

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (LC) met on Wednesday, June 19, 2019. The meeting was attended by committee members Dave Hansen, Rich Lincoln, Herb Pollard, Christa Svensson, and Marc Gorelnik; Council staff Chuck Tracy, Don Hansen, and Jennifer Gilden; Council members Phil Anderson and Pete Hassemer; Theresa Labriola, and Paul Shively.

The LC first heard a staff review of recent Federal legislation (Agenda Item D.3, Attachment 1).

The Council received a request for comments from Senator Maria Cantwell regarding HR 2236, the Forage Fish Conservation Act, introduced by Debbie Dingell (D-MI). A draft response to the letter, based on LC discussions, is attached (D.3, Supplemental Attachment 3).

Revisions to Consensus Positions in Council Coordination Committee (CCC) Working Paper

The LC also discussed revisions to consensus positions that were made to the CCC Working Paper (Attachment 2) at the recent CCC meeting in Charleston, South Carolina. The LC recommends approving these revised positions as written below. (New text is underlined while deleted text is struck out):

Aquaculture

~~“The CCC believes that the Councils’ existing authority under the Magnuson-Stevens Act allows them to develop fishery management plans to regulate aquaculture in their respective exclusive economic zone (EEZ) waters to address major topics like permitting process and duration, approval of systems and siting, species that may be cultured, and record keeping and reporting. The Gulf Council has an existing fishery management plan and other Councils have programs and/or policies addressing aquaculture in the EEZ. Individual Councils are in the process of determining whether they will develop a fishery management plan and do not feel a consultation role alone would adequately address Council concerns.”~~

“The CCC believes that Regional Fishery Management Councils have existing authority under the Magnuson-Stevens Act (MSA) to develop fishery management plans for aquaculture/mariculture, which is consistent with NMFS’ longstanding interpretation. This authority allows the Councils to address in a public and transparent manner, major topics like permitting process and duration, approval of systems and siting, species that may be cultured, and record keeping and reporting. However, conflicting court decisions have caused confusion and specific mention of aquaculture/mariculture in the MSA would affirm the Councils’ authority to manage such activities that impact existing fishery management plans.”

Rebuilding

“In general, the CCC believes the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would improve the ability of Councils to achieve management objectives.

“We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts.

“Under the rebuilding requirements currently in the Act, Councils determine the rebuilding schedule based on scientific information supplied by NMFS. Rebuilding timeframes balance the biology of the fish and the economic needs of those involved in the fishery to rebuild the fishery within the time limits allowed in the Act. There is often considerable uncertainty involved in the calculation of the rebuilding timeframe and, with changing ocean conditions occurring in some regions, rebuilding success can be even more uncertain. That is why the Act already requires that Councils assess rebuilding progress at regular intervals.

“Requiring that a rebuilding plan meet an arbitrary goal (75 percent probability of success) if a rebuilding plan is not meeting the expected progress by the first assessment would almost certainly result in significant adverse impacts to fishermen and fishing communities. The experience of several Councils shows that this requirement could lead to closing fisheries, with severe impacts on communities. The suggested language would take away the flexibility that Councils currently have in balancing the need to rebuild overfished fisheries with the need to minimize the economic effects on fishing communities.

“Often, changes to an assessment model can lead to an unexpected change in the understanding of stock status. Limiting a Council’s ability to adapt to these changes because of a mandatory requirement would limit a Council’s ability to modify the rebuilding program in light of the new information. As a result, fishermen and their communities would be penalized for improvements in science.”

Data and Surveys

“Surveys and stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the CCC believes that it would be beneficial for the MSA to include a requirement for the Secretary to develop a comprehensive plan and schedule to address stock assessment needs on a national basis. Increasing stock assessment frequencies and improving stock assessment methods to reduce the uncertainty in setting harvest limits and achieving management objectives will also improve the ability of Councils to establish scientifically-based ACLs, including for those fisheries that are currently considered data limited. However, the CCC is concerned that requiring the Secretary to complete a peer-reviewed stock survey and stock assessments for all FMP species within two years is unrealistic. Comprehensive stock surveys have not been done for coral reef and other areas because they would have been prohibitively expensive and would provide little benefit. While emerging technology (e.g., saildrones, ROV, etc.) may reduce costs of some surveys, the CCC remains concerned about potential redistribution of survey and assessment resources from stocks with high commercial and recreational interest to those of lower concern, or to other programs writ large. Should Congress insist on completion of these surveys, substantial increases in dedicated funding should be provided to NOAA Fisheries for this work.

“In addition, there has been some discussion of establishing guidelines to facilitate incorporation of data from non-governmental sources in fishery management decisions. There are existing

legal requirements that govern data collection and quality (e.g., Data Quality Act) that dictate what NMFS is required to use for stock assessments. Data from fishermen, the states, and universities are already considered and evaluated for inclusion in stock assessment, as appropriate for the methodology and use of the data collected. These data sources are reviewed by the assessment analysts and through the peer review process that usually includes the Councils' scientific and statistical committees. The CCC believes prescriptive requirements for use of any data source are not appropriate. The implementing guidelines for when such information should be utilized will be critical to its veracity and usefulness to assessment authors and managers.

“A cost comparison report on monitoring programs (for example, human observers versus electronic monitoring) would be extremely beneficial to development of such monitoring programs.”

Future Meetings

The LC recommends meeting in September to discuss relevant legislation and to review Pacific Council positions in the CCC working paper. The LC agreed to review these positions at least annually, and to keep in mind that Council positions in the CCC working paper should be consistent with any Council comment on related legislation.

PFMC
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