



November 30, 2021

The Honorable Jared Huffman
Chairman
Subcommittee on Water, Oceans, and Wildlife
Committee on Natural Resources
United States House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Don Young
Acting Ranking Member
Subcommittee on Water, Oceans, and Wildlife
Committee on Natural Resources
United States House of Representatives
1329 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Huffman and Acting Ranking Member Young:

The Pacific Seafood Processors Association (PSPA) represents the shared policy and regulatory interests of commercial seafood processors in Alaska and the Pacific Northwest. Our members support fisheries management efforts that rely upon scientific evidence and uphold sustainability, accountability, safety, stability, and community development, all of which have enabled our region to responsibly produce up to six billion pounds of seafood annually—two-thirds of wild fish production in the United States. Our sector delivers sustainably harvested wild Alaska pollock, cod, salmon, crab, whiting/hake, and other premium seafood products to both global and domestic markets, where consumers increasingly demand responsible fishing practices.

The economic health of our sector, as well as the long-term productivity of our fisheries, depends squarely on the terms and underlying principles of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). PSPA staff and members carefully watched how the Water, Oceans, and Wildlife subcommittee legislative hearing on MSA reauthorization bills unfolded on November 16, 2021. On behalf of our members, I write to express our key concerns with the way MSA discourse is evolving among some lawmakers and concerned stakeholders, as these discussions and proposals—if implemented—would affect the very viability of our nation's commercial fisheries. We urge the subcommittee to proceed with a more informed understanding of how the MSA works and how proposed changes may impact fisheries-dependent stakeholders and communities, putting accurate information and analysis at the core of your discussions and decision making.

Role of Practicability in MSA

Certain provisions in HR 4690 would remove the term “to the extent practicable” in fisheries management national standards and fisheries management plan (FMP) requirements, including for incidental catch minimization and essential fish habitat impact minimization. This critical phrase was originally included and retained in the MSA because fisheries managers must account for multiple objectives and variables simultaneously in crafting FMPs customized for each unique fishery. Congress rightly recognized that managers would need to balance the multiple objectives embodied in MSA's ten national standards, and that they would need flexibility and discretion to allow *limited* levels of impact, consistent with other protective laws and safeguards, to ensure the optimal delivery of benefits to harvesters, processors, and communities.

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Based on information submitted to the record at this hearing regarding incidental catch minimization, we are concerned that Congress has been misled regarding the facts of how bycatch limits in the North Pacific work. This is troubling on two levels. First, contrary to allegations in the information submitted to the record, bycatch or prohibited species caps are not exceeded in the BSAI or GOA federal fisheries. Before bycatch caps are reached, NOAA Fisheries closes the fishery.¹ In addition, bycatch of species managed under hard caps has been generally declining over the last decade.² Second, it is troubling to think Congress would rely on falsehoods when crafting amendments to the most important fisheries law in the United States.

Currently, the MSA requires managers to minimize an impact “to the extent practicable,” meaning managers must minimize it to a degree that is both practical and reasonable, depending on the mix of other factors important to each fishery. This is good policy, and PSPA supports it. If this term is removed from MSA, how would managers know if and when “minimization” is achieved—especially difficult when managing stocks and ecosystems in constant flux? One outcome is that any amount of bycatch reduction, no matter how small, could be construed as minimizing bycatch. Another outcome is that managers would have to minimize impact *absolutely*, meaning bycatch or habitat impact would have to be impossible to reduce further, an idealistic but unrealistic standard. This outcome would have to take primacy over all other considerations embodied in the national standards, or face allegations and lawsuits based on the idea that any incidental catch or habitat impact could be further reduced regardless of ability to conduct fisheries.

Similarly, if the term “to the extent practicable” is removed from the MSA provisions on minimizing “adverse effect” (defined as any reduction in quality or quantity, regardless of degree) on essential fish habitat (EFH), as proposed in HR 4690, councils would lose additional discretion to balance multiple objectives in developing FMPs. Managers would have to ensure habitat impact avoidance and absolute minimization, or—if some degree of habitat impact is allowed—risk litigation that could paralyze the FMP process. We have not seen compelling analysis justifying this change, as Councils have many tools to protect habitat and biodiversity, even outside the EFH construct. Under current MSA authority, for example, the North Pacific Council has instituted area-based habitat conservation measures that collectively close more than 65% of Federally managed waters to some or all fisheries, in order to conserve habitat, protect marine mammals, and otherwise uphold the ten national standards. Any changes to current council- and science-based habitat conservation processes risk destabilizing progress to date—progress that has secured the support of the fishing industry—and the impacts of such disruption should be fully understood.

While PSPA members share in the widespread desire to further reduce incidental catch and conserve habitat in all fisheries and gear types, lawmakers and their constituents must be aware that absolute minimization of impacts would have far-reaching consequences, many of which would be devastating to

¹ <https://www.fisheries.noaa.gov/alaska/commercial-fishing/fisheries-catch-and-landings-reports-alaska>

Bycatch limits (which apply to PSC species that by definition are always to be avoided like salmon, halibut, herring, and crab) are hard caps that close groundfish fisheries when reached, or in the case of crab and herring, close large areas. Target species (like sablefish and cod) are targeted by multiple gear types and are managed by allocations, not hard caps. These species, like all groundfish species, are accounted for in full so that an overall allowable biological catch or overfishing limit is not exceeded.

² <https://www.npfmc.org/wp-content/PDFdocuments/bycatch/bycatchflyer420.pdf>

Halibut bycatch in the Bering Sea and Gulf of Alaska is about half of what it was in the 1990s. Bering Sea Chinook salmon bycatch has declined about 89% since the high of 2007 and implementation of hard caps under BSAI Am 91 and Am 110.

fisheries management and dependent communities. The impacts of such drastic changes must be fully analyzed and acknowledged up front, including recognition that—in cases where impacts are actually not caused by fishing but by other change to ecosystems—actions to minimize impact may not have the desired outcome on bycatch species or habitat. Congress should not remove the term “to the extent practicable” from the MSA. Instead, Congress should consider the role of ecosystem science and fisheries surveys in facilitating evidence-based council efforts to further reduce bycatch impacts, and work through the appropriations process to ensure sufficient funding for NOAA Fisheries surveys, science programs, and council support.

Structure and Function of Fisheries Management Councils

Another persistent theme of HR 4690 is reform of the eight fishery management councils, in structure and function, in ways that would both undermine and complicate their role as lead fisheries management advisors to NOAA Fisheries regulators. Congressman Huffman’s bill, for instance, would centralize the climate research agenda and associated fisheries management council mandates at NOAA Fisheries, and it would force NOAA Fisheries to take over management plans if councils could not meet the impossible new standard of producing FMPs in only 180 days (the current FMP process must navigate NEPA and a host of other laws and regulations, and allow for scientific review and public comment, which exceeds 180 days). Moreover, it would impose unwarranted new requirements on how councils meet and communicate.

While these provisions may simply be rooted in a desire for council and FMP expediency and transparency, we find that the new requirements on council structure and function would be exceedingly onerous, costly, and—above all—far less effective for regionally-based fisheries management. First, in the original MSA and subsequently-enacted amendments, Congress recognized that regional councils best understand and can thus solve management issues specific to the area under its authority. Councils hold primary authority for developing and recommending FMPs, based on the advice of scientific advisors, NOAA regional fisheries science centers, and stakeholder input. All FMP inputs must be specific to the fish, stock complexes, vessel type, gear types, habitats, ecosystems, communities, safety issues, and other variables of the fisheries in question. This decentralization of expertise and awareness of unique, local conditions is the preeminent achievement of the MSA, and it fosters a system of FMPs that have been remarkably effective at nearly eliminating overfishing and sustaining fisheries productivity while also meeting community, safety, and other objectives. If Congress pursues MSA amendments that would replace council actions with top-down, centralized edicts from DC, analyses must occur showing how centralized control would impact the current system. Moreover, Congress must be fully aware of the cost of legislating away locally-led expertise and stakeholder buy-in. The MSA was premised on having regional input drive regional decision-making; changing this premise at all would be a monumental and fundamental change to the MSA.

Second, under current MSA authorities, numerous safeguards are in place to ensure councils follow clear rules regarding communication and conflict of interest. All council proceedings are open to the public, and meetings are increasingly accessible as online services and participation continues to expand. Communications with agencies and lawmakers are closely monitored by counsel, as councils cannot lobby or take positions of support or opposition to Congressional proposals in order to shape outcomes. Additionally, NOAA General Counsel ensures compliance with conflict of interest and disclosure regulations, most recently updated in a September 2020 final rulemaking. The current rules enable councils to have members with the best possible expertise and experience on technical and operational aspects from representatives of the harvesting and processing sectors, while also

prohibiting council members from voting on decisions where NOAA has determined a conflict of interest.

Considering all the changes that HR 4690 would impose on councils, we urge Congress to heed the input from the councils regarding the impacts of the proposed changes. The cumulative impact of provisions that would effectively sideline, stifle, and silence councils would have disastrous effects on our fisheries management system, and, to date, a compelling case has not been made for such proposed changes.

Climate Resilience and Ecosystem Science under MSA

Significant attention is being devoted to the provisions of HR 4690 that would mandate more action on fisheries management challenges driven by climate change. Some of these changes would centralize climate resilience mandates at NOAA, as described above, and some would be woven into other parts of council operation and FMPs (including new mandates for forage fish catch limits). We support the *intent* of these provisions, as they are consistent with actions long undertaken by the North Pacific Council; however, we question the need for new mandates related to climate considering Councils are already pursuing climate-resilient fisheries under *existing* MSA authority. In fact, doing so is already consistent with the MSA requirement to base FMPs on the best available scientific information, including trends and forecasts of stocks and ecosystems, as data and resources permit.

For example, the North Pacific Council is increasing data utilization, incorporating climate information into stock assessments where possible, and has approved a 5-year plan (Climate Change Taskforce workplan) to evaluate how to change its management system to be more climate resilient. The North Pacific Council has also been supporting significant modeling work at the Alaska Fisheries Science Center (ACLIM 1.0 and 2.0), with the intent of increasing fisheries management resilience to climate impacts. The purposes of this work are to project physical and ecological conditions under levels of climate change and evaluate effectiveness of adaptation actions in fisheries management. This work combines realistic projections of ocean conditions under climate scenarios, alternative harvest strategies in the harvest limit setting process, and climate enhanced biological models that predict climate-driven changes to individual species and food webs. It is intended to increase its ability to forecast climate-driven distribution of species, tipping points, and thresholds. In addition, NOAA Fisheries has rolled out the Climate and Fisheries Initiative to build operational modeling and a decision support system to provide the information and capacity resource managers and stakeholders need to reduce impacts and increase resilience in their regions. This information support is needed in the face of a changing climate and is the proper role for NOAA.

Any changes to MSA that would centralize or mandate top-down NOAA-led climate resilience management actions would risk adding unnecessary rigidity, bureaucracy, and delay to what should be regionally-led, flexible, and adaptive science-based undertakings. Any impacts from new mandates and burdens would be disruptive, and such costs should be factored into any Congressional review. The most important role for Congress in facilitating climate resilience would be in enacting sufficient funding for councils and NOAA Fisheries, to make sure such efforts led by councils and scientific advisors are well-resourced and producing timely, relevant stock and environmental data.

Conclusion: Do No Harm

Representing Alaska seafood processors that depend on having a sustainable and predictable flow of products from Alaska and the Pacific Northwest, PSPA understands that our councils are now facing unprecedented challenges related to climate and ecosystem change, climate driven and cyclic changes in fish stocks, and other sources of uncertainty. At the same time, PSPA finds that the current fisheries management system is performing as lawmakers intended in the North Pacific, putting science and representative councils at the forefront of sustainable fisheries management. The changes proposed in HR 4690 would—on balance—inject unwarranted cost, risk, inefficiencies, and uncertainty into the council- and science-based fisheries management system. While we understand the intent of many provisions, we find that the proposals lack comprehensive analyses and awareness of impacts and consequences, and these shortcomings preclude us from supporting this bill as written. We continue to urge Congress to focus on the appropriations process, as the most effective way to facilitate sustainable fisheries management.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Barrows", with a stylized, flowing script.

Chris Barrows
President
Pacific Seafood Processors Association