

Gulf of Alaska Coastal Community Coalition
Testimony to
The Senate Committee on Commerce, Science, and Transportation
Regarding
Reauthorization of the Magnuson-Stevens Fishery Conservation and
Management Act (MSA)
August 23, 2017

Chairman Thune, Distinguished Members of the Committee:

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) is good legislation, perhaps even great legislation. We are all aware of the many successful conservation and management accomplishments that the act has enabled. Because of its success, many believe that the current reauthorization of Magnuson-Stevens should mostly maintain the status quo. Why change what is working? While it feels like a “safe harbor” to keep Magnuson essentially the same, I cannot support a status quo MSA reauthorization. Here’s why: America’s fishery-dependent communities, especially the smaller rural communities in the Gulf of Alaska, are being excluded from the federal fisheries. This is happening despite MSA’s National Standard 8 that directs management Council to “take into account the importance of fishery resources to fishing communities by utilizing economic and social data... in order to (A) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize economic impacts on such communities.” To be more specific, the Limited Access Privilege (LAP) provisions [Section 303(A)(c)] for community protection, the Community Sustainability Plan and the Regional Fishery Association are unworkable. **Action must be taken during this reauthorization of the MSA to strengthen the community protections provisions of the act. Also, Alaska’s smaller gulf communities believe that as a matter of National Policy, National Standard 9 should be expanded to encourage the reduction of discarded fish/bycatch.**

Under the Requirements for Limited Access Privilege Programs (LAPs) [Section 303(A)] **I am suggesting three changes that will better protect fishery dependent communities:**

1. Strengthen policy language to encourage management councils to initially allocate Limited Access Privileges to fishery-dependent communities and clearly identify criteria for Fishing Communities' community sustainability plans [303(A)(c)(1)(F) and 303(A)(c)(3)(A)(i)(IV)].
2. Limit the risks of losing LAP privileges/quota for Fishing Communities operating under a community sustainability plan and for Regional Fishery Associations. [303(A)(c)(3)(A)(ii) and 303(A)(c)(4)(B)].
3. Revise the Regional Fishery Association definition so that it can include a larger group of stakeholders and also be considered for initial allocations of Limited Access Privileges. [303(A)(c)(4)(A)(iv)].

In addition, I am suggesting the Committee consider expanding National Standard 9, “to the extent practicable (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch”, to include a provision that when bycatch occurs and mortality from the bycatch cannot be avoided, to minimize the regulatory discarding of dead fish to the extent practicable. [301(a)(9)]

For the past 30 years I have worked on behalf rural Alaska fishermen from smaller fishery-dependent Alaska communities in the Gulf of Alaska. These communities formed the Gulf of Alaska Coastal Communities Coalition which identifies as communities of less than 1,500 people without road access that have a fishing history, sometimes for thousands of years. The economy in each of these communities is almost exclusively based on fisheries: subsistence, commercial, sport and charter. **Regulatory programs enacted under Magnuson-Stevens, particularly the Halibut/Sablefish IFQ program and the Bering Sea Crab program, have negatively impacted these communities.** The North Pacific Fisheries Management Council has attempted to mitigate some of these adverse impacts by creating the Community Quota Entity program that allows communities in the Gulf of Alaska to purchase halibut and sablefish Individual Fishing Quota (IFQs). However, the Community Quota Entity program has been largely unsuccessful because it is nearly impossible to purchase quota and pay the debt service **AFTER** the initial issuance of the quota. Only 3 of 45 eligible communities have been able to purchase even a small amount of quota.

Communities, with limited resources and without other fishery revenue, just can't catch up by purchasing quota. **In short, if trends continue, residents of most of these communities will be completely excluded from federal fisheries within a generation.**

A reauthorized Magnusson-Stevens Fishery Conservation and Management Act must increase the emphasis for each of the eight regional management councils to consider smaller or isolated fishery-dependent communities as stakeholders at the outset of any Limited Access Privilege (LAP) program. Councils should use current sociological and economic studies, as referenced in National Standard 8, regarding impacts from past management programs to assess probable community impacts from any new LAP programs. Here in Alaska, virtually all of the social and economic assessments illustrate that Limited Access Privilege programs have had negative impacts on smaller Alaska communities. The reauthorized MSA should also encourage Councils to re-consider impacts on fishery-dependent communities whenever limited access privilege programs are reviewed and/or renewed and as part of the review, when needed, allocate Limited Access Privileges to fishery dependent communities to mitigate further harm.

The eight Regional Management Councils have primarily assessed a vessel owner's historical participation in the fishery when awarding Limited Access Privileges. While vessel owners are clearly stakeholders, parallel stakeholders have often been overlooked. Councils must be encouraged to fully assess the community support structures that enable vessel owner participation in the fishery as well as the community fabric of fishing jobs and fishery opportunity that the fishery provides. Rural residents in many Gulf of Alaska communities cannot compete economically for quota especially when there are no "owner on board" or "active participation" requirements for quota holders. **Experience has shown that the primary way to continue community engagement in the fishery is through the awarding of Limited Access Privileges to the community at the outset of a LAP program.** See, for example, the Community Development Quota program in the Bering Sea.

Under the Limited Access Privilege Program provisions for fishing communities, section 303(A)(c)(3) of MSA, the requirement of an approved community "sustainability plan" creates a classic "catch 22" situation for fishery dependent communities wanting to be awarded LAP

privileges. Communities appear to be expected to develop the community sustainability plans without fully knowing a regional Council's criteria for plan approval and/or whether the Secretary will approve the criteria. Our experience with the NPFMC's consideration of a LAP program for the Gulf of Alaska indicated that the Council was hesitant to consider LAP privilege/community quota allocation without a community sustainability plan but it was difficult for Gulf of Alaska fishery dependent communities to develop a sustainability plan without first having Secretary approved Council criteria for the community sustainability plan. (We recognize that part B lists participation criteria but the list is not exhaustive nor is it adopted or approved by any Council.)

Regional Councils must be directed to develop Fishing Community sustainability plan criteria BEFORE considering a LAP program.

Even with an approved Community Sustainability Plan and either the initial allocation or community purchase of quota, fishery-dependent communities are not protected. Under sub paragraph (ii) the secretary may deny or revoke "privileges granted under this section for any person". This language presents three problems. First, the privilege (quota) is revoked from an **individual** who is fishing the Community's privilege or allocation. Second, the Community may have little or no immediate control over that individual or the individual's fishing practices yet it is held responsible for the individual's misconduct. The quota is apparently removed from the individual **AND** the fishing community. Third, the removed quota "may" but also **MAY NOT** be reallocated to another **individual** eligible within the fishing community. There are two issues here: the quota can be entirely lost to the Regional Fisheries Association if it is not reallocated and the quota is reallocated to another **individual** and not back to the Community Fisheries Association.

Several financial institutions and lenders have indicated that the deny/revoke provision creates too much "risk" for lending to a fishery dependent community to acquire LAP privileges/quota ---- even with an approved Community Sustainability Plan.

Three changes to Magnusson-Stevens' LAP provisions for Fishing Communities could help further the National Standard 8 goal of protecting fishery dependent communities.

1. The LAP provisions outline eleven requirements (A-K) for implementation of a LAP program. Under section (F) the act requires a Council to "specify the goals of the program."

The following language should be added: **“including but not limited to goals for protecting fishery-dependent communities located within the management area of the relevant Council and whether or not initially awarding LAP privileges to the community will further those goals.”**

2. A new LAP requirement (L) should track with the Fishing Communities section (3) of the LAP provision and require each Council to develop secretary-approved Community Sustainability Plan criteria BEFORE considering a LAP program. The following language should be added: (L) **“Each regional management council shall develop secretary-approved community sustainability plan criteria before initiation of a LAP program.**
3. Under (3)(ii), any quota denied or revoked by the Secretary for an individual’s failure to comply with the Community Sustainability Plan must be retained by the community entity. The following language should be inserted: Sec 303A(c)(3)(A)(ii) **“The secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section shall be retained by the eligible fishing community.”**

Moreover, the Magnuson-Stevens Act’s parallel community support concept, the Regional Fishery Association, is similarly flawed. Regional Fishery Associations are expected to find capital and obtain quota shares after a LAP program is implemented. Membership is limited to those that already have acquired quota and any quota acquired by the Association may be “at risk” by seizure. Simply stated, as currently outlined in MSA, the Community Fishery Association is an ineffective tool.

Three changes to current MSA provisions for Regional Fisheries Associations would make them an effective tool for fishery-dependent community protection.

1. The MSA currently specifies that Regional Fishing Associations are NOT eligible to receive initial allocation of a limited access privilege. **The provision should read that Regional Fisheries Associations ARE eligible to receive an initial allocation of a limited access privileges.**

2. Regional Fishery Associations are limited to individuals or entities that already have LAP privileges/quota. This seems nonsensical, given the participation criteria to be considered by the Council in section (C). Regional Fishery Association participation criteria includes “traditional fishing or processing,” “cultural and social framework relevant to the fishery” and “the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or sub region.” Given the participation criteria, why exclude crewmen, active fishermen hoping to obtain quota and stakeholder communities or processors that are not awarded quota? **The regional Councils should have the option to include all significant stakeholders in a Regional Fishery Association.** Adding the following language at the end of Sec 303(A)(c)(4)(A)(iv) would allow the Councils to qualify all individuals and entities that meet the section (C) participation criteria: A regional fishery association shall “consist of participants in the fishery who hold quota shares that are designated for use in the specific region or sub region covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities **and/or individuals, businesses and communities who are active participants in the fishery.**”

Section 3 (Definitions)

The term "active participants" means individuals who are physically present on a fishing vessel during the prosecution of a fishery and who are paid compensation for their fishery participation, a business that derives revenue directly from the sale of the fish captured in the fishery, or a community economically and/or culturally dependent on the fishery.

3. The Regional Fisheries Association Language also enables the possible loss of quota by the Association because of an individual’s misconduct. As indicated above, this type of contingent liability puts the Regional Fisheries Association “at risk” and the association is unlikely to attract capital to obtain quota. Again, the fix is to require that any Regional Fisheries Association quota denied or revoked by the Secretary be retained by the RFA.

In summary, the three changes suggested for Community Sustainability Plans as well as the three changes suggested for Regional Fishery Association do NOT mandate that fishery-dependent communities be given Limited Access Privileges. However, they do provide workable options that the regional Councils can consider when working to ensure the sustainability of fishery dependent communities.

The final consideration for revising the Magnusson-Stevens Fishery Conservation and Management Act is, perhaps, one of the most important conservation and public policy issues of our day. **As a matter of policy the United States needs to reduce the amount of discards (dead fish thrown overboard) in MSA managed fisheries.** Large amounts of fish are caught in MSA fisheries, killed, and then discarded because they are not the right size, lack market value or are “prohibited” based on a particular gear type in a specific time and place. Although bycatch has been reduced under MSA, discarding of bycatch remains a significant management and conservation concern. In fact, the European Union had jumped ahead of the United States and set strict time frames for eliminating regulatory discards.

To illustrate, in fisheries managed by the North Pacific Fisheries Management Council 5,487 metric tons (12,181,140#) of halibut are annually allocated as bycatch. Not all of the bycatch is used but, on average, about 90% or 10 million pounds is actually caught and discarded as dead halibut. A substantial portion of discarded halibut, estimates range from 50-70% by weight, could be of commercial value and processed into food for human consumption. Halibut, of course, is just one species and across the nation several species should be assessed for discard limitations. **The goal for American Fisheries should be: If you catch it and it's dead, you keep it!** This is the logical next step to the policy progression of National Standard nine.

Alaska's smaller fishery-dependent communities are impacted by regulatory discards in several ways. First, discarding good food is in conflict with basic aboriginal and cultural values that teach it's against nature to waste what the sea provides. Second, it often creates a false economy in that a vessel will be fishing for a directed catch worth pennies per pound while discarding bycatch worth several dollars per pound. Third, the American consumer has reduced access to quality marine

protein that could easily be retained and enter the stream of commerce. Fourth, it may limit fish available to all other users and appears as a capricious disposition of a shared resource because, when quotas are set, halibut bycatch “comes off the top” ahead of sport, ahead of charter and ahead of all commercial users. Finally, the impacts on the eco-system from long term large scale fishery discards is unknown. Some have speculated that the rise of arrowtooth flounder in the Gulf of Alaska may have been, in part, due to the extent of fishery discards in the late 80 and 90s (scavenger fish like arrowtooth flounder need something to eat.)

I would encourage the Committee to expand our Nation’s policy regarding conservation of our marine resources and add a third priority to National standard 9, Sec. 301(a)(9), “Conservation and management measures shall, to the extent practicable, (a) minimize bycatch and (b) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” **And (c) to the extent that mortality cannot be avoided, minimize regulatory and economic discards.**”

Thank you for considering Alaska’s Gulf of Alaska Coastal Communities’ suggestions for revisions to the Magnuson Stevens Fishery Conservation and Management Act. The MSA is solid legislation but needs revisions to help protect fishery dependent communities. In summary, community allocation of Limited Access Privileges should be strengthened and each management council, at the outset of any LAP program, should specifically recognized fishery dependent communities as stakeholders and provide criteria for development of community sustainability plans. Quota obtained under a community sustainability plan must stay with the community. A Community Fisheries Association, if approved by a Council, should also be eligible for initial allocation of quota. Several Community Fishery Association provisions seem to be in conflict with the stated programmatic goals and should be modified. Membership should be expanded and liabilities reduced. Finally, it’s time, as a matter of public policy, to incorporate the reduction of regulatory discards, to the extent practicable, into our national standards.