



## Pacific Fishery Management Council

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February 2, 2018

The Honorable Maria Cantwell  
511 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Cantwell:

Thank you for your December 19, 2017 request for Pacific Fishery Management Council (Pacific Council) comments and perspectives on the Magnuson-Stevens Fishery Conservation and Management Act (MSA) reauthorization bills, H.R. 200, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, as well as other MSA-related bills.

The Pacific Council and its Legislative Committee have reviewed and held several discussions over the last year or so on various bills to amend or reauthorize the MSA. To comply with your request, we focused our comments on the December 7, 2017 version of H.R. 200 Amendment in the Nature of a Substitute (ANS), which passed the House Natural Resources Committee on December 13, 2017. Having previously commented on H.R. 200 in April 2017, we wanted to address the changes represented in H.R. 200 ANS and update some of our earlier comments; in addition we have included comments on other MSA reauthorization and amendment bills that may ultimately be considered, including S. 2991 (113<sup>th</sup> Congress), as requested by Senator Cantwell.

In general, the Pacific Council believes that the MSA has worked well to ensure a transparent, public, science-based management process that ensures sustainable harvests while preventing overfishing and rebuilding depleted stocks. The Pacific Council believes large-scale changes to the MSA are not warranted, and any changes made should be carefully considered. Legislation should be focused on intended outcomes, rather than prescriptive management or scientific parameters, and should allow for flexibility in achieving intended objectives while being specific enough to avoid lengthy, complex implementing regulations or “guidelines.”

### H.R. 200 ANS Comments

General comments: H.R. 200 ANS includes several requirements for reports to be developed by either the Secretary of Commerce, either alone or in consultation with the Regional Council(s). While we understand the need for accountability with respect to meeting the intent of Congress, we also note that developing reports takes time and also diverts resources from core management functions.

**Overfished/Overfishing:** (§102 of H.R. 200; MSA §3(a)(1)&(2)). Clarifying the distinction between “overfished” and “overfishing” is important to making the MSA more comprehensible, and recognizes the different management responses to crossing threshold levels, i.e., developing a

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rebuilding plan vs. ending overfishing. Revising the term “overfished” to “depleted” provides a better understanding of stock status and avoids biased interpretations of the cause(s) of low stock abundance.

**Subsistence Fishing:** (§102 of H.R. 200; MSA §3(a)(3)(43a)(A)). Including the term “subsistence fishing” provides needed context to the importance of fishing activities to Native cultures. The language could, however be improved by expressing to what fishery sectors the term may or may not apply (e.g., recreational, commercial, treaty Indian, non-Indian, indigenous, etc.).

Ceremonial and subsistence fishing has a long history in Indian treaty case law, and it should not be confused with recreational or commercial fishing. Treaty Indian subsistence fishing should be separated and clearly distinguished from some broader definition of subsistence that might include recreational fisheries. It should also be noted that treaty tribes may engage in and authorize commercial fisheries in addition to ceremonial and subsistence fisheries.

**Funding** (§103; MSA §4). Level funding appropriations for a period of five years would likely make it more difficult for the Councils and National Marine Fisheries Service (NMFS) to effectively carry out the provisions and mandates of this Act.

**Definition of Recreational Fishing** (§201(3)(A)). The Pacific Council believes defining charter recreational fishing in statute is not necessary and would cause confusion regarding its potential application. We do not see the need to have it defined based on the only other use of the term in H.R. 200 ((§202(a)(1)). Attempting to define the term will also be problematic; is it based on mode of conveyance, number of passengers (is a single guest on a guide boat defined as a charter), is it based on Coast Guard certification, etc.? In addition, if the term is adopted, it would be necessary to clarify whether recreational fishing includes charter fishing, since currently charter fishing is included under regulations governing recreational fishing, or whether an additional term for “private recreational fishing” would have to be defined.

**Allocation Reviews** (§202(c)). The Councils have, or are in the process of, developing guidance on allocation review triggers, as directed by NMFS Procedural Directive 01-119-01. Allocation reviews can be very contentious and workload intensive, and typically address unique circumstances. Having a one-size-fits-all review policy will not provide the flexibility Councils need to evaluate the need for allocation reviews and determine workload priorities. While this section of the proposed legislation would not apply to the Pacific Council, we note our long and successful history of evaluating allocation schemes, and have relied on the flexibility in the MSA to accomplish these reviews where and when necessary, and we are concerned that this requirement could set a precedent for future allocation reviews.

**Alternative Management Measures** (§203; MSA §302(h)(8)). These alternative management measures are already available, and being used in both recreational and commercial fisheries; however, including their acceptable use in the MSA is not objectionable. The Pacific Council believes that these measures should not be used to avoid using assessment-based reference points and associated catch limits or quotas, rebuilding requirements, or overfishing restrictions.

**Annual Catch Limits (ACLs)** (§204; MSA §302(m)(1)). Identifying criteria to set ACLs for unassessed or infrequently assessed stocks would help inform the stock assessment prioritization

process, and could also prevent other high priority management activities from being displaced by low priority assessment needs.

**ACLs – Ecosystem Factors** (MSA §302(m)(2)). Ecosystem and economic factors can and have been considered in establishing ACLs, so including their acceptable use in the MSA is not objectionable. Generally, ecosystem-based management includes the socio-economic aspects of the fishery, so the terms “ecosystem” and “economic needs of the fishing communities” may be redundant.

**ACLs - Life Cycle Exception** (MSA §302(m)(3)(C)(i)). It would be helpful to clarify the intent of “complete their life cycle in less than 18 months.” If this is intended in the same manner as in 302(m)(3)(B) for “a species that has a life cycle of approximately 1 year,” then using the same construct “has a life cycle of less than 18 months” would be helpful. If this is not the intent, then it would be helpful to define the point from which the remainder of the life cycle would be measured. This situation might be applied to species like coho salmon that are managed for their adult life phase of approximately one year (when an abundance forecast is available and they are vulnerable to fishing gear), even though their entire life cycle is approximately three years.

**ACLs – “Little Impact”** (MSA §302(m)(3)(C)(ii)). The term “little impact” is ambiguous, and could be replaced with “*de minimis* impacts” or “negligible impacts.”

**ACLs – International Fisheries** (MSA §302(m)(4)). This section on international fisheries is confusing, and should be reconciled with §302(m)(3) and §104(a)(10) of PL 109-479. Consider adding to 302(m)(3):

- (D) fisheries under a formal international agreement in which the United States participates
- (E) fisheries that are transboundary that have an informal agreement...
- (F) fisheries that are transboundary that do not have an informal or formal agreement...

As for content, in general the Pacific Council believes that considering and accounting for impacts and management of foreign fisheries on stocks that are target stocks of domestic fisheries is consistent with achieving the purpose of ACLs, which is to prevent overfishing. However, if U.S. fisheries have only minor impacts on a stock whose range is primarily in foreign waters, there could be justification for an ACL exception. The Pacific Council believes the U.S. should engage other countries in management considerations for transboundary stocks that are important to U.S. fisheries and ecosystems.

**ACLs – Multispecies Complexes and Multiyear Provisions** (MSA §302(m)(5)(A,B)). Multispecies complexes and multiyear ACL provisions are already in the National Standard 1 Guidelines (NSIGs); including them in the MSA would require defining multi-stock complex, and probably indicator stocks or other relevant terms.

**ACLs – Ecosystem Component Species** (MSA §302(m)(6)). This section provides two definitions for ecosystem component species, as either “in the fishery,” or “(A) is not subject to overfishing...” This appears to conflict with NSIGs which indicate that an ecosystem component species is not “in the fishery.” The term “in the fishery” is intended to indicate that the species is

required to have reference points such as minimum stock size threshold, maximum fishing mortality threshold, maximum sustainable yield, etc., which are often difficult to estimate for such stocks since they are generally not harvested in substantive numbers or consistently sampled. We recommend striking the first instance of “a non-target, incidentally harvested stock of fish in a fishery, or.” Also, in line 6, it is unusual to give authority to either the Council or the Secretary, and risks confusion if there is difference in opinion.

**Technical Edits** (MSA §304(k)). The reference to §302(m) should be 302(m)(1).

**Catch Share Definition** (§205(a); MSA §3(2a)). Change “The term ‘catch share’ means...” to “The term ‘catch share’ refers to...” A catch share *per se* can mean an allocated share (i.e., a percentage of a specific total allowable catch), and not generally the entire catch share program.

**Catch Share Program Moratorium** (§206(b)). While the Pacific Council is not currently contemplating any new catch share programs, placing a moratorium on such programs will reduce the flexibility of Councils to address need that may be best addressed using catch shares. Councils have been conducting regular reviews of their catch share programs and are now much better positioned to avoid the pitfalls of some of the early programs.

**Cooperative Data Collection** (§207(a); MSA §404(e)(1)). A report on cooperative data collection as described in H.R. 200 ANS could be useful in assisting states, tribes, and nongovernmental organizations in directing their sampling and analytical efforts to benefit Council needs, and in prioritizing Federal funds to accomplish those efforts. We also note that much of what is being requested under 404(e)(3)(B) is, or should be, included in the periodic strategic plan for fisheries research as required under MSA §404(b).

**Marine Recreational Information Program (MRIP)** (§207(c)). A comprehensive review of the MRIP program and its limitations for use in stock assessments and inseason management would help focus program enhancements or development of other programs to help meet the needs of Councils and state managers.

**Federal/State Partnerships** (§208; MSA §401(g)). The Pacific Council believes additional interaction through partnerships and best practices between the states and the Secretary would help clarify data needs and uses that could improve Council management of fishery resources and increase consistency between state and Federal management programs with overlapping or mutually dependent management jurisdictions.

**Stock Assessment Planning** (§301(b); MSA §404(f)(1,2)). This section on stock assessment planning is very prescriptive, will be very difficult to fully comply with, and the intent largely duplicates what the Pacific Council is already doing. The Pacific Council’s groundfish fishery management plan has over 90 stocks “in the fishery”; conducting stock assessments for all of them would take years, and because many stocks are caught infrequently, caught in low numbers, or have core distributions outside the Pacific Council’s jurisdiction, assessments are likely to be data limited and have little utility to fishery management.

The Pacific Council already has a process developed in cooperation with NMFS to prioritize assessments for most of those species, and which allows the Pacific Council to set final priorities based on needs identified through the Pacific Council’s open process. The Pacific Council

conducts this process every two years to coincide with its biennial management process, so requiring it to be conducted on the same schedule as the strategic plan, every three years, would be counterproductive and problematic. Paragraph (C) requiring identification of data and analysis to reduce uncertainty, etc., is duplicative of the purpose of the strategic research plan. Finally, 404(f)(3) allows a waiver, which potentially renders the requirements under (1) and (2) moot for many stocks, some of which would be deserving, and others perhaps not, but nevertheless requires justification in the *Federal Register*. Going through that process would impact Council resources, and time that could be better spent on conducting the stock assessments that are a high priority. This provision seems to be directed at identifying and providing assessments for data poor stocks in other regions. For regions that have regular and timely stock assessments and a process to prioritize them, this provision could result in less regular and timely stock assessments for priority stocks and result in less informed management decisions.

**Meeting Transcripts, Video, etc.** (§302(b); MSA §302(i)(2)(G)(ii)). The Pacific Council provides a searchable audio transcript of its meetings; however, in the past we provided written summary minutes, rather than full written transcripts. Summary minutes have been found to be easier to use than literal transcripts, and should be allowed as an alternative to searchable and written transcripts. Additional broadcast requirements and prescriptive timelines would be difficult to achieve and unnecessary, given the transparency of the Pacific Council process. For example, we have two Council meetings less than 30 days apart. Producing an official meeting record in that time would detract from preparation for the upcoming Council meeting. We are particularly concerned about the costs and workload associated with requiring Scientific and Statistical Committee (SSC) audios, videos, or transcripts. The SSC provisions seem unnecessary since the SSC is an advisory body to the Pacific Council, and provides written reports to the Pacific Council, which makes the final decisions. All Pacific Council SSC meetings are publicly noticed and open to the public, and almost always occur at Pacific Council meetings. In addition, minutes of SSC meetings are included as part of the Pacific Council's administrative record and are available online. No further administrative record should be necessary.

**National Environmental Policy Act (NEPA)** (§302(c)(1)). §304(i) of the 2006 MSA Reauthorization established a requirement for the Secretary, in consultation with the Councils, to develop procedures for integrating National Environmental Policy Act (NEPA) requirements into Fishery Impact Statements (FISs), and directed that the new procedures would be the sole environmental impact assessment procedure for actions pursuant to the MSA. The Pacific Council believes that great gains in efficiency would be possible under this scenario. However, despite consultations with the Councils, the recommendations of the Councils were not incorporated into the procedures. As a result, Council actions are still subject to both NEPA compliance and review and the existing FIS requirements of the MSA; therefore, we believe the intent of §304(i) has not been met.

**NEPA/Fishery Ecosystem Plan Overlap** (MSA §303(a,d)). The previous version of H.R. 200 included language that required "actions taken in accordance with this section are deemed to fulfill the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq) and all implementing regulations." Removal of this language in the substitute bill eliminates the primary benefit of this section, and the remaining language would require a substantial increase in workload to establish procedures and guidelines to accomplish what the Council currently does to develop FIS/NEPA analyses for Fishery Management Plans (FMPs), amendments, and

regulations. In addition, it should also be noted that although the Pacific Council normally posts materials for its upcoming Council meetings 14-16 days in advance, there is not always adequate time between Pacific Council meetings to comply with a strict 14-day requirement for publishing a substantially complete FIS. An acceptable alternative may be “a date advertised in the *Federal Register* noticing the Council meeting.”

**NEPA/FIS Evaluation and Review** (§302(c)(2,3); MSA §304(a)(2)(D) and 304(b)(1)). The addition of language in these sections is consistent with the intent of MSA §304(1), and the Pacific Council supports its inclusion, except for §302(c)(4); MSA §305(e). Adding the requirement that NMFS complies with NEPA in its review would be counter to the intent of §304(i), which was to make the FIS “...the sole environmental impact assessment procedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to the ACT.” The Pacific Council believes this provision in H.R. 200 ANS would require the Secretary to complete a NEPA analysis that was separate from the FIS, which would have to be submitted for approval to Council on Environmental Quality, create an inconsistency in the Act, and prevent any future efforts to streamline the approval process for FMPs, amendments, and regulations. As previously stated, the Pacific Council believes the objective of MSA §304(i) and the provisions in the original HR 200 language is not to circumvent the intent of NEPA, but to incorporate important aspects of the NEPA analysis and process directly into the MSA.

**Possible vs. practicable; 10-year rebuilding requirement.** (§303 (a); MSA §304(e)(4)(A)(i,ii)). The Pacific Council supports the terminology change from “possible” to “practicable,” and changing the arbitrary 10-year rebuilding requirement to something based on the life history of the stock in question. The Pacific Council believes these changes would result in more consistent application of rebuilding timeframes and better balance between conservation and economic objectives of rebuilding strategies. The 10-year rule can lead to a discontinuous policy that disrupts fisheries for little conservation gain. For example, if a stock can rebuild in nine years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g., one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild (11 years plus the length of one generation of the species), with obviously less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

**Technical correction:** Delete “may,” the first word in paragraph MSA §304(e)(4)(A)(ii).

**Rebuilding flexibility** (§303(a)(1)(B); MSA §304(e)(A)(ii)(III,V)). The terms “significant economic harm” used in paragraph (III) and (V) and “unusual events” and “improbable” in paragraph (V) are vague and would be vulnerable to litigation. The language in paragraphs (i) and (ii)(I) appear to provide adequate flexibility for considering economics of the fishery and environmental conditions in establishing a rebuilding time period. In addition, paragraph (IV) should end with “or” rather than “and.”

**Consideration of environmental conditions in rebuilding** (§303(a)(1)(C), new paragraph (B)). This seems duplicative of paragraph (A), new paragraph (ii)(I) regarding consideration of environmental conditions. An alternative may be “ecological factors,” which would better reflect the example of predator/prey relationships.

**Rebuilding schedules** (§303(a)(1)(c), new paragraph (E)). The Pacific Council has concerns about a proposed requirement for Councils to specify schedules for reviewing rebuilding targets. The need to review rebuilding targets may vary by circumstances and stocks. For example, a stock that has a long rebuilding time but is not a constraining stock in the fishery may have a different assessment priority than a constraining stock with a short rebuilding time. The Pacific Council has an assessment prioritization process that can account for these (and other) factors. Prescribing a review schedule for the former case that is likely to change based on higher priority needs would be inefficient, counterproductive, and possibly detrimental if a less important assessment was prioritized over a more important assessment.

**Ending Rebuilding Plans** (§303(a)(2), new paragraph (9)). The Pacific Council supports the intent of this paragraph for discontinuing a rebuilding plan if it is determined that the original determination of overfished or depleted status was erroneous. The NS1Gs include a similar provision that is less prescriptive and also considers the stock status in subsequent years, which (9) does not. The Pacific Council recommends adoption of the NS1G language: "... if the Secretary determines that the stock was not overfished in the year that the overfished determination ... was based on and has never been overfished in any subsequent year including the current year."

**Term for Emergency Regulations** (§303(b); MSA §305(c)(3)(B)). The Pacific Council believes extending the term for emergency regulations and interim measures would potentially reduce Council and NOAA workload, reduce the risk of multiple changes to rebuilding measures over a short period, and allow better planning for both stakeholders and staff.

**Exempted Fishing Permits (EFPs)** (§304). The Pacific Council believes that exempted fishing permits are an extremely important and useful mechanism to conduct scientific research, and can increase industry efficiency in advance of new regulation. For example, EFPs have been used to conduct surveys, test monitoring devices under field conditions, develop fishing gear that reduces bycatch and reduces impacts on habitat, and reduce observer costs. These studies are frequently done at no cost to the public and within existing allocation schedules.

The existing regulations provide a good framework for developing regional processes for issuing and reviewing EFPs. The EFP applications undergo a regional scientific peer review and are evaluated through a public process by the respective regional Councils. The public and affected states have opportunities to comment to NMFS and the Councils during this process. Any new requirements for the EFP process, such as additional social and economic analysis or further consultation with the state governors and Fisheries Commissions, would greatly reduce the ability to get EFPs developed and approved in a timely manner. In fact, the Pacific States Marine Fisheries Commission would not be an appropriate review body for Pacific Council area EFPs since they largely serve a data warehouse function and generally are not a fishery management or scientific review entity as other regional fisheries commissions may be.

In addition, the Pacific Council believes that multi-year EFPs provide the necessary flexibility to scientifically test gear across different years and seasons. New regulations that limit EFPs to a 12-month period will restrict the type and quality of research that can be done, thus limiting the usefulness of the data collected. Both our groundfish and highly migratory species processes rely on a biennial period for specifications and management measures, including analysis and approval of EFPs for the entire biennial period, if appropriate. Limiting the EFP period to one year would add workload to the Pacific Council's and NMFS' approval process.

The Pacific Council 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 required analysis just to examine the effects on all sectors, which are likely to be negligible for many sectors. This would greatly reduce our ability to get EFPs developed and approved in a timely manner. The Pacific Council also believes that multi-year EFPs can be critical to testing some solutions to fishery management problems.

The requirement in paragraph (C) that the proposed EFP “...will have a positive and direct impact...” presumes the results of the EFP fishery, whereas the purpose of EFPs is often to determine empirically if it will have a positive or negative impact; or by extension, what the tradeoffs are so that a decision about future regulations can be adequately analyzed.

**Restrictions on Exempted Fishing Permits (§304(b)).** The Pacific Council believes these restrictions on EFPs are appropriate because the complexity and expense of limited access systems and catch share programs, and potential pitfalls of inadequately considered features and safeguards, require a more deliberate process than is typical though an EFP process. The results of EFPs, as mentioned above, may be to not proceed with similar programs in regulation, and such a decision in a limited access or catch share program would be costly to the entire fishery as well as those responsible for the administration of those programs.

**Cooperative Research Plan (§305; MSA §318(a)).** Developing an implementation plan for cooperative research is a logical step. Funding is an important aspect to consider; to the extent that cooperative research and management information is readily available, the Pacific Council would be able to effectively contribute to developing the plan. However, if information is not readily available, a one-year completion horizon is likely to be too short. Given the recent Federal budgeting delays, the Pacific Council has concerns about the one year plan development requirement.

**Electronic Monitoring (§305).** This section contemplates improving monitoring and observer coverage through electronic monitoring devices. The Pacific Council notes that there is a possibility of the opposite effect on human observer coverage resulting from EM use. The advent of electronic monitoring systems was intended to make monitoring requirements less expensive and provide more flexibility to fishermen, but it may also make human observer coverage more expensive and less flexible. While the Pacific Council supports, and has led, development of regulatory programs for electronic monitoring systems, some fisheries (such as the bottom trawl sector in our groundfish catch share fishery) may not be able to take full advantage of these systems while still having 100% monitoring requirements. We are already seeing small ports having difficulty with observer availability, and if electronic monitoring reduces the demand for observers in those ports, observer provider companies are likely to reduce staff and have remaining staff cover a larger geographic area. This leads to loss of flexibility for fishermen and processors to plan trips, and to avoid bad weather windows. The cooperative research plan should investigate ways to keep human observer options available to meet the needs of small ports and fishermen for whom electronic monitoring is not feasible.

The Pacific Council notes that MSA §313(a-e) allows the North Pacific Fishery Management Council to establish a fee program to fund observer coverage, including electronic monitoring. The Pacific Council is interested in exploring the potential for a similar, dedicated funding mechanism to offset the cost of video review under the Pacific Council’s third party review model or to solve



other cost-prohibitive funding issues under the new electronic monitoring program. Currently, the groundfish trawl catch share program electronic monitoring regulations require that after year 2020, individual fishermen using electronic monitoring will be responsible for employing a certified video review provider; this additional cost could prohibit or discourage participation in the new program. The fund could also potentially be used to augment human observer coverage as needed. Consideration of expanding this authority beyond the North Pacific Council could be beneficial to dealing with the use of evolving technologies such as electronic monitoring and the associated costs. The Pacific Council is early in its consideration of this issue, and we are not able to capture all of nuances in this summary letter. But we would certainly welcome follow up discussions with your staff on how some of the issues affecting the Pacific Council's fisheries in particular could potentially be addressed.

### **Other MSA Legislation**

The Pacific Council would also like to offer some thoughts on other MSA legislation as requested by Senator Cantwell. We will generally focus our comments on subjects that are different from those in H.R. 200 ANS, recognizing that such subjects could be considered as potential amendments to H.R. 200 ANS.

#### S. 1520: Modernizing Recreational Fisheries Act

**Report on Alternative Fishery Management Measures** (S. 1520 §102(b)). Developing a report within 180 days on plans to use alternative fishery management measures in all mixed use fisheries will be difficult to achieve, and is likely to falsely raise expectations that such measures will be used in numerous fisheries. As mentioned above, alternative management measures are not currently prohibited, and the listed measures are being used in fisheries throughout the nation.

**Improving Recreational Data Collection** (S. 1520 §202(a)(4)(C,D,E)). A report of the scope identified will be an important starting point for improving recreational data collection, but will be very workload-intensive. Repeating it on a biennial basis may not provide enough time to implement and evaluate changes. Having several years of results would provide a better picture of how effective changes have been, and what other changes are needed. Identifying a funding mechanism in statute will help secure the program. Designating a portion of Saltonstall-Kennedy funds for improving recreational is current practice, but the funding is not dedicated and secure.

**Marine Recreational Information Program** (S. 1520 §202(b)). An assessment of the limitations of MRIP for the purpose of inseason management and addressing those limitations would improve management performance and provide benefits to fish stocks and fisheries.

#### S. 2991 (Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014) (113th Congress)

**References to Tribes** (S. 2991 §3; MSA §2). Adding the term "tribal governments" throughout the MSA is appropriate when referring to actions affecting state agencies. The tribal governments and agencies in the Pacific Council region are important co-managers and participants in the Council process and should be recognized and respected as such.

The sovereign governmental authority of tribes should be reflected in the MSA as it is for state governments. Similarly, the standing of treaty tribes as sovereign co-managers should be reflected in the structure and guidelines of the tribal seat on the Pacific Council. The tribal representative for treaty tribes along the West Coast should not be subject to term limits nor should a minimum number of nominees be required prior to Secretarial consideration. These restrictions are counter to the principles of tribal sovereignty and self-determination.

**Appropriations** (S. 2991 §5; MSA §4). Modifications to annually increase appropriations for implementing the MSA would support the Councils in pursuing their mandate.

**Council Member Training** (S. 2991 §101(g)(4); MSA §302(k)(1)). It is appropriate to add ecosystem-based fishery management to the Council member training program. Ecosystem management is a difficult concept to grasp for those new to its application in fisheries management, and the issues are rapidly evolving. It will be important for all Council members, but especially new members, to be kept abreast of those issues.

**Determination of Sustainability** (S. 2991 §104(c); MSA §305). We believe the recommendations for determining whether fish are sustainably caught would be a positive step for U.S. fisheries. Providing context for our management system relative to other nations', and bolstering consumer confidence and knowledge about U.S. seafood products in the marketplace, is important for realizing the goal of providing the greatest overall benefit to the Nation.

**Labeling** (S. 2991 §105; MSA §307(3)). The proposed additions to prohibited acts regarding labeling of fish products could be problematic. It is difficult for seafood importers and distributors to verify the origin of all their products, and they could be unfairly penalized for unknowingly violating this provision. Also, "knowingly and willfully" is a difficult standard to prove in court, and the likelihood of a conviction under this statute would be low.

**Penalties** (S. 2991 §106(a,b); MSA §308(a,b)). Increasing penalties for violations as proposed for MSA §308-and 309 are appropriate.

#### Huffman Discussion Draft

**Appropriations** (§105 of draft). This formulaic approach to adjusting appropriations as an amendment to H.R. 200 ANS seems appropriate.

**Recorded Votes.** (§203(c) of draft; MSA §302(e)(5)). The Pacific Council does not believe it is necessary to conduct a recorded vote for each nonprocedural action, since the results of each vote are included in the meeting record. In addition, Pacific Council draft motions in writing, including the voting record, are posted on the Pacific Council's website in less than 24 hours (usually within four hours) after the vote.

**Travel Restrictions** (§204 of draft). This section would require that each Council, to the extent possible, minimize the amount and cost of member and staff travel by the use of electronic means for remote participation during meetings, including for voting. This could lead to a requirement for Council meetings to be conducted via telephone or webinar, which would reduce opportunities for interactions among Council members, agency staffs and stakeholders, which are often very productive. Face-to-face communication is necessary in order to address the many difficult

decisions that must be made during a Council meeting, and it helps to understand different views if people can communicate in informal as well as formal venues. The Pacific Council does not object to encouraging electronic communication for certain other types of meetings, and we utilize them frequently, but requiring electronic communication “to the extent possible” would place unnecessary and unproductive restrictions on a vital and sensitive decision-making process.

**Review of EFH and Habitat Areas of Particular Concern (HAPC) determinations** (§204 of draft). The draft calls for routine reviews of EFH and HAPC determination every five years. Such reviews are already required under 50 CFR 600.815, but the Council does not oppose their inclusion in the MSA.

**Bycatch Reduction Plan** (§204(d) of draft). The draft calls for Councils to develop and implement a plan to reduce bycatch in the region under their authority, with reviews at least every five years. The Pacific Council currently includes such a bycatch reduction plan for all of its Fishery Management Plans. The effects of bycatch is included in its periodic SAFE documents, and bycatch projections are included in the assessed impacts of annual or biennial management measures.

**Report on Operations of Councils** (§204 of draft). This section requires a report to Congress on the operations of all Councils, including an accounting of all grant money received and distributed for the preceding 10 years, an assessment of interactions of the Councils and Council staff with Congress for the preceding 10 years, and an assessment of Council member and Council staff conflicts of interest. We suspect these provisions are designed to address problems in other regions. The Pacific Council abides by the strictest standards of transparency, including semiannual grant progress and financial reports, annual independent audits, budget committee meetings and reports (which are part of the Pacific Council’s administrative record), keeping financial interest statements up to date and posted on our web site, and the annual report to Congress detailing recusals. Such a thorough analysis of Council activities is unnecessary in the Pacific region and would require extensive staff time that would detract from our ability to conduct our core work.

**Rebuilding Plan Review** (§206(a)(2) of draft; MSA §304(e)(7)(A)). A strict requirement to review rebuilding plans every two years essentially dictates that a full stock assessment for an overfished/depleted stock must be conducted every two years. An assessment cycle with such frequency may not be necessary for stocks with long rebuilding horizons and could displace higher priority assessments such as stocks categorized in a precautionary zone due to decreased abundance, stock of high economic value, or fishery limiting, weak stocks in mixed stock fisheries.

Evaluating the adequacy of rebuilding progress is important to stock recovery and should be required; however, specifying the criteria in statute can be overly prescriptive and problematic. For example, if a stock is rebuilding more rapidly than expected, catch could exceed expectations under a rebuilding plan, but the resulting fishing mortality rate could still be within the range necessary to achieve the rebuilding time period. Thus, fisheries could be penalized or unnecessarily restricted. The Secretary should be given the flexibility to determine the most appropriate methods and criteria for assessing adequate rebuilding progress.

**Rebuilding Time Flexibility** (§206(a)(2) of draft; MSA §304(e)(7)(C)). If rebuilding progress is adequate or is exceeding expectations, the flexibility to modify rebuilding timeframes to avoid unnecessarily fishery and management constraints would be helpful, particularly if modest

increases in fishery impacts to the rebuilding stock would allow substantial harvest opportunity for co-occurring healthy stocks.

**Minimum Probability of Rebuilding** (§206(a)(2) of draft; MSA §304(e)(7)(D)). Specifying the minimum probability of rebuilding in statute may be problematic, particularly if the criteria for determining adequate rebuilding progress are not appropriate (see comment above).

**Habitat Areas of Particular Concern (HAPCs)**(§207 of draft; MSA §303(a)(7)). This section adds a reference to HAPCs. Councils are currently required to identify actions to encourage the conservation and enhancement of EFH, including recommendations to avoid, minimize, or compensate for adverse effects on EFH and HAPCs (50 CFR 600.815). The wording here for HAPCs is similar to the wording currently used for EFH, except that it calls for Councils to “*prevent adverse impacts on such habitat caused by fishing*” (rather than minimizing to the extent practicable) and “*monitor efficacy of actions to prevent adverse effects, and identify other actions to encourage the conservation and enhancement of such habitat.*” The Pacific Council believes the requirement to prevent adverse impacts is too constraining, and could be interpreted to mean that no fishing could occur in a HAPC.

**Data Modernization** (§304 of draft). The Pacific Council believes the national fisheries data information networks would benefit from a review by the U.S. Digital Service, consistent with the recommendations of the Fishing Data Innovation Task Force. We note that protecting data confidentiality remains a high priority.

**Groundfish Loan Refinancing** (§403 of draft). Refinancing of the groundfish buyback loan was signed into law in the 114<sup>th</sup> Congress, yet the loan has yet to be refinanced. The fleet has already paid back more than the original loan amount, and has been forced to pay a high interest rate for many years while the rest of the nation has been able to refinance its debt during the recent years of low interest rates. This refinancing would be a welcome relief to the groundfish fleet and help restore profitability to this important fishery.

**Council Representation on Western and Central Pacific Fisheries Commission (WCPFC)** (§404(b) of draft). This language would remove a requirement for Pacific Council representation on the WCPFC. Actions taken by the WCPFC directly affect West Coast fisheries and the stocks they rely on, and the Pacific Council strongly opposes this proposed disadvantage to the Pacific Council and the fisheries we represent.

Thank you for your interest in the Pacific Council’s comments and for your consideration of our responses. We would like to note that the Pacific Council, as well as the Council Coordination Committee, will continue to deliberate this and other reauthorization bills in the future. We would be happy to answer any questions or provide further thoughts as reauthorization moves forward.

Sincerely,



Philip Anderson  
Chairman, Pacific Fishery Management Council

JDG:kma

cc: Pacific Council Members  
RFMC Executive Directors  
Mr. Chris Oliver  
Mr. Sam Rauch  
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Ms. Sheila Lynch  
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