



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

JUN 22 2015

The Honorable Jaime Herrera Beutler
U.S. House of Representatives
Washington, DC 20515

Dear Representative Beutler:

Thank you for your letter requesting an explanation of the National Oceanic and Atmospheric Administration (NOAA) General Counsel's determination that the Magnuson-Stevens Fishery Conservation and Management Act (MSA) does not authorize a fixed linkage between harvesters and their historic processors when structuring fishery cooperatives. You also requested any legislative suggestions on how to expand the authority in the MSA to permit the North Pacific Fishery Management Council (Council) to consider harvester-processor fishery cooperatives based on historic delivery patterns.

NOAA's longstanding position has been that, with the exception of the Bering Sea and Aleutian Islands Crab Rationalization Program, the MSA does not authorize the agency to allocate onshore processing privileges, which include "fixed linkages" between harvesters and a specific shore-based processor. NOAA General Counsel most recently reiterated the position at the October 2014 North Pacific Fishery Management Council meeting during the Council's discussion of alternatives for the formation of inshore harvesting cooperatives in the Gulf of Alaska Trawl Bycatch Management Program. The Council was considering a provision to require eligible harvesters to form a cooperative with a processor based on their historical deliveries in order for the cooperative to receive quota share. The provision was substantively identical to a requirement for inshore cooperative formation that was included in the Central Gulf of Alaska Rockfish Pilot Program (Pilot Program). When the Council considered this provision during its development of the Pilot Program, the agency determined the Pilot Program cooperative formation requirement would be an allocation of onshore processing privileges, as it would establish a fixed linkage between harvesters and the specific shore-based processor to which they made historical deliveries. Congress then authorized the Council and NOAA to make such allocations of onshore processing privileges in the Pilot Program by including specific authorization in the Consolidated Appropriations Act of 2004. The specific authority for onshore processing privileges in the Pilot Program expired at the end of 2011.

The Council developed the Central Gulf of Alaska Rockfish Program to replace the Pilot Program. The Rockfish Program, which was implemented as Amendment 88 to the Fishery Management Plan for Gulf of Alaska Groundfish, does not include onshore processing privileges.

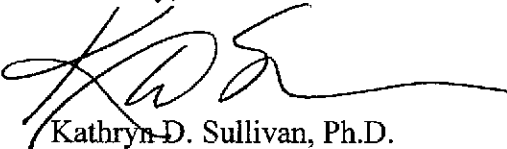
In the past, when Congress wanted to authorize onshore processing privileges, Congress has passed specific legislation, such as the American Fisheries Act (AFA) (authorization of harvesting cooperatives that are allocated a percentage of the total allowable catch and form around a particular processor), the Crab Rationalization Program (processor share allocations of crab), and the Rockfish Pilot Program (authorization of AFA style cooperatives).



If Congress wants to authorize onshore processing privileges, including fixed linkages between harvesters and their historic processors, Congress could legislate language for specific fisheries as it has for the AFA or Rockfish Pilot Program. Congress also could provide specific authority to NOAA to manage certain processing activities. For example, Congress could provide NOAA with the authority to require that harvesters deliver to a specific class of processors, or limit the ability of a harvester to receive limited access privileges under Section 303A of the MSA only if they have an established relationship with a specific processor. Finally, Congress could provide broad authority for NOAA to regulate a wide range of activities undertaken by processors. This could potentially require modifications to the definition of "fishing" in Section 3 of the MSA to specify that processing activity can be regulated as fishing, or modifications to the specific required provisions for fishery management plans in Section 303(a) of the MSA to allow the regulation of processors. Because there are a wide range of possible legislative approaches that Congress could choose to use to regulate processors, NOAA could better assist you with technical drafting assistance if we have an improved understanding of your preferred approach.

I look forward to further communication with you and your staff on this issue to provide you with the specific assistance you require. If you have any questions, please contact Amanda Hallberg Greenwell, Director of NOAA's Office of Legislative and Intergovernmental Affairs, at (202) 482-4981.

Sincerely,

A handwritten signature in black ink, appearing to read 'KDS', with a long horizontal flourish extending to the right.

Kathryn D. Sullivan, Ph.D.
Under Secretary of Commerce
for Oceans and Atmosphere



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The Honorable Don Young
U.S. House of Representatives
Washington, DC 20515

Dear Representative Young:

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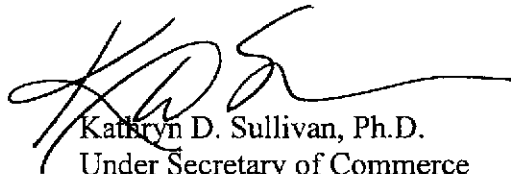
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