

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (LC) met on Saturday, March 7. The meeting was attended by committee members Mr. David Crabbe, Ms. Dorothy Lowman, Mr. Dale Myer, Mr. Herb Pollard, Mr. Buzz Brizendine, and Mr. Dan Wolford; Council Executive Director Dr. Donald McIsaac, and Council staff Ms. Jennifer Gilden, Mr. Chuck Tracy, and Mr. Don Hansen. Several other people attended the meeting, including Ms. Heather Mann, Mr. Rod Moore, LCDR Gregg Casad, Brian Corrigan (USCG), and several students from Oregon State University.

The LC first heard a staff review of recent Federal legislation (Agenda Item I.1.a, Supplemental Revised Attachment 1). A few bills of note include HR 774, the Illegal, Unreported, and Unregulated Fishing Enforcement Act, which will be discussed below; HR 980, which would make permanent the vessel discharge exemption currently in place as a result of Congressional action in December; and HR 1335, which would reauthorize the Magnuson-Stevens Act (MSA) and is nearly identical to last year's HR 4742, introduced by Chairman Doc Hastings. HR 1335 will also be discussed below.

Status of the REFI Act

The REFI Act passed at the end of the last Congressional session and was signed into law by the President. It lowered the interest rate on the 2003 Federal buyback loan, and once implemented will save the groundfish fleet as a whole around \$1.3 million per year. However, since the Act passed, the situation has become more complicated and the loan has yet to be refinanced. National Marine Fisheries Service (NMFS) has offered to provide a detailed explanation of why the loan has not been refinanced, but it was not received by the time of the LC meeting. The Office of Management and Budget (OMB) has apparently indicated there may be a requirement for an additional Congressional appropriation of \$10.3 million to refinance the loan. In the current Congressional climate, such funds may be difficult to acquire. At the same time, there are questions about whether a referendum of permit holders is necessary. Section 312(d)(1)(A) of the MSA states that "If an industry fee system is necessary to fund the program, the Secretary *may* conduct a referendum on such system..." (Emphasis added).

Congressional staff for the Washington delegation have requested Council comment on this matter, and the LC recommends that the Council send a letter to President Obama with copies to the head of the OMB, NMFS, relevant Congressional representatives, and others. Recommendations for the main points of a Council comment letter are provided on the last page of this report.

HR 774, the Illegal, Unreported, and Unregulated Fishing Enforcement Act

The LC recommended sending a letter to the ranking member of the House Committee on Natural Resources in support of HR 774. The Council received a request from Mr. Matt Strickland, House Subcommittee on Water, Power and Oceans minority staff, to comment on the bill. Such a letter would comment on the Council's support for:

- The provision in HR 774 regarding addressing illegal, unreported, and unregulated (IUU) fisheries
- The recommendation to appoint a Pacific Council member to the Inter-American Tropical Tuna Commission (IAATC)
- The provisions implementing the Antigua convention

MSA Reauthorization Priorities

The LC reviewed the MSA reauthorization priorities listed in Agenda Item I.1.a, Attachment 2, and discussed possible additions and deletions suggested by advisory bodies at or since the June 2014 Council meeting. The LC kept all 21 priorities listed in Attachment 2 and added one related to confidentiality in discussions of international agreements. A list of the 22 priorities is shown in Appendix 1 to this report (the new priority is No. 22).

The LC also discussed whether any of the Council’s priorities could be addressed through the revision of National Standard 1 (NS1), which will be discussed at the April and June Council meetings. They agreed that although some priorities could be addressed through NS1, the proposed NS1 revisions are not yet final, so it is important to continue to pursue legislative solutions at this time.

MSA Reauthorization Activity

On March 5, Rep. Don Young submitted HR 1335. This is an MSA reauthorization bill that, apart from two differences, is essentially identical to HR 4742, introduced by Rep. Doc Hastings in the previous session of Congress. HR 1335 does not include the REFI Act that was included in HR 4742.

HR 1335 removes language that states that actions taken in accordance with section Sec. 7(d)(6) regarding fishery impact statements shall constitute fulfillment of the National Environmental Policy Act (NEPA)¹. This deletion essentially moots the proposed inclusion of NEPA principles and procedures into the MSA with regard to streamlining the MSA and NEPA processes and avoiding duplication. The LC recommends that the Council send a letter to Representative Young requesting reinstating the language, and emphasizing the need to coordinate the requirements of the two Acts in regard to environmental review. The letter should also provide the Pacific Council’s list of priorities.

The House Natural Resources Subcommittee majority staff have stated that they intend to pass the bill out of committee by July 4. It appears unlikely that a Senate bill will be released in the near future.

Future meetings

The LC recommends meeting next in conjunction with the June Council meeting.

Summary

In summary, the LC’s recommendations at this meeting include:

- Letter to President Obama and OMB regarding implementation of the REFI Act

¹ This language was removed from between what is now page 14 line 22-23 in the Young bill.

- Letter to House Committee on Natural Resources ranking member Rep. Raul Grijalva and other Committee members regarding HR 774, the Illegal, Unreported, and Unregulated Fishing Enforcement Act
- Letter to Rep. Young on HR 1335 in regard to NEPA implications
- Current list of Council priorities with addition of #22

PFMC
03/10/15

Appendix 2: Council Priorities for Reauthorization of the Magnuson-Stevens Act Recommended by the Legislative Committee

Rebuilding

1. Provide clarity to better allow Councils to take into account the needs of fishing communities in developing rebuilding plans, without needing to demonstrate “disaster” level impacts before modifying the most stringent conservation alternative.
2. Revision of rebuilding plans should not be required consequent to minor changes in stock status (executing an extensive revision process due to “statistical noise”).
3. Address the discontinuity associated with the ten-year rebuilding requirement.
4. Address rebuilding requirements when environmental conditions may be a predominant factor in a stock’s decline.
5. Stocks later determined never depleted (overfished) should not be held to rebuilding provisions.
6. Address social and economic issues such as ‘possible’ to ‘practicable’ in MSA section 304(e)(4)(A)(i).

Data-Poor Species

7. Explore more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries.

NEPA

8. Better-align and streamline the National Environmental Policy Act (NEPA) & MSA section 304(i).

Observers

9. Provide flexibility in requirements and qualifications for NMFS-certified observers to ensure that a sufficient pool of observers is available.

Carryover

10. Specify that a carryover exception allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the SSC that such a carryover provision will have negligible biological impacts.

State Authority

11. Extend state management authority for the Dungeness crab fishery off the West coast.
12. Expand state enforcement authority to all non-tribal vessels that fish directly offshore of the territorial sea within the state given boundaries.

Overfished, Depleted, Depletion

13. Replace the term “overfished” with “depleted” to account for non-fishing causes of stock size below minimum stock size threshold.

14. Make a distinction between “overfishing” (a measure of fishing rate) and “overfished” (a measure of abundance).

Highly Migratory Species

15. Designate one Commissioner seat on IATTC Commission for the Pacific Council.
16. Enhance enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and provide assistance to developing countries in their enforcement capacity.
17. Change “vessels” to “vessel” in the IUU certification section.

Confidential Information

18. Improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.

Mixed Stock Exception

19. Include a viable mixed-stock exception.

Habitat

20. Add a national standard for habitat to minimize adverse impacts on essential fish habitat to the extent practicable.

Seafood Labeling

21. Implement stricter imported seafood labeling requirements in the U.S. market.

International Negotiations

22. Clarify in Section 302(i)(A)(3) that Council discussion of international negotiations, such as proposals and counter proposals in the recent the U.S.-Canada Albacore Treaty negotiations, are clearly an eligible topic for discussion during closed sessions of Council meetings. (NEW)

Appendix 2: Main Points of Proposed Letter on the REFI Act

Dear President Obama:

- 1) The Council was happy to see the REFI Act pass with bipartisan support, with the accounting offset for refinancing fees accomplished, and signed into law.
- 2) The refinance is important for many reasons, and the delay in implementing the refinance causes great hardship to the West Coast groundfish fleet.
 - a) This is critical to the fleet. It is likely that some operators will go out of business if the loan is not refinanced[P1]. [Example]
 - b) Currently, five percent of exvessel value is automatically deducted (when fish are sold) for loan payments. In addition, a cost recovery fee of three percent is deducted from gross revenue. The cost of observers is additional.
 - c) These costs range from \$10,000 to more than \$50,000 annually per vessel.
 - d) The treasury rate is increasing, so the time to refinance is now.
 - e) The fleet as a whole will save approximately \$1.3 million per year when the loan terms are reduced to current rates.
- 3) The Council is very disappointed to hear that the refinance has been held up and is not proceedings as expected. Further, the Council does not understand why the refinance must be delayed.
- 4) There is a claim that \$10.3 million in foregone interest must be satisfied by appropriations prior to Act implementation. This strongly resembles predatory lending. In addition, the current Congress is unlikely to approve these additional funds.
- 5) The President's 2016 budget proposal includes the \$10.3 million now being required to refinance. However, there is no guarantee this budget request will be fulfilled, and waiting until 2016 will place an unnecessary financial burden on the fleet.
- 6) There is also a claim that a fleet referendum may be required before implementation can proceed. We do not believe there is a need for a referendum on this matter. A referendum is expensive, and although it is allowed for in the law, it has no clear value in this case and is not mandatory.
 - a) In addition, the way the law is written means that if somebody does not vote on the referendum, that vote is counted as a "no." A better option would be to simply canvass trawl permit holders on their opinion. If NMFS decides that a referendum must be held, it should be a referendum only of trawl permit holders with an outstanding balance on the buyback loan.
- 7) The Council, NMFS, and Congress have already spent a considerable amount of money on this process.
- 8) We urgently need a resolution to this problem. We ask that you direct OMB and the Dept. of Commerce to cease and desist on any further procedural obstacles to implementation, waiving any possible interpretations that further appropriations or referenda are necessary.

Cc:

Shaun Donovan, Office of Management and Budget
Kathy Sullivan, NOAA
Eileen Sobeck, NMFS
Relevant Congressional representatives
Council members and relevant advisory body members