



## Pacific Fishery Management Council

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Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

August 7, 2014

The Honorable Doc Hastings  
United States House of Representatives  
1203 Longworth House Office Building  
Washington, D.C. 20515-4704

The Honorable Mark Begich  
Russell Senate Office Building  
Room 111  
2 Constitution Avenue NE  
Washington, D.C. 20510-0204

Re: Magnuson-Stevens Act Reauthorization

Dear Chairman Hastings and Senator Begich:

Thank you for your interest in the Pacific Fishery Management Council's (Pacific Council) comments and perspectives of the Magnuson-Stevens Act (MSA) reauthorization proposals and issues. At its June meeting, the Pacific Council heard from its Legislative Committee, advisory bodies, and the public regarding HR 4742, the Senate staff discussion draft, and comments by other entities on proposed legislation. The Pacific Council offers the following points as this important legislative process moves forward. We understood at the time of our June Council meeting that the comment period for the Senate staff discussion draft was technically closed, thus the following is focused primarily on HR 4742, and, unless otherwise specified, targets the language or presumed intent of HR 4742.

### **General**

As we have noted before, the Pacific Council believes that the MSA has worked well to ensure a science-based management process that ensures long-term 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 to the Act should be carefully considered.

### **Other Acts**

With regard to the section describing consistency under Federal laws, the Pacific Council supports the language in HR 4742 mandating that the MSA control when there is any conflict with the National Marine Sanctuaries Act or the Antiquities Act.

The Pacific Council feels the wording to streamline the National Environmental Policy Act (NEPA)/MSA process in the Senate Staff Discussion Draft was insufficient to address the current

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

Regarding language about the intersection between the MSA and the Endangered Species Act (ESA), it is unclear whether HR 4742 intends to have the Councils select the appropriate incidental catch rate for ESA-listed fish (such as some salmon stocks) caught under MSA authority, or whether current ESA processes would determine the incidental take rate, and Councils would then simply adopt conforming regulations. The Pacific Council previously adopted an intermediate position on this matter advocating for an open and transparent process, with Pacific Council involvement, for the selection of ESA-related fishery impact rates by the National Marine Fisheries Service; this occurred recently in the case of the appropriate ESA limit for Lower Columbia River Tule Fall Chinook and was broadly viewed as a very successful process.

### **Electronic Monitoring**

While the Pacific Council does not object to overarching standards for the implementation of electronic monitoring programs as described in HR 4742, it believes there should be some exemption for programs that already exist or that are nearly ready to be implemented.

The Pacific Council supports the change in HR 4742 (as compared to the earlier discussion draft) that allows use of electronic monitoring for enforcement purposes.

The electronic monitoring section in the Senate Staff Discussion Draft contains an excessive amount of detail regarding requirements and timelines, and should be made more flexible.

### **Rebuilding Time Adjustments and Exemptions**

The Pacific Council recommends that rebuilding exemptions include a category that clearly specifies instances when a rebuilding plan is not required, either because fishing is not the cause of the stock’s depletion, and/or because fishing restrictions cannot correct the depleted condition.

### **Asset Forfeiture Fund**

The Pacific Council supports the use of the asset forfeiture fund for use in the areas in which the fines were collected.

### **New Science Requirements**

The Senate Staff Discussion Draft includes requirements for a great deal of new science and reporting that would require more staff and funding, and could decrease flexibility of individual Councils. For example, under Section 404(e), the draft would require stock assessments for every stock of fish that has not already been assessed, subject to appropriations; and under Section

303(a)(14), would require annual catch limits (ACLs) for forage fish fisheries to take into account “the feeding requirements of dependent fish throughout [their] range.” A substantial amount of new science and staffing would be required for both of these provisions, given that the Pacific Council manages 119 stocks of fish.

### **Subsistence Fisheries**

The definition of “subsistence fisheries” needs to be made more specific. As it currently stands, it could apply to recreational fishers who bring fish home for consumption.

### **Fishery Ecosystem Plans**

The section on Fishery Ecosystem Plans should be reconsidered. As currently written, the high standards included in that section could have a chilling effect on the development of Fishery Ecosystem Plans.

### **REFI Act**

The Council supports the REFI Act (HR 2646), which has been incorporated into HR 4742.

### **Marine Spatial Planning**

The Council supports the newly-added language that allows the use of data for marine spatial planning in order to ensure access to fishing grounds and for national security purposes.

### **Disaster Recovery Costs**

The Council believes the newly-added language that requires the Secretary to publish the estimated cost of recovery from a fishery resource disaster with 30 days of the disaster determination is impractical, and the time period should be lengthened if the provision is maintained.

### **Dungeness Crab Jurisdiction**

The Pacific Council fully supports extension of State jurisdiction over Dungeness crab.

### **IUU Definition**

The Council supports for the definition of illegal, unreported, and unregulated (IUU) fisheries in the Senate Staff Discussion Draft (including the importance of unreported catches), which contains elements critical to achieving a level playing field for U.S. fisheries in the international arena.

### **Other Council Priorities**

There are several issues important to the Pacific Council that remain unaddressed by either HR4742 or the Senate Staff Discussion Draft. Such topics include not requiring revision of rebuilding plans when there are minor changes in stock status (the “noise vs. signal” issue), providing specific language to allow Councils to consider the needs of fishing communities in developing rebuilding plans, exploring flexibility for fishery impacts on data-poor species when the precautionary approach becomes a bottleneck for healthy mixed stock fisheries, and several issues related to highly migratory species fisheries. Such topics related to highly migratory species issues include designating one Commissioner seat on the Inter-American Tropical Tuna Commission for the Pacific Council; expanding state enforcement authority to all vessels that

fish directly offshore of the territorial sea within the state-given boundaries; enhancing enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity; changing “vessels” to “vessel” in the IUU certification section; and providing flexibility in observer requirements.

Additionally, it would be useful to clarify in Section 302(i)(A)(3) that Council discussion of international negotiations, such as proposals and counter proposals in the recent the US-Canada Albacore Treaty negotiations, are clearly an eligible topic for discussion during closed sessions of Council meetings. It would also be useful to include a carryover exception to allow ACLs to be exceeded in order to carry over surplus and deficit harvest in individual quota programs from one year to the next, provided the Scientific and Statistical Committee finds that such a carryover will have negligible biological impacts. It is important to also clarify current MSA language about the Scientific and Statistical Committee recommending true biological point estimate overfishing limits (OFLs), and not policy decision-dependent catch limits related to social, economic, or management performance cushions (ACLs), or policy decision-dependent assessments of the size of scientific inaccuracy risk buffers (currently identified as an acceptable biological catch limit).

Thank you again for the opportunity to comment. Should you or your staff have any questions about the enclosed report or require additional information, please don't hesitate to contact me at any time.

Sincerely



D. O. McIsaac, Ph.D.

Executive Director

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Cc: Council Members  
Mr. Dave Whaley  
Mr. Jeff Lewis  
Pacific Council Advisory Body Members  
RFMC Executive Directors