

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON
LEGISLATIVE MATTERS

Antigua Convention

A proposed administration bill to implement the Antigua Convention requires amendments to the Tuna Conventions Act of 1950, as amended. The Highly Migratory Species Advisory Subpanel (HMSAS) has conducted a preliminary review of the bill entitled "OES draft, January 23, 2006" identified at the April meeting of the Council as Agenda Item c.2.a Attachment 6. The proposed bill makes substantial amendments to sections of the existing law; therefore, a careful legal review and analysis of the changes is required. To date this has not been forthcoming from National Marine Fisheries Service (NMFS) or National Oceanic and Atmospheric Administration (NOAA).

The HMSAS has numerous concerns with the draft legislation including, but not limited to, the deletion of embargo provisions, the increased enforcement penalties, and the absence of provisions to prevent inequitable treatment of the U.S. fleet in management and conservation measures. At this time the HMSAS expresses a strong objection to the proposed amendment of paragraph "c" of section 6, 16 USC 955c, (see pages 6-7 of Agenda Item C.2.a, Attachment 6). These provisions in the original act provide protection for the U.S. fishing fleet against being regulated by conservation and management measures that are not being followed by other countries participating in the same international fishery. The proposed bill makes unnecessary changes which weaken the existing provisions.

In addition, the proposed bill does not treat the Antigua Convention Advisory Committee in the same manner that the recently enacted enabling legislation for the Western and Central Pacific Fisheries Commission treats that advisory committee. The two advisory committees should have similar responsibilities and privileges. After further study and consultation by its members, the HMSAS will provide substantive language for the Council and/or the Council's Legislative Committee for their consideration. The HMSAS request this to be on the agenda for their next meeting.

SCR 85

The HMSAS has again reviewed this California senate concurrent resolution, the latest draft of which is labeled Agenda Item C.2.a, Supplemental Attachment 13. While a number of changes have been made in the legislature's apparent good faith effort to be more accurate, there remain misleading and incomplete statements in the "whereas" clauses. Because SCR 85 is still being considered by various legislative committees, the HMSAS will not comment on the current "whereas" clauses. The HMSAS disagrees with the Legislative Committee's statement that "because the Council's recommendations on these issues have not been solicited by the California assembly, lobbying restrictions prevent the Council from commenting directly." The HMSAS requests that the Council make known its views to the Council member from the California Department of Fish and Game, to be conveyed to the Legislature, the Governor, and

the Ocean Protection Council. The HMSAS encourages NMFS and NOAA to investigate how they became listed as supporters of SCR 85, particularly since the Council has received no guidance from these entities as to the interpretation of the Magnuson-Stevens Act amendments concerning total annual catch limits and their application to internationally managed fisheries. The HMSAS is, however, very concerned by the language in the “resolved” section of the resolution, which states in part “and the imposition and enforcement of catch limits for Pacific bluefin tuna in the United States exclusive zone” and recommends that the Council ask the California Senate to strike all the language on page 4 beginning after the word “resource” in line 36 to the end, which is the language previously noted. This language represents a misguided attempt to impose unilateral regulations, rather than action to implement internationally agreed measures which would apply to *all* countries in the international fishery. Further, while the HMSAS is aware of illegal, unreported, and unregulated (IUU) fishing in the North Pacific which is impacting salmon and albacore, it is unaware of any IUU fishing impacting North Pacific bluefin. Lastly, the HMSAS recommends the Scientific and Statistical Committee evaluate the priority which should be given to assessing North Pacific bluefin tuna as contrasted with other HMS species in the northern Pacific Ocean which may be in greater need of study.

A minority of the HMSAS (Meghan Jeans, Ocean Conservancy) supports SCR 85 regarding the conservation and management of bluefin tuna as amended and approved by the California Senate Committee on Natural Resources and Water on Tuesday, April 8, 2008 (Agenda Item C.2.a, Supplemental Attachment 13). The spirit and intent of the law is consistent with a precautionary approach to management and prioritizes the need for more informed, transparent, and scientifically based management of a species with high ecological and commercial value. Moreover, the clause requiring the imposition of catch limits for U.S. vessels targeting and catching bluefin tuna is both prudent and entirely consistent with the Council and NMFS’s obligations under the Magnuson-Stevens Act.

PFMC
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