

MSA – National Standards Workgroup Notes

1.5.2021

ATTENDEES: Mateo Paz-Soldan (chair), Hannah Heimbuch, Linda Behnken, Peggy Parker, Duncan Fields, Forrest Braden, Brett Veerhusen.

AGENDA:

- Discuss MSA Discussion Draft presented by Congressman Huffman (D-CA) and recommendations to be made to broader AFC group regarding engagement on this issue with Congress.
- Discuss work plan to:
 - 1) review and comment on provisions in draft MSA;
 - 2) propose comments or revisions to MSA National Standards;
 - 3) consider new provisions regarding Climate Change, LKTK science, and Native representation on the Council; and
 - 4) review and propose changes to specific MSA provisions such as Section 303A (LAPP/RFA programs); and Section 305(c) (Emergency Rules).

SUMMARY:

- 1) MSA Reauthorization: the group discussed approaches to a likely effort under the Biden Administration and in the 117th Congress to reauthorize the MSA. Congressman Huffman (D-CA), Chairman of the House Natural Resources' Water and Oceans Subcommittee, presented an MSA discussion draft on December 18, 2021, that is likely to be the starting point for the reauthorization effort. Comments are due on 1.31.21 (need to verify).

The working group understands that various members of AFC may have different views on the MSA draft and discussed the potential for different “tiers” of comments. However, it was recognized that all AFC members have agreed with AFC’S Mission Statement and the objectives it has outlined, and that these could be the basis for an introductory comment/statement on MSA reauthorization.

On this basis, the working group felt it was important to introduce AFC to the new Congress and present itself as an important and credible coalition of North Pacific fishery stakeholders. To this effect, the group recommends drafting an introductory letter providing an overview of what AFC is, and touching broadly on the main areas of concern with the MSA – bycatch, community access to fisheries, climate change impacts -- without “getting into the weeds” on specific MSA provisions at this stage. The group also discussed the importance of working closely with Congressman Young and his recently introduced version of the MSA, as well as the other Alaska congressional offices, as it proceeds with its efforts.

- 2) Assignments to the AFC Working Groups: as a second initiative and given the dimensions of the work involved, the NS working group recommended fanning out to each of the AFC working groups the following assignments:
 - a. review the provisions of the MSA discussion draft pertinent to each working groups and develop comments on these; and
 - b. consider, and if applicable or recommendable, propose additional comments on areas not addressed by the draft.

For example:

- Bycatch WG -- could focus on the bycatch provisions such as NS9, definitions of overfishing and depleted, etc.
- Historic Participation WG -- could focus on making recommendations regarding North Pacific Council representation, NS4/Indian treaty-aboriginal rights issues, LKTK science, Tribal Consultations.
- Community Participation WG -- could focus on NS8 and Section 303A recommendations.
- Climate Change WG -- could focus on proposing the inclusion of new climate change provisions in the draft MSA.
- National Standards WG – could propose revisions to Section 305(c) regarding Emergency Rules and other non-specific MSA topics.

CONCLUSION:

Mateo agreed to begin drafting an introductory AFC letter for consideration by the broader group ASAP.

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6.25.2020

ATTENDEES: Mateo Paz-Soldan (chair), Linda Behnken, Heather McCarty, Peggy Parker, Frank Kelty, Tom Panamaroff, Marya Halvorsen.

AGENDA:

- Discuss feedback received from participants of the 5.27.2020 meeting with the ADF&G Commissioner, as well as the congressional offices, regarding revisions to the MSA and how they might inform this Working Group’s efforts.
- Overview of MSA Section 303A provisions regarding LAPPs and RFA’s and how community interests might be strengthened.
- Review MSA Section 305(c) statutory provisions and NMFS guidelines to consider how Emergency Rule process might be strengthened and broadened to respond to natural and man-made events, including those resulting from climate change.
- Review MSA Section 312 provisions regarding fishery disaster declarations and discuss how these might be might guide revisions to 305(c).

SUMMARY:

- 3) MSA Reauthorization and National Standards: the group discussed feedback received from the Alaska congressional offices concerning the MSA National Standards. It was indicated that, at this time, there is no support for changing/amending the National Standards. This does not mean that other congressional offices may not be supportive of such efforts in a future reauthorization effort. It was indicated that if constituents believe that changes to the National Standards are needed that they should make their case and provide examples of where and why such changes would be necessary.
- 4) Section 303A: the group outlined the proposals to strengthen the LAPP process and RFAs, but decided to forego an in depth discussion into possible revisions to these provisions since Duncan

Fields, who has done a lot of work in this area, was unavailable to participate and present on these.

- 5) Section 305(c)/Emergency Regulations: the group reviewed the Emergency Rule statutory provisions as well as the NMFS guidelines, and noted the substantial differences between both. In addition, the group reviewed the responsiveness of Section 305(c) to climate change events and pandemics.

The group discussed incorporating terms and provisions from the guidelines into a revised statute, as the current statutory language is focused on emergency regulations necessary to address “an emergency or overfishing”¹. These would include specifying the applicability of Section 305 to respond to adverse ecological, economic, social, or public health impacts, using language from the NMFS guidelines; or to emergencies resulting from “natural or man-made causes”, borrowing language from Section 312.

There was further discussion regarding the need for Emergency Rule provisions to respond to climate change events and whether a new MSA section was needed, or whether existing or revised 305(c) provisions would be sufficient. There was also discussion about defining “climate change events” as well as tracking proposals by congressional offices for a Shifting Stocks Amendment to the MSA.

The group also discussed the benefits of broadening the scope of entities and stakeholders that could request an Emergency Rule. Section 305(c) allows the Secretary, or a regional Council, to make an emergency finding, but the ultimate authority to promulgate emergency regulations belongs to the Secretary.

On the other hand, unlike Section 305(c), Section 312 explicitly allows affected fishing communities and States to request fishery disaster declarations. The question then is would it improve Section 305(c) to be broadened to allow a State, a fishing community, etc, to make an emergency finding and then request emergency regulations from the Secretary?

Finally, the potential for coordinating with other fishery stakeholder groups nationwide was considered. The group agreed that due to limited resources and time, it made sense not to “reinvent the wheel” on proposals to amend the MSA. However, from an Alaska perspective, including outreach to the congressional offices, the group also weighed the benefit for AFC participants of considering each of the MSA issues, developing proposals, and educating themselves about them.

CONCLUSION:

The group agreed that before “getting too far into the weeds” it made sense to pursue a discussion with NMFS regarding: 1) the interaction between the Section 305(c) statutory provisions and the NMFS

¹ “If the Secretary finds that an emergency exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing”

guidelines, and 2) whether the agency believed that revisions to the statute would benefit future responses to emergencies.

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5.29.2020

ATTENDEES: Mateo Paz-Soldan (chair), Linda Behnken, Forrest Braden, Heather McCarty, Peggy Parker, Brian Ritchie, Frank Kelty, Jamie O'Connor, Tom Panamaroff, Marya Halvorsen.

AGENDA:

- Recap of the results of the 4.7.2020 meeting regarding possible paths to strengthening National Standard 8 such as: MSA Reauthorization; issuance of NMFS guidelines; LAPP programs.
- Comment on results of 5.27.2020 meeting with ADF&G Commissioner and congressional offices.
- Review Working Group's proposed Mission Statement.
- Discuss drafting of letter containing AFC recommendations regarding MSA reauthorization.
- Discuss whether Section 305(c) governing Emergency Rules needs to be updated.

SUMMARY:

- 1) Recap of 4.7.2020 Meeting: the group recapped the results of the previous meeting and ended up discussing questions received from State and NPFMC representatives at AFC's meeting with ADF&G on 5.27.2020. These comments centered on:
 - a. the need for a group such as AFC to advocate for certain policy positions given existing Council bodies; and
 - b. an affirmation that the NPFMC had already expressed its position regarding MSA Reauthorization and that revisiting certain standards and provisions could open a Pandora's Box.

In response to these comments, it was noted that AFC was a process oriented coalition that intended to work closely with existing fora such as the NPFMC to highlight issues of joint concern to AFC members and that it looked forward to receiving feedback on its policy positions.

- 2) MSA Working Group Mission Statement: the group reviewed a proposed Mission Statement which would help define the focus of AFC's efforts on the MSA reauthorization front. This Mission Statement may also be included in a link on AFC's website along with similar links to bycatch, recreational, cultural dependence/subsistence issues. The results are attached.

It is clear however that further discussion among the broader AFC group is needed to define the working group's objectives. In addition, it became clear that as the working group's efforts continue, and new priorities are identified, it may need to reorient its proposed Mission Statement.

- 3) Proposed Letter to Congress regarding MSA Reauthorization: the group also discussed the value of beginning a draft letter that would capture AFC's objectives with regards to MSA. The idea would be to begin circulating a draft within and outside of AFC for feedback and comment. The group discussed working with outside coalitions nationwide seeking similar objectives in the MSA. While the potential for this broader cooperation was considered valuable, the group also

felt that it was important for AFC's legitimacy and the credibility of its policy positions to go through this process organically.

The proposed letter could include ideas on:

- a. strengthening of National Standards 4 and 8, and changes to National Standard 9;
 - b. strengthening Section 303(A) requiring that fishery management councils develop community sustainability plan criteria before initiating LAPPs and strengthen Regional Fishery Associations (RFAs) through allocation of LAPP privileges for communities;
 - c. amending Section 305(c) to broaden its responsiveness to climate change and other emergency events, including pandemics; and
 - d. including clarifying language that the National Standards apply even to species not directly under a regional council's authority such as halibut.
- 4) Revisions to Section 305(c)/Emergency Rule Provisions?: the group began review of the statutory provisions underpinning Emergency Rules as well as the NMFS Guidelines. The group considered whether revisions to the MSA statutory provisions could help: i) the Secretary of Commerce and regional fishery councils to use the Emergency Rule process to respond to rapidly developing climate change, pandemic, and other natural or man-made emergency events, and ii) broaden the scope of entities, including the Governor of a State, and other stakeholders, who could request an Emergency Rule. Discussion of this topic was cut short due to insufficient time.

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4.07.2020

ATTENDEES: Mateo Paz-Soldan (chair), Duncan Fields, Linda Behnken, Forrest Braden, Heather McCarty, Peggy Parker.

AGENDA

- Overview of Congressional agenda and prospects for MSA Reauthorization
- Discuss interplay between National Standards 8 (regarding sustained community participation) and 9 (reducing bycatch to the extent practicable) as well as clarification provided in the guidelines
- Brainstorm possible paths to strengthen National Standard 8 through: LAPP programs under Section 303(A)); revisions to the National Standard Guidelines (NMFS went through process of revising National Standard 1); and changes to the National Standards during MSA Reauthorization

SUMMARY: the group explored 3 possible paths to strengthening community participation in the national standards and in the Council process. These are:

- 5) Amending MSA Section 303A(c)(1): by requiring that fishery management councils develop community sustainability plan criteria that detail how small fishing businesses will be accommodated and what strategy will be implemented to provide for the sustained participation of fishing communities before initiating a Limited Access Privilege (LAP) program.

These plans could include approaches such as: caps on quota and fleet consolidation; area and quota set asides for community-based boats; priority access granted to historic directed fisheries, permit banks, or fishery trusts.

Also under Section 303A(4), strengthen Regional Fishery Association (RFA) provisions in MSA which are currently workable because they are limited to LAP privilege holders and cannot be awarded initial LAP quota. Nevertheless, the concept for RFAs involving diverse stakeholders, is worthy of revising as an effective tool for protecting communities and stakeholders more broadly defined. The catalyst for this would be the initial allocation of LAP privileges to RFAs.

⇒ Action Item: the above would require amending various provisions Section 303A of the MSA during reauthorization of this Act.

- 2) Revising the National Standard Guidelines: to provide additional explanation and clarification as to how the National Standards are to be interpreted and weighed concerning sustained community participation and reductions of bycatch to the extent practicable. The NS8 guidelines were dispositive in the Am 113 case. NMFS has gone through these revisions in the past. In 2016, it published a Final Rule with the revisions to NS1, 3, and 7.

<https://www.govinfo.gov/content/pkg/FR-2016-10-18/pdf/2016-24500.pdf>

⇒ Action Item: meet with NMFS to push for initiation of a process to revise NS8 and NS9.

⇒ Action Item: review Am 113 case for implications of decision as to NS8 and to address weaknesses in future revision of the guidelines.

- 3) Amending NS8 and NS9 as part of MSA Reauthorization: by proposing changes that: i) strengthen language in NS8 regarding sustained participation by fishery dependent communities, and ii) prioritize historic subsistence, sport, charter and commercial fisheries over bycatch in NS9 and/or delete the “reduction of bycatch to the extent practicable in NS9.

⇒ Action Item: reach out to congressional offices for revisions as proposed above during the next MSA Reauthorization.

NOTES & CONCLUSION:

- The group also discussed the need for the MSA to be responsive to the growing impacts of climate change on fisheries and coastal communities and the importance of stronger protections for Essential Fish Habitat. It discussed feedback from Alaska congressional offices on this matter about opening a Pandora’s Box of issues associated with broader interest in the Green New Deal being proposed by segments of the US Congress.
- The group weighed the pros and cons of initiating an effort with the US Congress given the unlikelihood of action on the MSA this year. The general consensus was that the best path forward was to articulate AFC’s positions on the above matters by way of a statement/letter and begin laying the groundwork for possible changes to MSA in the future.