



**Western  
Pacific  
Regional  
Fishery  
Management  
Council**

January 31, 2014

David Whaley  
Senior Staff for Fisheries & Ocean Policy/Subcommittee  
on Insular Affairs, Oceans and Wildlife Committee on Natural Resources  
269 Ford House Office Building  
Washington, D.C. 20515

Dear Dave:

I am writing in response to your December 19, 2013 email requesting comments on the discussion draft of the House reauthorization draft of the Magnuson Stevens Act. The Council staff comments are attached. We are also attaching our testimony to the Senate Subcommittee.

In addition there are four areas of particular concern to the Western Pacific Council that we have highlighted in our testimony to the Senate Subcommittee. These are as follows:

1. The MSA should direct the Secretary to identify nations that are not compliant with RFMO measures and take steps to impose trade sanctions on those nations in accordance with existing MSA provisions such as 16 U.S.C 1826b "High Seas Driftnet Fisheries Enforcement Act. Non compliance with RFMO measures is in our opinion, a much bigger problem than individual IUU vessels.
2. Prioritize enforcement of US EEZs over foreign EEZs and partnerships, such as the US Coast Guard's foreign ship-rider program. In recent years the USCG has also been patrolling the EEZs of foreign nations in support of their enforcement monitoring. Enforcing our large US EEZ should take precedence over foreign enforcement. In our opinion, this is subtracting from potential detection of illegal foreign fishing in the US EEZs.
3. Re-direct a portion of S-K funds to support fisheries development and cooperative research. In our opinion, the Congressional directive to NMFS to make 60 percent of the entire Saltonstall-Kennedy Act funds available to the Councils and fishing industries to be employed for fishery research and development should be actualized.

4. About 90% of the spatial extent of the marine protected areas (MPAs) listed in the United States are found in the Western Pacific, a grotesque skew by any definition. They are largely the result of the NMSA, Antiquities Act and Presidential Executive Orders. Many of our fisheries are grossly under-utilized and these large scale closures are resulting on a disproportionate burden in our fisheries.

Please let me know if you have any questions or need clarification of our comments on the House MSA draft .

Sincerely



Kitty M. Simonds  
Executive Director



January 30, 2014

**Comments from Western Pacific Fishery Management  
Council on the Draft House Bill to amend the MSA to Provide Flexibility for Fishery  
Managers and Stability for Fishermen, and for Other Purposes**

Below are detailed comments from the Western Pacific Fishery Management Council on the draft House Bill to amend the Magnuson Stevens Fishery Conservation and Management Act. The comments and recommendations are presented by section.

**Regarding Section 3: Flexibility in Rebuilding Fish Stocks**

Overall, the Council supports the language proposed in Section 3 to provide flexibility in rebuilding fish stocks. In particular, allowing for a phased-in approach over a three year period is practical and takes into consideration impacts to affected communities. However, further guidance is needed in defining “highly dynamic fishery” as it applies to the use of this phased-in approach.

This Section notes that rebuilding may be contingent on factors beyond the control of the Councils, or in some cases beyond that of the USA with regard to shared trans-boundary stocks. Moreover, it notes that environmental conditions may predicate the rebuilding schedule. The statement in item IV is unclear which refers to “informal trans-boundary agreements under which management activities outside the EEZ by another country may hinder conservation effort by US fishermen”. How do “informal trans-boundary agreements” differ from international agreements which are included in Section (I)?

Finally, Section 3(2)(C), we question the utility of including the “predator/prey relationships” in this sentence as it is only one example of many that may be considered when accounting for “environmental conditions.” We suggest it be removed.

**Section 4: Modifications to the Annual Catch Limit Requirement**

The proposed changes in the Annual Catch Limit (ACL) section of this bill addresses many of the problems faced in implementing ACLs in the Western Pacific Region. Providing the Council the authority and opportunity to consider ecosystem and economic needs of the fishing community in implementing ACLs is a beneficial change to the current MSA text. The Western

Pacific Council provides for similar considerations through an analysis that considers social, economic, ecological and management uncertainty. Consideration should be given to include social and management elements in this section as ecosystem and economic variations are already accounted for. Given the overall underutilized status of fisheries in the Western Pacific Region, this language could be revised to: “In *evaluating the need to establish* annual catch limits, a Council may consider changes in an ecosystem and the economic needs of the fishing community”. This provides the Council flexibility in having to apply ACLs for in fisheries where it may not be appropriate.

With regard to exempting Councils for having to develop ACLs, we suggest adding a third item for fisheries that are currently inactive and will remain inactive in the foreseeable future. Having to specify annual limits for dormant fisheries, such as deepwater shrimp and precious corals in the Western Pacific, unnecessarily consumes Council and NMFS resources.

With regard to the section on “Relationships of International Efforts”, the Council is concerned as those stocks managed through international agreements would now be required to have ACLs established, where currently they are exempt as established through NMFS guidelines.

The Council supports the provisions included addressing multispecies complexes and multi-year catch limits and defining ecosystem component species.

The suggested change to Section 302(h)(6) in striking "fishing" and inserting "overfishing" will result in a technical conflict with the NS1 guidelines. Currently, the *fishing level recommendation* by the SSC is the acceptable biological catch or ABC. The overfishing level is derived from the stock assessment developed by NMFS. Changing fishing to overfishing puts the onus on the SSC to develop its own stock assessment which changes the process on how ACLs are specified. Is this the intended outcome of this provision?

#### **Section 5: distinguishing Between Overfished and Depleted**

The Council supports redefining “overfished” to help distinguish between fisheries that are depleted as a result of fishing versus “depleted” as a result of factors other than fishing. This issue has been a point of contention for our Advisory Panel and fishing communities for many years, as numerous fisheries have been impacted by changes in habitat resulting from coastal development and other non-fishing activities. In particular, the Council looks forward to the NMFS reporting on the status of stocks as a result of this change.

#### **Section 6: Transparency of the Public Process for Scientific and Management Actions**

With regard to increasing transparency of the public process, to the extent practicable this Council has routinely provided for most of the public transparency elements identified in this

section. However, requiring complete transcripts of both the Council and SSC will require additional resources to process this information within the 30 day time frame suggested. At this time, the Council makes available meeting minutes for all Council and SSC meetings on the web, among other documents.

#### **Sec. 314: Compliance with National Environmental Policy Act of 1969**

The Council supports a reauthorized MSA that would allow for MSA fishery management plans, plan amendments, and regulatory amendments to be stand-alone documents that satisfy the requirements of NEPA. This is because the existing MSA/Council process is analogous to the procedures of NEPA with respect to public participation and impact analysis. However, the Council suggests that minor technical modifications to be made to Section 303(a) of MSA to ensure consistency with NEPA such as requiring the consideration of alternatives to the proposed action and requiring a broader-level of environmental review in MSA documents.

#### **Section 7: Limitations on Future Catch Share Programs**

The Council suggests that the use of catch shares also consider regional flexibility in the need for its application to fisheries, particularly the non-commercial/recreational sector. Catch shares are not appropriate for the non-commercial/recreational fisheries sector as new entry opportunities and equal access to a public trust resource are imperative to effectively managing the nation's fisheries resources for the good of all.

#### **Section 8: Data Collection and Data Confidentiality**

Electronic monitoring should be one of many tools considered to facilitate data collection and monitoring when developing fishery management plans or amendments. We support developing objectives and performance standards for this new technology to ensure consistency in its application immediately after passage of the MSA reauthorization. However, mandating the development of regulations for electronic monitoring within this six month period is not appropriate. The implementation of such regulations should be promulgated through the standard regulatory process and not automatically mandated through this top-down approach.

We also have serious concerns regarding prohibiting the use of electronic monitoring for enforcement which contradicts this Council's existing regulations on the use of satellite based vessel monitoring systems on Hawaii longline vessels to monitor area-based closures. These regulations have been in place for nearly 25 years. If Congress wishes to maintain this provision we suggest defining electronic monitoring to not include VMS.

Regarding the new provision to supported "*Increased Data Collection and Action to Address Data-Poor Fisheries*," the Council supports directing a portion of the fisheries enforcement penalties received by the US to assess data poor fisheries and cooperative research

to improve fishery independent data in stock assessments. However, while this provision is good, it will be important to ensure that it does not conflict with the existing provisions in the MSA that directs enforcement fines and penalties in the Pacific Remote Island Areas to the Sustainable Fisheries Fund or those occurring in the US EEZs surrounding American Samoa, Guam and Commonwealth of the Northern Mariana Islands to their respective local treasuries.

This Council supports the proposed definition for “data-poor fishery” which would include many of the reef fisheries managed in the Pacific Island region.

**Section 9: Council Jurisdiction For Overlapping Fisheries**

[No comments]

**Section 10: Gulf of Mexico Cooperative Research and Red Snapper Management**

[No comments]

**Section 11: North Pacific Fishery Management Clarification**

[No comments]

**Section 12: Authorization of Appropriations.**

[No comments]

**Section 13: Ensuring Consistent Management for Fisheries through their Range**

The Council strongly supports this section recognizing the MSA as the controlling authority over promulgating fishing regulations. In addition to the National Marine Sanctuaries Act and Antiquities Act of 1906, other Acts impacting fisheries should be included such as the Marine Mammal Protection Act, Migratory Bird Treaty Act and the Endangered Species Act.

This Council also strongly supports the provision related to “*Fisheries Restrictions Under the Endangered Species Act of 1973*,” but recommends that the text, “...that is necessary to implement a recovery plan...” be removed. While Section 4 of the ESA relates to rules that may be result from recovery plans, Section 9 of ESA may also result in fishery restrictions through take prohibitions for ESA-listed species. Further, the Council recommends that the text “(1) using authority under this Act; and (2) in accordance with processes and time schedules required under this Act” be modified to read “in accordance with processes established under Section 302 of this Act”. Currently, fishery management measures deemed necessary to protect ESA-listed species are promulgated under Section 305 of the MSA, which bypasses transparent public process intended under MSA.