



Marine Conservation Alliance

promoting sustainable fisheries to feed the world

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Adak Community Development Corporation

Alaska Bering Sea Crabbers

Alaska Longline Co.

Alaska Whitefish Trawlers Association

Alaska Groundfish Data Bank
International Seafoods of Alaska, North Pacific Seafoods, Trident Seafoods, Western Alaska Fisheries

Alaska Scallop Association

Aleutian Pribilof Island Community Development Association

Akutun, Atka, False Pass, Nelson Lagoon, Nikolski, St. George

Arctic Storm Management Group

Bristol Bay Economic Development Corporation

Aleknagik, Clark's Point, Dillingham, Egegik, Ekwok, Ekwok, King Salmon, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, Ugashik

Central Bering Sea Fishermen's Association

St. Paul

City of Unalaska

Glacier Fish Company

Groundfish Forum

Fishermen's Finest, Iqique US, Ocean Peace, O'Hara Corporation, United States Seafoods

High Seas Catchers

Ocean Harvester, Sea Storm, Neahkahnie

Icicle Seafoods

Norton Sound Economic Development Corporation

Brevig Mission, Diomedes, Elm, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktotik, Stebbins, Teller, Unalakleet, Wales, White Mountain

Pacific Seafood

Pacific Seafood Processors Association

Alaska General Seafoods, Alyeska Seafoods, Golden Alaska Seafoods, North Pacific Seafoods, Peter Pan Seafoods, Phoenix Processor Limited Partnership, Trident Seafoods, UniSea, Westward Seafoods

United Catcher Boats

Akutun Catcher Vessel Association

Mothership Fleet Cooperative

Northern Victor Fleet

Peter Pan Fleet Cooperative

Unalaska Co-op

Unisea Fleet Cooperative

Westward Fleet Cooperative

May 22, 2014

The Honorable Mark Begich
Chairman
Subcommittee on Oceans, Atmosphere,
Fisheries, and Coast Guard
United States Senate
Washington, DC 20510

The Honorable Marco Rubio
Ranking Member
Subcommittee on Oceans, Atmosphere,
Fisheries, and Coast Guard
United States Senate
Washington, DC 20510

Dear Senators Begich and Rubio:

Thank you for providing the Marine Conservation Alliance (MCA) with the opportunity to provide comments on the April 3, 2014 Magnuson-Stevens Act (MSA) Reauthorization Staff Working Draft. Our comments will focus on Ecosystem-Based Fishery Management (EBFM), forage fish management, the definition of bycatch, multi-use allocation review, and the use of best available science. We have also offered comments on the use of "depleted" instead of "overfished" and the clarification that annual catch limits (ACLs) should not apply to each individual species in a Fishery Management Plan (FMP). We may provide a subsequent letter in the next handful of days with suggestions for improving the existing MSA.

The Marine Conservation Alliance is comprised of harvesters, processors, and fishing dependent communities with interests in the Bering Sea, Aleutian Islands, and Gulf of Alaska. Collectively our membership represents the majority of seafood harvested from Federal waters off the coast of Alaska. Our mission is to seek practical, science-based solutions that support sustainable management of fisheries.

1. Executive Summary

The discussion draft attempts to bring the concepts of Ecosystem Based Fishery Management (EBFM) to the forefront of U.S. fishery management. The way in which the discussion draft proposes to do so conflicts with recent literature on EBFM and would depart from generally accepted EBFM practices. The implications are potentially severe with adverse effects to domestic fisheries and upheaval to the U.S. fishery management system. The conservation gains from the proposed language would be questionable at best.

The U.S. fishery management system is working well where it is being implemented as intended and it is not clear that any large systemic problems exist which should be addressed by National legislation. To the best of our knowledge, the problems which continue to exist are regional issues. If the intent of the discussion draft is to address these regional issues, then we suggest that the language be modified to focus on those particular regions.

Our general recommendations are provided in the following bullets:

- Discussion draft text on Findings, Purposes, and Policy needs to be substantially rewritten or deleted. Claims regarding trophic effects, habitat, forage species, bycatch are questionable at best and do little to support the proposed changes to the act.
- The proposed definition of bycatch could be devastating to many of our nation's well-managed fisheries and would cause chaos to our existing fishery management system. This new definition should be struck. Similarly, the proposed requirement that fisheries "avoid" bycatch rather than "minimize" bycatch invites litigation and is not necessary.
- Prescriptive language on forage fish is wholly inappropriate for National legislation and is inconsistent with EBFM practices. Trophic effects matter and should be taken into account; however prescribing specific approaches for a single trophic level is inconsistent with EBFM practice, it ignores important societal values, and may have the unintended effect of minimizing the consideration of trophic effects of other species in the food web.
- Requiring the SSC to develop control rules for forage would undermine the important science/policy divide. It is important that policy makers not weigh in on science, and similarly, it is important that scientists not determine policy. To blur the lines between the two undermines the entire fishery management system and invites litigation. Requiring SSCs to develop control rules for forage fish is inappropriate.
- Given the questionable wisdom of calling out specific provisions for forage fish, we suggest deleting the proposed definition of forage fish. Similarly, there are no standards for the differentiation of target and non-target species in our fishery management system and therefore it is not clear that adding these definitions is wise. In fact, differentiating between the two implies different management and monitoring activities. This increases the complexity of management unnecessarily. These definitions should be stricken.
- Fishery Ecosystem Plans should remain discretionary. FEP provisions should also be discretionary rather than mandatory. FEPs are not necessary for implementing EBFM, but they can be helpful. FEPs should not be subject to Secretarial review and approval for a variety of reasons outlined in a subsequent section of this letter. If it is the intention of the discussion draft to help guide the development and content of FEPs, then we have provided comments in a subsequent section which may be helpful.
- Requiring that stock assessments be done on a fixed schedule for all stocks within an FMP is an impossible task without a significant increase in resources. Second, increasing the frequency of assessments for some species will likely decrease the frequency of assessments on other species. In the North Pacific it has been estimated that fewer surveys would result in a multi-million dollar loss in revenue due to increased management uncertainty. This would have nation-wide implications to the U.S. seafood industry. Stock assessment priorities need to be based on a variety of ecological, economic, and social factors. The section mandating a stock assessment plan should be struck.
- Requiring that information from universities, industry, NGOs, etc be considered "best available science" could undermine the integrity of information which the Council uses to base its decisions. Best available science is best identified through a process of peer review, and the current process which utilizes the SSC is a good model. The requirement that we consider information from particular entities part of "best available science" would appear to undermine scientific integrity.
- Requiring that multi-use fisheries review allocations every 5 years would be an extraordinary tax on Council resources, it is not necessary given existing Council authority to revisit allocations, and it should be struck. If the intention with this proposed language is to address

a regional problem, then language should be added which requires a particular region or Council to conduct this review, not the entire nation.

- Proposed language clarifying that ACLs do not need to apply to all species is a welcome clarification. However, the proposed language would apply only to non-target species. This implies that all target species do in fact need their own ACL. This could cause a large increase in complexity for target species which are lumped in a complex with other species. It is the risk of overfishing that should determine the need for an ACL, not whether the species is a target or non-target species. This intent of the language is welcome, but the reference to non-target species should be struck.
- New terms “depleted” and “depletion” are welcome additions if the intention is to identify those stocks which are depressed due to causes other than fishing. If this is the intention then the definitions of depleted and depletion should substantially mirror the definitions of overfished and overfishing. We have proposed text to this effect in the appropriate section.

2. Overarching Comments

The general consensus of the North Pacific fishing industry is that the MSA – as currently written – works well and that any modifications to the draft should be minor. The MSA works well because it is written in a way that allows for substantial stakeholder input, it allows the Regional Fishery Management Councils (Councils) to tailor fishery management to regional conditions, and – most importantly – it strikes a balance between utilization and conservation. At simple face value, 90 pages of proposed amendments to the MSA is concerning in light of the fact that the act as currently written works well. Digging deeper into the substance of the discussion draft, many of the proposed amendments are highly prescriptive and would substantially change some well-established themes of fishery management in the United States.

The discussion draft adds new standards and requirements and it is not clear how these new standards and requirements relate to the existing National Standards for Fishery Conservation and Management (National Standards). Introducing new approaches and standards outside the National Standard framework invites confusion and litigation. NMFS and the courts would be placed in the position of trying to reconcile the existing National Standards with new requirements that are included in other chapters of the MSA. This confusion is potentially damaging to our Nation’s fishery management system and it does not appear that significant change is necessary.

Significant progress has been made in domestic fisheries management since the implementation of the 2006 MSRA: overfishing has nearly been eliminated; Councils are making significant progress in implementing ecosystem-based approaches to fishery management; and Councils are continuing to find ways to improve their fishery management system. There are of course regional concerns and issues, but in light of the broad-based success where the MSA has been implemented as intended, it is not clear that a systemic problem with our National fishery management framework exists. By extension, it is not clear what problems the discussion draft is trying to address.

Given the large scale success of our current fishery management system and the responsiveness of that system to new information, it is not clear that modifications to the act are necessary. Indeed it is not clear that the system suffers from any systemic problems that National legislation could – or should – strive to address. Instead the problems that exist appear to be regionally-specific concerns, or concerns based on a misunderstanding of fishery management policies. The discussion draft would introduce and alter a substantial amount of text in the MSA but the reasons for doing so are not clear.

3. Ecosystem-Based Fishery Management as a Dominant Theme of the Discussion Draft

It is clear that the discussion draft is attempting to bring the principles of EBFM toward the forefront of U.S. fishery management. However, the way in which the discussion draft introduces EBFM is inconsistent with recent literature, and it is inconsistent with generally accepted practices of implementing EBFM (see Berkes (2012); Browman et al (2004); Constable (2011); Curtain and Prellezo (2010); DeYoung et al (2008); Essington and Punt (2011); Field and Francis (2006); Fulton et al (2014); Hilborn (2011); Harte (2014); Hobday et al (2011); Kock et al (2007); Levin (2013); Levin et al (2013); Marasco et al (2007); Murawski (2007); Rice (2005); Rice (2011); Sherman et al (2005); Tallis et al (2010); Waters et al (2013); Witherell et al (2000)). In an attempt at clarifying what EBFM is and how it is practiced (while also setting the stage for some of our subsequent recommendations) we have briefly summarized available EBFM literature and practice and how it relates to MSA reauthorization.

In general, EBFM means that fisheries management outcomes are placed in a broader ecosystem context that recognizes that ecosystem objectives are: A) socially determined, B) based on existing scientific knowledge, and C) societal expectations for healthy marine ecosystems. The concept of a “healthy ecosystem” is essentially a societal values statement. Social values will change over time and across regions. In other words, what we desire to get out of an ecosystem will change according to regional societal values, and in turn what we perceive as a “healthy ecosystem” will change depending on what we want out of it. For example, communities in the Bering Sea view a healthy ecosystem as one that produces fish and marine mammals for subsistence, employment, and revenue. This perspective can be contrasted with communities off Southern California who will place higher value on recreation and preservation, and lower value on resource extraction. Both examples can be described as a “healthy ecosystem” but the goals of the system are substantially different—and rightly so given the difference in societal values and needs in each region.

Since desirable ecosystem states are socially defined, literature has moved past the notion that there is a state that equates to a “healthy” ecosystem. Instead, attention has turned to how the attributes (or components) of EBFM can be integrated into existing fisheries management practices.

EBFM does not imply a goal that differs from our current fishery management goals. It is an approach to fisheries management that should help us to better attain our goals.

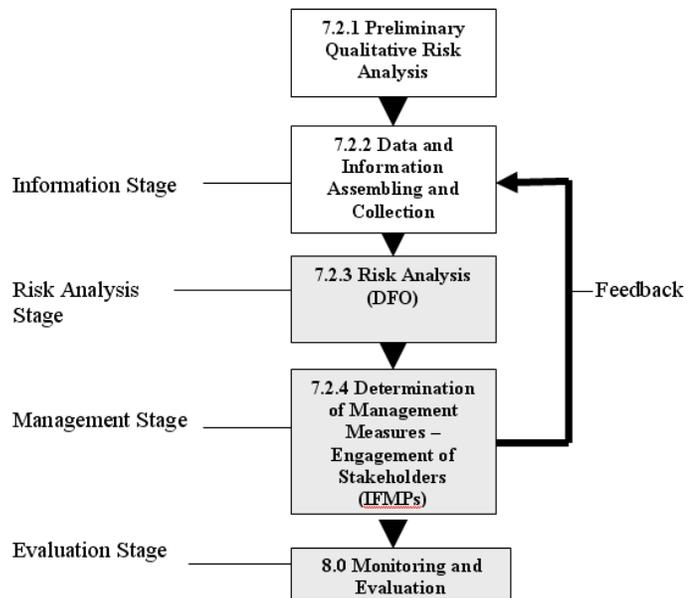
Broadly speaking, the components of EBFM can be grouped into several categories:

- Delineation of the geographic extent of an ecosystem
- Controlling fishing mortality on target species and non-target species
- The effects of fishing on habitat
- Trophic effects caused by fishing
- Managing for external factors (environmental change and ecological forcing)
- Consideration of fishing communities and fishery economics

The components that make up EBFM are already included in our nation’s federal fishery management system. For instance, we are required to prevent overfishing (for managed species, not just target species); protect habitat to the extent practical; set OY in a manner that takes into account social, economic, and ecological reasons; and other factors. The best available science used for stock assessment purposes is evolving to include food web dynamics and environmental information in making forecasts of stock abundance. In other words, the components of EBFM are widely included in existing fishery management and Councils are required to take into account these components when making decisions. A recent review of EBFM implementation around the world consistently places the U.S. at, or near, the top in relative rankings against other countries (Harte (2014); Ecosystem Sciences and Management Working Group (2014)).

Perhaps the only readily identifiable area for improvement of EBFM approaches is in the process that exists between scientists and managers, or more specifically, a feedback loop between policy goals and monitoring of an ecosystem¹. An example of how this is used elsewhere can be explained through an approach often called the “ecological risk assessment for fisheries”. The following figure is taken from a Canada Department of Fisheries and Oceans publication on deep sea coral management in fisheries that uses this concept. The take away from this concept is that ecosystem-based fishery management is an iterative approach that invokes a continual process of information collection, analysis, management consideration, and stakeholder involvement – a process that already exists within the existing U.S. Council system.

Figure 1 Depiction of an EBFM process (Source: <http://www.dfo-mpo.gc.ca/fm-gp/peches-fisheries/fish-ren-peche/sff-cpd/benthi-eng.htm>)



Unfortunately, the discussion draft would essentially preempt a dialog between policy and science. The most glaring example is the notion of SSCs establishing control rules for forage fish. This approach would appear to eliminate any dialog between scientists, managers, and stakeholders and would instead place decision-making authority squarely in the hands of the SSC. This is inconsistent with accepted principles of EBFM and it would also undermine the foundation of our fishery management system. EBFM is ultimately about weighing various tradeoffs.

Discussions between policy and science are an important piece of EBFM implementation as it allows for the Councils to understand and weigh such tradeoffs and develop appropriate policies in consultation with the scientific community and in response to regional conditions and values.

One EBFM component is the consideration of trophic effects. The discussion draft effectively elevates trophic considerations for forage fish above trophic considerations of other species. In reality, many species have substantial trophic effects including forage species, key predator species, and other keystone types of species that many components of the food web rely upon. Is it the intention of the discussion draft to minimize these other trophic effects and to mandate forage fish approaches without regard to the broader system and management framework?

The existing MSA requires that Councils consider the role of a species within the ecosystem, meaning trophic effects at all levels should be considered. Prioritizing the role of forage fish in the ecosystem over other species is inappropriate without understanding the broader context of the ecosystem in question and the values of stakeholders. In some systems, predator management may be a more important component

¹ For more information about the feedback loop between science and policy that is an important part of EBFM, it is helpful to review the Ecological Risk Assessment for the effects of Fishing (ERAF) framework. This approach has been adopted in Australia and relies heavily on ongoing communication between policy makers, scientists, and stakeholders.

of attaining desirable ecosystem states than forage management². Mandating that specific approaches be taken for forage would devote resources to forage management that could be better spent on predator management. It is inappropriate for the MSA to prescribe certain management approaches for species which exist at a certain trophic level. Management responses to trophic effects are best done in a broad context and are best left to the regional Councils in consultation with the science community and stakeholders.

4. Text Regarding EBFM Goals and Principles Needs to be Removed or Substantially Altered

New text within the discussion draft attempts to incorporate EBFM through the concepts of trophic effects, habitat, and bycatch, initially referenced in the section on Findings, Purposes, and Policy. The statements within this section, which should provide rationale for other portions of the discussion draft, have questionable accuracy. Therefore, the reason for including provisions in latter portions of the discussion draft on forage, bycatch, habitat, and FEPs is questionable. The discussion draft should remove or substantially alter text on EBFM and EBFM principles (which include forage, bycatch, habitat, and the development of FEPs).

4.1. Text Within Findings, Purposes, and Policy is of Questionable Accuracy and Should be Removed

Proposed modifications to paragraph (2) within “Findings” state that bycatch mortality, trophic impacts, and habitat losses have changed marine ecosystems such that there is a diminished capacity to support fishing levels. These statements are problematic on several fronts because A) there are questions about their accuracy, and B) where damage to habitat and ecosystems occur it is frequently the result of non-fishing factors (coastal wetland loss, runoff, acidification, etc). Except in extreme cases it is better described as a policy tradeoff where the goals of utilization are balanced by the needs of conservation. Describing such outcomes as a net loss in a piece of National legislation is inappropriate.

It is troubling that this proposed language specifically calls out bycatch and trophic interactions as leading to diminished capacity of ecosystems. It is true that fishing activity incurs bycatch and it is true that there are trophic effects that result from fishing. However, the mere presence of bycatch and trophic effects does not automatically equate to reduced capacities of ecosystems. Managers and scientists are well aware that fishing incurs bycatch and has ecological effects. Fishing impacts the ecosystem by definition. To imply that bycatch and trophic effects are a problem is to imply that fishing itself is problematic.

The proposed paragraph (16) within Findings introduces a new problem statement on bycatch that has questionable accuracy. When combined with the new proposed definition of bycatch in later sections of the discussion draft, the newly introduced text could have enormously detrimental effects on existing U.S. fisheries. The proposed text needs to be removed.

Proposed paragraph (11) in Findings makes some dubious claims regarding forage species, their management, and their vulnerability to fishing. In spite of the fact that many regions of the country are responding to new scientific information and invoking conservation measures for forage species, the proposed language states that forage fisheries are expanding and that there are few constraints on their rapid development. This claim is inaccurate. The proposed language goes further in arguing that forage species are highly vulnerable to fishing pressure and that current management approaches put their

² A recent scientific effort in the salt marshes around Cape Cod led researchers to conclude that the absence of predator species was leading to highly abundant populations of plant-eating crabs. The crabs are eating away at the ecologically important grasses in those salt marshes, thus compromising the integrity of the ecosystem. See New York Times article “When predators vanish, so does the ecosystem”

ecological role at risk. Forage fish are no more vulnerable to fishing gear than many other types of fish species. In fact, when considering their short life history, it would be reasonable to argue that they are far less vulnerable than other types of species which may be long-lived and slow growing. In terms of their management, a review of forage fish management around the country will reveal precautionary approaches are being undertaken in many regions of the country, including outright bans on directed fishing for some forage species (see recent actions in PFMC, longstanding regulations in NPFMC, recent actions by ASMFC). Councils act when new scientific information presents itself and they are acting on new information concerning forage species. The claims in this proposed paragraph need to be reconsidered.

4.2. Substantially Modify or Remove References to EBFM from the Section on “Purposes”

Proposed paragraph (5) to “Purposes” would add ecosystem-based fishery management goals and policies that promote ecosystem health, stability, and sustainability, and the conservation and management of fishery resources. This addition could be problematic for a few reasons. One is that EBFM is an approach to fishery management that supports existing goals; it does not imply new goals or purposes. Second, the concept of a “healthy ecosystem” is perplexing since what we desire from an ecosystem is essentially a societal values statement. In other words, what we desire to get out of an ecosystem will change according to regional societal values and evolving scientific information, and in turn what we perceive as a “healthy ecosystem” will change depending on what we want out of it and what we know about it. For public policy purposes, it is further complicated when one considers the presence of a fishery FMP and the goals contained therein. The goals contained within the FMP are a reflection of the Council’s broader goals for a fishery and this is a reflection of what that Council desires from an ecosystem. The text in proposed paragraph (5) implies that somehow healthy EBFM goals would be different from goals of fishery management that are contained within the FMP. The two are the same.

In terms of the concepts of ecosystem stability and sustainability, these terms are problematic because they are false concepts. An ecosystem is a web of intersecting, inter-relating, and inter-dependent components that are constantly changing and adapting. Many of the drivers of this system are cyclic in nature and not man-induced (weather and oceanographic patterns for instance), meaning we are in a position of responding to ecosystem changes rather than driving it (from a fishery management perspective at least). The idea that we can promote ecosystem stability is very questionable.

Ultimately, ecosystem-based fishery management does not imply a set of goals. The available literature on EBFM no longer proposes that EBFM is a revolutionary approach to management (see previously listed references). Instead, literature over the past handful of years argues that EBFM involves the consideration of several different components. A management system which takes these factors into account is doing EBFM. Ultimately then EBFM is not a different goal or a “purpose”, it is an approach that helps us to achieve our stated goals based on evolving scientific information and stakeholder values.

4.3. New Definitions of Bycatch, Target and Non-Target Species, and Forage Fish should be Removed from the Definitions Section

Proposed definitions could cause wide spread harm to domestic fisheries and introduce unnecessary management confusion and complexity. The discussion draft introduces a new definition of bycatch. This new definition needs to be struck. It would cause wide-spread harm, confusion, and disarray to our current management system. For instance, terming fish that are “non-target fish that are harvested in a fishery and retained” as bycatch would have the effect of naming a significant portion of the economic portfolio of multi-species fisheries as bycatch. Second, this definition would effectively result in calling fish that are consumed on board a vessel as “bycatch” since they would not be landed. Finally, defining bycatch as “fish subject to mortality due to direct encounter with fishing gear” could reasonably be

interpreted to mean everything that is killed by fishing gear, whether it is target, non-target, retained, discarded, fish unknowingly killed 200 fathoms below the surface. This definition is economically destructive, impractical to implement, and it is not clear that it would advance any conservation outcome. The existing definition, which equates discard to bycatch, is the only legal definition that will not cause wide-spread chaos in our fishery management system.

Other definitions are introduced regarding target species and non-target species. It is not clear why these new definitions are necessary. National Standard 1 of the MSA requires Councils to “attain Optimum Yield while preventing overfishing” while National Standard 9 requires that Councils minimize bycatch to the extent practicable. There is no standard differentiating target species or non-target species, nor does there need to be. The introduction of these new terms implies that they must be delineated in catch reporting and that management measures need to differ between the two. This would result in the introduction of unnecessary management complexity with outcomes that have questionable value at best.

The discussion draft introduces the term “forage fish” with an accompanying definition. At first blush the definition appears rather specific; however there is significant room for interpretation. For instance “...energy transfer from lower to higher trophic levels throughout its life cycle” will mean different things to different people. It is possible that under the proposed definition that pollock, cod, Pacific whiting and other mid-level trophic species could be considered forage fish by some people and invite litigation if those species are not managed as forage fish. A marine mammal biologist will think about trophic levels much differently than a groundfish biologist. Furthermore, in reference to our prior arguments questioning the wisdom of specific approaches for forage fish, it is not clear that adding a definition of forage fish is appropriate or necessary. All regional Councils are engaged in efforts to better define and understand the food web. Stock assessments increasingly take food web dynamics into account. Considering trophic effects is a wise policy consideration. It is not necessary to call out forage specifically in order to do so, and therefore it is not necessary to add a definition of forage in the MSA. This will only cause more confusion and management complexity.

4.4. Language Describing Fishery Ecosystem Plans (FEPs) Should be Removed or Substantially Modified

Fishery Ecosystem Plans are under development and already exist in various Councils (see Aleutian Islands plan). Although we are not averse to the development of FEPs, we would like to be clear in expressing our belief that they are not necessary in all cases. The existing requirements within the MSA combined with recent scientific developments means that Councils are engaged in EBFM and have been for years. A Council can engage in sound EBFM approaches within the scope of a regular Fishery Management Plan (FMP).

The discussion draft would add language that provides for Secretarial review and approval of a FEP, essentially meaning that a FEP would require the same process (Council decision making, NEPA processes, etc) and hold the same legal authority as a FMP. This creates confusion as to which document is intended to guide fishery management decisions and adds incredible complexity and demands on the system. A FEP should be a guiding document that helps to provide support to the Councils ongoing fishery management goals and activities which are described within FMPs. Language referring to Secretarial approval and review of FEPs should be struck.

Since these plans already exist and are already under development, it is not clear that anything new needs to be included in the act to allow their development. However, if the intention of the proposed language is to help steer the content of these plans and to encourage their development, then we have several comments:

- The first suggestion is that discretionary FEP authority should include discretionary provisions rather than mandatory provisions. The inclusion of mandatory provisions in a discretionary authority may lead to Councils avoiding the development of FEPs. For instance, it would be unfortunate for a Council to develop a FEP, only to find that they are subject to litigation because they did not adequately consider some of the mandatory provisions.
- The goals of a FEP should be identical, or supportive of, the goals of fishery management identified in the National Standards and within a Council FMP. As currently outlined in the discussion draft, there are questions in regards to how FEP goals would reconcile with the existing National Standards. It appears that these goals would be additive, thus requiring Councils to establish a series of goals for a FEP that are in addition to the National Standards (and other acts which impact the Council process). Secondly, it appears that these FEP goals could be established in a way that conflicts with the goals and objectives of a FMP. What then? The discussion draft appears to be written in a way that implies EBFM goals are different from the goals of fishery management. The two are the same. EBFM is an approach used to better attain existing goals. Goals of an FEP should be complimentary to the goals of an FMP and complimentary to the National Standards, not additive, and certainly not in conflict. The language on FEP goals needs substantial revision.
- The Secretarial review and approval of FEPs should be stricken. This would add complexity and increase demands on the process that are not necessary. FMPs should remain the document that is reviewed and approved by the Secretary. The role of FEPs should be to serve as a document for the Council to utilize in order to further the goals and objectives contained within FMPs.
- It is not clear that the content of FEPs as currently outlined in the discussion draft could be implemented. From an implementation perspective it is not clear that readily available, transparent, objective metrics exist for concepts such as “resiliency” and “diversity” and other proposed FEP requirements. In many cases the science is simply not there to do so. Requiring Councils to consider elements which they do not have resources or scientific capacity to track and monitor would almost certainly guarantee that Councils would avoid the development of an FEP altogether. If it is the intention to help guide the Councils through FEP development by itemizing the content of an FEP, then great care needs to be taken to assure that the suggested content of these plans are things which Councils can identify effectively, track realistically, and utilize effectively in order to help further existing goals of management. The current discussion draft lists factors which are poorly defined and for which questionable scientific foundations exist. If the development of FEPs is the goal of this discussion draft, then the suggested provisions of an FEP need to be clear, easily understood, and relatively simple to implement.

4.5. Required Provisions for Forage Fish would be Inconsistent with the MSA’s Purpose of Balancing Conservation and Utilization and would be Inconsistent with EBFM Practices

The discussion draft proposes new text that would modify forage fish management based on the feeding requirements of other fish in the system. The discussion draft also would require that SSCs develop a control rule for forage fish which would close fisheries and be based (presumably) on food web considerations. This language would prevent the Councils from weighing the ecological, social, and economic factors that exist in fisheries management and would be inconsistent with recent literature and accepted principles of EBFM (see references). Furthermore, the language on feeding requirements could be interpreted in any number of ways. For instance, is it the intention of the language that no forage fisheries should exist until the feeding requirements of all fish in an ecosystem are met? This would be an impossible task and would effectively eliminate many forage fisheries that are responsibly managed

today. When combined with other questions about the definition of forage, the control rules established by the SSC, and other matters, this provision could be very detrimental to U.S. fisheries. For instance, some publications refer to two of the Nation's largest fisheries (pollock and Pacific hake) as "forage fish". Is it the intention of this language to impose large scale restrictions on these widely productive, important, and sustainable fisheries?

5. Changes to Committees and Advisory Panels could Fundamentally Alter the Science/Policy Divide

Science and policy must be kept separate. Requiring the SSC to develop control rules undermines the management system because it engages the SSC in policy making. The discussion draft would require that the SSC develop control rules to specify ABCs for forage fish based on their importance to other species and provide a reference point where that fishery should close. This would be an inappropriate use of the SSC. The SSC acts as the arbiter of scientific information that is appropriate for use by Councils as they establish policy and it is important to the entire management system that the SSC remain independent of policy setting.

In the last iteration of the MSA, the role of the SSC was strengthened. SSCs specify the OFL and ACLs (such as the ABC). While the OFL ultimately ends up in regulation, the specification of the OFL is not a matter of policy debate. The OFL is an objective standard that is measured by a stock assessment. The specification of the ABC gets closer to policy; however the ABC is specified based on a policy framework established by the Council which takes into account risk and uncertainty. In this latter case, the SSC is not establishing policy, it is merely making calculations based on policies established by the Council. In both cases, the SSC is responsible for making final measurements, but they are not determining policy. This is an important distinction.

The proposed language on requiring SSCs to establish forage fish control rules would have the effect of making the SSC a policy-making body. This is problematic. Successful fishery management requires that there be a separation between science and policy. Policy makers should not make decisions about what constitutes the best available science, and similarly, scientists should not be determining policy. To do either undermines our entire system, it erodes confidence and trust in the system, and it invites litigation.

Managing fisheries in a way that takes into account trophic effects is best done by Councils after consulting with fishery scientists. To call out specific approaches for forage fish, and to require that the SSCs develop policies for their management, is poor public policy and would undermine our system of Federal fishery management.

6. Functions Requiring Multi-use Allocation to be Revisited on a Fixed Schedule could Extraordinarily Tax Council Resources

Requiring that Councils revisit multi-use fishery allocations every 5 years is concerning. On the one hand, allocation matters can be quite intense and take years to resolve while on the other hand Councils have the authority now to take up allocation at any time, and they are required to make decisions in a way that is fair and equitable. The proposed text requires that a review take place every 5 years which in and of itself does not mandate a new decision. However, the proposed text also states that Councils may "delay action" for not more than three one year periods, indicating that revising allocations every 5 years is the intent of this language. Allocation is incredibly controversial and allocation decisions are often made by Councils only after several years of contemplation and significant stakeholder involvement. Requiring that such decisions be revisited every 5 years (and changed?) imposes an incredible tax on our fisheries management system and it is not clear that such a requirement is necessary given the latitude

Councils have now. If this provision is designed to address controversy embedded in a specific regional fishery such as the GOM red snapper fishery, it might best be handled as a regional provision. Even then, forcing a regional Council to act on a schedule dictated to it by federal legislation is a usurpation of Council authority and counter to the intent of established MSA decision-making processes.

7. Section Titled “Stock Assessment Plan” Needs Substantial Revision or Needs to be Stricken

We recommend that this section be stricken as the NMFS is already undergoing a process for regionally-based stock assessment prioritization.

The discussion draft would require that a plan be developed to assess all stocks under the authority of a fishery management plan and sets out a series of steps and standards which need to be met in order to be consistent with the plan. Without a substantial increase in financial resources to conduct stock assessments, the language in this section outlines an impossible task. Requiring that assessments be done on a set schedule because they are managed under the authority of a FMP ignores many of the factors that ought to go into the determination of stock assessment priorities. In addition, requiring that all species in any FMP around the country be subject to such assessment standards will almost certainly mean that assessments (and associated surveys) will be done less frequently for some species in order to increase the frequency of others. In an internal analysis done by staff at the Alaska Fisheries Science Center, estimates were developed showing the loss of yield to Bering Sea fisheries and the loss in exvessel revenue that would occur if surveys were conducted less frequently. Highlights include: A) reductions in yield of up to 33% for some species, and B) foregone exvessel revenue of up to \$46 million. These figures don't include foregone revenue measured at the processor level, foregone revenue measured at the wholesale level, losses to seafood industry suppliers, etc. Such a loss would be a large impact to the U.S. domestic seafood industry. Is this really what we want?

Stock assessments are a tool used to support the goals of management. Broadly speaking, these goals include a variety of conservation goals as well as “net National benefits” which are taken to mean employment, contribution to GDP, and other similar metrics. In addition to conservation and economic goals, management also considers social factors and factors that are important to our coastal communities. The prioritization of stock assessment resources should be based on all of these appropriate goals. Second, not all stocks need assessments. Many stocks are currently placed within the “ecosystem component” classification of an FMP which is a classification that manages species without catch limits and is a classification which by and large eliminates directed fishing. These species typically do not need an assessment. They are placed within the FMP to simply restrict fishing activity in order to protect their role in the ecosystem.

Mandating that all stocks within a FMP be assessed on a rigid timeline ignores some of the most important economic, social, and ecological reasons for prioritizing assessment resources. Without a substantial increase in assessment resources, the effect of this section will almost certainly be to negatively (and blindly) impact stock assessment capacity for some species to increase stock assessment frequency for others. This section should be stricken.

8. Language Requiring Information from Certain Entities be Considered “Best Available Science” Should be Struck

The discussion draft introduces language that would require information from particular entities be considered best available science. This section, titled Incorporation of Information from Wide Variety of Sources names universities, communities, fishermen, agencies, and others as entities which generate information that a Council would be required to consider as best available science “as appropriate”. Subsequent paragraphs add language which would require Councils to identify how such information was

used in conservation and management, or alternatively, why information was not used if it is not used to support management. These sections are problematic because they would appear to shift what constitutes best available science away from peer reviewed information and toward particular entities that generate information. Best available science is best determined through a process of peer review, with hypotheses, methods, metrics, and transparency which can be reviewed, replicated, and challenged. Furthermore, requiring Councils to articulate why information was not used in management is a potentially never ending slippery slope that invites litigation. How often do we explain our reasoning for not doing something?

Requiring Councils to consider information from particular entities is a departure from the scientific method and peer review process and sets a dangerous precedent. It is the role of the SSC to determine the best available science to be used by the Council for decision making. Legislation requiring Councils to use information from particular sources could undermine the principles of science-based fishery management and is inappropriate.

9. Support for New Concepts of “Depletion” and “Depleted” but some Clarification Needed.

The discussion draft introduces the terms “depleted” and “depletion”. It appears that these new definitions are intended to complement the terms “overfished” and “overfishing”, with the difference being that “depleted” and “depletion” would be environmentally driven actions/outcomes. If this is the case, then these definitions would benefit from some further consideration and additional specificity. We would propose that the language be modified to substantially mirror the definitions of “overfished” and “overfishing”, but with some exceptions:

Current Definition of Overfished and Overfishing: “The terms “overfishing” and “overfished” mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.”

Proposed Definition of Depleted and Depletion: “The terms “depleted” and “depletion” mean a rate or level of mortality derived from sources other than fishing that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.”

10. Limitations that Clarify the Applicability of ACLs is well intentioned, but would benefit from Additional Clarification.

The discussion draft proposes to add text that would clarify that ACLs do not need to be applied to each individual non-target species that is harvested in a fishery. We appreciate the clarity that would be added by this section; however it is not clear that this text needs to make the distinction of “non-target species” in order to provide the necessary clarity. Indeed, this text could be construed as indicating that all target species do need their own individual ACL and this could create problems in many fisheries where stock complexes exist, overfishing is not a concern, but some limited targeting of the species in those complexes occur (see various rockfish complexes in the North Pacific and Pacific, skate complexes, etc). We recommend that the language be changed to drop the reference to non-target species.

We thank you for the opportunity to weigh in on this very important matter, and greatly appreciate you sharing this discussion draft with us. We hope that we can continue to work with you as reauthorization of the MSA unfolds. We believe the discussion draft reflects some good intentions that are meant to help advance sustainability and ensure the long term health of our Nation’s fisheries; however a review of the proposed language would lead to many unintended consequences, some of which would be very

detrimental to our Nation's fisheries without an apparent conservation benefit. We hope our comments are helpful in avoiding these problems and look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Burden', with a stylized flourish at the end.

Merrick Burden
Executive Director

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