel to review all proposals for scientific adequacy, and an Advisory Panel to review proposals for their importance to communities and representative stakeholders prior to Board decisions on funding. A review of NPRB's overall structure and process for developing the request for proposals, scientific review and evaluation of proposals, may be beneficial to the structure of this bill, in that resulting research would be more useful to the Council for conservation and management. The most effective and relevant research projects that improve our management programs and scientific knowledge are those that are well designed, respond to focused research topics, and are conducted by capable applicants.

S. 1323 Young Fishermen's Development Act of 2017

This legislation will provide benefits to the long-term management of fisheries and sustainable fishing communities, in that the grant program will provide education and mentorship opportunities for young fishermen to more successfully enter and participate in the fisheries, which enhances the ability of the Council to better provide for sustainable fishing communities. Further, the flexibility for entities to tailor the grant program to meet the needs within each region, allows for more effective and focused education and training programs. The Council benefits when fishermen are better informed of the regulatory process, understand legal requirements and fishing regulations, utilize sustainable fishing practices, and other training opportunities provided by this bill.

At its October meeting, the NPFMC raised questions as to how the funding for this grant program falls in the priorities of other activities funded through Section 311 (e). Does the \$2 million come off the top before the other uses of the money specified in the MSA (e.g., costs incurred in storage of seized property, rewards to whistleblowers, enforcement costs, liens on forfeited property and other claims, reimbursement to any Federal or State agency for services) are spent? The NPFMC notes that Asset Forfeiture Funds are critical to various enforcement and investigative activities of the NOAA Office of Law Enforcement, and reductions in these activities could be detrimental to the NPFMC's overall management objectives. Since the Council meeting, however, we have been advised that the Asset Forfeiture Fund carries a growing balance of about \$18 million, so this may be of a lesser concern, at least in the near term. The provision that funds available for grants be proportional to the areas in which they were collected would be equitable across the regions. Additional guidance on what is "a beginning commercial fisherman" and "desires to participate in commercial fisheries" would be helpful for the Council to understand who can participate in the education and training.

Magnuson Stevens Act Legislation

The North Pacific Council believes that the current MSA already provides a very successful framework for sustainable fisheries management, and major changes are not necessary at this time. Nevertheless, we also recognize the potential benefits of increased flexibility in some circumstances, and amending the Act

to provide for such flexibility could provide all the regional councils additional opportunities to optimize their fishery management programs, with appropriate cautionary notes and limitations. In order for the Council to provide for the continued conservation of our resources, any changes to the law providing additional flexibility must continue to ensure that fundamental conservation and management tenets based on sound science are upheld, and should not create incentives or justifications to overlook them. Following are our comments on issues and provisions of the legislation which appear to be of relevance to the NPFMC (we are not providing comments on sections that specifically apply to other regions of the U.S.). In addition, these comments are captured in the **attached table** that, from the North Pacific perspective, compares the three pieces of legislation across different issues.

H.R. 200 Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act

Section 4. Flexibility in Rebuilding Fish Stocks. Regarding potential changes and increased flexibility for stock rebuilding plans, the NPFMC believes that further flexibility, would appropriately increase the ability to maximize harvest opportunities while still effecting rebuilding of fish stocks. The arbitrary 10-year requirement may constrain the Councils management flexibility with overly restrictive management measures, with unnecessary, negative economic impacts, with little or no conservation gain. Allowing for rebuilding to occur in as short a time as “practicable”, as opposed to as short a time as “possible”, appears to be an appropriate mechanism that would be beneficial to the conservation and management goals of the Councils. The use of alternative rebuilding strategies such as harvest control rules and fishing mortality targets is consistent with this increased flexibility as long as accountability remains. Finally, allowing the Scientific and Statistical Committees (SSCs) to determine whether a rebuilding plan is no longer necessary seems an appropriate role for the SSCs.

Section 5. Modifications to the ACL requirement. Annual catch limits (ACLs) have been used in the North Pacific for over 30 years, and such limits are a cornerstone of sustainable fisheries management. We also believe there are situations where some flexibility in the establishment of ACLs is warranted, particularly in the case of data poor stocks. Consideration of the economic needs of fishing communities is critical in the ACL setting process, and while the current MSA allows for such consideration, we recognize the desire for a more explicit allowance for these considerations. We must be careful however, not to jeopardize long term fisheries sustainability, and associated community vitality and resiliency, for the sake of short term preservation of all economic activity associated with a fishery. Accounting for uncertainty, articulating policies for acceptable risk, and establishing the necessary precautionary buffers, are all explicit outcomes of the ACL process, and we believe that the SSCs are the appropriate gatekeepers to establish the upper limits of ‘safe’ fishing mortality. This limit, which is established as the Acceptable Biological Catch (ABC) level, appears to be consistent with the provisions of H.R.200.

We believe that authorization for multi-species stock complexes and multiyear ACLs, as well as the provisions regarding ecosystem component species, will also provide the regional fishery management councils greater flexibility to apply ACLs consistent with other aspects of management for a given species, in order to achieve OY under National Standard 1. The wording in this section, which defines ‘ecosystem component’ with reference to ‘non-target stock’, could be confusing for the North Pacific given how targets and non-targets are defined in our regulations (i.e., based on catch composition after the fact), and may create confusion for stakeholders and affect the Council’s ability to effectively amend its fishery management plans. In effect, all major stocks may be considered non-targets if they are not the dominant species caught in a given haul or trip, while ACLs must be set prior to the fishing year. While

this would not likely change how we set ACLs in the North Pacific, clarification may be achieved by deleting the words “in a fishery” to accomplish the apparent intent.

Section 6. Distinguishing between overfished and depleted. Should a stock decline below a minimum level of abundance, the stock is deemed ‘overfished’ and a rebuilding plan is required. In the North Pacific the example of Pribilof Island Blue King Crab, a fishery for which there has been no allowable fishing for decades, and a species which is only occasionally taken as bycatch in other fisheries, highlights the need to differentiate stocks for which an “overfished” status has no relation to fishing activities. Replacing the term “overfished” with the term “depleted” may be an effective way to more accurately reflect this important distinction. However, while the distinction makes sense, the legislation does not explicitly exempt such a situation from development of a rebuilding plan; therefore, adding such an exemption in cases where fishery management actions would not effect, or substantially affect, stock rebuilding. Such an exemption would create efficiencies for the Council in that it would allow the Council’s to focus efforts on development of rebuilding plans for which fisheries can be modified.

Section 7. Transparency and Public Process. Regarding the requirements to provide website access to audio, video, or written transcripts of all Council and SSC meetings, this is already provided by the NPFMC for meetings of the Council, including live webcast and full searchable audio transcripts. While SSC meetings are not live webcast or recorded, they are open to all public and very detailed meeting minutes are developed and are accessible on our website. Requiring live webcast or full audio transcriptions of SSC meetings would impose a significant cost to the Council, with both monetary and personnel commitments, with little or no marginal benefit to the public. Additionally, our Council meetings are sometimes held in remote Alaska coastal communities that may have less than ideal internet connectivity necessary for audio (or video) webcasting. The Council agrees with the Council Coordinating Committee recommendation to require the use of webcasts “to the extent practicable” will achieve greater transparency within budget and operational constraints.

Regarding the revised fishery impact statements, and the associated incorporation of NEPA requirements into MSA, this section represents a unique opportunity to streamline our regulatory process, but also represents some potential challenges which could complicate our process, and which should be carefully weighed before adopting in legislation. This section reflects a long-standing intent of the NPFMC, and the broader Council Coordination Committee (CCC), to streamline regulatory processes, eliminate redundancy, and make the Magnuson-Stevens Act the single guiding Act for fisheries actions. The language of this section mirrors language developed by the NEPA workgroup of the CCC in 2015. However, as constructed, it may only make a marginal improvement to the regulatory process, and could, at least in the near term, complicate our regulatory process, and associated legal processes, for the following reasons:

- Proposed new requirements do not alter the current breadth and scope of environmental, economic, and social impact analysis requirements, so we would not anticipate any decrease in the overall resources necessary to satisfy the new requirements.
- Councils, subject to approval by the Secretary, will be required to “prepare procedures” to comply with the new fishery impact statement requirements (paragraph 6) – as with many recent MSA amendments, this means development of potentially complex, controversial, interpretive regulations, or at least ‘guidelines’, which would in essence be subject to approval by NMFS and NOAA GC.

- Presently the onus for completion of NEPA requirements technically lies with NMFS (even though our current process attempts to incorporate most of that within the Council process). Under this revised process all of the onus for compliance with the new provisions will lie with the Councils under the MSA process, except for NMFS' final review and approval authority. Shifting this responsibility could require substantial realignment of resources.
- We have become quite proficient at the NEPA process (albeit cumbersome), and we have an established track record with regard to litigation of fisheries actions under NEPA. While this section could streamline the process in the longer term, it could also create grounds for a new body of litigation and case law on fisheries management actions, based on an as-yet-unwritten set of implementing regulations (pursuant to paragraph (6)), and/or attempting to extend previous NEPA case law to the new MSA process. For example, the term "substantially complete", in reference to a draft fishery impact statement, will likely be a subjective determination unless further defined.
- To the extent Councils are experiencing timing/delay issues between the time of final Council action and actual transmittal of the package for Secretarial review, this legislation will not directly address or rectify that problem; i.e., even under this legislation, determination of 'adequacy' of the amendment package for transmittal will still be determined by the agency. It is possible this could be addressed through the "procedures" envisioned under paragraph (6), but there is no guarantee of that.

In sum, while this section does accomplish the goal of incorporating NEPA intent into the MSA (without diminishing the intent of NEPA or environmental impact analyses), the potential benefit to our process should be carefully weighed against the potential downsides. At least in the near-term, all of the Councils and NMFS would have to spend substantial time and resources developing and negotiating implementing regulations pursuant to paragraph (6) and possibly paragraph (5) (which ultimately have to be approved by the Secretary). Deletion or modification of paragraph (6) may be one option to address these concerns, as the language of the legislation (in paragraph 2) appears to actually be quite sufficiently clear on the nature and extent of analyses required under the revised procedure (i.e. how we fully capture NEPA intent for content).

Section 9. Report on fee. Requiring the Secretary to report annually, to both Congress and the Councils, on the amount collected from each fishery subject to fees, is consistent with information requests previously made by the NPFMC to NMFS. This information will greatly assist the Councils, and NMFS, with information to effectively and fairly develop, implement, and review fee programs in the future.

Section 10. Cooperative Research and Management. The NPFMC believes that an explicit plan for cooperative research will benefit both the industry and the management process in more effectively managing our fisheries. In the current budget climate, with reduced stock assessment surveys already being planned by NMFS, such cooperative research will be even more critical. We also note that prioritization of the expanded use of electronic monitoring (EM) is consistent with efforts already well underway in the North Pacific, and identifying this priority may provide the Council with additional information for management and monitoring of the fisheries.

Section 13. North Pacific Management Clarification. Section 306(a)(3)(C) contains provisions related to State jurisdiction to manage fishing activity in the absence of a federal fishery management plan. Removal of the August 1, 1996 date in this paragraph would close a potential loophole which could

theoretically allow unrestricted fishing for salmon in EEZ areas off Alaska by vessels not registered with the State of Alaska. The Council strongly believes this change, thereby allowing regulation of fishing in these areas by the State of Alaska, is essential to the responsible and effective management and enforcement of these fisheries.

Section 14. Ensuring consistent management for fisheries throughout their range. This section refers to the relationship between MSA and other statutes including the Endangered Species Act, National Marine Sanctuaries Act, and Antiquities Act. While we may infer the intent of this new section (and agree with that intent as it relates to prioritizing the authority of the MSA relative to those other statutes in the case of conflict), we do not fully understand the actual effect of this section on the Council's performance of its responsibilities. In more recent years, many fisheries regulations stemming from section 7 ESA consultations have been implemented through the MSA (Steller sea lion protective measures for example), thus providing the opportunity for those knowledgeable about the fisheries to develop the fishery rules. Using the public, transparent process of the Councils to develop whatever fishery regulations may be necessary will result in better decision making. Pending further clarity of the intent and effect, the NPFMC may provide additional comment at the appropriate time.

Section 15. Limitation on harvest in North Pacific Pollock Fishery. This section would authorize the NPFMC to change the pollock harvest cap as stipulated in the American Fisheries Act (currently 17.5%), but not to exceed 24%. NMFS has raised the issue of whether the NPFMC or NMFS might already have the authority under the American Fisheries Act to revisit the harvest cap. The NPFMC has taken no position on this provision at this time, but may in the future upon a better understanding of the intent, need, and potential impacts of such action.

Section 16. Recreational Fishing Data. This section appears to allow for grant funding to help support recreational fisheries monitoring programs undertaken by the State, which the MSA authorizes as a suitable replacement for a federal registry program. In the North Pacific, this could apply to ADF&G's charter logbook and recreational harvest survey program to monitor recreational harvest of halibut. Because the State received a one-time grant several years ago to modify the logbooks, but no longer receives federal funding in support of the continued operation of this program, the NPFMC believes this would facilitate improved management of our recreational halibut fisheries. Other provisions of this section could generally benefit the NPFMC's consideration of recreational fisheries data.

Sections 19/20. Fishery resource disasters. The Council believes that these sections provides useful clarification of the resource disaster declaration process.

Section 22. Subsistence fishing. The Council believes that providing a definition for subsistence fishing is a proper addition to the MSA to reflect the full range of marine resource uses in the EEZ. Additionally, adding subsistence as an appointment qualification for Council membership is a beneficial clarification to the MSA in that it allows additional qualified people to participate as Council members in the North Pacific, with the understanding that it would not require or direct the appointment of a subsistence representative as a Council member.

Section 24. Arctic CDQ. The Council does not have a position on this provision of H.R. 200, but notes that it may be useful to the Council if Congress provided more specificity with regard to identifying eligible villages, as this would enhance the Council's ability to develop such a program. Additionally, the Council also suggested that it would be beneficial to the Council with respect to public process for Congress to consider guidance for the allocation of such quota.

Section 26. LAPP program review requirements. This section appears to modify existing review requirements in order to provide greater specificity as to the aspects that must be included in a program review. The NPFMC typically includes these in various program reviews, but this section does provide useful clarity that will assist Councils in the evaluation of LAPP program performance.

Section 27. Healthy fisheries through better science. Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the NPFMC believes the requirements for the Secretary to develop plans and schedules for stock assessment will enhance fisheries management nationally. However, we have some serious concerns with the provision as written to incorporate information from a wide variety of non-governmental sources, and potentially require that information to be considered ‘best information available’. We are concerned that complying with this provision will increase burdens on our staff and our Scientific and Statistical Committee, and invite potential litigation with respect to the determination that the best scientific information is being used, in the absence of an independent scientific peer review process. The implementing guidelines for when such information would be utilized will be critical to its veracity and usefulness to managers. A cost comparison report on monitoring programs (for example, human observers versus electronic monitoring) would be extremely beneficial to development of such monitoring programs.

Section 29. Alternative fishery management measures. Alternative management measures for recreational fisheries such as extraction rates, mortality targets, and harvest control rules could provide additional tools and flexibility to fisheries managers in all U.S. regions. It is unclear, however, whether such alternative measures are intended to be *in lieu of* annual catch limit (ACL) requirements, or in some other context. The NPFMC believes that accountability to management measures, harvest levels, and scientific principles is paramount for sustainable fisheries envisioned by the MSA.

S. 1520 Modernizing Recreational Fishing Management Act of 2017

Section 3. Definitions. The bill defines mixed-use fisheries as a Federal fishery in which two or more of the following occur: recreational, charter, or commercial fishing. The NPFMC notes that subsistence fishing is not included, and that it’s not clear whether the term mixed-use includes the incidental harvest or bycatch of a species in one fishery that is the target species in another. These types of mixed-use fisheries are an important part of the fishery management program in the North Pacific, and we have limited access privilege programs for one or more components of these types of fisheries. Additional clarification would enhance the Council’s management of these fisheries.

Section 102. Alternative Fishery Management. The bill provides the councils authority to use alternative measures in recreational fisheries including extraction rates, fishing mortality targets, harvest control rules, or traditional or cultural practices. The NPFMC notes that it is unclear if alternative fishery management measures replace the requirement for ACLs. Nevertheless, fisheries managed under alternative measures should be accountable to the conservation and management provisions of the MSA, including prevention of overfishing. ACL’s serve as the primary conservation measure for fish stocks in the North Pacific, and have effectively prevented overharvesting in our fisheries. The NPFMC also notes that traditional or cultural practices are not normally considered as recreational fisheries.

Section 103. Study of Limited Access Privilege Programs. The bill requires a study by the National Academy of Sciences on the use of limited access privilege programs for mixed use fisheries, with consideration of referenda, auctions or lotteries, limited duration, sector allocation analysis, and

compensated reallocation. The NPFMC notes that NAS studies incur costs to the agency (typically ~ \$1 million) that in turn, affect the councils by reducing funding for NMFS scientific and management support. Additionally, prescribing a national moratorium on LAPPs limits the ability of Councils to use proven management tools based on regional needs and determinations, to fulfill their conservation and management responsibilities.

Section 104. Rebuilding Overfished Fisheries. The bill requires rebuilding to be as short as possible, and not to exceed 10 years, or the time to Bmsy in the absence of fishing plus one generation time. The NPFMC notes that the bill provides more guidance on the rebuilding time allowance. However, the bill retains the arbitrary 10-year T_{max} rebuilding requirement, which severely limits the flexibility of the councils to determine more reasonable rebuilding times for those stocks that can rebuild to Bmsy within 10 years in the absence of fishing. There is a significant discontinuity for stocks that can rebuild in the absence of fishing in 9 years, versus 11 years (in the first case, the time to rebuild would be limited to 10 years, whereas in the second case, rebuilding could be extended to 11 years plus one whole generation time). The NPFMC believes that the arbitrary 10-year time period can be harmful to resource users and fishing communities if it prohibits even limited fishing activity under a scientifically sound rebuilding plan. Replacing the term ‘possible’ with ‘practicable’ provides the councils with more flexibility to incorporate the needs of fishing communities in maintaining economic stability during a rebuilding period.

Section 105. Modification to ACL Requirements. The bill allows a council to maintain its current ACL for a stock where ACL is > 25% below the OFL, a peer-reviewed survey and stock assessment have not been done in the last 5 years, and the stock is not subject to overfishing. Within 2 years of receiving a notice from a council that there is such as stock, the Secretary must complete a peer-reviewed survey and stock assessment. Councils can also establish ACLs for complexes and ACLs with a 3-year duration. The NPFMC notes that multi-year ACLs provide additional flexibility to address ACL requirements. The NPFMC is concerned that a requirement that the Secretary perform surveys and stock assessments within 2 years is entirely unrealistic and extremely costly, and may cause a reallocation of funds to regions where surveys are very challenging (e.g., coral reef areas) and expensive. Consequently, it may provide little added benefit to conservation of the stocks and management of those fisheries. NMFS is currently conducting a Stock Assessment and Improvement Plan that will address many of the issues that this bill seems to identify. The NPFMC further notes that the House version of this bill (H.R.2023) exempts stocks from ACLs if they meet any one criteria, *including exempting all stocks from the ACL requirement if overfishing is not occurring*. Since ACLs are the foundation of our successful conservation program, we believe that such an exemption would be a dramatic step backwards in the conservation of fish stocks in the U.S. Fisheries managed without catch limits greatly increases the risk of overfishing.

Section 106. Exempted Fishing Permits. The bill requires that the SOC direct a joint peer-review of EFP applications by the science center and State marine fisheries commission. The SOC must also certify that EFP fishing activity would not negatively impact other measures or conservation objectives, have only minimal social and economic impacts in both money and lost fishing opportunities, information collected would have a positive and direct impact on management, the Governor of each state potential affected has been consulted. EFPs shall expire after 12 months of issuance.

Our fisheries management program has greatly benefited from the use of EFPs, including multi-year EFPs, to test (under field conditions) solutions to management problems. In recent years, for example, fishermen have successfully tested different trawl gear configurations to allow escapement of salmon in the pollock fishery, tested and quantified reductions in mortality of halibut sorted on deck and discarded alive from vessels trawling for flatfish, and tested the efficiency and effectiveness of different electronic

monitoring devices on longline vessels. Each EFP proposal undergoes scientific peer review by the Alaska Fisheries Science Center and the Council's SSC to ensure that it is scientifically sound, and each proposal is also evaluated by the Council prior to approval by NMFS. A multi-year EFP allows testing across seasons to evaluate inter- and intra-annual impacts. A NEPA Categorical Exclusion may be issued in cases where no additional catches are requested. The NPFMC is concerned that language requiring EFP applications to provide information on the economic effects of the EFP "in dollars" and in terms of lost fishing opportunities for all sectors would elevate the analysis to a full Environmental Analysis just to examine the effects on all sectors. This would greatly reduce the industry's and Council's ability to get EFPs developed and approved in a timely manner. The NPFMC also believes that multi-year EFPs can be critical to testing some solutions to fishery management problems. For example, in the North Pacific several multi-year EFPs have been conducted to test excluders in trawl gear and deck sorting of bycatch that have been critically important to improving our management programs. Lastly, the NPFMC also notes that a representative from each State sits on the council, so the need to consult with a Governor is duplicative, adds another hurdle to the process.

The current EFP process is working well for the NPFMC, with a minimum of paperwork and process requirements, and the NPFMC does not see a need for changes or new requirements. If there are problems with the current EFP process in specific regions of the country, then proposed legislation should be applicable only to those regions.

Section 201. Cooperative Data Collection. The bill requires the Secretary to prepare a report on facilitating greater incorporation of data, analysis, stock assessments and surveys from State agencies and non-governmental sources (fishermen, fishing communities, universities, and other institutions). The NPFMC notes that although cooperative data collection can be very valuable to our management process and scientific understanding (e.g., the expanded Bering Sea crab surveys done by industry several years ago), the studies and results need to have adequate peer review. The concern isn't specifically with other non-government data sources per se, it is the notion that they won't be adequately peer reviewed or vetted. The NPFMC suggests that in developing the report, the Secretary also identify a process for ensuring adequate scientific peer review of the data and analysis. Basing management decisions on poorly designed studies can be highly detrimental to the conservation of our stocks and management of the fisheries.

Section 202. Recreational Data Collection. The bill requires the Secretary develop guidance, in cooperation with the States that detail best practices for State programs, so that the information from State programs can be determined to meet the threshold for use in conservation and management of recreational fisheries. This section also includes a requirement that the Secretary provide biennial reports on the information used and improvements that could be made, grants to States using S-K funding to improve State data collection programs. The NPFMC notes that the MSA requires a registration program for recreational fishermen who fish in the EEZ, for anadromous fisheries, or beyond the EEZ, and the Secretary can exempt from the registration program fishermen from a given State, but only if the SOC determines the State registration and data collection program is suitable for use in conservation and management. [Alaska has been exempt from the registration program because it has a functioning program for accurately accounting for catch in recreational fisheries]. This section would enhance the Council process if the Secretary also consulted with the councils and their SSCs to provide input on what is acceptable data for conservation and management of recreational fisheries. A national level discussion among SSC representatives may also identify an appropriate path forward.

H.R. Discussion Draft (Huffman): Strengthening Fishing Communities Through Improving Science, Increasing Flexibility, and Modernizing Fisheries Management Act

Section 104. Amendments to Definitions. The draft bill includes several new definitions that impact the effectiveness of management in the North Pacific.

- **Habitat Areas of Particular Concern (HAPC):** The draft bill defines HAPC to include the importance of its ecological function in maintaining and restoring spatial and genetic characteristics of fish populations. The NPFMC notes that this greatly broadens the definition of HAPC currently found in the EFH guidelines, and that defining genetic characteristics of a fish population may be challenging and invite litigation with respect to the scientific basis for assessing the performance or achievement of this objective.
- **Subsistence Fishing:** The draft bill defines subsistence fishing as fishing in which the fish harvested are intended for customary and traditional uses. The NPFMC notes that it is helpful for management to have this term defined in the MSA.
- **Overfished or Otherwise Depleted:** The draft replaces the term “overfished” with “overfished or otherwise depleted”. This is consistent with the previous NPFMC recommendation to use the term depleted, and the suggested replacement term of “overfished or otherwise depleted” more accurately describes the various causes of stock conditions, rather than unfairly implicating fishermen when the stock may have declined due to coastal development, environmental and ecosystem changes, or other factors. Differentiation between these two conditions would be helpful to Councils for developing effective management and rebuilding measures. We note the inconsistency in the title and text, where the bill states that the heading of 304(e) is “Overfished AND otherwise depleted” and the text is replaced with “Overfished OR otherwise depleted”.

Section 201. Alternative Management Measures. The draft bill provides authority to use alternative measures for ACLs such as extraction rates, fishing mortality targets, harvest control rules particularly in recreational fisheries. The NPFMC is concerned that this would replace the requirements for ACLs – including for commercial fisheries - which have been the critical to our successful management program.

Section 202. Modification to ACL Requirements. The draft bill establishes that 1) ACLs are not required for ecosystem component species or stocks with a 1-year life cycle, 2) ACLs may take into account fishing or life history outside of EEZ, and 3) ACLs can be established for stock complexes and with a 3-year duration. Additionally, ecosystem component species are defined as a stock that does not require conservation and management but should be listed in an FMP to achieve ecosystem management objectives. The NPFMC believes that these modifications provide flexibility to the Councils in establishing ACLs without jeopardizing conservation of fish stocks.

Section 203. Transparency and Public Process. The draft bill requires webcast, recording, or live broadcast of council and CCC meetings to the extent practicable on a council's website, and Councils must post audio, video or written transcript of Council and SSC meetings on the website within 30 days of the meeting. Roll call votes required at the request of any member. The bill also requires recorded vote on all non-procedural matters. The NPFMC notes that recordings and live broadcasts would be new for SSC meetings, and would add costs associated with posting transcripts. Additionally, webcasts and live broadcasts may not be viable in remote coastal communities with low bandwidth internet connection.

The NPFMC notes that it is unclear if ‘a recorded vote’ essentially means a roll call vote on every motion, but we suspect that was the intention. Such a requirement negatively affects the ability of the councils to complete their business by creating divisiveness on every motion or amendment. If an individual Council wants to require a roll call vote on all actions, it can do so by simply amending its Statement of Organization, Practices, and Procedures (SOPP).

Section 204. Additional Amendments. There are a number of disparate items in this section. Comments are provided on important issues affecting the North Pacific as follows.

The draft bill adds subsistence fishing as a qualification to be considered for Council membership, and requires the Governor of Alaska to consult with subsistence fishing interests when submitting nominations for the Council. The NPFMC believes this is a useful clarification and would allow additional qualified people to participate as Council members in the North Pacific.

The draft bill requires that, to the extent possible, councils shall minimize the amount and cost of member and staff travel by use of electronic means for remote participation during meetings, including voting. Since this type of meeting is almost always possible to do (note the term ‘practicable’, which implies tradeoffs, was not used), and ‘shall’ is interpreted as mandatory, we conclude this means that Council meetings would no longer be conducted in person. The NPFMC notes that in-person meetings provide better interpersonal communications and make Council members more accessible to the public. A requirement for electronic meeting would seriously impede the ability of a Council to fulfill its responsibilities and greatly reduce transparency in the decision-making. Changing ‘possible’ to ‘practicable’ and ‘shall’ to ‘may’ would allow the Council to meet in person if they determine it is not practicable to hold meetings by WebEx or some other electronic means. Having Council members participate via the internet does not advance transparency.

The draft bill also requires fishery councils to develop and implement plans to 1) protect and recover essential fish habitat and 2) reduce bycatch, each with quantitative and measurable milestones and goals. The NPFMC notes that this would require considerable Council time and resources to develop and monitor, implies that the existing MSA phrase ‘to the extent practicable’ has not been met, and raises litigation concerns with respect to the scientific basis for assessing the performance and achievement of this objective. The draft bill also requires a report from the U.S. Comptroller General on a full accounting of all grant money received and distributed by the Councils, and an assessment of interactions of the Councils and staff with Congress for the past 10 years, and an assessment of conflicts of interest. The NPFMC notes that it is not clear what problem this provision is trying to address, or the meaning of ‘grant money received and distributed’, but it may take considerable staff time to dig through records. Regional fishery management councils already undergo annual or biannual financial audits of their grants.

Regarding the requirement for an assessment of conflict of interest, the NPFMC wishes to bring an important issue to your attention, specifically the process that NOAA and NMFS employ to determine whether Council members have a financial conflict of interest on a particular action and must therefore recuse themselves. We have communicated with NOAA over various aspects of this process in recent years, and have resolved some issues, but question whether the specific interpretations are consistent with the intent of conflict of interest statute and regulations. The current interpretations make it challenging for the Council to fully exercise its collective voice as intended under the MSA.

The MSA was designed to allow people who actively participate in the fisheries to be voting members of regional fishery management councils. To address concerns about members voting to improve their own financial situation, the MSA has long required Council members to disclose financial interests. Prior to

1996, as long as council members disclosed their financial interests, there was no prohibition on voting on any matter. In 1996, Congress added the recusal provision, which required not only disclosure but also that an affected individual not be allowed to vote on council decisions that would have a significant and predictable effect on a member's financial interest. The MSA language left the issues of significant and predictable effect open for interpretation, so NMFS developed a regulation that set a 10% threshold for a significant effect, which is the basis for determining whether a recusal is required. The primary problem is the way in which NOAA calculates a member's financial interests in determining whether the 10% thresholds are exceeded. The NOAA and NMFS policy is to attribute all fishing activities of a company -- even partially owned by an associated company -- in calculating an individual Council member's interests. The North Pacific Council believes that this attribution policy is inconsistent with the intent of the conflict of interest statute and regulations.

The following example helps to explain this issue: Joe Councilman works for Fishing Company A, which owns 50% of Fishing Company B, which in turn owns 3% of Fishing Company C. NOAA uses ALL harvesting and processing activity by ALL three of these companies in determining whether Joe Councilman exceeds any of the 10% thresholds. The North Pacific Council believes that this is an unfair and illogical interpretation of the recusal regulations, and results in unintended recusals of Council members. The North Pacific Council believes that NOAA should use only the amount of harvesting or processing activity equivalent to the Council member's percentage of ownership. Using this proportional share approach, NOAA GC would use 100% of the harvesting and processing activity of Fishing Company A, 50% of the harvesting and processing activity of Fishing Company B, and 1.5% of the harvesting and processing activity of Fishing Company C to determine whether Joe Councilman exceeds any of the thresholds. At our request, NOAA and NMFS revisited the attribution policy, but to date, have declined to make changes.

The full attribution policy causes particular problems for the North Pacific council members who represent the Community Development Quota groups because they have been prohibited from voting on many very critically important management issues. The MSA established the CDQ program to allocate up to 10.7% of fish quotas to the groups, with the intent the groups invest broadly in the fishery. These CDQ groups have been very successful over the past 25 years, and have become full or partial owners of many fishing companies, and participate in virtually all of the Bering Sea groundfish, halibut, and crab fisheries and sectors. Hence a CDQ representative is very knowledgeable about the fisheries, so their input and vote is extremely important for a fully effective and participatory fishery management program as envisioned by the MSA. Under the full attribution policy however, all of the various ownership structures are additively applied, resulting in NOAA General Counsel determining that the CDQ representative is recused from voting. The CDQ representative on our Council has been recused far more frequently in the last two years than any other Council member, resulting in what we believe is a frustration of Congressional intent for this program.

We believe that a proportional attribution policy in determining recusal of Council members from voting is more in line with Congressional intent on MSA, and would greatly improve the Council's ability to manage our fisheries.

Section 206. Flexibility in Rebuilding. The draft bill requires rebuilding to be as short as possible... not exceed the time for the stock to be rebuilt without fishing occurring plus one generation. It also provides for the SOC to review rebuilding progress and notify the Council if rebuilding is not occurring on schedule. Any rebuilding plan must have a 75% chance of rebuilding within the time limit proposed by the Council. It also allows the use of alternative measures for rebuilding. This section also includes a requirement that, at least every 5 years, the SOC reviews the Councils newly required plans to protect and

recover EFH and reduce bycatch, and if adequate progress is no being made, make recommendations to do so. The NPFMC notes that the new time limit for rebuilding (i.e., “not to exceed the time to be rebuilt without fishing occurring plus one generation) is vastly superior to the arbitrary 10-year requirement that can result in overly restrictive management measures. The NPFMC suggests that allowing for rebuilding to occur in as short a time as “practicable”, as opposed to as short a time as “possible”, would provide additional flexibility that is more reflective of the tradeoffs inherent in the MSA National Standards.

Section 207. Protecting Fish Stocks and Habitat. The draft bill adds a new required provision for FMPs: identify habitat areas of particular concern (HAPC), prevent adverse effects on such habitat caused by fishing, monitor efficacy to prevent adverse effect and identify other actions to conserve habitat. The NPFMC notes that the language “to prevent adverse effects” suggests that regulations must prevent any amount of impact on HAPC due to fishing. Our approach with HAPC has been that we monitor and minimize adverse impacts but do not eliminate or prevent all adverse impacts at HAPC sites. Under the proposed language, we may be required to prohibit all fishing activity at sites designated as HAPC such as Bering Sea skate egg deposition sites and the GOA Fairweather Grounds coral areas. The NPFMC believes this requirement may create unnecessary adverse economic impacts on the fisheries.

Section 208. Sense of Congress on Ecosystem-Based Fishery Management. The draft bill identifies the sense of Congress that “applying ecosystem science to fisheries decision-making reduces management uncertainty and increases resiliency of stocks.” The NPFMC notes that applying ecosystem-based fisheries management (EBFM) will not likely reduce management uncertainty or increase resiliency of stocks. We suggest rewording this section using language from the NMFS policy on EBFM.

Section 301. Healthy Fisheries Through Better Science. The draft bill requires the Secretary to provide a report on stock assessment methods and assessment schedule, and identifying data and analysis, including whether such data and analysis could be provided by fishermen, fishing communities, universities, and research institutions. Further, the bill includes a statement that fishery management is most effective ... when it incorporates such information from these sources, and that the SSC should consider this information when seeking best scientific information. The NPFMC notes that the SSC is currently responsible for determining ‘best scientific information’ and that prescribing what the SSC should consider diminishes the independent and objective role in identifying appropriate information for stock assessment and analysis of proposed management actions.

Section 302. Cooperative Research and Management. The draft bill requires the Secretary to conduct a cooperative research plan with priorities of using fishing vessels, electronic reporting, and electronic monitoring. The NPFMC notes that improving monitoring through electronic monitoring is consistent with research progress in our region. The bill also authorizes the Secretary to accept outside funding for this program, including funding from other agencies, academic institutions, persons including fishery participants, and non-governmental organizations. Further it allows the source who donated the funds to designate the specific project or region for the money to be spent. The NPFMC cautions that this provision would provide non-governmental groups substantial influence over research priorities and research conducted in the region by allowing them to determine specific projects to fund. The objectives of these groups may not match the research, conservation and management objectives of the Council or NMFS, and may impede our ability to effectively manage our fisheries using the balanced approach provided by the MSA National Standards.

Section 304. Modernizing Fisheries Data Collection. The draft bill encourages the development of video survey technologies. The U.S. Digital Service is directed to make recommendations to modernize data collection, processing, analysis, and storage of NMFS data. The NPFMC notes that these

recommendations might be useful, however, we suggest that the Digital Service maintain existing protocols for protecting confidential information, as stakeholder trust is a required element for effective management

Section 306. Science and Management for Shifting Stocks. The draft bill prohibits development of a new fishery until the Secretary determines the fishery ecosystem impacts are analyzed. Additionally, the revised list of approved fisheries needs to specify an associated geographic range, so that ecosystem impacts must first be evaluated before fishing can occur outside of the specified range if fish distribution shifts. The NPFMC appreciates that this is a precautionary approach, similar to the approach the NPFMC has taken with respect to commercial fishing in the Arctic region. However, by limiting the geographic range in the list of approved fisheries, fish may no longer be fully harvested if fish distribution shifts (until ecosystem impacts evaluated). Distribution changes may be impossible to predict and may be abrupt, and may raise critical transboundary or cross-council management and allocation issues. This requires a flexible and adaptive response by the Councils in order to effectively manage the fisheries. The NPFMC suggests NMFS issue guidelines, if necessary, instead of new MSA requirements to address this concern.

Section 402. Fishery Resource Disaster Assistance. The draft bill requires the Secretary to publish an estimate of the cost of recovery from a disaster within 30 days, and make a decision within 90 days or receiving the estimate of economic impact from the requesting entity. The NPFMC notes that this provides useful clarification of the disaster declaration process.

Section 405. North Pacific Fishery Management Clarification. The draft bill also removes the August 1, 1996 date for an FMP to allow delegation of fishery management authority to the State. The NPFMC strongly supports this change, which can be essential to the effective management and enforcement of these fisheries.

General comments

I would like to reiterate some general thoughts regarding the reauthorization process, which are also reflected in the CCC recommendations. These represent some general tenets which we believe would improve the ability of the regional councils to develop appropriate conservation and management measures, and should be considered relative to any change in the MSA:

- Avoid across the board mandates which could negatively affect one region in order to address a problem in another region. Make provisions region-specific where necessary, or couch them as optional tools in the management toolbox rather than mandates.
- 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 closures or other 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.

Once again, thank you for the opportunity to review these pieces of legislation, and to provide these comments to you on behalf of the North Pacific Fishery Management Council. We look forward to our continued dialogue on these critically important issues.

Sincerely,

A handwritten signature in blue ink that reads "Dan Hull". The signature is written in a cursive, flowing style.

Dan Hull
Chairman

CC:

Senator Lisa Murkowski
Representative Don Young
Chris Oliver, AA NOAA Fisheries
Regional Fishery Management Councils

Comparison of proposed MSA legislation, focusing on issues of importance to the North Pacific, with NPFMC comments.

October 16, 2017

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
Definitions	Mixed-use fisheries means a federal fishery in which two or more of the following occur: recreational, charter, or commercial fishing. LAPP program also defined as program meeting requirements described in 303A.	Defines subsistence fishing.	Defines subsistence fishing. Defines habitat areas of particular concern to include the importance of the habitat in maintaining and restoring the biomass, demographic, spatial, and genetic characteristics of fish populations. Defines adverse effect wrt EFH and HAPC. Defines forage fish.	The NPFMC notes that S. 1520 doesn't include subsistence fisheries, or clarify mixed-use in terms of bycatch in one fishery and target of another. For example, is pollock a mixed-use fishery if a few are caught in a recreational fishery? The Huffman draft redefines HAPC from guidelines and includes spatial and genetic objectives, which greatly broadens the definition of HAPC currently found in the EFH guidelines, providing increased opportunities for litigation.	
Alternative Fishery Management	Provides authority to use alternative measures in recreational fisheries including extraction rates, fishing mortality targets, harvest control rules, or traditional or cultural practices of native communities.	Provides authority to use alternative measures in recreational fisheries including extraction rates, fishing mortality targets, harvest control rules.	Provides authority to use alternative measures for ACLs such as extraction rates, fishing mortality targets, harvest control rules particularly in recreational fisheries.	The NPFMC notes that it is unclear if this replaces the requirements of ACLs. Traditional or cultural practices of native communities are not normally considered as recreational fisheries.	Yes
LAPPs	Requires a NAS study within 1 year on the use of LAPPs for mixed-use fisheries with consideration of referenda, auctions or lotteries, limited duration, sector allocation analysis, and compensated reallocation. A moratorium is in place on new LAPPs for mixed-use fisheries until NAS study submitted.	Slightly modifies existing review requirements to clarify specific aspects of the review.		Studies cost money for the agency (typically ~ \$1 m) that in turn, affect the council by reduced funding for NMFS scientific and management assistance. Deadlines and moratoriums affect the ability of the council to complete their work efficiently.	

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
Rebuilding Overfished Fisheries	Requires rebuilding as short as possible... and not exceed 10 years, or the time to Bmsy in the absence of fishing mortality plus one generation time.	Requires rebuilding as short as 'practicable'... and not exceed the time to Bmsy in the absence of fishing mortality plus one generation time, EXCEPT in cases where biology or environmental conditions dictate otherwise, or the SOC determines that: 1) rebuilding cannot be effective by just limiting fishing, 2) one stock in a mixed-use fishery cannot be rebuilt without significant economic harm, 3) rebuilding is impacted by international agreements, or 4) unusual effects make rebuilding improbably without significant economic impact to communities. Allows the use of alternative measures (e.g., target mortality rates) to rebuild the stock.	Requires rebuilding to be as short as possible... not exceed the time for the stock to be rebuilt without fishing occurring plus one generation. Provides for the SOC to review rebuilding progress and notify council if not. Any rebuilding plan must have a 75% of rebuilding within the time limit proposed by the Council. Allows the use of alternative measures for rebuilding. This section also includes a requirement that, at least every 5 years, the SOC reviews the Councils newly required plans to protect and recover EFH and reduce bycatch, and if adequate progress is no being made, make recommendations to do so.	The NPFMC noted that this provides more flexibility by not just relying on an arbitrary 10 year requirement, but also the term 'practicable' seems to imply more flexibility than the term 'possible'. It is unclear how alternative measures work in addition to --or a replacement for -- ACLs. The Council notes that S. 1520 maintains the current arbitrary 10 year Tmax rebuilding requirement, where there is discontinuity for stocks that can rebuild in the absence of fishing in 9 years, versus 11 years. The NPFMC suggests dropping the 10 year timeline, as this greatly restricts the ability to reduce community impacts during rebuilding.	Yes
Modification to ACL requirement	A council may maintain its current ACL for a stock where ACL is >25% below the OFL, a peer-reviewed survey and stock assessment have not be done in the last 5 years, and the stock is not subject to overfishing. Within 2 years of receiving a notice from a council that there is such as stock, the SOC has to complete a peer-review survey and stock assessment. Councils can also establish ACLs for complexes and ACLs with a 3 year duration.	ACLs not required for ecosystem component species or stocks with 1-year life cycle. ACLs may take into account fishing or life history outside of EEZ. ACLs can be established for complexes and with a 3-year duration. Ecosystem component species are defined as a non-target incidentally harvested stock of fish in a fishery.	ACLs not required for ecosystem component species or stocks with 1-year life cycle. ACLs may take into account fishing or life history outside of EEZ. ACLs can be established for complexes and with a 3-year duration. Ecosystem component species are defined as a stock that does not require conservation and management but should be listed in an FMP to achieve ecosystem management objectives.	The NPFMC appreciates the flexibility provided with respect to stock complexes, multiyear ACLs, and ecosystem component species. The NPFMC noted possible confusion regarding the use of non-target stocks in the definition of ecosystem component species, and suggested taking out the term "in a fishery". Requiring the SOC to perform surveys and assessments within 2 years is entirely unrealistic and extremely costly, and cause a reallocation of funds to regions where surveys are extremely challenging and expensive, and may provide little added benefit to conservation and management.	Yes

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
Exempted fishing permits	The SOC must direct a joint peer-review of EFP applications by the science center and State marine fisheries commission. The SOC must also certify that EFP fishing activity would not negatively impact other measures or conservation objectives, have only minimal social and economic impacts in both \$ and lost fishing opportunities, information collected would have a positive and direct impact on management, the Governor of each state potential affected has been consulted. EFPs shall expire after 12 months of issuance.			The NPFMC has major concerns with the 1-year duration limit, and the analytical burdens associated with this language. EFPs provide critical field testing of solutions to management problems. A multi-year EFP allows testing across seasons to evaluate inter- and intra-annual impacts. Additional analytical hurdles slow the approval process inhibiting valuable and timely research. The NPFMC further notes that a representative from each State sits on the Council, so the need to consult with a Governor is duplicative, and adds another hurdle to the process.	Yes
Cooperative Data Collection and Scientific Information	Requires the SOC to prepare a report on facilitating greater incorporation of data, analysis, stock assessments and surveys from State agencies and non-governmental sources (fishermen, fishing communities, universities, and other institutions). The SOC is also instructed to implement to the extent feasible, the recommendations from the NAS on Marine Recreational Information Program (MRIP).	Defines stock assessment; requires SOC to schedule stock assessments for all FMP species within 2 years; requires guidelines for incorporation of stock assessment information from non-governmental sources; as appropriate, such information will be considered "best information available"; requires cost-reduction report within 1 year to assess and compare costs of monitoring and enforcement (e.g., EM)	Requires SOC to report on stock assessment methods, schedule, and data and analysis needed and if it could be provided by non-govt sources. Adds finding that management most effective when it includes data from non-govt sources. Requires SOC to report on monitoring and enforcement programs including EM and VMS. Requires SOC to conduct a cooperative research plan with priorities of using fishing vessels, electronic reporting, and EM. Authorizes SOC to accept outside funding for this program, and funders can specify how the money is used.	The NPFMC has concerns with the provision to incorporate information from a variety of non-governmental sources, and potentially require that information be considered 'best available information' in that it will increase burdens on staff and SSC, and invite potential litigation. The Council further noted that cooperative data collection can be very valuable to our management process and scientific understanding (e.g., BS crab surveys done by industry). The concern isn't specifically with other non-government data sources per se, it is the notion that they won't be peer reviewed or vetted. The provision that requires an explanation if the Council chooses not to use these data adds an unnecessary burden. Tight deadlines can detract NMFS for completing important conservation/mgmt actions.	Yes

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
Recreational data collection.	The SOC must develop guidance, in cooperation with the States that detail best practices for State programs, so that the information from State programs can be determined to meet the threshold for use in conservation and management of recreational fisheries. This section also includes a requirement that the SOC provide biennial reports on the information used and improvements that could be made, grants to States using S-K funding to improve State data collection programs. Lastly, the NAS is required to evaluate and report on the MRIP and the appropriateness of using in-season management of ACLs for recreational fisheries.	The SOC must develop guidance, in cooperation with the States that detail best practices for State programs, so that the information from State programs can be determined to meet the threshold for use in conservation and management of recreational fisheries. This section also includes a requirement that the SOC provide biennial reports on the information used and improvements that could be made, SOC may make grants to States funding to improve State data collection programs. Lastly, the NAS is required to evaluate recreational survey methods and limitations of MRIP.	The SOC must develop guidance, in cooperation with the States that detail best practices for State programs, so that the information from State programs can be determined to meet the threshold for use in conservation and management of recreational fisheries. This section also includes a requirement that the SOC provide biennial reports on the information used and improvements that could be made, SOC may make grants to States funding to improve State data collection programs. Lastly, the NAS is required to evaluate MRIP.	The MSA requires a registration program for recreational fishermen who fish in the EEZ, for anadromous fisheries, or beyond the EEZ. The SOC can exempt from the registration program fishermen from a given State, but only if the SOC determines the State registration and data collection program is suitable for use in conservation and management. [Note – Alaska has been exempt from the registration program because it has a functioning program for accurately accounting for catch in recreational fisheries]. The bill would basically require that the Secretary and States come to agreement on the threshold for what is suitable information. The NPFMC questions why Council's are bypassed in providing input, and noted that this section requires added funding and workload.	Yes
Distinguishing between overfished and depleted		Strikes the term Overfished, and replaces it with "Depleted". Requires the annual report to congress to distinguish if stocks were depleted do to fishing or not.	Strikes the term Overfished, and replaces it with "Overfished or Otherwise Depleted"	The NPFMC appreciates using the term 'depleted'. 'Overfished or Otherwise Depleted' addresses CCC concerns about how to categorize and the term use in other laws. The Council noted the "and" "or" inconsistency in the title and text of the Huffman bill.	Yes
NEPA		Incorporates NEPA requirements into Sec 303 (fishery impact statements) of MSA and requires Councils and NMFS to develop procedures to comply with this requirement and establishes a modified process for SOC review and approval.		The Council has noted many concerns with incorporating NEPA into MSA, including that the analytical requirements will be the same, t will requires new procedures and guidelines, and potentially create new body of litigation and case law.	Yes

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
Transparency and Public Process		Requires webcast, audio recording, or live broadcast of council and CCC meetings to the extent practicable on a council's website. Councils must post audio, video or written transcript of Council and SSC meetings on the website within 30 days of the meeting.	Requires webcast, recording, or live broadcast of council and CCC meetings to the extent practicable on a council's website. Councils must post audio, video or written transcript of Council and SSC meetings on the website within 30 days of the meeting. Roll call votes required at the request of any member. Also requires recorded vote on all non-procedural matters before the council.	Relative to recordings and live broadcasts, the Council noted that this would be new for SSC meetings; there are added costs associated with transcripts; and the quality of internet connections at remote coastal communities may be lacking. The NPFMC further notes that the use of webcasting where people may not be technologically savvy or in areas with limited internet accessibility may actually reduce transparency and public participation.	Yes
Council Meetings			Requires each Council to the extent possible to minimize the amount and cost of member and staff travel by the use of electronic means for remote participation during meetings, including voting.	Since electronic means for meetings is almost always possible, and 'shall' is interpreted to be mandatory, the NPFMC concludes that this means that Council meetings would no longer be conducted in person. The Council notes that in-person meetings provide much better interpersonal communications, improve transparency, and make Council members more accessible to the public. Changing 'possible' to 'practicable', and 'shall' to 'may' would allow the Council to meet in person if they determine it is not practicable to hold a meeting by WebEx or some other electronic means.	

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
Plans to Protect EFH and Reduce bycatch			Requires councils to develop and implement plans to 1) protect and recover essential fish habitat, and 2) reduce bycatch; each with quantitative and measurable milestones and goals.	The requirement for EFH and bycatch plans would take considerable time and resources to develop and monitor, and implies that the existing phrase 'to the extent practicable' has not been met. NMFS is already addressing bycatch reduction planning with standardized bycatch reporting and its bycatch reduction plan. The EFH plan implies we have authorities to implement actions that we simply don't have.	
Accounting for Grant Money			Requires a report from the U.S. Comptroller General on a full accounting of all grant money received and distributed by the Councils, and an assessment of interactions of the Councils and staff with Congress for the past 10 years, and an assessment of conflicts of interest.	The NPFMC notes that it is not clear what problem this is trying to address, or the meaning of 'grant money received and distributed', but it may take considerable staff resources to dig through our records. The NPFMC does have major concerns with NOAA's conflict of interest and recusal interpretation. A proportional attribution policy is suggested for use in recusal determinations.	
Subsistence Fishing		Requires to Governor of Alaska to consult with subsistence interests when making a council appointment, and adds subsistence fishing to qualifications for council appointment.	Requires the Governor of Alaska to consult with subsistence interests when making a council appointment, and adds subsistence fishing to qualifications for council appointment.	The NPFMC notes that the inclusion of a subsistence definition and as qualification for making appointments are useful additions to MSA, understanding that the section does not direct appointment of a subsistence seat.	
Fishery Resource disasters		SOC shall publish cost of recovery from a disaster within 30 days, and make a decision within 90 days of receiving estimate of economic impact from requesting entity.	SOC shall publish cost of recovery from a disaster within 30 days, and make a decision within 90 days of receiving estimate of economic impact from requesting entity.	The NPFMC noted that this provides useful clarification of the disaster declaration process.	

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
North Pacific Clarification for State Authority		Strikes the August 1, 1996 date so that State management is authorized in the absence of an FMP.	Strikes the August 1, 1996 date so that State management is authorized in the absence of an FMP.	The NPFMC strongly supports this change, thereby allowing regulation of fishing in the EEZ by the State of Alaska, which is essential to the effective management and enforcement of these fisheries.	
Ecosystem-based Management			Identifies the sense of Congress that applying ecosystem science to fishery management reduces uncertainty and increases resilience of stocks. Directs NMFS to refine and implement EBFM.	The NPFMC notes that this section seems to reaffirm the direction all regional councils are heading. However, the NPFMC cautions that applying EBFM will not reduce management uncertainty or increase resilience of stocks, and suggests rewording this section using language from the NMFS policy for EBFM.	
Protecting Habitat			Requires the SOC to notify an action agency of measure that could be taken to avoid adverse effects on EFH. Action agencies must avoid or mitigate adverse impacts, or explain why not. Councils would be required to prevent adverse effects on HAPC caused by fishing, monitor to prevent adverse effects and identify other actions for conservation and management of HAPC.	The language “to prevent adverse effects” suggests that regulations must prevent any amount of impact due to fishing. Our approach with HAPC has been that we monitor and minimize adverse impacts but do not prevent all potential adverse impacts. Under the proposed language, a prohibition on fishing activity at sites designated as HAPC such as Bering Sea skate egg deposition sites and the GOA Fairweather Grounds coral areas. Such an action may provide minimal conservation benefits, but have adverse effects on fishery operations.	

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
Modernizing Fisheries Data Collection			Encourage the development of video survey and acoustic survey technologies. US Digital Service to make recommendations to modernize data collection, processing, analysis and storage of NMFS data.	This might be a useful study. However, the NPFMC notes that the bill should ensure that the Digital Service maintains existing protocol for protecting confidential information.	
Gulf of Mexico Red Snapper			Requires implementation of a real-time data collection program for snapper fishery and is a priority use of funds for S-K grants; requires cooperative research program.	Defines a priority use of S-K funds in the Gulf of Mexico over other uses. This impacts the NPFMC in that reduced S-K funding is available in our region for research that improves conservation and management.	
Science and Management of Shifting Stocks			Prohibits development of a new fishery only if the ecosystem impacts have been analyzed; requires councils to revisit and narrow list of approved fisheries including limiting geographic range.	This is similar to the policy established by the Arctic FMP. However, by limited geographic range in the list of approved fisheries, fish may no longer be able to be fully harvested if fish distribution shifts (until ecosystem impacts evaluated). Distribution changes may be impossible to predict and may be abrupt, and may raise critical transboundary or cross-council issues. This requires a flexible and adaptive response by the Councils. The NPFMC suggests NMFS guidelines instead of requirements to address this concern.	
Report on Fee		Requires SOC to report annually on amount of money collected from each fishery under a fee program and detail how the funds were spent.		NPFMC notes that this provision will greatly assist the Councils to fairly develop, implement, and review fee programs in the future.	

Issue	S. 1520	H.R. 200	Huffman Draft	NPFMC Comments	CCC Consensus?
Limitation on Future Catch Share Programs		Catch shares are defined; Requires a referendum for East Coast programs before a new program can be approved.		The NPFMC notes that objectives are largely being met in our catch share programs.	Yes
Cooperative Research		Requires the SOC, in consultation with the Councils, to publish a plan for cooperative research within 1 year; priority given to expanded use of EM or other technologies.		The NPFMC noted that an explicit plan would benefit management, and prioritizing EM was consistent with efforts underway in the North Pacific.	
Limitation on Harvest in North Pacific Pollock Fishery		Authorizes the Council to increase the pollock harvest cap set under AFA up to 24%.		The NPFMC has no position on this issue, but may in the future pending clarity of the intent, need, and potential impacts of such an action.	
Ensuring Consistent Management of Fisheries Throughout their Range		In case of conflict between MSA and the National Marine Sanctuaries Act or Antiquities Act, the MSA shall control; any restrictions on fisheries necessary to implement a recovery plan under ESA shall be implemented through MSA.		The NPFMC notes that prioritizing the authority of MSA relative to the other statutes likely has positive effects on our ability to meet conservation and management objectives, we do not fully understand the actual affect of the language .	Yes
Arctic CDQ		A minimum of 10% must be set aside for CDQ coastal villages located north and east of the Bering Straight, if council establishes a commercial fishery in the Arctic.		The NPFMC noted it had no opinion on this issue, but noted that it might be useful if Congress provided more guidance with regards to eligible villages and allocation criteria.	