

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

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Chairman Richard W. Pombo
Committee on Resources, U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Pombo:

The eight Regional Fishery Management Councils' Chairs and Executive Directors met this year in Philadelphia, PA during the week of May 22, 2006 and in Washington, D.C. October 30 and 31 to review and discuss various legislation related to reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Based on previous consensus Council Chairs' positions adopted in 2005 regarding MSA reauthorization, as well as positions adopted by consensus at the May 2006 meeting, the following issues are provided on behalf of the eight Regional Fishery Management Councils' Chairs for your consideration.

Ending Overfishing As Soon As Possible

The Councils recognize one of the most effective things that can be done towards achieving the conservation goals we all share is to end overfishing as soon as possible after it is ascertained. The Councils also note that there are difficulties caused by inadequate scientific data, analyses, and lengthy mandatory federal processes that can impede achieving this goal in a timely manner. However, the Council Chairs adopted the position of supporting provisions to mandate ending overfishing within two years of notification that such a situation exists in a particular fishery. We note that such a position has many positive collateral effects that make

unnecessary some of the proposed provisions that the Councils do not support.

Annual Catch Limits and Penalties for Overages

One of the most significant provisions being considered is the requirement for setting annual catch limits and attendant penalties for overages. This issue has been discussed extensively among the Councils and NOAA Fisheries leadership. The eight Councils are unanimous in their support of a requirement for annual catch limits that shall not be exceeded and believe strongly that such a limit should be based on the biologically established reference point associated with the overfishing threshold, and not on the policy based optimum yield (OY) levels selected by each Council. SB 2012 uses Optimum Yield (OY) as the limit, which is not a biologically based reference point established by an SSC or other scientific body. Alternately, HR 5018 proposes ABC as the limit, which is a biologically based reference point or range, and can be established by an SSC or other scientific body. The key concept in opposing the use of the OY level as the absolute catch limit is the prevention of biological "damage" from catches that are too high: exceeding an overfishing threshold level can result in overfishing and negative biological consequences, whereas merely exceeding an OY level does not. For example, if the overfishing threshold level was 100 fish, but a Council selected 75 as their situational precautionary OY level, there is no biological "damage" resulting from a catch of 80 fish.

The Councils believe that creating hard, scientifically based catch limits, and adhering to such limits, can achieve the presumed conservation intent without the necessity of penalty provisions in subsequent years, as proposed by S. 2012. In particular, penalties for exceeding any "specified catch limit" can be merely punitive when the specified limit was a policy based limit (such as an OY, a sector limit, or a geographic area harvest guideline) and the biologically based overfishing threshold total catch limit was not exceeded. There are several accounting

quandaries and science related issues that make the proposed legislation as currently worded in S. 2012 problematic towards improved fishery management. A discussion paper prepared by the Pacific Fishery Management Council provides additional detail supporting the consensus Council Chairs position that the catch overage penalty provision not be included in legislation.

Arbitrary 10 Year Rebuilding Requirement

The Councils oppose the arbitrary 10 year rebuilding requirement, but do not oppose rebuilding overfished stocks as soon as possible taking into consideration the biology of the fish stock and the needs of the fishery dependent communities. The lack of a scientific underpinning of a single 10 year boundary causes the classic boundary effects of any arbitrary boundary. There are situations where long lived fish stocks could not be rebuilt in 10 years even with all directed and incidental fishery impacts taken to zero, rendering the 10 year boundary useless. There are other fish stocks that could be rebuilt in much less than 20 years, but such a boundary could call some to advocate a longer rebuilding process than otherwise would be the case. Fish stocks that could be rebuilt in 9 or 11 years become particularly troublesome when actions are dictated by an arbitrary 10 year requirement depending on how one balances the impacts to fishing communities and the benefits to the fish populations. The Councils also note that improved scientific processes, appropriate total catch limits that are not exceeded, and ending overfishing within two years are much more positive ways to achieve the intended conservation objective.

Authorizing Limited Access Privilege Programs (LAPP)

Such provisions should provide for maximum flexibility in program design, and be discretionary whenever possible rather than mandatory, recognizing the need to tailor programs to diverse regions and fisheries. While the various provisions generally represent a positive approach to

LAP programs design, development of LAP programs under these provisions will be complex, time-consuming, and expensive process. To the extent that such LAP programs should be simple, understandable, and free of bureaucratic complexities, we ask that Congress emphasize Council authority and discretion in the development and implementation of such programs.

Adoption of Ecosystem Research Programs

The Councils recognize and believe great caution should be exercised in considering amendments to the MSA that include any specific requirements. More specifically, the RFMCs are wary of strict regulations and guidelines that will require Councils to produce new ecosystem FMP amendments across the board (as occurred with new elements in the 1996 Sustainable Fisheries Act), rather than building an ecosystem based approach into existing management practices. Noting the current MSA allows for ecosystem-based management, the RFMCs do not believe it is necessary to amend the MSA to address ecosystem management. Instead, it is recommended that Secretarial regional guidelines be developed to help Councils move forward with an increased level of sophistication. However, it should be noted that the lack of comprehensive data to effectively conduct fisheries management using an ecosystem based approach cannot be overstated. The Council Chairmen support developing research programs that provide the needed data that will ultimately lead to an ecosystem based approach to fisheries management, but cannot at this time support the adoption of a one-size-fits-all ecosystem based approach to fishery management.

Collaborative Strategic Planning Requirements

HR 5018 contains a new set of provisions titled "Collaborative Strategic Planning" which would institute a broad set of requirements for establishment of a National Task Force on Sustainable Fisheries Capacity, and for regional Councils to develop long-range strategic

plans in conjunction with the Institute for Environmental Conflict Resolution. While the intent may be laudable, the implications are unclear and could be very significant. A primary concern is that many of the provisions are mandatory as opposed to discretionary, and appear to replace existing fishery management plans, usurp Council authority, or even delay overfishing responses and other management actions by the Councils. Given the uncertainties of intent and effect, the Councils' unanimous position is not to include these provisions as written in any reauthorization legislation.

Qualified Exemption from the National Environmental Policy Act (NEPA)

We believe that NEPA is fundamentally a process driven mandate whereas the MSA is a substantively driven mandate, and that the coordination of these two should result in a better product. However, in reality, owing to differences in timing and duplicative and unnecessary processes NEPA actually works against achieving good fisheries management. NEPA's requirements are overly time consuming and defeat the Councils ability to synchronize and use current fisheries data for the proposed actions. Under this circumstance, the data used to meet NEPA alternative development requirements and their related cumulative effects analyses have aged and been overtaken by the availability of more current fisheries data. This circumstance leads to using aged data and analyses to manage the fisheries which greatly impair our MSA obligation to conserve and manage our fisheries for optimum yield. Therefore, the unanimous position of the Council Chairmen is that: the Councils receive a qualified exemption to NEPA, i.e., that embedded in the reauthorized MSA are requirements that are the functional equivalent of NEPA. In other words, include language in the MSA reauthorization that requires the Councils to analyze a range of alternatives when addressing any plan action or related management action, and likewise requires them to assess the cumulative impacts of such alternatives.

Preventing Duplicative Fishery Management Authority in Federal Waters of National

Marine Sanctuaries

This issue relates to one of overlapping jurisdictions between the MSA and the National Marine Sanctuaries Act (NMSA) regarding fishing regulations. The NMSA recognizes that the Councils are the primary authority related to the development of fishing regulations in sanctuary waters. In certain situations a reverse loophole exists that prevents the Councils from addressing fishing regulation in sanctuary waters. This situation puts the various Sanctuaries in the position of regulating fishing. After careful consideration over the past year of the various arguments associated with this issue, the Council Chairs have affirmed their position that the development and implementation of fishing regulations be the exclusive purview of the Councils together with their partner federal action agency, i.e., NMFS. This action can be accomplished in a manner that preserves full consideration of the goals and objectives of individual National Marine Sanctuaries (see attached 2005 regional Fishery Management Council Chairs position).

In closing, we would like to draw your attention to one additional important issue on behalf of the eight Regional Fishery Management Councils - the issue of adequate funding to accomplish the Council necessities in managing the nation's marine fishery resources. We understand that new MSA legislation can only authorize funding; however, we ask that you be cognizant of the need for sufficient appropriations for the Councils to operate and to do what you can to provide that funding. A funding level of \$25 million represents the 2004 status quo funding for the Councils, yet the President's request level is \$18 million and the House appropriations mark is \$15 million. We understand the current Senate Committee mark is \$30 million, an amount more commensurate with executing the new activities associated with a reauthorized MSA. Given the higher expectations that will come with new MSA responsibilities, the Councils believe that \$30 million should be the base level to be provided to the Councils in

FY 2007.

Thank you again for the invitation to comment on this important legislation. I have enclosed with this letter additional position statements regarding MSA reauthorization.

Sincerely,

Joint Signatures

Enc: Summary table of Councils' 2005 and 2006 MSA positions

TOPIC ¹	COUNCIL CHAIRS' POSITION	REMARKS
<p>Requires scientific and statistical committee (SSC):</p> <ul style="list-style-type: none"> -recommendations for acceptable biological catch or maximum sustainable yield; -reports on stock status and health, bycatch, habitat status, socioeconomic impacts of management measures, and sustainability of fishing practices; and -peer review of such statistical, biological, economic, social, and other scientific information 	<p>Council Chairmen support S.2012, Section 103(b)(1) --- See Tab 1</p>	<p>Include "or other appropriate scientific body" following "... scientific and statistical committee..."</p>
<p>Requires that SSC members appointed by the Councils be Federal employees, State employees, academicians, or independent experts with strong scientific or technical credentials and experience.</p>	<p>Council Chairmen support S.2012, Section 103(b)(1) --- See Tab 1</p>	<p>Include "or other appropriate scientific body" following "... scientific and statistical committee..."</p>
<p>Requires Councils adopt annual catch limits for each of its managed fisheries after considering SSC recommendations or peer review process.</p>	<p>Council Chairmen support H.R. 5018, Section 3(a)(1) and (2) --- See Tab 2</p>	<p>Do not support the mandatory payback/rollover provisions in S.2012, Section 104(a)(7). Should use biological reference point (ABC), not OY</p>
<p>Requires the Secretary of Commerce establish guidelines for the Councils to use in determining what is the best scientific information available.</p>	<p>Council Chairmen support S.2012, i.e., no guidance required.</p>	
<p>Requires Councils develop, in conjunction with the SSC, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, for 5-year periods.</p>		
<p>Authorizes the tribal representative in the Pacific Council to designate an alternate who is knowledgeable in tribal rights, tribal law, and fisheries resources.</p>		

1. Items addressed in the Side-by-Side comparison of Bills to Reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA) entitled: "Regional Fisheries Management Councils"

TOPIC ¹	COUNCIL CHAIRS' POSITION	REMARKS
Authorizes the Secretary and each Council to establish a peer review process for scientific information. The review process would be deemed to satisfy requirements of the Data Quality Act.	Council Chairmen support either S.2012, Section 103(b)(1) ... See Tab 1, or H.R. 5051, Section 102(b) ... See Tab 3	
Requires the Secretary and each Council to ensure that the peer review process will not delay the process of providing current information for use in fisheries management, to the extent practicable, and is as transparent as possible so the regulated community can provide input during the review process.	Council Chairmen support H.R. 5018, Section 3(f)(3) ... See Tab 4	
Authorizes the payment of stipends to SSC or advisory panel members that are not employed by the Federal government or a State marine fisheries agency.		Council Chairmen support discretionary authority to pay SSC members, but did not achieve consensus for payment of AP members
Modifies notice requirements for Council meetings.	Council Chairmen supported S. 2012, Section 103(d) and (e) ... See Tab 5	No costly newspaper notices required
Authorizes Council coordination committee.	Council Chairmen supported S.2012, Section 103(l) ... See Tab 6	Allows Council Chairmen to meet outside FACA requirements
Modifies financial disclosure rules.	Council Chairmen support S.2012, Section 103(h) ... See Tab 7	
Beginning in 2008, requires an annual report be submitted to Congress on actions taken to implement financial disclosure and recusal requirements.	Council Chairmen support S.2012, Section 103(h) ... See Tab 7	

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Requires the Secretary, in consultation with the Councils and the National Sea Grant College Program, develop a training course for new Council members. Training course must be made available to new and existing Council members, and may be made available to committee or advisory panel members as resources permit.	Council Chairmen supported S.2012, Section 103(f) ... See Tab 8	Not necessary for existing members
With exception of the Gulf of Mexico Fisheries Management Council, S.2012 does not broaden representation on the Regional Fishery Management Councils.		Council Chairmen do not support "at least 6 nominations for appointment," H.R. 5051, Section 102(d)... See Tab 9
With exception of the Gulf of Mexico Fisheries Management Council, S.2012 does not direct Governors' nominees for appointment by the Secretary on the Regional Fishery Management Councils.		
Requires Secretary to appoint to the Gulf Council 5 commercial fishing representatives; 5 recreational/charter fishing representatives; and 1 other person that is knowledgeable on fisheries conservation and management.		
Within the list of Gulf Council nominees that is submitted to the Secretary, requires Governors to include at least one nominee each from the commercial, recreations, and charter fishing sectors, and one other nominee who is knowledgeable on fisheries conservation and management.		
If Governor's list does not meet requirements, requires the Secretary to publish a notice in the Federal Register asking State residents to submit names and biographical information of nominees that meet unmet requirement.		

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If Governor's list does not meet requirements, requires the Secretary to publish a notice in the Federal Register asking State residents to submit names and biographical information of nominees that meet unmet requirement.		
Requires Secretary of Commerce, in consultation with the Gulf Council, to report to Congress on impacts of the appointment requirements and determine if they resulted in a fair and balanced apportionment of the active participants in the commercial and recreational fisheries under the jurisdiction of the Gulf Council.		
An individual who owns or operates a fish farm outside of the United States may not be a representative of the commercial fishing sector on the Gulf Council.		

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Authorize establishment of Limited Access Privilege Programs (LAPP)		Such provisions should provide for maximum flexibility in program design, and be discretionary whenever possible rather than mandatory, recognizing the need to tailor programs to diverse regions and fisheries. While the various provisions generally represent a positive approach to LAP program design, development of LAP programs under these provisions will be a complex, time-consuming, and expensive process
Environmental review process (NEPA)	Council Chairmen support S.482 and H.R.3645	Any fishery management plan, any amendment to such plan, or any regulation implementing such plan, that is prepared in accordance with applicable provisions of Section 303 and 304 of this Act are deemed to have been prepared in compliance with the requirement of Section 102 paragraph 2 (c) of the National Environmental Policy Act of 1969
National Marine Sanctuaries		Fishery management authority in national marine sanctuaries (NMS), for all species of fish as defined in the MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the MSA. This authority shall not be limited to species of fish covered by approved fishery management plans (FMPs), but shall include all species of fish as defined in the MSA and shall cover the full range of the species in the marine environment
Ecosystem-based Management and Research	Council Chairmen support S.2012; and requirement for publication of Secretarial Guidelines in H.R.5051	
Rebuilding time frame		Eliminate the arbitrary and unscientifically established 10 year recovery period detailed in Section 304(e)(4)(A)(ii) of the MSA

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