

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (LC) met on Thursday, September 13, 2019. The meeting was attended by committee members Marc Gorelnik, Rich Lincoln, and Christa Svensson; Council staff Chuck Tracy and Jennifer Gilden; Council members Phil Anderson and Pete Hassemer; and Theresa Labriola, and Liz Cerny-Chipman.

The LC first heard a staff review of recent Federal legislation (Agenda Item C.2, Attachment 1). Representative Young has introduced a new Magnuson-Stevens Act reauthorization bill (HR 3697) which is virtually identical to HR 200.

The Council received a request for comments from Representative Rob Bishop regarding HR 1979 (the Driftnet Modernization and Bycatch Reduction Act) and HR 2236 (the Forage Fish Conservation Act.) The Council also received a request from Senator Maria Cantwell for comments on S 2346, Senator Wicker's bill "to improve the Fishery Resource Disaster Relief program of the National Marine Fisheries Service." Draft letters are attached.

Revisions to Pacific Council Positions in the Council Coordination Committee Working Paper

Following up on the September LC resolution to annually review Pacific Council positions in the Council Coordinating Committee working paper, the LC discussed updates and additions to Council position statements in the document (Attachment 3). These updates are derived from past Council letters, in particular letters on HR 200. The changes are underlined in Attachment 3. The LC did not have any additional comments on the revisions.

Future Meetings

The LC recommends meeting in November to discuss relevant legislation.

PFMC
09/15/19

DRAFT LETTER TO REPRESENTATIVE BISHOP

September 20, 2019

The Honorable Robert Bishop
House of Representatives
123 Cannon Building
Washington, DC 20515

Dear Mr. Bishop:

Thank you for your September 6 request for comments by the Pacific Fishery Management Council on HR 1979 (the Driftnet Modernization and Bycatch Reduction Act) and HR 2236 (the Forage Fish Conservation Act). The Council and its Legislative Committee reviewed the bills and have the following remarks.

HR 1979: The Driftnet Modernization and Bycatch Reduction Act

Your letter asks the Council to explain the current status of “alternative fishing practices that minimize the incidental catch of living marine resources” and to assess “what alternatives to the current fishing gear are being considered.”

The Council has several methods for minimizing the incidental catch of living marine resources in the highly migratory species fishery (where drift gillnetting currently takes place). These include:

- The Pacific Leatherback Conservation Area, which prohibits drift gillnet fishing from August 15 to November 15 in roughly 213,000 square miles within the exclusive economic zone (EEZ).
- A closure to protect Pacific loggerhead turtles from drift gillnet gear during a forecasted or concurrent El Niño event, located south of Point Conception, California and west of 120° W. longitude from June 1 – August 31.
- Closures to protect common thresher sharks within 75 miles of California mainland from June 1 through August 14 and in the entire EEZ from February 1-April 30.
- Closures around the Channel Islands.
- Regulations that require large mesh drift gillnet fishing off the West Coast to be equipped with acoustic pingers and extenders, primarily to deter entanglement of marine mammals.

Other commercial gear types authorized under our Highly Migratory Species Fishery Management Plan (HMS FMP) include harpoon, surface hook-and-line, purse seine, and pelagic

longline¹. In addition, exempted fishing permits (EFPs) are currently being used to study alternative gears. EFPs are part of the process of evaluating new gear configurations. Current EFPs are exploring fishing with pelagic longline (currently prohibited within the EEZ) and multiple EFPs to test deep-set buoy gear, a new gear type.

Deep-set buoy gear is a line fishing gear in two configurations: standard buoy gear and linked buoy gear. Both configurations require the hooks to be set below a minimum depth, and require that buoys are configured to avoid entanglement. The gear is fished during specified hours and must be actively tended.

As you may know, at its September meeting the Council [approved] a new Federal fishery for deep-set buoy gear. At its November meeting, the Council is scheduled to consider initiating an HMS FMP amendment to authorize shallow-set pelagic longline gear

HR 2236: Forage Fish Conservation Act

In your letter, you asked the Council to comment specifically on the need for further management and conservation of forage fish and the feasibility of developing management plans that meet the requirements outlined in HR 2236.

As you know from the recent letter we sent to Senator Cantwell (attached), the Pacific Council strongly believes in the importance of protecting forage fish not only on the Pacific Coast, but throughout U.S. coastal waters. This concern is shared by all eight regional councils as evidenced by the consensus statement in our Council Coordination Committee [Working Paper](#) on MSA reauthorization issues. While the Pacific Council appreciates the need for protection of forage fish resources, we do not believe, and have demonstrated, that legislation is not necessarily required whence the Council chooses to protect forage fish resources. The letter to Senator Cantwell outlines the many actions we have taken to protect forage fish in our region. While it is possible to craft legislation to require such actions, the challenge is to do so without infeasible requirements. In this instance, we have some concerns with HR 2236.

Section 5 requires Councils' Scientific and Statistical Committees to provide advice on maintaining a sufficient abundance, diversity, and localized distribution of forage fish populations to support their role in marine ecosystems. This level of information is simply not available on an ecosystem scale, and the dynamic nature of such factors would make it likely to be outdated before the information could be compiled, communicated or acted upon. It is also likely that even if those limitations were overcome, any attempt to manipulate the system to

¹ Under the HMS FMP, shallow-set longline, used to target swordfish, is prohibited based on the Endangered Species Act section 7 consultation for the original implementation of the fishery management plan. Deep-set longline, used to target tunas, is permitted outside the west coast EEZ east of 150° W longitude. However, vessels permitted under the WPFMC's Pelagics FEP are permitted to fish with shallow-set longline gear outside the west coast EEZ both east and west of 150 W longitude and land in west coast ports. Those vessels may also fish using deep-set gear and land in west coast ports.

achieve a more desirable state would quickly demonstrate how little control we can exert on such dynamic systems and would likely have unintended consequences as well.

Section 7 requires Councils, when setting annual catch limits (ACLs) for managed forage fish fisheries, to assess and reduce ACLs by the dietary needs of fish species and other marine wildlife, such as marine mammals and birds, for which forage fish is a significant part of their diet. Calculating the dietary needs of fish and marine wildlife species that rely on forage fish would be a nearly impossible task for any Council, given the current lack of understanding about which species rely on forage fish, the extent to which they rely on forage fish versus other sources of food, which forage fish they rely upon, and the population size of both predator and prey species. In addition, the biomass of short-lived forage fish can change dramatically in a short timeframe. It is a challenge for managers to reliably track the population sizes of the forage fish that we manage, without having to do the same for unmanaged species.

We believe the Pacific Council has crafted a feasible solution to this problem: to manage our coastal pelagic species fisheries conservatively, and to establish protections for unmanaged forage species and a process for considering future management of those species. We consider the impact of forage fish to the ecosystem and fishing communities to inform optimum yield and annual catch limit decisions for managed forage species in our Coastal Pelagic Species Fishery Management Plan. One of the eleven goals and objectives in the plan is to “Provide adequate forage for dependent species.” In addition, our harvest control rules for coastal pelagic species include built-in reductions in allowable harvest if biomass estimates and ecosystem indicators point to declining stock status. This harvest control rule closed the directed sardine fishery in 2015, four years before the stock reached its current overfished status due to changing environmental conditions. We have also prohibited the development of fisheries for krill and other unmanaged forage stocks, as described further in our letter to Senator Cantwell.

To summarize, we believe strongly in protecting forage fish stocks. We have concerns that some requirements in this section of HR 2236 would be infeasible to implement. However, we believe that our regionally responsive approach to protecting the forage base is reasonable and effective.

Thank you again for the opportunity to comment on these bills. Should you have any additional questions, please do not hesitate to contact us.

Sincerely, etc.

DRAFT LETTER TO SENATOR CANTWELL

September 20, 2019

The Honorable Maria Cantwell

ADDRESS

Washington, DC 20515

Dear Ms. Cantwell:

Thank you for your September 11 request for comments by the Pacific Fishery Management Council on S. 2346, Senator Wicker's bill on disaster relief. The Council and its Legislative Committee reviewed the bills and have the following remarks.

First, we support any effort to expedite the dissemination of disaster relief funding. It is notable that funds have yet to be allocated for the 2016 California salmon disaster. Given the feedback we have received from constituents, we are concerned about the lag between a disaster declaration and the subsequent monetary relief for our constituents. We support legislation and other measures to address this issue so that relief can be provided to those who are affected by these disasters.

We do have concerns about Section 2(e)(3) of the Wicker bill, which states that "a fishery subject to overfishing in any of the 3 years preceding the date of a determination under this section is not eligible for a determination of whether a fishery resource disaster has occurred unless the Secretary determines that overfishing was not a contributing factor to the fishery resource disaster."

Currently, there is no distinction between fisheries that are designated "overfished" due to actual overfishing and those that are designated "overfished" as a result of non-fishing-related causes such as drought and habitat loss. Sacramento and Klamath River fall Chinook are currently designated as overfished, and drought conditions--combined with habitat loss, dams, water withdrawals, and a host of other non-fishing factors--are believed to be the primary cause of the decline leading to the designation. We recognize that this provision allows for Secretarial discretion regarding the cause of the overfishing designation, but believe this is a good example of why it is important to change the wording in the Magnuson-Stevens Fishery Conservation and Management Act.

We will continue to review this bill and may have more comments in the near future. Please do not hesitate to contact us if you have any questions.

Sincerely, etc.