



# North Pacific Fishery Management Council

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February 25, 2019

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

Dear Senator Sullivan:

My letter to you dated December 28, 2018, provided preliminary comments on behalf of the North Pacific Fishery Management Council (NPFMC or Council) regarding the staff working draft of an MSA reauthorization bill (pursuant to a request for comments from Erik Elam via email on 12/20). The Council as a whole recently had an opportunity to review the draft, and offers the following additional comments on the draft bill for your consideration.

**Section 107. Fishery Management Measures.** *Subsection (4) Consideration of Ecosystem and Economic Impacts states that in establishing annual catch limits, Councils shall account for relevant economic, social, and ecological factors in accordance with section 3(36).*

This requirement is inconsistent with the Council's successful approach to setting annual catch limits, which is the foundation of our management program which has provided for sustainable and profitable fisheries for over 40 years, and may have unanticipated consequences that are contrary to the intent. The Council's approach has been to establish scientifically-based biological limits (acceptable biological catch levels, or ABCs which incorporate scientific uncertainty in the point estimate of the overfishing limit, OFL, based on maximum sustainable yield), and set a target catch level (total allowable catch, or TAC) below the biological limit and which incorporates social and economic factors. In our fishery management plans, annual catch limits are appropriately defined as the ABC, and annual catch targets are defined as TAC. This approach is entirely consistent with National Standard 1, in that optimum yield (OY) is based on a biologically-based maximum sustainable yield as reduced by social, economic, and other factors. Given the importance of keeping biological and economic issues separate, the North Pacific Council has a policy that ABCs should remain a science-based process strictly for estimating the scientific uncertainty in the OFL as prescribed by the National Standard 1 guidelines in determining the allowable biological catch level, and that the appropriate place for incorporating social and economic variables is in setting TACs.

Should the proposed language become law, the Council seems to be left with two choices, both of which would have substantial negative impacts on our ability to manage the fisheries and neither of which would achieve the desired result in our opinion. One approach would be to incorporate social and economic factors into the determination of ABC. The perverse outcome would be that there would no longer be a scientifically derived ABC limit, and this would put the Council's Scientific and Statistical Committee in the position of making non-scientific policy decisions about how much to reduce the ABCs to account for social and economic factors in addition to scientifically-determined buffers for uncertainty in the OFL; the unanticipated consequence would be to leave the Council with little or no role in accounting for social and economic factors. We believe that Congressional intent is that policy decisions are more

appropriately left to the Council and our management system establishes that separation of roles: the SSC is the arbiter of biological factors and the Council is the arbiter of social and economic factors. The other option would be to define the annual catch limit as the total allowable catch level (TAC). This approach, although it would preserve the authority of the Council, would unfortunately reduce the amount of fish harvested, because NMFS must prevent catches from exceeding the annual catch limits, and thus would shut down fisheries before the TAC is harvested. With the optimum yield limit in the Bering Sea and Aleutian Islands set as the sum of the TACs, the Council would not be able to set higher TACs to account for the necessary management buffers. Further, the National Standard Guidelines specify that if any annual catch limit is exceeded, the Council must evaluate the management program and make changes to prevent this from reoccurring.

The Council strongly believes that the current system already allows for appropriate consideration of social and economic factors. Incorporating social and economic factors into the determination of annual catch limits as proposed in the draft will severely impact the conservation and management of resources in the North Pacific by increasing scientific and management uncertainty and reducing public transparency and participation in the decision-making process. From our perspective, this may be a cure in search of a problem.

**Section 110. Fees.** *This section would clarify that the fees collected by the Secretary would include only the incremental costs directly related to the management, data collection, and enforcement of any limited access privilege program or community development quota program. Additionally, this section requires that prior to the Secretary collection any fees, the Council must prepare an analysis that identifies the costs that will be recovered by the fee, and costs that won't be recovered by the fee. Further, the Secretary must report annually and in detail how the funds were spent in the prior year on a fishery-by-fishery basis.*

The Council agrees that this section provides clarity to the issue, and is consistent with our approach to evaluating fee collections for LAPPs in the North Pacific. The Council notes however, that based on our experience, it will be difficult to define exactly what fees will and will not be collected, because agencies don't always have information (from timesheets, rent, utility bills, etc.) that break out the information in detail. Further, it may be impossible to go back and recreate cost data that has not been systematically collected in order to compare to costs after a limited access privilege program is implemented; a step that is necessary to calculate incremental costs.

**Section 408. Limited Access Privilege Programs (LAPPs).** *This section would require Councils to assess impacts on fishery-dependent communities within the management area of the relevant Council, and consider how to ensure access to, and sustained participation in the fishery to which the program applies, before approving a new limited access privilege program. This section also includes detailed requirements for denial, suspension, revocation, and reallocation of privileges for any person who fails to comply with the requirements of a fishing community or regional fishery association plan.*

The draft language would require assessment of the impacts on fishery-dependent communities located within the management area of the relevant Council. We note that the term "fishery-dependent communities" is an undefined term. National Standard 8 already requires that conservation and management measures take into account the importance of fishery resources to fishing communities by utilizing social and economic data, in order to provide for sustained participation of such communities and to the extent practicable, minimize adverse economic impacts on such communities. Further, the National Standard Guidelines indicate that to address the sustained participation of fishing communities that will be affected by management measures, the analysis should first identify affected fishing communities and then assess their differing levels of dependence on and engagement in the fishery being

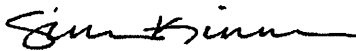
regulated. It is unclear if the proposed language expands on this to require the assessment of a LAPP on all fishing communities in the management area, or just those communities that are 'dependent' on the fishery that is being considered for a new LAPP. This is an important question, particularly with the addition of the proposed requirement that the Council would need to "(L) consider how to ensure access to, and sustain participation in, the fishery to which the program applies." For example, the Council has heard much testimony on the impacts that the Halibut and Sablefish IFQ program had on individual fishermen from coastal communities. Yet many of these communities would not have been considered 'dependent' upon these fisheries when the program was implemented in 1995, and it is unclear how the new requirement for assessing impacts on fishery dependent communities would have addressed their concerns.

The Council notes that community sustainability plans and Regional Fishery Associations (RFAs) are an existing element of MSA, but have not been used in practice as of yet. Limited guidance exists on how these should be developed. The bill references (3)(A)(ii) which states that the Secretary can deny/revoke LAPP privileges for persons who fail to comply with the community sustainability plan, and that any denied/revoked privileges may be reallocated to other eligible members of the fishing community. The Council interprets this language to mean that if an individual who is fishing quota held by an RFA acts in a manner that would trigger denial or revocation then the quota could be reallocated to another RFA-eligible individual (i.e., the quota would not be lost to the community). The Council understands that criteria for such a reallocation should be developed "in consultation with the Council." The Council believes that the revised language appears to solve the fishing community's contingent liability issue and appreciates being consulted as to when quota should be denied/suspended/revoked from an individual who violates the regulations surrounding a LAPP. This would not apply to the Council's current LAPPs because the Council does not currently have community sustainability plans (nor does it appear they are required).

**Section 201.** In addition to our preliminary comments on data collection and storage, the Council wishes to emphasize two important points. First, the NPFMC has learned that EM programs must be carefully designed to meet regional and fishery specific monitoring goals and adapted to the operational limitations of specific fleets. Successful programs engage stakeholders throughout the process and are guided by stakeholder knowledge of operating conditions. For these reasons, the Council recommends careful consideration of these aspects when considering the efficacy of national EM regulations as described in Section 202 of the draft bill. Our experience with national regulations, even those that Congress has directed be modelled on existing regulations developed by the NPFMC, invariably result in "top down" modifications to NPFMC regulations that were developed in stakeholder driven processes and typically result in outcomes that are no longer tailored to our circumstances. Second, relative to EM data storage, the Council recommends the language be modified to limit storage of EM video imagery to 18 months, but allow observer and EM summary reports to be stored well beyond 18 months as these data remain invaluable to managers and scientists for years after they are collected and summarized. The Council wishes to emphasize a need for clarity in storage requirements, because storing source videos for longer than 18 months could be prohibitively expensive.

Once again, thank you for the opportunity to review this draft 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,



Simon Kinneen

Chairman

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