



# North Pacific Fishery Management Council

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December 28, 2018

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

Dear Senator Sullivan:

Pursuant to a request from your office (via email from Erik Elam dated 12/20/2018) to provide comment on the staff working draft of an MSA reauthorization bill, I am responding on behalf of the North Pacific Fishery Management Council (NPFMC or Council). Please note that these comments focus only on issues and provisions of the legislation which appear to be of relevance to the NPFMC and Alaska fisheries (we are not providing comments on sections that specifically apply to other regions of the U.S.). These comments build upon our previous comments on draft MSA legislation, including our comment letter to you dated October 17, 2017, and our comment letter to Congressman Young dated April 2, 2018. Because the Council as a whole has not yet had an opportunity to review the current draft, please consider these comments as preliminary; we may have additional comments to provide at a future date.

The North Pacific Council believes that the current MSA already provides a very successful framework for sustainable fisheries management, and major changes are not necessary at this time. Nevertheless, we also recognize the potential benefits of increased flexibility in some circumstances, and amending the Act to provide for such flexibility could provide all the regional councils additional opportunities to optimize their fishery management programs, with appropriate cautionary notes and limitations. In order for the Council to provide for the continued conservation of our resources, any changes to the law providing additional flexibility must continue to ensure that fundamental conservation and management tenets based on sound science are upheld, and should not create incentives or justifications to overlook them.

**Section 104. Regional Fishery Management Councils.** The Council believes that providing a definition for subsistence fishing is a proper addition to the MSA to reflect the full range of marine resource uses in the EEZ. Additionally, adding subsistence as an appointment qualification for Council membership is a beneficial clarification to the MSA in that it allows additional qualified people to participate as Council members in the North Pacific, with the understanding that it would not require or direct the appointment of a subsistence representative as a Council member.

**Section 105. Recusals.** The Council agrees that a financial interest held by an entity for purposes of voting recusal determinations should be attributed to an affected individual only to the extent of the proportional ownership of such entity. NMFS recently published a proposed rule to change the regulations addressing disclosure of financial interest and voting recusal of council members appointed by the Secretary of Commerce. The proposed MSA language appears to enhance, but not conflict with the proposed regulatory changes. The North Pacific Council believes that a proportional attribution policy is consistent with the intent of the conflict of interest statute and regulations.

**Section 108. Transparency and the Public Process.** The requirement for the Council to hold a roll call vote on all procedural matters is unnecessary, divisive and disruptive to the process. We would note that Councils operate under Roberts Rules of Order, and Council members have the privilege to request a roll call vote on any matter at any time if they wish to do so.

**Section 111. Rebuilding Overfished or Otherwise Depleted Fisheries.** The Council appreciates the need to differentiate stocks for which an “overfished” status has no relation to fishing activities. Adding the term “or otherwise depleted” may be an effective way to more accurately reflect this important distinction. However, while the distinction makes sense, the draft legislation does not explicitly exempt such a situation from development of a rebuilding plan; therefore, adding such an exemption in cases where fishery management actions would not effect, or substantially affect, stock rebuilding. Such an exemption would create efficiencies for the Council in that it would allow the Council’s to focus efforts on development of rebuilding plans for which fisheries can be modified.

The Council appreciates that further flexibility would appropriately increase the ability to maximize harvest opportunities while still effecting rebuilding of fish stocks. Removing the arbitrary 10-year requirement provides the Councils with management flexibility so as to avoid negative economic impacts from overly constraining measures that may have little or no conservation gain. However, we note that the draft bill would require that rebuilding not exceed the shortest time “possible”, which would appear to eliminate the flexibility to account for status and biology of any overfished stocks or the needs of fishing communities as specified in the prior paragraph in this section. 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 that would be beneficial to the conservation and management goals of the Councils.

**Section 201. Modernizing Fisheries Data Collection and Storage.** The Council agrees with the use of electronic technologies as a complement to, or in some cases a replacement for, observers. We would note that the NPFMC has already implemented such an electronic monitoring program for fixed gear fisheries in the North Pacific, and would hope that the implementation of the regulations deriving from this bill would not invalidate the program this is already successfully in use in Alaska. Along the same lines, the Council hopes that in preparing the regulations, NMFS will continue to allow for regional flexibility and technological advances in the implementing regulations with respect to defining minimum criteria, objectives, or performance standards. Fishery circumstances vary across regions and target fisheries, and EM technologies are constantly innovating. The regulations should be sufficiently adaptive to accommodate these changes.

The Council does have concerns regarding a maximum of 18 months for storage of data obtained either through human observers or electronic monitoring. As written, the language implies that the Councils and NMFS would no longer be able to use any data deriving from the observer or EM programs. This would be a significantly adverse outcome for the North Pacific, where such historical data is continually used for stock assessment and management measure reports and analyses. It is possible that the bill intended to be more targeted with respect to storage of EM source data, e.g. the source video from which catch monitoring reports are derived. The Council supports establishing an appropriate time period for requiring storage of EM source video, so that the cost of storage, especially if it is borne by industry, does not become excessive. Even so, the 18-month time frame from the data of collection still seems fairly short. There are some fisheries in the North Pacific, for example, for which catch monitoring may not be necessary in real time, and where video review may appropriately be scheduled to occur in the following year. In these cases, an 18-month time frame would not allow much flexibility to be able to process all the video data.

**Section 203. Recreational Data Collection.** 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 could apply to the Alaska Department of Fish and Game’s charter logbook and recreational harvest survey program to monitor recreational harvest of halibut, and could facilitate improved management of our recreational halibut fisheries.

**Section 401. Young Fisherman Development Grants.** This section will provide benefits to the long-term management of fisheries and sustainable fishing communities, in that the grant program will provide education and mentorship opportunities for young fishermen to more successfully enter and participate in the fisheries, which enhances the ability of the Council to better provide for sustainable fishing communities. Further, the flexibility for entities to tailor the grant program to meet the needs within each region allows for more effective and focused education and training programs. The Council benefits when fishermen are better informed of the regulatory process, understand legal requirements and fishing regulations, utilize sustainable fishing practices, and other training opportunities provided by this bill.

**Section 402. North Pacific Fishery 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. The Council strongly believes this change, thereby allowing regulation of fishing in these areas by the State of Alaska, is essential to the responsible and effective management and enforcement of these fisheries.

**Section 404. Arctic Community Development Quota.** The Council notes that providing more specificity with regard to identifying eligible villages would enhance the Council's ability to develop such a program. Additionally, it would be beneficial to the Council with respect to public process for Congress to consider guidance for the allocation of such quota.

**Section 505. Certain Commercial Fishing Permit Transfers.** The Council has no position on the section that authorizes the State of Alaska to cooperatively develop a State FMP for Glacier Bay National Park, and allow transfer of lifetime access permits for commercial fishing to members of immediate families.

**Section 507. Mandatory Requirements.** The Council has not yet developed a formal position on the section that would require that the government pay travel costs for Bering Sea Fishery Advisory Board (BSFAB) members to the U.S. – Russia Intergovernmental Consultative Committee on Fisheries (ICC) meetings, and travel costs for U.S. Commissioners and Advisory Panel members to the North Pacific Anadromous Fish Commission meetings. The Council notes the importance of BSFAB members attending the annual U.S./Russia maritime boundary meetings, and that funding support would be entirely consistent with the Council interest in this forum.

**Section 508. Reallocation of Certain Unused Harvest Allocation.** This section requires that upon written notice from the Aleut Corporation that it will not harvest all or part of its Aleutian Island pollock allocation, the Secretary shall reallocate the unused portion to the Bering Sea subarea to eligible vessels for harvest in the Bering Sea subarea. This section contains specifics on limitations, agreements, calculations. This section provides clear notice to the Regional Administrator as to when to reallocate unused fish, which should improve the ability of the fishery to achieve OY, and provide efficiencies for the Aleut Corporation and the harvesting vessels.

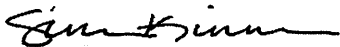
**Section 5.9. Clarification.** As noted in the sunset provision, this section may no longer be necessary. The Council took action in December 2018 to adjust Amendment 113 such that the prosecution of the BSAI Pacific cod fishery aligns with the Council's original objective of providing stability to Aleutian Islands (AI) shoreplant operations, AI harvesters, and AI fishing communities dependent on AI Pacific cod harvesting and shoreside processing activity. The Council selected Alternative 4 and Option 2 as its preferred alternative, which changes how the unrestricted fishery harvested in the AI is deducted from the

trawl catcher vessel (CV) BSAI allocation in order to provide the full AI set-aside for shoreside deliveries. Option 2 maintains the March 21 end date for the Bering Sea (BS) trawl CV limitation, but changes the restriction on the limitation after March 15 so that during the March 15 to March 21 period, AI Pacific cod deliveries by the trawl CV sector can be delivered to any processor.

**Section 510. Fees.** In December 2016, the Council took final action to allow the formation of a non-profit charter halibut recreational quota entity (RQE) to purchase and hold commercial halibut quota share, to augment the charter catch limits in IPHC Regulatory Area 2C and Area 3A. Any IFQ annually generated from the RQE's quota share holdings would augment the pounds allocated to the sector through the Catch Sharing Plan. NMFS approved of the RQE program in 2018. The draft language provides the Council authority to recommend, and for NMFS to implement a collection of fees from halibut charter vessel operators for the purposes of financing administrative costs and the purchase of halibut quota shares, as well as for halibut conservation and research. The Council appreciates the inclusion of this language in that it would provide an additional tool for the Council to meet its goals for managing the charter halibut fishery.

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

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