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## *Commonwealth of Massachusetts*

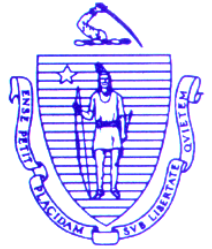
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#### **MEMORANDUM**

**TO: Tom Nies, Executive Director**  
**FROM: David Pierce, Ph.D.**  
**DATE: January 13, 2014**  
**RE: MSA REAUTHORIZATION**

I offer the following thoughts and recommendations for MSA Reauthorization. These ideas are linked to the Draft Reauthorization legislation to be discussed at the Executive Committee January 21 meeting. I'm still working on this memo, but in the interest of time, I offer it to you now to assist staff work on this important topic.

- (1) Congress should embrace the recent National Research Council recommendation regarding rebuilding targets: *“Trying to achieve a rebuilding target by a given time places unrealistic demands on the science and forces reliance on forecasts and estimates of biomass-based reference points, which may be very uncertain. Emphasis on meeting fishing mortality targets rather than on exact schedules for attaining biomass targets (emphasis added) may result in strategies that are more robust to assessment uncertainties, natural variability and ecosystem considerations, and less prone to rapid changes in management measures, which have social and economic impacts that may be more severe than more gradual changes.* The draft legislation (page 2) continues our having to rebuild to specific targets (e.g., *“...may phase-in the rebuilding plan over a 3-year period to lessen economic harm to fishing communities...”*). Although there is an “escape door” to this requirement, it is ill-defined and likely will be subject to interpretation through revised NS #1 Guidelines. Reauthorization should be more to the point and not simply say: *“...except that in the case of a highly dynamic fishery...”* What is a “highly dynamic fishery” (see below)?
- (2) Moreover, there are five exceptions (pages 3-4) to *“may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation”* (page 2). These exceptions are so far-reaching and all-encompassing that the legislation might as well omit any reference to required rebuilding timelines thereby being consistent with the NRC

recommendation (see above). The legislation seems to overkill the idea of flexibility regarding timelines by providing many exemptions. Just be guided by the NRC and not complicate matters by giving the councils so many exemptions.

- (3) The title “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” invites attack. The title appears to swing the pendulum to the other pole, i.e., away from strict focus on resource conservation to strict focus on industry conservation, the latter being laudable and needed, but suggests that “significant economic harm to fishing communities” (e.g., pages 3 and 4) will trump any steps to cut fishing mortality to relatively low levels that will be necessary in many cases.
- (4) Return to the original definition of Optimum Yield: OY must be based “*on maximum sustained yield as modified (emphasis added) by any relevant economic, social, or ecological factors*. Changing “reduced” back to “modified” will enable management councils to regain flexibility and the ability to factor socioeconomic impacts into their decision making. This change also will enable a far better use of councils’ Scientific and Statistical Committee (SSC) social scientists’ and economists’ expertise. It will allow for some balancing of fisheries resource conservation needs and the welfare of fishermen and their communities.
- (5) Include a requirement that catch limits should not be allowed to “pendulum,” i.e., large swings in catch – up or down – especially as a result of updated or new stock assessments. Considering the uncertainty in assessments and their heavy reliance on bottom trawl surveys and index-based results, managers must give greater weight to the welfare of fishermen and communities (by avoiding large downward swings) and to fisheries resources (by avoiding large upward swings).
- (6) Clarify the definition of “fishery” and apply that definition throughout the Act so as to make it possible for the “Northeast Multispecies Fishery” in New England and elsewhere to be managed as a complex without having to achieve MSY for all individual stocks in the fishery (an impossible objective to meet).
- (7) Ensure National Standard guidelines are entirely consistent with Congress’ purposes and policy expressed within the Act (Section 2. Findings, Purposes, and Policy) by requiring that current and any revised guidelines established by the Secretary of Commerce shall be consistent with those purposes and policy, as determined by Congress itself and not the Secretary.
- (8) In Section 2 include a revised finding #2 to include references to environmental or changing climate effects being a cause of “substantially-reduced-in-number stocks of fish.”
- (9) In Section #2 revise finding #6 to acknowledge that “a national program for the conservation and management of the fishery resources of the U.S. is necessary” to “assure our citizens benefit from employment, food supply, and revenue” generated by domestic fisheries.” [Note: Section 2 finding #7 has latter language but applied to underutilized or not utilized by the U.S. fishing industry. This suggested revision includes existing fisheries, i.e.,

utilized, and dovetails with finding #1 that emphasizes: "...fisheries resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities."]

- (10) Revise Section 3 (Definitions) to: (a) exclude from the definition of "person" (#36) any reference to corporation, partnership, association or other entity, etc, and (b) restrict the definition to "any individual," i.e., a person. Similarly, revise Section 402. Information Collection so that "submitters" of information will have that information considered "confidential" if the submitter is an individual (not a corporation, partnership, etc.). [Note: Currently each groundfish sector is considered to be a "**person**" so catch and economic data for all individuals in each sector (even when combined for all members) are confidential. Sectors are considered to be "submitters" under Section 402 because they must submit reports. Their data are confidential. The rule of three applies to sector information; information submitted by three or more sectors can be released in aggregate form only. This interpretation must change to enable a far better NEFMC and public understanding of the socioeconomic impacts of sector (catch-share) management on individual fishermen, i.e., real individuals not masked by illogical and nonsensical confidentiality requirements, and to effectively address consolidation and excessive share concerns of Amendment 18.]
- (11) Revise Section 301 National Standards for Fishery Conservation and Management subsection (b) Guidelines to read: *"The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans [existing language]. Advisory guidelines will provide suggestions as to fishery management plan content and requirements and not to be considered agency regulations potentially to be used to establish case law inconsistent with Congressional MSA intent."*
- (12) Support the intent of the House of Representatives discussion draft for MSA reauthorization with its purpose being to provide flexibility for fishery managers and stability for fishermen, but suggest the following changes and additions to the draft:
  - a. The draft still ties the councils to a rebuilding plan to be "phased-in" over a 3-year period for "highly dynamic fisheries" to "lessen economic harm to fishing communities."
    - i. The objective is admirable, but the definition of a fishing community is unclear and leaves open the question of how to lessen economic harm to individual vessel owners, fishermen (commercial and recreational), dealers, processors, etc. The current MSA definition indicates a fishing community "means a community which is substantially dependent on or substantially engaged (emphasis added) in the harvest..." For ports such as Provincetown, Scituate, Plymouth, and others with commercial and recreational fishermen but do not meet the "substantial" criteria (however, that may be defined),

economic harm to fishermen and vessel owners may be inappropriately discounted and considered acceptable.

- ii. The definition of a “highly dynamic” fishery is not provided. Perhaps it’s better to say any fishery since almost all are “dynamic” with many participants and gear types (certainly groundfish).
  - iii. Language in Section 3 “Flexibility in Rebuilding Fish Stocks” II-V states: “the Secretary determines...” should be changed to “if a fishery management council determines...” Flexibility is to be given to fishery managers, not to the Secretary or NMFS that is one voting member of management councils and does not represent the views of state fishery agency representatives (5 on NEFMC). This section has important determinations that should be left to councils and their advisors, including NMFS.
  - iv. Phasing in a rebuilding plan over a 3-year period is inconsistent with the recommendation of the Committee on evaluating the effectiveness of stock rebuilding plans of the 2006 Fishery Conservation and Management Reauthorization Act that stated: *“...the focus on trying to achieve a rebuilding target by a given time places unrealistic demands on the science and forces reliance on forecasts and estimates of biomass-based reference points, which may be very uncertain. Emphasis on meeting fishing mortality targets rather than on exact schedules for attaining biomass targets may result in strategies that are more robust to assessment uncertainties, natural variability and ecosystem considerations, and less prone to rapid changes in management measures, which have social and economic impacts that may be more severe than more gradual changes.”* Biomass targets have value, but not when tied to timetables and not when they force the setting of fishing mortality targets that effectively end fishing with very large losses of optimum yields, especially in a mixed-species fishery such as groundfish. The “Northeast Multispecies (Groundfish) Fishery Management Plan” speaks for itself.
- (13) Include an expanded and more creative approach for use of a “mixed-stock exception” in the MSA unless other MSA House-suggested revisions regarding increased sensitivity to socioeconomic impacts make the exception unnecessary. Currently it is in National Standard Guidelines (not the MSA) and with restrictive language/criteria making the exception very difficult to apply, if at all (last section of NS #1 Guidelines dated January 16, 2009). The National Research Council recommended the “mixed stock exception” be *“modified to expand the range of situations to which it could be applied subject to assurances that the less productive species are not driven to unacceptably low levels.”* Care must be taken not to have the MSE be the only way to justify and maximize the taking of OYs in a multispecies fishery. “Unacceptably low levels” should be a management council determination assisted by SSC advice and council risk-tolerance decisions.