

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (Committee) convened at 1:00 p.m. on Friday, April 9, 2010. In attendance were Committee members Mr. Rod Moore (Vice Chair), Pacific Fishery Management Council (Council) Vice Chair Mr. Dan Wolford, Ms. Dorothy Lowman, Mr. Dale Myer, and Mr. Gordy Williams. Also present were Council Executive Director Dr. Don McIsaac, Council Deputy Director Dr. John Coon, Council Assistant to the Executive Director Mr. Don Hansen, and Council Staff Officer Mr. Mike Burner. Additionally, the following members of the Council's Highly Migratory Species Advisory Subpanel (HMSAS) attended the session; Mr. Doug Fricke (HMSAS Chair), Mr. August Felando, Mr. Peter Flournoy (HMSAS Alternate), Ms. Linda Buell, Mr. Steve Foltz, and Mr. Bill Sutton.

The Committee noted that there has not been a recent Congressional request for Council input on legislative matters, including the two bills the Committee focused on for this meeting, *S. 2870 - International Fisheries Stewardship and Enforcement Act*, and *H.R. 4363 - National Sustainable Offshore Aquaculture Act of 2009*. Therefore, the Committee has prepared the following comments for the purpose of updating the Council on these matters and to provide recommendations that could be submitted in response to future Congressional inquiries at the discretion of the Council or the Council's Executive Director.

S. 2870 - International Fisheries Stewardship and Enforcement Act

This bill would establish uniform administrative and enforcement procedures and penalties for the enforcement of a variety of fishery related statutes (the High Seas Driftnet Fishing Moratorium Protection Act, the Pacific Salmon Treaty Act of 1985, the Dolphin Protection Consumer Information Act, the Tuna Conventions Act of 1950, the North Pacific Anadromous Stocks Act of 1992, the South Pacific Tuna Act of 1988, the Antarctic Marine Living Resources Convention Act of 1984, the Atlantic Tunas Convention Act of 1975, the Northwest Atlantic Fisheries Convention Act of 1995, the Western and Central Pacific Fisheries Convention Implementation Act, and the Northern Pacific Halibut Act of 1982).

The bill would also amend existing legislation by implementing the technical corrections regarding U.S. representation to the Western and Central Pacific Fisheries Commission (WCPFC) and the appropriate criteria specified under the U.S./Canada agreement on Pacific Whiting, implement the Antigua Convention, and reauthorize certain statutes.

The Committee noted that the technical corrections on implementation of the WCPFC and the U.S./Canada agreement on Pacific Whiting under Title III are non-controversial, overdue, and the sole purpose of related legislation (S.2871). Also, implementation of the Antigua Convention will take place in August 2010 and, although the U.S. is signatory to this agreement, legislation similar to that under Title IV is needed to invoke the required instruments of U.S. ratification for full U.S. participation. The Committee agreed that S.2870 addresses too broad a range of issues and recommends that Title III and Title IV under S.2870 be removed and treated expeditiously under separate legislation.

Title I - Administration and Enforcement of Certain Fishery and Related Statutes

Penalties proposed under S. 2870 are considerable and are substantially increased from the penalties in existing statutes. Maximum monetary fines can reach \$250,000 per day and forfeiture provisions could include the confiscation of property other than vessels, gear, and cargo. The Committee believes that these penalties are severe and do not necessarily fit the violations. The Committee notes that penalties under existing acts have been adjusted for inflation over the years and are not in need of revision.

S.2870 establishes uniform enforcement provisions across several fishery statutes. The Committee noted that enforcement and economics vary by fisheries. Therefore, any enforcement program for fisheries under international statute should provide flexibility to ensure that penalties and forfeitures are appropriate for each fishery and its potential violations.

Title II – Law Enforcement and International Operations

Subject to appropriations, S.2870 would authorize \$30 million a year over five years for the purpose of establishing an International Fisheries Enforcement Program within the Office of Law Enforcement of the National Marine Fisheries Service to enhance international fishery enforcement. The Committee does not have any specific comments on Title II other than to recommend that this level of authorization should be accompanied by further explanation of the intent for the funds.

Title III – Miscellaneous Amendments

The Committee continues to support rapid passage of the technical corrections regarding U.S. representation to the Western and Central Pacific Fisheries Commission and the appropriate criteria specified under the U.S./Canada agreement on Pacific Whiting that are included in Title III of S.2870. The Committee notes that a related bill, S.2871 deals solely with these corrections and represents a concise and perhaps more expedient way of achieving their implementation.

Title IV – Implementation of Antigua Convention

S.2870, Title IV, Section 404 would amend the Tuna Convention Act of 1950 to specify that there will be five U.S. Commissioners appointed to the Inter-American Tropical Tuna Commission (IATTC) while the Antigua Convention, Article 6, paragraph 2 specifies that there will be four U.S. IATTC Commissioners. Neither the Committee nor the HMSAS could identify the rationale for this discrepancy and the Committee recommends that this discrepancy be corrected or justified.

S.2870, Title IV, Section 406 would amend language in the Tuna Convention Act of 1950 pertaining to rulemaking provisions and the promulgation of regulations. However, the Tuna Convention Act of 1950 under Section 6 (16 U.S.C. 955) has three subsections [(a)-(c)] pertaining to rulemaking authority and S.2870 only amends subsections (a) and (b) leaving the existing and potentially antiquated language in subsection (c). The Committee recommends that S.2870 be revised to include amendments to subsection (c) per Article VII(c) of the Antigua

Convention to recognize that IATTC recommendations will be made pursuant to the following paragraph under Article VII(c):

“adopt measures that are based on the best scientific evidence available to ensure the long-term conservation and sustainable use of the fish stocks covered by [the Antigua Convention] and to maintain or restore the populations of harvested species at levels of abundance which can produce the maximum sustainable yield, *inter alia*, through the setting of the total allowable catch of such fish stocks as the [IATTC] may decide and/or the total allowable level of fishing capacity and/or level of fishing effort for the [Antigua]Convention Area as a whole”

S.2870, Title IV, Section 408 would amend the tuna Conventions Act of 1950 to include Title I of S.2870 pertaining to enforcement provisions. For the reasons stated above under Title I, the Committee recommends that Section 408 be removed from S.2870.

H.R. 4363 - National Sustainable Offshore Aquaculture Act of 2009.

The Committee reviewed the legislation and provides the following comments by section.

Section 3, NOAA Office; Advisory Board - The Committee recommends the bill be amended to include tribal representation on the Advisory Board.

Section 4, Regional Programmatic Environmental Impact Statements - Subsection (f) prevents the Secretary of Commerce from issuing any permit before all Regional Programmatic Environmental Impact Statements have been issued. The Committee recommends easing this restriction so that permits within a given region cannot be issued until that region's Environmental Impact Statement is issued.

Section 5, Offshore Aquaculture Permitting – Subsection (j)(1)(D) states that “Stocked fish shall be no further than two generations from the relevant wild stock, and shall not have been exposed to intentional selective breeding.” The Committee appreciates the merits of preserving the genetic integrity of native stocks, but requests additional rationale and scientific justification for this restriction and recommends that the bill’s language be amended to clarify which aquaculture facility operations would be subject to this restriction.

Subsection (j)(1)(G) prevents wild-caught fish from being grown out to market size at a facility permitted under the Act. The Committee could not identify a reasonable justification for prohibiting the practice of growing out of fish that are sustainably and legally harvested and recommends the prohibition be removed.

Subsection (j)(5)(A)(i) prohibits the use of wild fish as feed unless they are “sourced from populations with ecosystem-based management measures in place.” The Committee noted that ecosystem-based management principles around the country vary by degree and practice. The Committee recommends that this term be explicitly defined because it is not clear to the Committee which populations would and would not qualify for use as feed as currently described.

Subsection (j)(5)(C) expresses a desire to maximize the utilization of alternatives to fishmeal, fish oil and fish byproducts when sourcing aquaculture feeds. The Committee noted that the term “fish byproducts” is defined in Section 14 to not include bycatch. Overall, the Committee agreed with the bills apparent precautionary approach regarding the use of wild-caught species as feed, but noted that unavoidable bycatch and offal from well-managed fisheries could serve as a responsible source of fishmeal. The Committee recommends that the bill be amended to both maximize the use of alternate feeds while minimizing the waste of fish byproducts and unavoidable bycatch.

Subsection (j)(7)(C) prohibits siting an offshore aquaculture facility on or attached to an oil or gas platform. The Committee described this provision as overly prohibitive and recognized potential efficiencies in siting aquaculture facilities in areas already occupied by such platforms. The Committee recommends that the bill be amended to include provisions for using these existing structures in an environmentally and economically sensible manner.

Section 8, Compatibility with Other Uses; State Input - Subsection (a) describes the entities the Secretary shall consult with when assessing the compatibility of aquaculture facilities with other activities within the Exclusive Economic Zone, but does not specifically mention tribal entities. The Committee recommends that the bill be amended to require tribal consultation regarding the compatibility of aquaculture facilities with tribal activities and tribal usual and accustomed areas.

Subsection (e)(2)(A) allows coastal States to opt-out of aquaculture activities either by location, by species category, or both. The Committee continues to prefer that these provisions be specified as a requirement for a State to out-in rather than opt-out. Like the existing opt-out provisions, the Committee recommends that States have the ability to opt-in to aquaculture activities by location and/or by species category.

Section 11, Enforcement – Subsection (f) allows any person to commence a civil suit regarding permitted aquaculture activities. This provision creates an unnecessary disincentive to participate in aquaculture and would likely generate a litigious atmosphere. The Committee recommends that provisions for civil suits be removed.

Section 14, Definitions – As noted above, the Committee recommends that H.R.4363 be amended to include explicit definitions of the terms “ecosystem-based management measures” and “native fish” relative to their use in the bill.

Emergency Temporary Water Supply Amendment

At its March meeting, the Committee reviewed a February 18, 2010 letter to U.S. Senator Feinstein (CA) signed by 11 members of Congress (March 2010, Agenda Item D.3.a, Supplemental Attachment 4) regarding legislation proposed by Senator Feinstein that may override protection for threatened and endangered fish stocks and fisheries of the San Francisco Bay-Delta system for the purpose of easing the effects of an ongoing drought in the region. The Committee recommended the Council Executive Director send a letter to Senator Feinstein requesting the specific language of the proposed legislation and clarification on whether or not the amendment would address potential disaster relief for salmon fishermen.

Since the March Council meeting Council staff have been in contact with Senator Feinstein and have learned that Senator Feinstein and others, working with the U.S. Department of the Interior and stakeholders, has addressed the drought concerns through other means such as delaying scheduled diversions to municipalities in lieu of irrigation needs. At this time, Senator Feinstein does not have plans to introduce legislation. Council staff will continue to track this matter, including the potential for legislation pertaining to salmon disaster relief, and will report back to the Committee.

Future Meeting Plans

The Committee did not identify an urgent need to meet at the June 2010 Council meeting and recommends that the Council balance the need for a June Committee meeting with the heavy proposed workload of the June Council meeting under Agenda Item K.3.

The Committee adjourned at 3:30 p.m.

Legislative Committee Recommendations

- 1. Review and approve Committee recommendations on S.2870 and H.R.4363 with the expectation that these recommendations could be submitted in response to future Congressional inquiries at the discretion of the Council or the Council's Executive Director.**
- 2. Balance the need for a June Legislative Committee meeting with the heavy proposed workload of the June Council meeting under Agenda Item K.3.**

PFMC
04/14/10