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on

Pacific Council Perspectives on Magnuson-Stevens Act Reauthorization

Before

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"Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act" Hearing

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Chairman Hastings, Ranking Member DeFazio, and members of the Subcommittee, thank you for the opportunity to testify before you today regarding the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

My name is Dorothy Lowman and I serve as the Chair of the Pacific Fishery Management Council (Pacific Council). It is from our experiences of managing over 160 fish stocks off the states of Washington, Oregon, and California under the mandates of the MSA that I offer the Pacific Council's perspective regarding refinement of this important legislation.

First I would like to be clear that the Pacific Council believes that the MSA as reauthorized in 1996 and again in 2006 has been a success. The Act has worked well to ensure a science-based management process that ensures long-term sustainable fisheries while preventing overfishing and mandating rebuilding of depleted stocks. As a result, the Pacific Council has ended overfishing of any and all stocks within one year of detection, has rebuilt seven depleted stocks, and is in the process of successfully rebuilding eight long-lived stocks that remain depleted—three of which are projected to be rebuilt in the next year. We have implemented a successful groundfish trawl catch share program that has been held up as a model for programs in other regions for its ability to reduce bycatch and increase economic yield. We annually craft ocean salmon fisheries that accomplish stock-specific conservation goals for a multitude of individual salmon stocks, including many listed under the Endangered Species Act. We have created an ecosystem fishery management plan, which we are now in the process of implementing, along with protections for unmanaged forage fish. We are successfully participating in international fisheries organizations to protect highly migratory tuna-like species and the West Coast fisheries that rely on them. The current MSA has been a key driver of these successes. We believe large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

That said, after 7 years of managing under the 2006 reauthorized bill, we believe that a few refinements would enhance marine fishery management in the United States and internationally. A number of the Pacific Council priorities for reauthorizations were echoed by others at the Management Our Nation's Fisheries 3 (MONF3) conference which was held in May of 2013. The Pacific Council was the primary organization responsible for planning the MONF3 conference. Findings from the conference can be found on our website, and the final report should be available within a few weeks. At subsequent Pacific Council meetings we have continued to discuss reauthorization of the MSA, and the priorities outlined in this testimony represent the results of our discussions through our last Pacific Council meeting in November. The Pacific Council has not yet had the opportunity to review the discussion draft bill put forth by Chairman Hastings but will do so at our March Council meeting and intends to provide the results of this review to the Committee as soon as possible thereafter.

The Pacific Council's priorities for MSA reauthorization are as follows. These represent notable priorities identified at this time, with the reservation for additional priorities and refinement of positions as the reauthorization process moves forward.

Higher-Priorities Matters

Revise rebuilding time requirements.

- Address the discontinuity associated with the 10-year rebuilding requirement.
- Don't "chase noise" in rebuilding plans (in other words, temper immediate reactions to changes in stock assessments that may merely be statistical "noise," rather than a true signal of significant status change).
- Address problems associated with "rebuilding as soon as possible" in order to properly take into account the needs of fishing communities.

We agree with the National Academy of Science that a strict requirement to rebuild within 10 years may eliminate some management responses that could lead to greater social and economic benefits while still assuring that stocks are rebuilt. Focusing on rebuilding in a certain amount of time can result in overly-restrictive fishery management that is illogically and unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. At the same time, care must be taken when providing focused flexibility to assure that we continue our recent successes in rebuilding the stocks upon which our fisheries and fishing communities depend.

The current MSA requires that rebuilding must take place in as short a time as possible, with an maximum of 10 years if biologically possible. This "10-year rule" can grossly disrupt fisheries for little conservation gain. If a stock can rebuild in 9 years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild

(11 years plus the length of one generation of the species), with obviously less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

In addition, uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to expensive revisions in rebuilding plans and unwarranted consequences to fisheries and fishing communities ("chasing noise"). This disruption is especially problematic when analytical results vary by small amounts due to assessment uncertainty, and vary both up and down without changes in true status over time. The current process needs to be revised such that a reasonable threshold exists for stock status changes before significant changes in management approaches are required.

The MSA requirement to rebuild as soon as possible, taking into account the needs of the fishery communities, has been subject to Court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. Current administration of this requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. It has been said that a solution may be as simple as changing the word "possible" to "practical." At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. It is important to note the purpose that rebuilding programs are designed for is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery-dependent communities negatively impacted (and may even be required to endure a disaster) by the rebuilding program.

Explore more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries.

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, current requirements call for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. While this is a logical approach in some regards, there is concern it may be overly conservative in some situations. It can lead to severe economic consequences when a rarely-caught stock about which little is known appears occasionally in a healthy mixed-stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in the catch of healthy species; this situation essentially creates a bottleneck species that closes or

substantially reduces an otherwise healthy fishery.

There are times when the best available science is not sound enough for active fishery management decision-making; the current approach for data-poor species may occasionally fall into this situation. Further, the current approach may limit obtaining scientific information on stock performance under higher catch rates.

Better-align and streamline the National Environmental Policy Act (NEPA) & MSA section 304(i).

The Councils have a long history of advocating for more effective reconciliation of the requirements of NEPA and the MSA. We appreciate the opportunity to work with National Marine Fisheries Service in developing a recently completed policy directive that accurately describes our current roles and responsibilities in complying with NEPA process and requirements.

However, inefficiencies remain in the current process, requiring substantial additional work and process to satisfy duplicative NEPA and MSA mandates. This unnecessarily delays implementation of regulations, causes obsolescence of scientific information, and burdens management resources that could be used more efficiently. In some cases, the mismatch of MSA and NEPA timelines also results in alternatives being developed under NEPA after final action has been taken by the Council.

In short, we believe that the mandate to streamline NEPA and MSA processes that was included in §304(i) of the 2006 reauthorization of the MSA has not yet been effectively addressed.

A defining characteristic of fishery management under the MSA is the mandated transparent and participatory process. Given the Council expertise that can be applied in the near future towards revising the MSA to include explicit requirements for a robust environmental impact analysis of a full range of reasonable alternatives, I personally believe it is possible to achieve essential compliance with the intent and purpose of NEPA. If this can be accomplished, making MSA consistent with NEPA in this manner could address current challenges without sacrificing any environmental protections of NEPA and efficiently taking full advantage of the public process provisions of MSA.

Include a carryover exception to allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the Scientific and Statistical Committee (SSC) that such a carryover provision will have negligible biological impacts.

As part of their business planning, fishermen in catch share programs need to know

whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past, there has not been a consistent policy application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.

Stocks later determined never overfished should not be held to rebuilding provisions.

The data and scientific approaches used to determine stock status evolve and improve, and revisions to past stock statuses are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.

For example, in 2000, a stock assessment indicated that widow rockfish on the West Coast were below the minimum stock size threshold (MSST) that triggers an overfished status designation. Accordingly, the stock was declared overfished and a rebuilding plan put in place. However, subsequent assessments in 2005 and 2007 estimated that the biomass had never dropped below the MSST, and thus the stock had never been overfished. Despite the best available science, uncertainty regarding MSA requirements and the assessment results caused the fishery to remain under a restrictive rebuilding plan until 2013. Continuing to manage widow rockfish under a rebuilding plan, even though the stock was never overfished, resulted in negative social and economic impacts to fishing communities and industry. It also represented a significant expenditure of Pacific Council resources to construct and maintain a rebuilding plan, and the new catch share program was unnecessarily complicated by the overfished declaration of widow rockfish and its subsequent rebuilding plan.

Provide flexibility in requirements and qualifications for observers.

Current requirements and qualifications for National Marine Fisheries Service certified observers may be too restrictive regarding formal education and full independence provisions. There have been difficulties in providing a sufficient pool of observers.

Lower-Priority Matters

The Pacific Council has also identified the following lower-priority areas that we ask you to take into consideration in drafting new legislation.

- Designate one Commissioner seat on the Inter-American Tropical Tuna Commission to represent the Pacific Council.
- Provide flexibility to address rebuilding requirements when environmental conditions may be a predominant factor in a stock's decline.

- Include a viable mixed-stock exception.
- Replace the term "overfished" with "depleted" to account for non-fishing causes of stock size below MSST.
- Consider a national standard for habitat that can more effectively minimize adverse impacts on essential fish habitat.
- Implement stricter imported seafood labeling requirements in the U.S. market.
- Enhance enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity.
- Improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.
- Amend MSA language to change "vessels" to "vessel" in the illegal, unreported, and unregulated certification section.
- Make a consistent distinction between "overfishing" (a measure of fishing rate) and "overfished" (a measure of abundance).

Thank you again for the opportunity to testify before this Committee. We look forward to continuing to work with you during the reauthorization of the MSA to make what we believe to be one of the strongest and most effective pieces of legislation governing fishery management in the world even better.