

From "Donald.McIsaac" <Donald.McIsaac@noaa.gov>

Date Tuesday, October 25, 2005 10:29 am

To Jennifer LaBarre <jennifer.labarre@noaa.gov>

Cc Jim Balsiger <Jim.Balsiger@noaa.gov>, craig.mclean@noaa.gov, Mike Burner <Mike.Burner@noaa.gov>, Kit Dahl <Kit.Dahl@noaa.gov>, Mark Helvey <Mark.Helvey@noaa.gov>, "Stephen P. Freese" <Steve.Freese@noaa.gov>, Joe Scordino <Joe.Scordino@noaa.gov>, John Coon <John.Coon@noaa.gov>, Marija Vojkovich <mvojkovich@dfg.ca.gov>, Steve Copps <Steve.Copps@noaa.gov>

Subject Re: NOAA Letter to PFMC

Jennifer LaBarre: please forward this to the other people on the call last Thursday.

Jim and Craig-

Thanks for the phone call last Thursday in advance of the letter that is attached as part of this email reply. When we received the letter and read it, three questions came immediately to mind that did not arise during the phone call. These three questions lead to another question, one of process: will someone in a NOAA leadership capacity be able to attend the upcoming Council meeting to answer these three content questions and any others that Council Members may ask? As you know, when this comes up before the Council Tuesday November 1 in San Diego, the Council is scheduled for final action.

The three questions:

1. The July 19, 2005 conference call on this subject of a legal analysis of MSA/State authority versus NMSA authority indicated further legal review was underway and that the analysis requested by the Council would be provided by mid-October. The letter received was just over 2 pages in length and included no attached legal analysis. With the exception of one sentence on California State landing laws, the letter contained only one phrase relative to analytical substance: "Based on our review of existing factual and scientific evidence...." While this phrase was repeated several times, there was no evaluative review with the cover letter. No evidence cited, no legal analysis, no analytical rationale or concepts (again, other than the one California jurisdiction sentence). So, question #1: Can the legal analysis of the two possible avenues be provided to the Pacific Council?
2. A "water column" rationale was stated on the phone call for the conclusion that MSA authority would not be appropriate in closing Channel Island waters above the seafloor. However, the letter states the conclusion that closing the 1000 feet of water column above the Davidson Seamount seafloor is appropriately done under MSA. Hence question #2: What is the analysis of the "...factual and scientific evidence..." that concludes legally identified groundfish EFH in 1000 feet of benthic water column can be protected from all fishing gear in one location but not the next?
3. The citation of insufficiency of California State landing laws to cover the gap between MSA authority and species/activities not covered by MSA authority seems a distant practical threat at best, and doesn't seem to recognize instances of State reciprocity laws that we see in use in fisheries on the West Coast nor other examples where State laws compliment and allow enforcement of offshore federal fishing regulations. With regard to the practical threat that a boat from another State might fish in one of the closed areas around the Channel Islands and land in another State, the port of Brookings, Oregon is the closest such possibility. It is some 1000 miles from the narrow 3-6 mile patchworked closed areas around the Channel Islands, with any species of interest available much closer to Brookings. At today's fuel prices, a round trip to this nearest port of concern would cost nearly \$10,000 in fuel alone. This threat seems remote and distant as a practical matter, certainly less than routine enforcement concerns associated with the thousands of boats with California home ports near the CINMS. So, question #3: What State laws were reviewed and how did the practical threat of an extra-State boat fishing in these areas and landing outside California rank with the other practical threats evaluated?

Please advise as to the availability of personnel to address these and potentially other questions at the upcoming Pacific Council meeting.

Thanks,
Don

Jennifer LaBarre wrote:

| Attached.

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