



North Pacific Fishery Management Council

Simon Kinneen, Chair | David Witherell, Executive Director
605 W. 4th Avenue, Suite 306, Anchorage, AK 99501
Phone 907-271-2809 | www.npfmc.org

October 16, 2019

Congressman Rob Bishop
U.S. House of Representatives
Committee on Natural Resources
123 Cannon Building
Washington, DC 20515

Dear Congressman Bishop:

Pursuant to your letter requesting Council comments on H.R. 1979 “The Driftnet Modernization and Bycatch Reduction Act” and H.R. 2236 “The Forage Fish Conservation Act”, I am responding on behalf of the North Pacific Fishery Management Council (Council). The following comments are not intended to provide support for or against the legislation. Rather these initial comments are based on the Council’s ability to meet its conservation and management goals under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). As these bills go through the legislative process, we will be pleased to provide additional comments if requested.

The North Pacific Council has a successful record of science-based, sustainable fisheries management since the MSA was implemented 1976. Each year, vessels homeported in Alaska, Washington, and Oregon harvest over 2,200,000 metric tons of groundfish in the North Pacific, worth approximately \$2.5 billion first wholesale. The abundance of groundfish stocks is high, and most stocks are well above the abundance levels that produce maximum sustainable yield. In the past 40 plus years, no groundfish stocks have been overfished or have been subject to overfishing. Ecosystem considerations are incorporated into the analysis and development of all fishery management measures, and nearly all of the fisheries in the North Pacific are certified as sustainable by the Marine Stewardship Council and the Responsible Fisheries Management Certification Program.

Our comments on the draft legislation are provided below.

H.R. 1979 “The Driftnet Modernization and Bycatch Reduction Act”

This bill appears to have no immediate impact on fisheries management in the North Pacific.

Gillnets (including setnet and driftnet) are not authorized gear types for use for fisheries in the North Pacific EEZ, with minor exceptions (CFR 600.725). The exceptions are for commercial salmon fisheries which operate primarily in State waters (and in 3 small designated areas of the EEZ), and other commercial fisheries managed by the State of Alaska which occur almost entirely in State waters (e.g., Pacific herring gillnet fisheries). In all cases, gillnet mesh is regulated by target species and area (the maximum mesh size allowed in the State is 8” stretched mesh) and gillnet length is regulated as well (maximum of 150 fathoms, which equates to about 0.274 kilometers). To date, the EEZ off Alaska has not been suitable habitat for billfish, tunas, or large commercially marketed shark species, so no commercial driftnet or pelagic longline fisheries have been prosecuted for these species in the area.

H.R. 2236 “The Forage Fish Conservation Act”

For the most part, the existing management program for forage fish in the North Pacific appears to meet the intent of this bill. What we consider forage fish species, as designated and specified in our groundfish fishery management plans (smelt, capelin, sand lance, lanternfish, krill, etc.), are already protected by regulations established by the Council. All directed fishing for these forage fish species in Federally managed waters is prohibited. Additionally, the sale, barter, trade, or processing of forage fish, grenadiers, and squids is prohibited, except that limited amounts of forage fish that are incidentally caught in other groundfish fisheries may be processed into fishmeal. A summary of existing forage fish management and protection measures in the North Pacific can be found here:

<https://meetings.npfmc.org/CommentReview/DownloadFile?p=e2efceab-a9e6-4dca-b258-29563b276e22.pdf&fileName=Forage%20Fish%20paper.pdf>

Because forage fish and ecosystem concerns are adequately addressed by the existing North Pacific management programs developed under existing MSA provisions, HR 2236 does not appear to enhance the Council’s ability to meet the MSA’s conservation and management goals for forage fish species. The legislation would limit the Council’s flexibility in achieving conservation objectives and in our ability to respond to changing ocean conditions and shifting ecosystems. Additionally, the bill does not provide enough specificity to avoid lengthy, complex implementing regulations or guidelines. It appears to add to Council workload without any added benefit to the conservation and management of forage fish species.

We believe the definition of forage fish is too broad to be unambiguously applied to species already managed under a fishery management plan or fishery regulations. While likely not intended, it is not clear if some of the most commercially valuable fish species in the North Pacific (e.g., Alaska pollock, Atka mackerel, and sockeye salmon) would be determined to be forage fish under this definition. In other words, these species could be considered forage fish under this bill if they meet the three criteria of what defines a forage fish:

- (1) is a low trophic level (defined as fish that generally consume plankton)
- (2) contribute significantly to the diets of other fish, mammals or birds, and
- (3) serve as a conduit for energy transfer to species at higher trophic levels.

All three of these species mentioned (Alaska pollock, Atka mackerel, and sockeye salmon) are planktivorous, are eaten by fish and mammals (like most every other fish species), and transfer energy up the food chain (like every other fish species). Thus, it could be argued by some that any fish species that eats plankton should be treated as forage fish.

We believe that the bill should clarify that the regional fishery management councils (though their fishery management plans) shall make final determinations of which species are considered as forage fish as this approach will best meet Congressional intent and lessen the likelihood of litigation. The Council is concerned that a broad definition of forage fish as proposed will allow for various interpretations by different interested parties. This ambiguity, particularly with respect to species that could be determined to meet the bill’s definition of forage fish but are currently caught in target fisheries (e.g., Alaska pollock, Atka mackerel, sockeye salmon), may invite lawsuits that would ultimately be decided by the courts. As we describe above, developing a uniform, national definition of the forage fish category may not be feasible. In contrast, requesting each Council to develop a list of fish species in their area of jurisdiction that function as forage fish, is a relatively straightforward exercise.

We believe that the language in Section 7 of the legislation might be more appropriate in section 303(b) of the MSA. This would provide the councils discretion to adjust catch limits for forage fish to account for dietary needs, rather than make it a required provision of FMPs. The current language in the

MSA already provides the councils with the authority to address forage fish concerns. Predator needs and other forms of natural mortality are already accounted for in the stock assessments and specification of acceptable biological catch limits, within the constraints of the best scientific information available. Additional adjustments to catch limits would require substantial research funding that may divert limited research monies away from critical surveys and stock assessments for harvested stocks. In the absence of additional dietary research, catch limits for target species would need to be extremely restrictive to account for this uncertainty. Greater specificity is unlikely to be appropriate given the rapid evolution of ecosystem science and the high degree of uncertainty that remains regarding interactions among species.

The bill could be clarified that *unless subject to a directed fishery*, the SSC and Council should not be required to make catch limit recommendations for forage fish. Forage fish are considered as ecosystem component species in the North Pacific groundfish FMPs, and by definition, are not subject to a directed fishery. Accordingly, annual catch limits are not established for these species, consistent with the National Standard 1 guidelines. It is not clear how the bill would address ecosystem component species. Requiring Councils to make catch limit recommendations for species that are not subject to directed fisheries adds to Council workload without producing any tangible benefit.

We believe that the MSA could be amended with following language, which would capture the intent of the proposed legislation, while minimizing potential collateral damage and adverse effects on the conservation and management of forage fish in the North Pacific.

*Add new item to the list of discretionary provisions of FMPs in section 303(b):
(15) identify forage fish species, and include management measures in the plan to conserve forage fish species, including consideration of reductions in catch limits to account for dietary needs of higher tropic level species.*

Additional comments from the North Pacific Council on the Forage Fish Act can be found here:

https://www.npfmc.org/wp-content/PDFdocuments/CM/2019/062819/062819_ForageFishCommentLtr.pdf

General Comments

The following bullets represent some general tenets developed by the regional fishery management councils that would improve the ability of the councils to develop appropriate conservation and management measures, and should be considered relative to any change in the MSA:

- Avoid across the board mandates which could negatively affect one region in order to address a problem in another region. Make provisions region-specific where necessary, or couch them as optional tools in the management toolbox rather than mandates.
- Legislation should allow for flexibility in achieving conservation objectives, but be specific enough to avoid lengthy, complex implementing regulations or 'guidelines.'
- Legislation should be in the form of intended outcomes, rather than prescriptive management or scientific parameters.
- Legislation should avoid unrealistic/expensive analytical mandates relative to implementing fishery closures or other management actions.
- Legislation should avoid constraints that limit the flexibility of Councils and NMFS to respond to changing climates and shifting ecosystems.

- Avoid unfunded mandates, and/or ensure that Councils and NMFS have the resources to respond to provisions of legislation.
- The Councils are already pressed to meet the current requirements of the MSA and additional mandates will likely hinder existing activities.
- Preservation and enhancement of stock assessments and surveys should be among the highest priorities when considering any changes to the Act.

Once again, thank you for the opportunity to review these draft bills, and to provide these comments to you on behalf of the North Pacific Fishery Management Council. We would be more than willing to offer additional comments on revisions or drafts as they move through the legislative process. We look forward to our continued dialogue on these critically important issues.

Sincerely,



Simon Kinneen
Chairman
DW

cc: Alaska, Washington, and Oregon Congressional Delegations
Chris Oliver, AA NOAA Fisheries
Regional Fishery Management Councils
Bill Ball, House Committee on Natural Resources