

## REPORT OF THE LEGISLATIVE COMMITTEE

The Legislative Committee (Committee) convened at 1 p.m. on Sunday, April 6, 2008. In attendance were Committee members Mr. Rod Moore (vice chair), Ms. Kathy Fosmark, Mr. Don Hansen, and Mr. Dale Myer. Also present were Council member Mr. Mark Cedergreen; Council Executive Director Dr. Don McIsaac, Highly Migratory Species Advisory Subpanel member Mr. Doug Fricke, Mr. Mike Burner with the Council staff, and Ms. Dorothy Lowman, consultant for Environmental Defense.

The Committee reviewed all of the legislative matters on its agenda and provides the following reviews and recommendations:

### H.R. 5425 - Flexibility in Rebuilding American Fisheries Act of 2008

H.R. 5425 (Agenda Item C.2.a, Attachment 1), introduced in the U.S. House of Representatives on February 13, 2008 by Representative Frank Pallone (D-NJ), seeks to amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to extend the requirement to rebuild overfished stocks within 10 years in specific situations, including situations where the biology of the stock or international agreements dictate otherwise, where the cause of the decline is outside Council jurisdiction, to minimize economic impacts or provide for a multi-species fishery if the stock is on a positive rebuilding trend. H.R. 5425 has been referred to the House Subcommittee on Fisheries, Wildlife, and Oceans.

The Committee sees H.R. 5425 as a positive amendment to the MSA that provides flexibility in rebuilding overfished stocks while not minimizing conservation goals. Although the specific situations H.R. 5425 would exempt from the 10-year rebuilding requirement do not currently apply to West Coast rebuilding efforts, the Committee is supportive of the bills proposed language change in MSA Section 304(e)(4)A:

*“For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph(5) for such fishery shall—*

*(A) specify a time period for rebuilding the fishery that shall*

*(i) be as short as ~~possible~~ practicable, taking into account the status and biology of any overfished stocks of fish, the need of fishing communities, recommendations by international organizations in which the [U.S.] participates, and the interaction of the overfished stock of fish within the marine ecosystem;....”*

In April 2007, U.S. Senator Gordon Smith (R-OR) sent a letter to the Council requesting Council comments on matters affecting west coast fishery resources. The Committee recommends the Council direct the Council Executive Director to send a letter to Senator Smith conveying Council support for H.R. 5425.

## H.R. 1187 - Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act

H.R. 1187 was the subject of a mark-up session held by the House Committee on Natural Resources on March 12, 2008. Council member Ms. Kathy Fosmark provided testimony at hearings on the bill and reported to the Committee on a failed attempt to amend H.R. 1187 by adding clarifying language on fishery regulatory authority within National Marine Sanctuaries. H.R. 1187 passed the U.S. House of Representatives on March 31, 2008 and has been referred to the U.S. Senate. U.S. Senator Barbara Boxer (D-CA) has introduced S.2654 the “*Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act.*” Although the bills in Congress state that nothing in the proposed legislation is “intended to alter any existing authorities regarding the conduct and location of fishing activities in the Sanctuaries,” none of the bills specify that the regulation of fishing within Federal waters of the Sanctuaries is under the sole authority of the MSA.

Because this matter is now before the U. S Senate, the Committee recommends the Council send a letter to Senator Smith that reiterates the recommendations contained in the Council’s October 9, 2007 letter (Agenda Item C.2.a, Attachment 2), expresses the same concerns regarding S. 2654, and request that any new legislation include clarifying language on fishery regulatory authority within National Marine Sanctuaries.

## Status of National Marine Sanctuary Act (NMSA) reauthorization

Reauthorization of the NMSA is anticipated in the near future and was the subject of a House Subcommittee on Fisheries, Wildlife, and Oceans hearing on November 3, 2007. Mr. Moore reported the staff of the Subcommittee is aware of the Council Coordinating Committee’s (CCC) position on the regulation of fisheries within National Marine Sanctuaries, but it is anticipated that Subcommittee Chairwoman Madeleine Bordallo (R-GU) will introduce a NMSA reauthorization bill in late April that does not address this topic. Additionally, a hearing has been tentatively scheduled for early May to discuss NMSA reauthorization legislation. The Committee and Council staff will track this legislation.

Dr. Mc Isaac noted that NMSA reauthorization will be an agenda topic for the May 2008 CCC meeting. The Committee recommends the Council direct Council staff develop a position statement for the Council delegation to the May CCC meeting that reaffirms the Council’s perspective on fishery authority within Sanctuaries. The statement should include examples of what has worked well (e.g. MSA closures on bottom contacting gear in the Cordell Bank National Marine Sanctuary) and what has not (e.g. denial of MSA regulations to close the water column to fishing in the Channel Islands National Marine Sanctuary).

## The Antigua Convention Implementing Act of 2005

The Inter-American Tropical Tuna Commission (IATTC) adopted the Antigua Convention (Agenda Item C.2.a, Attachment 5) which cannot be fully implemented without U.S. ratification and implementing Federal legislation. The Administration, through the Department of State, has put forward a bill to implement the Antigua Convention (Agenda Item C.2.a, Attachment 6), but the bill has not been introduced in Congress.

Central to the concerns of the Committee and the Highly Migratory Species (HMS) Advisory Bodies is the Administration Bill's lack of specificity on the membership of the U.S. Delegation and Advisory Bodies to the IATTC and the funding and legal status of such representatives when travelling on IATTC business. One possible solution discussed by the Committee was to include language in the legislation that is similar to the language under Title V of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act concerning U.S. representation to the Western and Central Pacific Fisheries Commission.

The Committee agreed there is a need for specificity on U.S. representation in the IATTC forum and discussed ways the Council could provide recommendations to National Marine Fisheries Service and the U.S. State Department on any subsequent versions of the Administration Bill on this matter. The Committee recommends the Council direct the HMS Advisory Bodies review existing draft bill language, the draft State-Commerce-Councils Memorandum of Understanding, and any other relevant materials, and develop recommendations for proper representation for the Pacific Council to the IATTC.

### California State Legislative Matters

In a written statement to the Council, the Highly Migratory Species Advisory Subpanel requested Council Staff review two items from the California State Legislature; Assembly Bill Number 2712 which would require the California Department of Fish and Game to develop a State Forage Species Management Plan (Agenda Item C.2.a, Attachment 8) and California Concurrent Resolution Number 85, relative to the Pacific bluefin tuna (Agenda Item C.2.a, Attachment 9).

The Committee's primary focus has typically been on Federal legislation, but because both Assembly Bill 2712 and California Concurrent Resolution 85 directly mention the Council and/or its Coastal Pelagic Species Fishery Management Plan, the Committee briefly reviewed these matters. Because the Council's recommendations on these issues have not been solicited by the California Assembly, lobbying restrictions prevent the Council from commenting directly. However, the Committee notes that individual Council members and other members of the Council family are not restricted from contacting California Assembly members.

Regarding California Assembly Bill 2712, the Committee reviewed materials submitted by the California Wetfish Producers Association (Agenda Item C.2.d, Supplemental Public Comment 2). The Committee appreciates the efforts of the CWPA on this matter and generally agrees with their comments.

Regarding California Concurrent Resolution 85, the Committee was supportive of the changes to the resolution as presented in Agenda Item C.2.a, Supplemental Attachment 13 and offers no other comments at this time.

### Vessel Discharge Permitting

On March 30, 2005, the U.S. District Court for the Northern District of California ruled that the Environmental Protection Agency regulation excluding discharges incidental to the normal operation of a vessel from discharge permitting exceeded the Agency's authority under the Clean Water Act. Because the Court's decision is not limited to vessels with ballast water tanks, it

appears to implicate an extremely large number of vessels (including recreational vessels) and a wide range of discharges.

Subsequently, several bills have been introduced in the Congress (Agenda Item C.2.a, Supplemental Attachment 10) to address this issue. Mr. Dave Whaley, Senior Professional Staff of the U.S. House Subcommittee on Fisheries, Wildlife and Oceans, brought this matter to the Council's attention and requested Council comments on these bills.

Of the bills that have been introduced, the Committee preferred the comprehensive approach of *H.R. 5594, the Vessel Discharge Evaluation and Review Act* introduced by U.S. Congressman Don Young (R-AK) because it exempts both recreational and commercial vessels from unnecessary discharge permitting requirement set to go into effect in September 2008. The Committee did not understand why H.R. 5594 has separate length categories for recreational, non-fishing commercial vessels, and commercial fishing vessels. The Committee recommends the Council direct the Council Executive Director to send a letter to Mr. Dave Whaley, supporting the bill, but suggesting that legislation in the U.S. House of Representatives be amended to provide a broad exemption for all recreational and commercial vessels below 125 feet in length from the discharge permitting requirements.

#### Future Meeting Plans

The Committee noted the draft agenda for the June Council meeting includes a proposed Committee meeting on Saturday June 7. Because there are no urgent legislative matters anticipated in the near future and due to the heavy workload of the June Council meeting the Committee recommends postponing the meeting until September.

The Committee adjourned at 3 p.m.

#### Legislative Committee Recommendations

- 1. Direct the Council Executive Director to send a letter to Senator Smith conveying Council support for H.R. 5425.**
- 2. Direct the Council Executive Director to send a letter to U.S. Senator Smith that reiterates the recommendations on H.R. 1187 contained in Council's October 9, 2007 letter, expresses the same concerns regarding S. 2654, and request that any new legislation include clarifying language on fishery regulatory authority within National Marine Sanctuaries.**
- 3. Direct Council staff to develop a position statement for the Council delegation to the May CCC meeting that reaffirms the Council's perspective on fishery authority within National Marine Sanctuaries.**
- 4. Direct the HMS advisory bodies to develop recommendations on Council representation to the U.S. Delegation and Advisory Bodies to the IATTC, which the Council can convey to the National Marine Fisheries Service and the U.S. Department of State.**
- 5. Direct the Council Executive Director to send a letter to Mr. Dave Whaley, supporting H.R. 5594, but suggesting that legislation in the U.S. House of Representatives be amended to provide a broad exemption for all recreational and**

**commercial vessels below 125 feet in length from the discharge permitting requirements.**

- 6. Schedule the next meeting of the Committee for the September Council meeting unless Council staff or Committee members identify an urgent matter in the interim.**

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04/09/08