

LEGISLATIVE COMMITTEE REPORT

The Legislative Committee (LC) met September 19, 2005. The LC discussed a draft “Staff Working Draft” bill for the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) distributed by staff of the U.S. Senate Committee on Commerce, Science, and Transportation (Agenda Item B.3.a., Attachment 5). Additionally, at the request of Oregon Senator Gordon Smith, the LC reviewed S. 1549, the *Cooperative Hake Improvement and Conservation Act of 2005* (Agenda Item B.3.a, Attachment 4).

The LC noted the small amount of time to address two substantial agenda items and recommends consideration of a longer meeting in the future for situations such as this one. Further, the LC noted only three appointed members were in attendance at the meeting and requested the Council Chairman address the current membership of the LC at this meeting.

MSA Reauthorization

Staff of the U.S. Senate Committee on Commerce, Science, and Transportation requested Council comments on the content of the Staff Working Draft and on any additional national or regionally-specific issues the Council would like to be considered for inclusion in an introduced bill. Based on time management considerations for the two agenda tasks, the LC elected to consider primarily the subject of matters omitted from the Staff Working Draft, and schedule a thorough review of the entire draft bill at a later meeting. The LC focused their discussion on the following three significant omissions with the understanding there was also insufficient time:

1. MSA and National Marine Sanctuaries Act

The LC discussed fishery management authority in national marine sanctuaries and recommends highlighting the Council’s June 2005 decision to support the position adopted by the Regional Fishery Management Council Chairs in April 2005. This position is as follows:

Fishery management authority in national marine sanctuaries, for all species of fish as defined in the current MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority shall not be limited to species of fish covered by approved fishery management plans (FMPs), but shall include all species of fish as defined in the current MSA and shall cover the full range of the species in the marine environment. Prior to reaching decisions on the management regulations affecting fishing in NMS waters, a RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.

In addition to the proposed changes in the MSA above, the RFMCs also recommend the National Marine Sanctuaries Act be amended to achieve jurisdictional clarity.

(The proposed amendments to the National Marine Sanctuaries Act are available in the June 2005 Council meeting record and available for reference at this meeting, but is not included in this statement.)

2. Rebuilding Requirements

The LC recommends highlighting to the U.S. Senate Committee on Commerce, Science, and Transportation staff the Council's decision to support removal of the arbitrary ten-year rebuilding time frame for overfished species and recommends subsequent draft bills on MSA reauthorization include the position adopted by the Regional Fishery Management Chairs. There was discussion of referencing the recent opinion from the U.S. Court of Appeals for the Ninth Circuit regarding darkblotched rockfish and the ten-year rebuilding boundary.

3. Use of VMS Data for Science and Management

The LC was encouraged by the draft bill's language on cooperative enforcement agreements between federal and state marine enforcement agencies, including the sharing of data from satellite based vessel tracking systems. The LC recommends extending the use of data collected using a vessel monitoring systems to state and federal scientific and management applications. The LC discussed the need to ensure adequate confidentiality protections.

S. 1549 Cooperative Hake Improvement and Conservation Act of 2005

The LC:

- Reviewed key components of S. 1549.
- Initially considered general complications between the bill and the West Coast groundfish trawl individual quota program (TIQ) considered in and Environmental Impact Statement.
- Considered specific individual matters associated with bill language.
- Passed a motion reaffirming the Council's June 2005 position on legislation that could preempt the Council's development of a trawl IQ program.

The LC reviewed major provisions of the bill and developed the following specific recommendations in no order of priority:

1. The LC characterized their input as driven by a timely response to Senator Smith, but notes that a thorough review by the Council's TIQ advisory bodies could provide a more comprehensive response. The LC also noted that data was not available at this meeting to assess the appropriateness of provisions such as landing requirements and window periods for identifying qualified participants.
2. The LC requests clarification on the definition of processor in the bill. For example, would it include fish reduction plants? The LC also notes that fish may be landed at one facility and subsequently trucked to another facility and it was not clear to the LC as to which processor would receive the privilege under these conditions.
3. Under this bill, fisherman's cooperative shares may be transferred to persons holding limited entry trawl permits, and processor cooperative shares can be transferred to anyone. This flexibility creates the potential for vertical integration of the industry and the transfer of shares to foreign interests. The LC recommended consideration of third

party oversight of price negotiations, review of the current limitations on acquiring a limited entry trawl permit, and addition of United States ownership requirements.

4. The bill provides 1% of the Pacific whiting allocation to the shore-based sector for the incidental catch of Pacific whiting in other fisheries. The LC questioned whether this was an adequate value for incidental fisheries and notes that this leaves little or no room for open access fisheries. The LC recommends reviewing the current set-aside level for incidental catch and providing a small allotment for open access fisheries with a set-aside cap of no more than 6% of the Pacific whiting allocation which would be deducted from the shore-based sector.
5. The LC agrees with the 3% fee on exvessel revenue to fund the program and the provision for state access to these funds.
6. To avoid a conflict with Council and NMFS work on Amendment 18 to the Groundfish Fishery Management Plan, the LC recommends that, if this bill passes, the Secretary of Commerce establish temporary caps on the bycatch of non-whiting species until such time as bycatch caps under Amendment 18 are implemented.
7. The bill requires NMFS to implement the required regulations within six months of the bill becoming law and states that the program would not be delayed by failure to amend the Council's groundfish FMP. The LC notes that six months is not an adequate time frame for implementing regulations and estimated a 12 to 18 month expectation is more realistic.
8. The LC noted discomfort with what is essentially a Congressionally mandated change to a Council FMP and had concerns about the Council's future flexibility to change provisions of the program if the bill becomes law.
9. The funding needed for initial implementation of S. 1549 includes what is required to complete the intersector allocation and an analysis of the share program for whiting and incidental catch. At this point, the additional amount needed for analysis of the share program is anticipated to be similar to that required for the TIQ program. The analysis needed will include consideration of the interactions between the program contained in S. 1549 and the TIQ alternatives the Council has already developed for analysis. The additional amount needed to complete this work and support implementation actions is estimated at \$1.5 million.
10. The LC notes that, if passed into law, this bill would change the way in which markets for shore-based Pacific whiting are created and recommends close review of the program by an outside entity such as the U.S. Department of Justice. The LC was encouraged by the requirement for program review by the Secretary of Commerce every five years. However, it is not clear what provisions could be changed if a review determines changes are appropriate.
11. Mindful of confidentiality issues, the LC recommends the program would be strengthened by a requirement for the collection of economic data from processors associated with this program. The collection of economic data would greatly improve the ability of the Secretary of Commerce and the Council to review the program.

Lastly, the LC reiterated concerns regarding a legislative mandate on Council staff and passed a motion reaffirming the Council's expressed opposition (June 23, 2005 letter to U.S. Secretary of Commerce Carlos M. Gutierrez, Agenda Item B.3.a, Attachment 1) to any Congressional action that could pre-empt the Council's development of an individual fishing quota program. Given the time constraints, it was expected that further discussion of the basis for this recommendation would occur when the Council takes up Agenda Item B.3.

LC Recommendations:

- 1. Provide Council recommendations on the discussion draft bill on MSA reauthorization, to the U.S. Senate Committee on Commerce, Science, and Transportation, as recommended in this report.**
- 2. Provide Council recommendations on Senate Bill 1549, Cooperative Hake Improvement and Conservation Act of 2005, to Senator Smith's office, as recommended in this report.**
- 3. Direct Council staff to track amendments to Senate Bill 1195, the National Offshore Aquaculture Act of 2005, for discussion at the November 2005 LC meeting.**
- 4. Schedule further review of MSA at the November Council meeting.**

PFMC

09/22/05