
INTERNATIONAL LAW OFFICES OF SAN DIEGO

ASSOCIATED OFFICES

SEATTLE

JUNEAU

MEXICO CITY

www.international-law-offices.com

phf@international-law-offices.com

740 NORTH HARBOR DRIVE

SAN DIEGO, CA 92101-5806

established 1989

TELEPHONE

619.232.0954

FACSIMILE

619.923.3618

CELLULAR

619.203.5349

PETER H. FLOURNOY

Mr. Donald O. McIsaac
Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Re: Agenda Item C.3 and C.3.d Magnuson-Stevens Act Reauthorization
Implementation:

Dear Don:

Since I am neither a Council member, nor do I work for NMFS, I thought this might be an appropriate way to report to the Council on the international fisheries management questions I raised as a panel member on that subject at the work shop entitled Magnuson-Stevens Reauthorization Act: Working Together on Implementation.

First, I raised the issues surrounding the Act's amendments requiring Councils, in their FMPs for managed species, to set Annual Catch Limits (TCL). Sections 302(h)(6) and 303(a)(15). I pointed out that this poses particular problems for fisheries, such as that for yellowfin tuna in the Eastern Pacific, which while falling under the management cover of the IATTC, was not regulated and conserved by a TCL or a TAC, but rather by time and area closures. The representatives from NOAA-NMFS recognized the problem but did not have an immediate answer. However, representatives from NOAA-NMFS did acknowledge that if the RFMO had set a TCL or a TAC, the Council should follow the RFMO's lead in setting a TCL. I also questioned how this would interface with, e.g., the Tuna Conventions Act enabling the IATTC, which contains language indicating that no international fisheries restrictions, which are then formulated as regulations for U.S. vessels, shall operate unless the same constraints are applied equally by other nations to their fleets.

Second, under the amendment adding section 304(I), which focuses on the Council's obligations when a fishery is declared to be overfished, or approaching a state of overfishing, and the fishery is subject to an international agreement to which the U.S. is a party, I raised

two questions. With regard to the provision that indicates if the international organization has no conservation or rebuilding plan, section 304(I) applies, I raised the question of who makes this determination, and questioned whether the section would apply if the RFMO had a program but it was ineffective, i.e. is an ineffective measure equal to no measure, and who determines this under the statute? We have already had one such determination as to yellowfin under the IATTC, however, I don't believe that should necessarily settle the question. I also raised the question of what section applied – 304(I) or 304(e) if the RFMO did have an effective conservation program? Finally, I pointed out that Section 304(i)(2)(A) which requires the Council to recommend domestic regulations which take into account the impact of U.S. vessels on the stock, makes no sense in its application to a U.S. fleet competing in an international fishery where the U.S. fleet is catching only 10% or 20% of the fishery. In my power point presentation which should be available on the website (msra.webexone.com) I gave a hypothetical example how foolish this would be, handicapping the U.S. fleet while doing nothing to accomplish the conservation goals.

My last comment concerns Item C.3.d Public Comment entitled “Setting Annual Catch Limits for U.S. Fisheries: An Expert Working Group Report.” I would like to point out that this was done under the auspices and participated in by MRAG which is a British based organization which does most of the work for the MSC certifications you may have heard about. It therefore should be carefully examined and not just accepted without a critical reading. By the way, it answers none of the questions raised above concerning ACLs and their application to international fisheries.

Sincerely,

Peter H. Flournoy