

**LEGISLATIVE COMMITTEE REPORT ON MAGNUSON-STEVENSON ACT
REAUTHORIZATION PRIORITIES AND OTHER LEGISLATIVE MATTERS**

The Legislative Committee (LC) met via webinar on Wednesday, June 11,¹ and in person on Thursday, June 19.² During the webinar, the LC discussed H.R. 4742 (Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act), the House Magnuson-Stevens Act (MSA) reauthorization bill, and the Senate's discussion draft of an MSA reauthorization bill. At that time, the LC tasked Council staff with drafting a report with points to be made in a joint letter to House and Senate principals. This draft was circulated at the onset of this Council meeting to assist other advisory bodies in preparing their statements to the Council. During the June 19 meeting, the LC considered the draft report on MSA reauthorization before discussing other Federal legislation.

The LC recommends the following points and recommendations to the Council.

Council Letter on MSA Reauthorization Issues

The LC recommends the Council task the Executive Director with sending a letter to Representative Doc Hastings and Senator Mark Begich with recommendations on MSA reauthorization. While the comment period for the Senate Staff Discussion Draft closed June 2, 2014, and there are elements in the Senate Staff Discussion Draft that are not included in HR 4742, it is felt the principals in both houses of Congress should be aware of the Council perspective on these matters as the legislative process on MSA reauthorization progresses.

HR 4742

1. With regard to the section describing consistency under federal laws³, the LC recommends the Council express support for the language mandating that the MSA control when there is any conflict with the National Marine Sanctuaries Act or the Antiquities Act. Regarding language about the intersection between the MSA and the Endangered Species Act (ESA), the LC noted it is unclear whether the bill intends to have the Councils select the appropriate incidental catch rate for ESA-listed fish (such as some salmon stocks) caught under MSA authority, or whether current ESA processes

¹ The webinar was attended by committee members Dr. David Hanson, Mr. David Crabbe, Ms. Dorothy Lowman, and Mr. Dan Wolford; Council Executive Director Dr. Donald McIsaac, and Pacific Council staff Ms. Jennifer Gilden. Several other people attended: Susan Chambers (GAP), Miako Ushio (NOAA), Jamie Goen (NOAA), Jessi Doerpinghaus (WDFW), Peter Flournoy (International Law Offices of San Diego), Theresa Labriola (Wild Oceans), Tara Brock (Pew Charitable Trusts), Marci Yaremko (CDFW), Jennifer Quan (WDFW), Gway Kirchner (ODFW), Michele Culver (WDFW), John Cross (Pew Charitable Trusts), Yvonne deReynier (NMFS), Rod Moore (WSPA), Steve Bodnar (Coos Bay Trawlers Assoc.), Corey Niles (WDFW), and Troy Buell (ODFW).

² The June 19 meeting was attended by Dr. David Hanson, Mr. David Crabbe, Ms. Dorothy Lowman, Mr. Dan Wolford, Mr. Buzz Brizendine, and Mr. Dale Myer; Council Executive Director Dr. Donald McIsaac; Pacific Council staff Ms. Jennifer Gilden; and Mr. Rod Moore, Mr. Corey Niles, and Ms. Jessi Doerpinghaus.

³ Sec. 5 in MSA as revised by HR 4742; page 15 of annotated copy (Agenda Item C.3.a, Attachment 3)

would determine the incidental take rate, , and Councils would then adopt conforming regulations; Council staff has yet to be able to determine Congressional intent. The Council previously adopted a position on this matter advocates for an open and transparent process for the selection of ESA-related fishery impact rates with Council involvement, such as occurred in the case of Lower Columbia River Tule Fall Chinook. The LC recommends the Council support the section on Fishery Impact Statements as a solution to the current problems associated with National Environmental Policy Act implementation.⁴

2. While the LC does not recommend the Council object to overarching standards for the implementation of electronic monitoring programs, it believes there should be some exemption for programs that already exist or that are nearly ready to be implemented.⁵
3. The LC recommends that rebuilding time adjustments or exemptions include the category of instances when a rebuilding plan would otherwise be required, but is not either because fishing is not the cause of the stock's depletion, and/or because fishing restrictions cannot correct the depleted condition.⁶
4. The LC supports the change in HR 4742 (as compared to the earlier discussion draft) that allows use of electronic monitoring for enforcement purposes.⁷
5. The LC supports the use of the asset forfeiture fund for use in the areas in which the fines were collected.⁸
6. The LC reaffirms its support for the REFI Act (HR 2646), which has been incorporated into HR 4742, and encourages Congress to pass this legislation expeditiously, either as part of MSA reauthorization or separately.
7. The LC supports the newly-added language that allows the use of data for marine spatial planning in order to ensure access to fishing grounds and for national security purposes.⁹
8. The LC believes the newly-added language that requires the Secretary to publish the estimated cost of recovery from a fishery resource disaster with 30 days of the disaster determination is impractical.¹⁰
9. State jurisdiction over Dungeness crab should be extended, as done in the Senate discussion draft.¹¹

Senate Discussion Draft

1. The Senate discussion draft includes requirements for a great deal of new science and reporting that would require more staff and funding, and could decrease flexibility of individual Councils. For example, under Section 404(e), the draft would require stock assessments for every stock of fish that has not already been assessed, subject to appropriations; and under Section 303(a)(14), would require annual catch limits (ACLs) for forage fish fisheries to take into account “the feeding requirements of dependent fish

⁴ Sec. 303(d) in MSA as revised (page 65 of annotated copy)

⁵ MSA as revised (page 152 of annotated copy)

⁶ MSA Sec. 304(e)(4)(ii) as revised (page 81 of annotated copy)

⁷ MSA as revised (page 152-153 of annotated copy)

⁸ MSA Sec. 404(3) as revised (page 135 of annotated copy)

⁹ Sec. 402(b)(5) as revised and amended by Del. Bordallo (page 132).

¹⁰ Sec. 312(a)(1)(B) as revised and amended by Rep. Runyan (page 112)

¹¹ Sec. 306(i), page 101.

throughout [their] range.” A substantial amount of new science would be required for both of these provisions, given that the Pacific Council manages 119 stocks of fish.

2. The definition of “subsistence fisheries” needs to be made more specific. As it currently stands, it could apply to recreational fishers who bring fish home for consumption.¹²
3. The section on fishery ecosystem plans should be reconsidered. As currently written, the high standards included in that section could have a chilling effect on the development of Fishery Ecosystem Plans.¹³
4. The LC feels the wording to streamline the National Environmental Policy Act/MSA process is insufficient, and instead supports the solution in HR 4742.¹⁴
5. The electronic monitoring section in the discussion draft contains an excessive amount of detail regarding requirements and timelines, and should be made more flexible.¹⁵

The LC recommends the Council highlight support for the Senate illegal, unreported, and unregulated definition (including the importance of unreported catches), which contains elements critical to achieving a level playing field for U.S. fisheries in the international arena.

Other issues

The LC recognizes that proposed legislation addresses several Council priorities, but notes that there are several issues important to the Pacific Council that remain unaddressed by both the House and Senate and would like to see them incorporated into a bill reauthorizing the MSA. Relevant topics include not requiring revision of rebuilding plans when there are minor changes in stock status (the “noise vs. signal” issue), better allowing Councils to consider the needs of fishing communities in developing rebuilding plans, exploring flexibility for fishery impacts on data-poor species when the precautionary approach becomes a bottleneck for healthy mixed-stock fisheries, and several issues related to highly migratory species fisheries. The LC recommends the Council continue to draw attention to these concerns.

Highly migratory species issues include designating one Commissioner seat on Inter-American Tropical Tuna Commission for the Pacific Council; expanding state enforcement authority to all vessels that fish directly offshore of the territorial sea within the state-given boundaries; enhancing enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity; changing “vessels” to “vessel” in the IUU certification section; and providing flexibility in observer requirements.

It would be useful to clarify in Section 302(i)(A)(3) that Council discussion of international negotiations, such as proposals and counter proposals in the recent the US-Canada Albacore Treaty negotiations, are clearly an eligible topic for discussion during closed sessions of Council meetings. It would also be useful to include a carryover exception to allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided the SSC finds that such a carryover will have negligible biological impacts, as well as clarifying current MSA language about the SSC recommending true biological overfishing limits (OFLs), and not policy decision-dependent annual catch limits related to social, economic, or risk factors.

¹² Sec. 3(42A), page 13.

¹³ Sec. 303B, page 74-76.

¹⁴ Refers to Sec. 304(i) of the MSA; page 157 of annotated MSA; see also page 84

¹⁵ Page 158-159 of annotated MSA.

Other Federal Legislation

The LC discussed S. 2094, the Vessel Incidental Discharge Act. While the Council has not been asked to comment on S. 2094, the LC is in unanimous support of Section 7(a), which provides for the current exemption for commercial fishing vessels (including recreational charterboats) to be made permanent. The LC recommends the Council support making this exemption permanent by any legislative vehicle possible, in the event the Council is asked for comment after the June Council meeting.

The LC also discussed S. 2198 and H.R. 4039, which both deal with drought relief issues in California and southern Oregon. The LC is very concerned that these bills, and several companion bills, are dangerous to healthy salmon production. The LC endorses the points made in opposition to these bills as expressed in the letter from the Golden Gate Salmon Association (Agenda Item C.3, Attachment 9). The LC recommends the Council authorize the expression of opposition to drought relief bills that are deleterious to salmon populations, in the event that the Council is asked for comment after the June Council meeting.

The Council is on record for supporting the Revitalizing the Economy of Fisheries in the Pacific Act (S. 1275). The LC notes that similar refinancing relief has been proposed in an MSA reauthorization bill and a Coast Guard authorization bill. The LC recommends the Council endorse support for the refinancing provisions in S. 1275, if the Council is asked to comment on other related bills after the June Council meeting.

The LC also discussed the Senate Resolution honoring Billy Frank, Jr. and his many contributions to contemporary salmon recovery and management. The LC would like to draw the Council's attention to this resolution, which is included in full in Agenda Item C.3.a, Attachment 5, to acknowledge his contributions in the Pacific Council arena and elsewhere.

Finally, the LC discussed recent reports in the media about the President's intent to take new actions to protect and preserve the ocean. This includes a large marine protected area in the South Pacific, and efforts to combat illegal fishing, address seafood fraud, and prevent illegally caught fish from entering the marketplace. It is expected that there will be an open comment period that will be a precursor to an Executive Order, and, if so, the LC can add this matter to a future agenda.

Future Meeting Planning

The LC recommends meeting at the onset of the September Council meeting in Spokane, and via webinar in advance if there are significant legislative developments over the course of the summer.

PFMC
06/25/14