

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (LC) met on Thursday, April 8, 2016. The meeting was attended by committee members Ms. Dorothy Lowman, Mr. David Crabbe, Mr. Rich Lincoln, and Mr. Dan Wolford; Council members Mr. Buzz Brizendine, Ms. Marci Yaremko, and Mr. Herb Pollard; Council staff Ms. Jennifer Gilden, Mr. Chuck Tracy, Mr. Don Hanson, and Dr. Kit Dahl; and others.

The LC first heard a staff review of recent Federal legislation (Agenda Item C.4, Attachment 1).

HR 774, the Illegal, Unreported, and Unregulated Fishing Enforcement Act, was signed into law on December 5, 2015.

HR 4188, the Coast Guard Authorization Act, was signed into law on February 8, 2016. The bill authorizes Coast Guard appropriations for 2016-2017. Among other provisions, the bill keeps the Newport helicopter facility open until January 1, 2018, and makes it more difficult to close the facility after that date.

Comment Requests

The Council has received requests for comments on two bills, S. 2533 and HR 4576. The Council has also been advised that it may legally comment on a California state bill (SB 1114) without a specific request if the bill could cause material impairment of managing resources under Council authority.

First, the LC discussed the Congressional request for comment on S. 2533 (California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act). **The LC proposed sending a Council letter that reflects the comments made by the Pacific Coast Federation of Fishermen's Associations and the Golden Gate Salmon Association.** Rep. Huffmann's staff have informed the Council that any comments should be sent by May.

Second, the Council received a request from the House Committee on Natural Resources to comment on implementing legislation for the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, and the Convention on the Conservation and Management of High Seas Fisheries Resources in the South Pacific Ocean. A hearing on HR 4576, the Ensuring Access to Pacific Fisheries Act, was held on March 1. After consulting with the Pacific Council Chair, Vice-Chair, and Executive Director in February, both the North Pacific and Western Pacific Councils testified at that hearing. This bill and other related bills would provide a seat for the North Pacific, Western Pacific, and Pacific Councils on the North Pacific Fisheries Commission, and a seat for the Western Pacific Council on the South Pacific Fisheries Commission.

These conventions apply only to species not currently covered by preexisting international fisheries management instruments such as the Western and Central Pacific Fisheries Commission and the Inter-American Tropical Tuna Commission, as well as Council fisheries managed under authority of the Magnuson-Stevens Act. Although no Council fisheries are currently being pursued in the convention areas, it is possible that such fisheries could develop in the future, or that the

relevant stocks could be caught as bycatch. Therefore the **LC recommends drafting a letter for the June briefing book** supporting the March testimony of the North Pacific and Western Pacific Fishery Management Councils, in particular with respect to management of fisheries resources that occur in the exclusive economic zone of one or more parties to the Convention and the Convention Area—so-called straddling stocks.

Third, a California State Senate Bill, SB 1114, has been submitted that would phase out the California drift gillnet fishery by:

- Prohibiting transfers of drift gillnet shark and swordfish permits
- Increasing fees for permits
- Revoking latent permits
- Directing California Dept. of Fish and Wildlife to establish regulations for a deep-set buoy gear (DSBG) fishery upon authorization of the use of deep set buoy gear pursuant to Federal law
- Establishing criteria for initial permits in a DSBG fishery
- Providing incentives for people to switch from the driftnet fishery to the DSBG fishery

A summary of the bill is provided in Agenda Item C.4, Supplemental Attachment 9.

According to National Oceanic and Atmospheric Administration counsel, the Council is legally able to comment on this bill although it has not received a specific request, provided the Council frames the comments to focus on potential or actual material impairment of management under any of its fishery management plans. Discussion within the Legislative Committee related to potential impairment centered on the Council's ongoing process to improve the sustainability of the drift gillnet fishery by instituting and evaluating protected species and finfish bycatch hard caps, and implementing recommended exempted fishing permit(s) to utilize ecosystem-based indicators to reduce potential bycatch while improving domestic fishery profitability and reducing reliability on less sustainable foreign swordfish practices.

A draft letter is attached; **any letter should be sent immediately after the April Council meeting**. A hearing is expected to be held on this bill on April 12.

Future Meetings

The LC proposes to meet in conjunction with the June Council meeting.

PFMC
4/11/16



Pacific Fishery Management Council

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Dorothy M. Lowman, Chair | Charles A. Tracy, Acting Executive Director

April 11, 2016

Senator Ben Allen
California State Senate
State Capitol, Room 2054
Sacramento, CA 95814

Dear Senator Allen,

The Pacific Fishery Management Council (Council) is concerned that California State Senate Bill 1114 (SB-1114), if enacted, would materially impair ongoing Federal management of fisheries under the Fishery Management Plan for West Coast Fisheries for Highly Migratory Species (HMS FMP) and also impair our ability to develop new measures for West Coast highly migratory species fisheries.

The Council was established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976, and has jurisdiction over more than 119 fish species in Federal waters off Washington, Oregon, and California.

As you know, SB-1114 has two major components. First, the bill would attempt to phase out the large mesh gillnet fishery for swordfish and shark, which occurs in Federal waters off of California and is actively managed by the federal government under HMS FMP developed by the Council. Second, it would establish a state permit, with specific qualifying conditions, for California vessels fishing in a Federally-authorized fishery using deep-set buoy gear.

Phasing Out the Drift Gillnet Fishery

The Council has been considering changes to the drift gillnet fishery since 2014. Since then the Council considered phasing out the large-mesh drift gillnet fishery in Federal waters, but decided instead to develop measures intended to make it a more environmentally sustainable fishery. In 2015, the Council recommended that NOAA implement protected species caps, which, if reached, would cause the fishery to close for at least the remainder of the fishing season. These caps exceed the standards imposed by the Endangered Species Act and Marine Mammal Protection Act. National Marine Fisheries Service (NMFS) is currently working on regulations to implement this proposal. In order to ensure more precise estimates of the infrequent protected species takes in the fishery, the Council requested NMFS increase at-sea monitoring of the fishery to 100 percent by 2018.

The Council has also established performance standards to determine whether future bycatch reduction measures should be recommended, and has recommended that NMFS test gear

modifications, use of ecosystem indicators to manage time/area regulations, and other methods to reduce take of protected species in this fishery. NMFS is currently reviewing an exempted fishing permit to conduct these studies. In 2014 the Council stated its intent to develop a Federal limited entry permit to allow more direct control over participation in this fishery and established a control date of June 23, 2014, which was published in the Federal Register as an Advanced Notice of Proposed Rulemaking (79 FR 64161). This control date is intended to promote public awareness of the Council's interest and the potential for a future rulemaking.

SB-1114 would prohibit transfers of the current state drift gillnet shark and swordfish permit and eliminate "latent" permits; these provisions are apparently intended to phase out the fishery as currently active participants cease participation. These provisions, if enacted, would impair the Council's ability to manage the large mesh drift gillnet fishery under Federal law.

Transitioning to a Deep-Set Buoy Gear Fishery

In March 2016, the Council began scoping the development of a Federal swordfish fishery using deep-set buoy gear. The Council sees the creation of a Federal limited entry permit as an important program component, and recognizes the link between such a permit and one for the Federal large-mesh drift gillnet fishery.

SB-1114 would purport to create a state permit for any Federally-authorized deep-set buoy gear fishery, establish initial qualification criteria for such permits, and conditions under which the number of permits would be expanded at a future date. While the establishment of a state permit would not preclude the Council from developing a Federal limited entry permit, the proposed conditions of the state permit program could substantially impair the Council's ability to design a Federal permit program as required under the Magnuson-Steven Act.

The Council includes one member representing the state of California itself, and three additional members from the state of California who were appointed by the Secretary of Commerce. We recommend that you coordinate closely with members of the Council's California delegation while considering state laws to regulate highly migratory species fisheries. We would be happy to provide any assistance needed.

In conclusion, the permitting provisions in SB-1114 would impair the Council's ability to propose and monitor measures for the large-mesh drift gillnet fishery described above, as well as the Council's flexibility in establishing a Federal deep-set buoy gear fishery, including a Federal limited entry permitting regime, if warranted.

Thank you for your consideration. Should you have any questions, please feel free to contact me or Dr. Kit Dahl, our staff officer for highly migratory species, at kit.dahl@noaa.gov.

Sincerely,

Mr. Charles A. Tracy
Acting Executive Director

cc: Ms. Dorothy Lowman
Mr. Herb Pollard
Mr. Barry Thom
Mr. Bob Turner
Ms. Heidi Taylor
Dr. Kit Dahl
Mr. Mike Burner
Council Members
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