

## **MSA Reauthorization: Other Federal Statutes**

### **WPRFMC Position for CCC MSA Reauthorization Working Group 2 Consideration**

**Draft Date: May 6, 2014**

#### **1. Considerations for Other Federal Statutes in MSA Reauthorization**

##### **A. ESA, MMPA, and NMSA**

Currently, federal fishing regulations may be promulgated under other federal laws such as the National Marine Sanctuaries Act (NMSA), Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA), creating inconsistent management of fisheries with the MSA. This results in the circumvention of the transparent Council process and promulgation of fishery regulations without consideration of the MSA National Standards, and may lead to unnecessary economic burden on fishing communities while having limited conservation benefit on the resources. Amendment to the MSA that ensures all federal fishery regulations to be promulgated under the MSA Council process would resolve this issue.

Examples of circumvention of the Council process established under MSA section 302 to implement federal fishery restrictions under other statutes include:

- Emergency rules promulgated under MSA section 305(c) to implement reasonable and prudent alternatives of ESA Biological Opinions;
- Modification of Hawaii longline exclusion zone originally established under the Pacific Pelagic FMP using MSA section 305(d) to implement measures developed under the MMPA False Killer Whale Take Reduction Plan.

The House Discussion Draft for MSA reauthorization included provisions to ensure consistent fisheries management under other federal laws. Specifically, the discussion draft included amendments to 1) prioritize MSA if any conflicts arise with the National Marine Sanctuaries Act or the Antiquities Act; and 2) implement any restriction on fishery management necessary for an ESA recovery plan using MSA authority.

The Western Pacific Council strongly supported this section recognizing the MSA as the controlling authority over promulgating fishing regulations. With regard to the first provision referring to any conflict with the National Marine Sanctuaries Act or the Antiquities Act, the Council suggested that other Acts impacting fisheries (e.g., Marine Mammal Protection Act, Migratory Bird Treaty Act and Endangered Species Act) be included under this provision.

The Council also strongly supported the second provision, but recommended that the provision be expanded so that it applies broadly to all ESA actions as it relates to fishery resources, rather than limiting it to actions implementing a recovery plan. The Council further recommended that any necessary regulations be promulgated in accordance with MSA Section 302, 303 and 304, which would ensure that the transparent Council process is not circumvented.

The Senate draft bill on MSA reauthorization did not include a comparable provision regarding other federal statute. The Council therefore recommended the inclusion of provisions similar to that of the House Discussion Draft as follows:

- (A) In any case of a conflict between this Act and the National Marine Sanctuaries Act, Antiquities Act of 1906, Endangered Species Act, Marine Mammal Protection Act, and Migratory Bird Treaty Act, this Act shall control.
- (B) To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fishery resources shall be implemented in accordance with processes established under Sections 302, 303 and 304 of this Act.

Alternatively, a single provision may suffice:

“To ensure transparency and consistent management of fisheries throughout their range, any laws, regulations or agency decisions necessary to implement the National Marine Sanctuaries Act, Antiquities Act of 1906, Endangered Species Act, Marine Mammal Protection Act, and Migratory Bird Treaty Act that affect the harvest of management unit species, fishing effort, fishing areas or gear otherwise lawfully allowed under the MSA shall be implemented in accordance with procedures and requirements established under Sections 302, 303 and 304 of this Act.”

#### ***B. NEPA***

The Council supports a reauthorized MSA that would allow for MSA fishery management plans, plan amendments, and regulatory amendments to be stand-alone documents that satisfy the requirements of NEPA. This is because the existing MSA/Council process is analogous to the procedures of NEPA with respect to public participation and impact analysis. However, the Council suggests that minor technical modifications to be made to Section 303(a) of MSA to ensure consistency with NEPA such as requiring the consideration of alternatives to the proposed action and requiring a broader-level of environmental review in MSA documents.