



Marine Conservation Alliance

promoting sustainable fisheries to feed the world

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Alaska Draggers Association

Alaska Groundfish Data Bank

Alaskan Leader Fisheries

Alaska Pacific Seafoods

Aleutian Islands Brown Crab
Coalition

Aleutian Pribilof Island
Community Development
Association

*Akutun, Adka, False Pass, Nelson Lagoon, Nikolski,
St. George*

At-Sea Processors
Association

Bristol Bay Economic
Development Corp.

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

Central Bering Sea
Fishermen's Association

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City of Unalaska

Coastal Villages Region Fund
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High Seas Catchers
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North Pacific Longline
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Koyuk, Nome, Saint Michael, Savoonga, Shaktolik,
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Pacific Seafood Processors
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*Akutan Catcher Vessel Assoc.
Arctic Enterprise Assoc.
Mothership Fleet Cooperative
Northern Victor Fleet
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Unalaska Co-op
Unisea Fleet Cooperative
Westward Fleet Cooperative*

U.S. Seafoods

Waterfront Associates

Western Alaska Fisheries, Inc.

Yukon Delta Fisheries
Development Association

*Alakanuk, Emmonak, Grayling, Kotik, Mountain
Village, Nunami Iqaa*

September 27, 2007

Mr. Alan Risenhoover, Director
Office of Sustainable Fisheries, NMFS
1315 East-West Highway, SSMC3
Silver Springs, MD 20910

Attn: LAPP Guidance

Dear Mr. Risenhoover,

This letter is in response to the solicitation by NOAA for comments on issues that should be considered by NOAA in the development of a proposed rule to implement Sec. 303 A of the newly reauthorized Magnuson Stevens Act.

The MCA is supportive of quota-based and/or cooperative rationalization systems and we strongly believe the authority to create such systems should reside with the Regional Fishery Management Councils (RFMC). The Magnuson Stevens Act (MSA) reauthorization reaffirmed the role of the Councils by retaining Sec. 304 (c) (3), that as a practical matter requires limited access programs be developed by the RFMCs. We urge NOAA to work with the Councils to provide them the tools, resources, and most importantly, the flexibility that will be necessary to address the unique and particular issues specific to the fisheries in each of the RFMC regions.

Alaska has the greatest number of rationalized fisheries in the United States, ranging from community development programs, to small boat IFQs, to the more industrial American Fisheries Act (AFA) pollock cooperative, and crab rationalization programs. We have direct experience from a variety of widely different fisheries that eliminating the "race for fish" provides opportunities to improve safety, reduce bycatch, and results in delivery of higher quality products. Such systems can also be tailored to meet other management objectives such as reducing overcapitalization and promoting community stability. Generally, the MCA supports quota-based rationalized fishing systems because they bring significant conservation and other benefits to fisheries management.

Our experience has also shown that there are no universal answers for how best to rationalize fisheries. Solutions will vary fishery to fishery, although one constant is that all stakeholders need to be involved in the design of appropriate systems for each fishery. This needs to be an iterative process, with a clearly defined problem to be addressed, ample analysis of the specific issues and concerns

identified, and a robust public process to vet the various options being considered. The only way for this to succeed is to provide the Council process with the maximum flexibility to consider all the factors affecting a fishery, and to adopt practical management measures that are tailored to the specific fisheries in question.

As such, MCA does not support adoption of LAPP provisions in regulation, and we are quite concerned that NOAA is proceeding down this path. Because the RFMCs need maximum flexibility in developing these programs, NOAA should carefully consider the effect that an enforceable rule, subject to judicial review, will have on their ability to use this important management tool. We are convinced that guidelines are more appropriate, and will serve the fisheries, the Councils, and the public better than an enforceable national-level regulation. Enforceable LAPP regulations, given the broad nature of the issues involved, their allocative nature, and the great diversity of fisheries and fishing communities around the coast, will only be an open invitation to endless rounds of litigation. NOAA should provide general guidance through national guidelines and then work on the regional level with each of the RFMCs to ensure that the provisions of the MSA are met using the existing Secretarial approval process as the final decision point.

Specific Questions Posed by NOAA

MCA recognizes that the questions posed by NOAA in the request for comments were examples of the kinds of issues NOAA expects to address through national regulations. We believe that these questions, as a general matter, point up the difficulties with addressing regional issues with top-down rule making from NOAA. For example:

1. Ownership Caps or Holding Privileges

Determining the level of ownership and related consolidation is a matter that must be tailored to the specific and unique characteristics of the individual fisheries. National criteria, a one size fits all approach, will not work. It takes the interaction between the participants in the fishery, the communities and states affected, and fishery managers to develop a practical and workable solution based on the specific factors affecting that fishery. Alaska certainly learned this lesson with the various approaches used in the different programs implemented here, all of which have widely differing requirements for who gets privileges at initial allocation, how much do they receive, and who can subsequently acquire them. Each program is tailored to the specific conditions and characteristics of that fishery. The transparent decision making process under MSA, implemented through the Councils with their extensive public participation process, is the only viable mechanism to address this.

2. What criteria should be used to determine whether businesses are “substantially dependent on a fishery”?

Recognizing our belief that the Councils need to have flexibility in developing these programs, we also believe that there should be practical guidance to ensure that the programs can work. In this instance, for most LAPP’s the guidance should be that only those businesses that are directly engaged in the harvesting or processing of fish should be eligible to receive LAPP privileges. In

these instances, support businesses, such as net manufacturers, fuel suppliers, transportation companies all have a stake in a healthy fishery but should not be direct participants in the rationalized fishery. The concerns of such businesses should be considered by the Councils as they also consider other social and economic impacts of the programs they are developing. However, the MSA also provides for fishery dependent support businesses to “participate” in a LAPP program under either the fishing community or Regional Fishery Association provisions. Both sections require that the participants meet criteria developed by the relevant Council and approved by the Secretary. As such, we believe that the clear intent is for these criteria to be developed at the regional level and not interpreted in national-level regulations promulgated by NOAA.

3. What factors should the agency use to determine if a Regional Fishery Association’s sustainability plan is “acceptable”?

The MSA is specific that the criteria for evaluating the RFA plans be developed by the respective Councils, approved by the Secretary and published in the Federal Register. This is another instance demonstrating that such criteria need to be developed at the regional level. What might be considered sustainable and acceptable in Maine, or in Louisiana may not fit in Hawaii or Alaska. In fact, it is certain not to. National level regulations attempting to dictate these factors will by necessity be broad and general, and thus subject to interpretation. This will be a formula for intervention through the courts if one party or another feels aggrieved by the decision.

4. How should the Councils and the agency determine when it is necessary and appropriate under Section 303 A (c) (5) (C) to “assist...entry level and small boat vessel owner-operators, captains, crew and fishing communities” to acquire privileges.

Again, these issues will be determined by the individual and specific set of circumstances in a particular fishery. There is no set answer that applies at a national level. For example, the Halibut/Sablefish IFQ program which was an owner-operator dominated fishery a set of management measures were put in place to maintain the nature of the small vessel fleet involved, and a loan program put together to aid individuals in the purchase of IFQs. In larger industrial fisheries, such as the AFA coops, such measures were deemed to be inappropriate. Each Council region will have to examine these issues on a fishery by fishery basis. Only through extensive public comment, analysis, and interactions between the players can a reasonable, fair, and workable solution be crafted that makes sense for the participants in the fishery.

5. What activities should be included in the categories of cost recovery and should they be standardized across different LAPPs.

Cost recovery under LAPPs should cover only the added costs of monitoring, managing, and enforcing the new LAPP rules. Fees collected in a fishery should be dedicated solely to that fishery, or at the most be used to address related management concerns within the specific management region. Under no circumstance should fees collected as cost recovery due to implementing a LAPP be used to supplement or pay for existing agency activities or responsibilities. As such, stock assessment, research, routine management and enforcement would not qualify to be funded under LAPP cost recovery fees. What would qualify would

include additional fishery or quota monitoring necessary to implement the LAPP, fishery management specific to the LAPP, and enforcement directly related to ensuring that the rules of the LAPP are being met. Thus, fees would only be used in the fishery from which they are collected, not as a general funding source. Neither should fees be collected from one region and used in another. Any guidance should make these principles clear, and reaffirm the 3% cap Congress placed on such fees.

MCA appreciates this opportunity to comment on NOAA's plans for implementing the LAPP provisions of the newly reauthorized MSA. We look forward to reviewing NOAA's draft guidelines when they are developed.

Sincerely,

A handwritten signature in black ink, appearing to read "David Benton". The signature is written in a cursive style with a long horizontal stroke at the end.

David Benton
Executive Director