

## Regional Fishery Management Council Coordination Committee

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June 20, 2014



The Honorable Mark Begich  
United States Senate  
111 Russell Senate Office Building  
Washington, D.C. 20510-0201

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



Dear Senator Begich and Representative Hastings:

On behalf of the Council Coordination Committee (CCC), I offer the following comments on the reauthorization of the Magnuson-Stevens Act (MSA). These comments were developed during the CCC's most recent meeting on May 12-15, 2014. In preparation for this meeting, three working groups were established to develop draft positions on a range of issues relevant to MSA reauthorization. The CCC reviewed the reports from each working group and developed consensus positions on a wide range of topics being considered as part of the revised Act.



Although our discussions were informed by the draft legislation available at the time, most of our comments are general in nature and do not include recommendations for specific legislative language. Due to both time limitations and differences in perspectives, we did not develop consensus positions on all of the topics that are being considered as part of MSA reauthorization. The following sections summarize the CCC's consensus positions on a number of high-priority topics.



New England  
Fishery Management Council

### **Management Flexibility**

#### Rebuilding Plans

In general, the CCC supports the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries. We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished while mitigating the social and economic impacts more effectively.



We agree that exceptions to rebuilding requirements should be limited in scope and carefully defined. Ideally, such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines.

#### Management of Mixed Stocks

Some of the Act's more prescriptive management requirements pose particular challenges for the management of mixed stock fisheries and may be incompatible with ecosystem approaches. While the current National Standard guidelines allow for a mixed-stock exception to the "overfished" definition, the statutory basis for this is unclear and would benefit from clarification in the reauthorized Act.



### Transboundary Stocks

The CCC supports the addition of language that would allow the Councils to develop annual and in-season quota trading programs for transboundary stocks. Also, enhancement of enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement would likely be useful. Assistance to developing countries in their enforcement capacity could also have substantial benefits.

### Data Poor Fisheries

The CCC supports further consideration of exemptions, or alternatives to, the existing ACL requirements for data-poor species. The ad hoc methods used to establish ACLs for data-poor species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. While ACLs and AMs have been effective management tools for some fisheries, they may not be the best tools for managing incidental or small-scale, data-poor fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms for data-poor stocks.

### **Definition of "Overfished"**

The CCC agrees that an alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors. The current MSY-based definition can be problematic when applied to data-poor fisheries or mixed-stock complexes. Furthermore, the term "overfished" can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other factors. Not all of the Councils agree that "depleted" is an appropriate term to replace "overfished" with. Some have noted that "depleted" has specific meanings in a number of other statutes, including the Endangered Species Act and the Marine Mammal Protection Act, and that care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.

### **Transparency**

The CCC supports a transparent public process, including webcasts and recordings of all Council and SSC meetings, to the extent practicable. However, budget problems are very real, and written transcripts are costly. Video recordings of large meetings may not add substantive content as they will not capture presentations and motions, which are the most critical visual aspects of meetings. Streaming video may also degrade the quality of webcast audio. While the technology for webcasts is rapidly evolving, live broadcasts generally require strong internet connections to be effective. In the context of Council meetings, which are often held in remote locations near fishing ports, the Councils have little ability to predict or control the quality of the internet connection.

We recommend that Congress require each Council to develop a policy in its Standard Operating Procedures that describes how it makes each type of Council meeting accessible to the public, and that Congress require the use of webcasts "to the extent practicable."

### **Collection and Use of Fishery Data**

In general, the CCC believes that Councils should be granted a reasonable degree of flexibility in the development and implementation of monitoring programs (electronic and otherwise) so that those programs may be tailored appropriately for each fishery.

### Electronic Monitoring

The Act should encourage development of electronic monitoring technologies and should enable the full utilization of such technologies in U.S. fisheries. However, introducing additional national-level regulations to govern the use of electronic monitoring beyond the current constraints of the Act (e.g., the

National Standards) may be counterproductive due to a number of factors, including funding and resource constraints, variability among fisheries, and the rapid evolution of technology. If such requirements are added to the Act, the CCC recommends that they only apply to new electronic monitoring programs (as opposed to programs currently in place or under development). Additionally, the CCC agrees that the Act should not preclude information collected with electronic monitoring technologies from being used for the purposes of fishery law enforcement. Such measures should be carefully considered in the context of individual fishery management plans.

#### Data Confidentiality

Our ability to manage fisheries effectively depends on having access to timely and accurate data. The CCC agrees that any changes to the Act should not limit Councils' abilities to use aggregated fishery-dependent data (landings data, observer data, etc.) for decision-making purposes. To this end, we also agree that contractors and grant recipients conducting work for either the federal government or Councils should have access to confidential data necessary for that work, provided that they sign data confidentiality agreements.

#### Marine Spatial Planning

The CCC agrees that the Act should not place new restrictions on the use of fishery data for the purposes of marine spatial planning. Without identifying important fishing grounds and practices, the fishing industry has more to lose than they would ever gain by not having fisheries data available to guide spatial planning efforts. The data could be particularly useful when coupled with habitat classification using remote sensing technologies.

#### Recreational Fisheries

Data quality and availability continue to be among the greatest challenges for the management of recreational fisheries. Given the importance of accountability, effective monitoring is critical for the successful management of recreational fisheries. While NOAA's Marine Recreational Information Program (MRIP) has provided some improved statistical methodologies to reduce sampling bias, the program has only been partially implemented, and it has done little to increase the precision of catch estimates. Addressing this problem will require increased sampling rates, which can only occur with increased funding.

### **Ecosystems**

#### Ecosystem Approaches to Fisheries Management

In general, the CCC supports the addition of language that addresses ecosystem-level management objectives. At times, the Councils' efforts to shift from single-species management to ecosystem-based fisheries management (EBFM) have been constrained by the Act's emphasis on ending overfishing and rebuilding individual stocks of fish. We recommend that any EBFM-related changes in the Act provide general, rather than prescriptive, guidance and that such changes acknowledge the ongoing efforts within the scientific and management communities to inform and support the application of EBFM principles.

#### Ecosystem Science

The lack of scientific data about marine ecosystems is another significant barrier to the implementation of ecosystem-based management approaches. Many aspects of single-species stock dynamics are still poorly understood, and additional resources are needed for research in the rapidly-progressing area of ecosystem based fishery management. If the reauthorized Act includes EBFM mandates, the CCC recommends that specific measures be included to address these information gaps through funding or research mandates.

### Forage Fisheries

The Act should encourage managers to take the role of forage fish into consideration, to the extent practicable, when establishing quotas and other management measures. The current language regarding Optimum Yield considerations already provides the Councils with authority to address forage concerns. 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. Several Councils have placed moratoria on the development of new fisheries on forage stocks, and while the Act does not preclude Councils from placing these types of moratoria, providing explicit authority to the Councils on this matter would be useful for future consideration of forage issues.

### **Catch Share Programs**

The CCC agrees that Councils should maintain the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive requirements for conducting a referendum is likely to increase the administrative burden for the Councils and may reduce the Councils' ability to implement new catch share measures.

### **NEPA Compliance**

The CCC agrees that the alignment between the MSA and NEPA could be improved by incorporating many of the NEPA requirements directly into the MSA through reauthorization. In the setting of the regional fishery management council process, the rules, guidelines, and directives associated with the National Environmental Policy Act (NEPA) have caused delays and introduced duplication with the requirements of the MSA and other applicable laws. Ensuring NEPA compliance for marine fishery management actions has been costly and time-consuming for Council and NMFS staff and has limited the Councils' abilities to pursue other regulatory activities. In addition, the CCC notes that there have been instances where compliance with NEPA has hindered adequate compliance with MSA in terms of providing comprehensive analysis to Councils prior to their taking final action. Although the 2007 MSA reauthorization attempted to align the requirements of the two laws more closely through the addition of Section 304(i), the CCC does not believe what has been called for in the Act has been accomplished.

Without formal position on all specifics at this time, the CCC is finalizing a White Paper that 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, which requires Federal agencies to prepare “a detailed statement” on “the environmental impact of the proposed action” into the MSA. 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.

### **Other Federal Statutes**

The CCC recommends an amendment to the MSA that ensures all federal fishery regulations to be promulgated under the Council process established under MSA section 302. Specifically, the CCC proposes the addition of a section similar to section 5 of the House Committee discussion draft (H.R. 4742, May 23, 2014). This section would include a single provision that addresses all major statutes that affect fishery management and to ensure that any fishery restrictions necessary to implement other federal laws are developed under the transparent Council process established under MSA section 302 and consistent with requirements and procedures established under MSA sections 303 and 304.

Thank you for the opportunity to provide these comments on MSA reauthorization. Please don't hesitate to contact me if you have any questions or would like clarification on any of the comments above. We appreciate your continued interest in the perspectives of the regional fishery management councils, and we look forward to future involvement in the MSA reauthorization process.

Sincerely,

A handwritten signature in black ink, appearing to read "R B Robins, Jr." with a stylized flourish at the end.

Richard B. Robins, Jr.  
Chairman

Cc: CCC Members  
Mr. Dave Whaley  
Mr. Bob King  
Mr. Jeff Lewis  
Ms. Eileen Sobeck  
Mr. Samuel Rauch