

## LEGISLATIVE COMMITTEE SUBGROUP DISCUSSION DOCUMENT

The Legislative Committee (LC) discussed the Council's previous views about stock rebuilding in the context of proposed changes to the Magnuson Act, and reached a conclusion that the Council should consider refining its previous position, particularly regarding the change of the phrase "as short as possible" to "as short as practicable. There is an immediate need/value for the Council to address this topic as the CCC legislative committee is having a call in April 2018 to discuss a CCC response to Congressman Young on HR200, which includes a section on rebuilding.

Below a LC subgroup has recommended (1) draft changes to the draft CCC letter; and (2) draft changes to the Council's previous perspectives to the CCC document on Magnuson revisions.

### **1. Rebuilding section of draft CCC letter to Congressman Young** (Agenda Item H.1 Supplemental Attachment 4, April 2018)

The text edits below reflect draft recommendations from the Pacific Council to the CCC Legislative Committee's draft letter to Congressman Young on HR 200

Section 303 – Flexibility in Rebuilding Fish Stocks. *This section would remove the term "possible" and replace it with "practicable" in the requirement in section 304 of the Act that a rebuilding period "be as short as possible". This section would remove the language requiring a 10-year time frame for rebuilding overfished/depleted fisheries and replace it with a requirement that the rebuilding timeframe be the time it would take for the fishery to rebuild without any fishing occurring plus one mean generation time except in the case that: the biology of the stock, other environmental conditions, or other listed exemptions. This section would allow a fishery management plan for any fishery that is considered overfished/depleted to use alternative rebuilding strategies including harvest control rules and fishing mortality rate targets. This section would allow a Council to terminate any rebuilding plan for a fishery that was initially determined to be overfished/depleted and then found not to be overfished/depleted within two years or within 90 days after the completion of the next stock assessment. Finally, current law allows the Secretary to implement emergency interim measures for fisheries in which overfishing is taking place.*

In general, the CCC believes that the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would improve the ability of Councils to achieve management objectives. We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law, [such as replacing the 10-year timeframe for rebuilding with the  \$T\_{min} + 1\$  mean generation formula](#), would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts. ~~In addition, w~~[Anye agree that](#)

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

The CCC does not believe that a simple word change from “possible” to “practicable” will solve commonly perceived limits to flexibility in specifying time periods for rebuilding programs, a flexibility we believe currently exists within Magnuson intent to account for important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. The CCC believes that the intent of the existing standard for rebuilding should be clarified to guide that in determining the ‘short as possible’ time period for rebuilding, Councils should consider the conservation risk to the stock, uncertainties in scientific information, and the needs of fishing communities. Careful analysis of these factors must be conducted and documented, so that selection of timeframe targets will result in a high probability of rebuilding while mitigating adverse social and economic impacts and promoting sustained participation of fishing communities throughout the rebuilding process. In these decisions considerations for short-term social and economic impacts should not come at a disproportionate cost to the long-term conservation needs of the stocks or long-term social, economic, ecological gains.

## **2. Rebuilding section of the CCC’s combined Magnuson position paper**

The text edits below reflect draft recommendations to the existing CCC position paper that contains the Pacific Council’s on rebuilding.

### **Rebuilding Timeframes**

*The MSA currently mandates that the time to rebuild depleted fish populations be “as short as possible,” but no more than 10 years. Some have argued that this time requirement results in inconsistent management approaches depending on the life history of the stock. For example, a stock that is expected to rebuild in slightly less than 10 years in the absence of fishing mortality could require much more restrictive management than a stock that is expected to rebuild in slightly more than ten years. This results from the fact that the maximum rebuilding timeframe ( $T_{MAX}$ ) for a stock that cannot be rebuilt within 10 years is the minimum time that it would take to rebuild the stock in the absence of fishing plus one mean generation time.*

*In addition, councils and stakeholders have expressed concern that the 10-year rebuilding timeframe precludes the councils from adequately considering the social and economic needs of fishing communities.*

### **Consensus Position**

The CCC developed the following consensus position on rebuilding timelines:

*“In general, the CCC believes the addition of these measures would increase flexibility with respect to stock rebuilding for certain types of fisheries.*

*We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts more effectively.”*

## Regional Perspectives

### **Pacific:**

**Rebuilding timeframe:** *The Council believes replacing the 10-year rebuilding requirement with a timeframe reflecting life history, plus one mean generation would result in more consistent application of rebuilding timeframes and better balance between conservation and economic objectives of rebuilding strategies. While a strict 10- year rebuilding requirement may be appropriate in some situations, focusing on rebuilding in a certain amount of time can also result in overly-restrictive fishery management that is unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. The 10-year rule, where stock rebuilding must occur within 10 years if possible, can lead to a discontinuous policy that can grossly disrupt fisheries for little conservation gain. For example, if a stock can rebuild in 9 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.*

**Rebuilding standard:** *The MSA requirement to specify a time period for rebuilding that is as short as possible, taking into account the status and biology of any overfished stocks in the fishery and the needs of fishing communities has been the subject of litigation by the Courts and varying interpretation by NOAA General Council. In the extreme case these interpretations ~~has been subject to Court interpretation as have often suggested that nearly ignoring~~ the needs of fishing communities can only be considered if the impacts of the rebuilding time period would have a disastrous consequence to fishing communities until such time as they have demonstrated a disastrous state. Current ~~administration application under this interpretation of this requirement necessarily can~~ leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. ~~It has been said that~~ The Council previously concluded that a solution to this interpretive issue may be as simple as changing the word "possible" to "practicable." On further analysis the Council does not believe that this simple word change is advisable nor would it provide guidance necessary to ~~At any rate, there is a need for threshold clarity so as to allow Councils to properly take into~~ clarify what it believes to be the current Magnuson intent to account for important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. Instead the Council believes that the intent of the existing standard for rebuilding should be clarified to guide that in determining the 'short as possible' time period for rebuilding. Councils should consider the conservation risk to the stock, uncertainties in scientific information, and the needs of fishing communities. Careful analysis of these factors must be conducted and documented, so that selection of timeframe targets will result in a high probability of rebuilding while mitigating adverse social and economic impacts*

and promoting sustained participation of fishing communities throughout the rebuilding process. In these decisions considerations for short-term social and economic impacts should not come at a disproportionate cost to the long-term conservation needs of the stocks or long-term social, economic, ecological gains. It is important to note the purpose that rebuilding programs are designed for is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery-dependent communities negatively impacted, which may entail significant social and economic impacts to fishing communities ~~(and may even be required to endure a disaster)~~ by the rebuilding program. However, the Council doesn't believe that the Magnuson Act's current intent is, nor should be, to require fishing community disasters in order to choose rebuilding time periods that are greater than  $T_{min}$ . The Pacific Council's perspective arises from the almost two decades of experience with rebuilding groundfish and is informed by the expert findings and recommendation of 2014 National Research Council report, "Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States." The interpretive guidance suggested above is not intended to create unbounded flexibility in adopting rebuilding plans but rather to ensure objective, stock specific evaluation that allows deliberate and transparent consideration by the Councils and public of potential short- and long-term trade-offs, while accounting for scientific uncertainty in both biological and economic assessments.