

North Pacific Fishery Management Council

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The Honorable Don Young
US House of Representatives
2314 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Young:

Pursuant to requests from your office to provide comment on HR1335 – “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” – I am responding on behalf of the North Pacific Fishery Management Council (NPFMC). We previously commented extensively on HR4742 (April 3, 2014 comments to Congressman Doc Hasting) which contained many of the provisions in HR1335; therefore, I will attempt to focus these comments on those issues which differ from HR4742, or which underscore previous comments which are of primary importance from the perspective of the NPFMC. These positions have also been influenced by the May 2013 ‘Managing our Nation’s’ Fisheries national conference, ongoing dialogue among the eight regional Councils through the Council Coordination Committee (CCC), and our experience with the 2006 MSA reauthorization.

A primary focus for pending reauthorization appears to be flexibility in the ACL and stock rebuilding requirements implemented through the 2006 reauthorization. The NPFMC believes that the current MSA provides a very successful framework for sustainable fisheries management, and major changes are not necessary at this time. However, we also recognize the need for increased flexibility in some circumstances and we do not oppose amending the Act to provide for such flexibility, with appropriate cautionary notes. Following are our comments to the specific provisions of HR1335:

Section 4- Flexibility in Rebuilding Fish Stocks

Regarding potential changes and increased flexibility for stock rebuilding plans, our Council supports further flexibility, particularly in cases where the 10 year rule does not make sense due to the particular aspects of the stock in question. In some cases the somewhat arbitrary 10 year requirement can result in overly restrictive management measures, with unnecessary, negative economic impacts, with little or no conservation gain. Allowing for rebuilding to occur in as short a time as “practicable”, as opposed to as short a time as “possible”, appears to be an appropriate mechanism for additional flexibility. We also support the use of alternative rebuilding strategies such as harvest control rules and fishing mortality targets. Finally, allowing the Councils’ Scientific and Statistical Committees (SSCs) to determine whether a rebuilding plan is no longer necessary seems an appropriate role for the SSCs.

Section 5- Modifications to the ACL requirement

Regarding annual catch limits (ACLs), ACLs have been used in the North Pacific for over 30 years, and we believe that such limits are a cornerstone of sustainable fisheries management. We also believe there are situations where some flexibility in the establishment of ACLs is warranted, particularly in the case of data poor stocks. Consideration of the economic needs of fishing communities is critical in the ACL

setting process, and while the current MSA allows for such consideration, we recognize the desire for a more explicit allowance for these considerations. We must be careful however, not to jeopardize long term fisheries sustainability, and associated community vitality and resiliency, for the sake of short term preservation of all economic activity associated with a fishery. Accounting for uncertainty, articulating policies for acceptable risk, and establishing the necessary precautionary buffers, is an explicit outcome of the ACL process, and we believe that the Councils' SSCs are the appropriate gatekeepers to establish the upper limits of 'safe' fishing mortality, which we believe to be at the Acceptable Biological Catch (ABC) level, which is consistent with the provisions of HR1335.

We further support the authorization for multi-species stock complexes and multiyear ACLs, as well as the provisions regarding ecosystem component species. We note one potential problem with the wording in this section, which defines 'ecosystem component' with reference to 'non-target stock', which could be confusing for the North Pacific given how targets and non-targets are defined in our regulations (i.e., based on catch composition after the fact). In effect, all major stocks may be non-targets at certain times, while ACLs must be set prior to the fishing year. While this would not likely change how we set ACLs in the North Pacific, clarification may be achieved by deleting the words "in a fishery" to accomplish the apparent intent. This would be consistent with our previous comments.

Section 6- Distinguishing between overfished and depleted

Associated with the rebuilding issue is the definition of 'overfished'. In the North Pacific the example of Pribilof Island Blue King Crab, a fishery for which there has been no allowable fishing for decades, and a species which is only occasionally taken as bycatch in other fisheries, highlights the need to differentiate stocks for which an "overfished" status has no relation to fishing activities. Replacing the term "overfished" with the term "depleted" may be an effective way to address this problem. However, while the distinction makes sense, the legislation does not explicitly exempt such a situation from development of a rebuilding plan; therefore, you may wish to consider adding such an exemption in cases where fishery management actions would not effect, or affect, stock rebuilding.

As a more general comment regarding ACLs and rebuilding requirements, we note NMFS' continuing development of revisions to the guidelines implementing National Standard 1 (as well as National Standards 3 and 7), which attempt to address many of the same issues being addressed within HR1335 and other legislation. The NPFMC will be devoting significant effort to develop comments on that proposed rule prior to the June 30, deadline, recognizing the overlap with provisions of HR1335.

Section 7 - Transparency and Public Process

Regarding the National Environmental Policy Act (NEPA), the Councils have a long history of advocating for reconciliation of this Act with the MSA, and the Council Coordination Committee (CCC) has developed an approach on which all regions currently agree. The MSA is arguably the most transparent, participatory regulatory process in existence, and while the MSA is ostensibly the guiding Act for fisheries management actions in the U.S., NEPA has become the vehicle for development of fishery management plans and associated regulations. The current application of NEPA results in an unnecessarily burdensome, overly expensive, and redundant, regulatory process without added benefit to the public. The NEPA process was never intended, and will never fit well, with the unique and dynamic nature of the fisheries management process. The substance and process associated with NEPA can be addressed more simply through the MSA.

The original draft Hastings bill (from early 2014) contained a new section (Compliance with NEPA) that stated that: "Any FMP or regulation that is prepared in accordance with sections 303 and 304 of the MSA is considered to satisfy NEPA, specifically section 102(2)(C), which is the requirement that the federal

government provide a detailed statement about the environmental impacts of alternatives (e.g., the NEPA analysis). While that would have been a direct approach to resolving the NEPA/MSA issue, that language did not survive in HR4742 as introduced in April 2014.

HR4742 did contain the CCC recommended approach, which expanded Section 303 of the MSA to include key NEPA analytical provisions directly into the MSA, and (importantly) a paragraph 7 at the end of that expanded Section 303 which stated that development of the revised Fishery Impact Statement would constitute compliance with NEPA. While HR1335 contains virtually the same language as HR4742, that critical paragraph 7 is not included in HR1335, which essentially moots the entire intent and effect of the preceding section; i.e., the CCC recommended approach. As currently constructed, HR1335 would require development of the expanded fishery impact statement under MSA, which is very similar to existing analytical requirements under NEPA, but would not exempt Councils from (what would now be entirely redundant) NEPA requirements.

In effect, Councils would be required to continue to comply with NEPA and also undergo a new, repetitive NEPA-like process in their development of a fishery impact statement. Previous Council and CCC positions on NEPA have supported incorporating NEPA into the MSA, on the condition that those requirements satisfy NEPA. We strongly recommend inclusion of that paragraph 7 as contained in HR4742, or alternatively, delete that section in its entirety and fall back to status quo NEPA application (barring some other solution). The NPFMC, as well as the CCC, will be discussing this issue again at our June 2015 meetings and may provide further comments on this important issue.

Section 10 - Data Collection and Confidentiality

Electronic Monitoring

The use of Electronic Monitoring (EM), particularly the use of video cameras in lieu of, or supplemental to, human observers, continues to be a high priority for the North Pacific Council and the North Pacific fishing industry, and an EM strategic plan was developed in the past year to guide those efforts. Along with pilot programs being continued this year, we hope to have an operational EM program on the water in 2016 for the small boat, fixed gear fleet. EM development is also a high priority at the National level, with NOAA Fisheries in the midst of developing both a National EM policy as well as regional implementation plans. With the collective, ongoing efforts relative to EM, it is unclear that additional statutory provisions are necessary at this time to move forward.

However, the proposed language in HR1335 appears to be a reasonable approach to facilitating EM development. It retains the flexibility and discretionary authority for each Council to develop EM implementation plans in response to Secretarial regulations governing use of EM, and it appears consistent with efforts already well underway in the North Pacific. Our only concern is that agency resources currently engaged in EM implementation in the North Pacific will get redirected to draft the Secretarial regulations, which are required on a relatively short timeline. We also note that HR1335 allows the use of EM for compliance and enforcement purposes, which the NPFMC supports.

Confidentiality

With regard to the provisions on data confidentiality, HR1335 appears to address the concerns expressed by the NPFMC on HR4742. Particularly we did not support deletion of section 402(b)(2)(A), which allows for disclosure of observer information necessary to manage salmon (and halibut) bycatch at the cooperative and individual vessel levels. We would note that HR1335 modifies sections 402(b)(1)(E) and (G) to substitute the words 'catch share' for 'limited access', thus establishing that information is confidential and cannot be disclosed except when it is used by a state, Council or marine fishery

commission to verify catch under a catch share program or by the SOC when such information is required to be submitted for any determination under a catch share program. This means that ongoing federal rulemaking defining what falls under the purview of a 'determination' is still relevant, and will be a critical factor in the application of future confidentiality rules.

With regard to coastal and marine spatial planning initiative, the NPFMC has previously voiced its general concerns; however, we are concerned that the proposed prohibition on providing information to any person for the purposes of coastal and marine spatial planning may reach too broadly and may have unintentional, adverse consequences. For example, there are many activities and management actions that could be construed to relate to coastal and marine spatial planning, and which could benefit from such fisheries data; therefore, we caution against the possibility of these actions being caught in the CMSP net, contrary to the specific intent of HR1335.

Section 11- Cooperative Research and Management Program

The NPFMC is generally supportive of this new section contained in HR1335, which requires the Secretary, in consultation with the Councils, to publish a plan for implementing section 318 within one year of implementation of the Act. The NPFMC is also supportive of the prioritization of expanded use of EM contained in these new provisions.

Section 14 - North Pacific Management Clarification

Section 306(a)(3)(C) contains provisions related to State jurisdiction to manage fishing activity in the absence of a federal fishery management plan. Removal of the August 1, 1996 date in this paragraph would close a potential loophole which could theoretically allow unrestricted fishing for salmon in EEZ areas off Alaska by vessels not registered with the State of Alaska, due to the removal of these areas from the Council's overarching salmon fishery management plan. The Council strongly supports this change, thereby allowing regulation of fishing in these areas by the State of Alaska, as intended.

Section 15- Ensuring consistent management for fisheries throughout their range

This section refers to the relationship between MSA and other statutes including the Endangered Species Act, National Marine Sanctuaries Act, and Antiquities Act. While we may infer the intent of this new section (and agree with that intent as it relates to prioritizing the authority of the MSA relative to those other statutes in the case of conflict), we do not fully understand the intent and effect of this section. Pending further clarity of the intent and effect, the NPFMC may provide additional comment at the appropriate time.

Section 16- Limitation on harvest in North Pacific Directed Pollock Fishery

This section would provide allowance for the NPFMC to change the pollock harvest cap as stipulated in the American Fisheries Act (currently 17.5%), but not to exceed 24%. The NPFMC briefly discussed this provision at its April 2014 meeting, and requested background information from staff to provide a better context. The NPFMC has taken no position on this provision at this time, but may in the future upon a better understanding of the intent and perceived need for this action.

Section 17- Recreational Fishing Data

This section appears to allow for grant funding to help support recreational fisheries monitoring programs undertaken by the State, which the MSA authorizes as a suitable replacement for a federal registry program. In the North Pacific, this would apply to ADF&G's charter logbook and recreational harvest survey program to monitor recreational harvest of halibut. Because the State received a one-time grant several years ago to modify the logbooks, but no longer receives federal funding in support of the

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continued operation of this program, the NPFMC is supportive of this new section as would facilitate management of our recreational halibut fisheries.

General comments

I would like to close by reiterating some general thoughts regarding the reauthorization process, which we have previously provided relative to HR4742 as well as other draft MSA reauthorization bills introduced in 2014. These represent some general tenets which we believe 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.
- 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 HR1335, 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,



Dan Hull
Chairman

CC: Senator Lisa Murkowski
Senator Dan Sullivan
Ms. Eileen Sobeck
Regional Fishery Management Councils