

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (LC) met on Thursday, April 5, 2018. The meeting was attended by committee members David Crabbe (Acting Chair), Rich Lincoln, Herb Pollard, and Dorothy Lowman; Council members Phil Anderson, Pete Hassemer, Brad Pettinger, Marci Yaremko, Buzz Brizendine, Michele Culver, Corey Niles, and Brett Kormos, Marc Gorelnik; Council staff Chuck Tracy, Mike Burner, Jennifer Gilden, Kit Dahl, and Don Hansen; and Seth Atkinson, Corey Ridings, and Noah Oppenheim.

The LC first heard a staff review of recent Federal legislation (Agenda Item H.1, Attachment 1) and then discussed specific issues relating to the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and issues in the Council Coordination Committee (CCC) position paper (Supplemental Attachment 6).

This report focuses on two areas: Council positions on four potential MSA reauthorization issues, and review of a draft CCC letter on MSA reauthorization issues in H.R. 200.

Section 1: Four MSA Issues

In March 2018, the LC discussed the need to plan for future comments on MSA reauthorization, particularly when requests for comment are received between Council meetings. Based in part on public comment, the LC agreed to revisit the following four elements in order to confirm and elaborate a Council response (see Supplemental Attachment 2):

- The rebuilding standard (the requirement that rebuilding be “as short as possible”): Implications of replacing “possible” with “practicable.”
- The rebuilding timeframe (implications of changing the current 10-year rebuilding requirement to $T_{min} + \text{one mean generation}$).
- Effects of alternative management measures for recreational fisheries.
- Definition of ecosystem component species and the resulting extent of exemptions from annual catch limits.

The Rebuilding Standard (“Rebuilding Shall be as Short as Possible”) and Rebuilding Timeframe

In the past, the Council has held the position that the word “possible” in this context should be changed to “practicable.” After further analysis and discussion, the LC believes that the term “possible” *may* be appropriate, given that the Council has successfully manage stocks under the current standard. Changing the wording to “practicable” could open the door to weakening the rebuilding standard nationally.

An alteration in the Pacific Council position should be carefully considered, with input from NOAA General Counsel. The LC intends to work with agency staff and scientists to craft language that can be considered during the upcoming CCC meeting (see Agenda Item H.1.b, Supplemental WDFW Report).

The current Pacific Council position (from a letter to Senator Maria Cantwell on February 2, 2018) is as follows:

MSA §304(e)(4)(A)(i,ii). The Pacific Council supports the terminology change from “possible” to “practicable,” and changing the arbitrary 10-year rebuilding requirement to something based on the life history of the stock in question. The Pacific Council believes these changes would result in more consistent application of rebuilding timeframes and better balance between conservation and economic objectives of rebuilding strategies. The 10-year rule can lead to a discontinuous policy that disrupts fisheries for little conservation gain. For example, if a stock can rebuild in nine years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g., one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild (11 years plus the length of one generation of the species), with obviously less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

This issue will also be discussed further below in reference to the draft CCC letter.

Alternative Fishery Management Measures

The LC discussed the terminology proposed in Section 203 of HR 200 regarding the use of alternative management measures, which would allow Councils to use alternative fishery management measures in a recreational fishery or for the recreational component of a mixed-use fishery including the use of extraction rates, fishing mortality targets, and harvest control rules in developing fishery management plans, plan amendments, or proposed regulations.

As noted in the Cantwell letter, these alternative management measures are already available, and being used in both recreational and commercial fisheries. The Council is on record stating that these measures should not be used to avoid using assessment-based reference points and associated catch limits or quotas, rebuilding requirements, or overfishing restrictions. Calling them “alternative” leads to confusion and could open the door to the use of weaker “alternative” measures that are not listed. Therefore, the LC recommends strengthening the Council’s opposition to this language.

Definition of Ecosystem Component Species

The LC did not discuss this issue; however, the Council commented on this issue in its letter to Senator Cantwell.

Under the current National Standard Guidelines, “ecosystem component species” are species that do not require conservation and management, but that a Council decides to include in a Fishery Management Plan (FMP) for ecosystem management or monitoring reasons. Because ecosystem component species do not require conservation and management, annual catch limits (ACLs) are not required for these species

HR 200 provides two definitions for ecosystem component species, as either “non-target, incidentally harvested stock of fish in the fishery,” or “not subject to overfishing...” The first

definition appears inconsistent with the 2016 revisions to the National Standard Guidelines, which no longer use the terms “non-target” or “in the fishery”; nor are those terms used in the MSA.

Section 2: Issues in the Draft CCC Letter

The CCC received a request from Representative Young to comment on H.R. 200, and the CCC Legislative Committee Chair has drafted a letter to respond to the request (Agenda Item H.1, Supplemental Attachment 4). The CCC Legislative Committee will meet before the May CCC meeting to revise the letter, and David Crabbe, the Pacific Council representative on the CCC Legislative Committee, requested guidance from the Council to be used at that meeting.

The LC reviewed the draft CCC letter and considered whether the Council agrees with the consensus statements therein. In general, the LC believes the letter should only include issues where all of the Councils are in true agreement.

Amendments to Definitions (Sec 103)

The LC did not discuss this section; however, the Cantwell letter contains the following:

Definition of Recreational Fishing (§201(3)(A)). The Pacific Council believes defining charter recreational fishing in statute is not necessary and would cause confusion regarding its potential application. We do not see the need to have it defined based on the only other use of the term in H.R. 200 ((§202(a)(1)). Attempting to define the term will also be problematic; is it based on mode of conveyance, number of passengers (is a single guest on a guide boat defined as a charter), is it based on Coast Guard certification, etc.? In addition, if the term is adopted, it would be necessary to clarify whether recreational fishing includes charter fishing, since currently charter fishing is included under regulations governing recreational fishing, or whether an additional term for “private recreational fishing” would have to be defined.

Modifications to the Annual Catch Limit Requirement for Data-Limited Species (Sec 204)

Section 204 of HR 200 would allow a Council to maintain the current ACL for a stock of fish until a peer-reviewed stock survey and stock assessment are conducted and the results are considered by the Council and its SSC *for fisheries for which the total allowable catch limit is 25 percent or more below the overfishing limit*; a peer-reviewed stock survey and stock assessment have not been performed during the preceding five years; and the stock is not subject to overfishing. (The phrase in italics has been dropped from the original bill that was the source of this language, S 1520).

In other words, a stock that is not subject to overfishing (*and for which the TAC is 25% below the OFL*), but that has not been assessed during the previous five years, does not require a new ACL until a stock assessment is completed and reviewed.

The Cantwell letter notes that “Identifying criteria to set ACLs for unassessed or infrequently assessed stocks would help inform the stock assessment prioritization process, and could also

prevent other high priority management activities from being displaced by low priority assessment needs.”

The LC concurred with the language in the CCC letter, which states that exemptions or alternatives to the existing ACL requirements for data-limited species could improve the Councils’ ability to provide stability in setting harvest limits... In these situations, Councils should have discretion to determine alternative control mechanisms such as ecosystem-based fishery management approaches for data-limited stocks.

Limitation on Future Catch Share Programs (Sec. 205)

Section 205 of HR 200 would require a referendum of permit holders before approval of any future catch share programs in certain regions *not* including the Pacific region.

The LC concurs with the CCC language opposing this requirement. The CCC letter states in part that “the CCC believes that Councils should maintain the maximum flexibility possible to develop effective management tools, including catch share programs.”

Recreational Fishing Data (Sec. 208)

Section 208 of HR 200 would require the Secretary to work with states to develop best practices for state recreational fisheries programs. In the Cantwell letter, the Council states that “additional interaction through partnerships and best practices between the states and the Secretary would help clarify data needs and uses that could improve Council management of fishery resources and increase consistency between state and Federal management programs with overlapping or mutually dependent management jurisdictions.”

The draft CCC letter focuses on the shortcomings of the Marine Recreational Information Program (MRIP), which is not used for recreational catch and effort data collection on the West Coast. The LC recommends clarifying the CCC language to note which statements are directed at Gulf and East Coast regions as follows:

“The CCC believes MRIP was not designed to provide data for in-season ACL management. The current MRIP methodology cannot be modified, nor can sufficient funding be provided such that in-season ACL management will work using MRIP. The CCC believes alternative methods (e.g., state electronic logbook programs, federal for-hire electronic logbook programs, and electronic logbook programs for private recreational anglers) should be fully implemented where they are available and developed, then evaluated, where they do not yet exist but could address identified needs. Once evaluated, MRIP should work to quickly certify these alternative methods for use in monitoring recreational catches.

There does not appear to be a plan for the systematic collection of the necessary biological data from recreational fisheries for use in stock assessments (size, age, and reproductive data) in many Gulf and East Coast Regions. Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the

environment. The CCC believes additional funding is required for successful implementation of such a data collection program.

The CCC believes more timely and accurate catch estimates ~~that will~~ are more likely to be accepted by the recreational community ~~(since if they are providing the data through logbook programs, which~~ will go a long way to improve stock assessments, improve voluntary compliance, and improve accountability within the recreational fishing community.”

Healthy Fisheries Through Better Science (Sec. 301)

Section 301 of HR 200 includes the “Healthy Fisheries Through Better Science Act,” which requires a plan to conduct stock assessments for all stocks of managed fish. Subject to the availability of appropriations, these new stock assessments or an update of the most recent stock assessment must be completed every five years or unless otherwise directed by the Secretary.

The LC agrees with the CCC statement on the importance of stock assessments and the need for more information, and agrees that “increasing stock assessment funding is the best investment an administration can make in U.S. fisheries... This provision could require significant new financial resources or require changes to existing stock assessment schedules which could impact future fishery management decisions by Councils.” The text in the Cantwell letter goes further into detail elaborating the Council’s and position on this issue, which comports with the draft CCC letter.

Transparency and Public Process (Sec. 302)

Section 302 of HR 200 relates to webcasts and/or transcripts of Council meetings and Scientific and Statistical Committee (SSC) meetings. The LC concurs with the draft CCC letter statement that although a transparent public process is critical to maintaining public trust, budget and technical problems are very real, and requiring the use of webcasts “to the extent practicable” would allow Councils to achieve greater transparency within budget and operational constraints.

This section also requires fishery impact statements to assess the impacts major fishery management decisions. The LC concurs with the draft CCC letter on this section, which is consistent with the CCC working paper and the Council’s letter to Senator Cantwell.

Flexibility in Rebuilding Fish Stocks (Sec. 303)

As noted in Section 1 above, Section 303 of HR 200 would remove the term “possible” and replace it with “practicable” in the requirement in section 304 of the Act that a rebuilding period “be as short as possible.”

In addition, this section would remove the language requiring a 10-year time frame for rebuilding overfished/depleted fisheries and replace it with a requirement that the rebuilding timeframe be the time it would take for the fishery to rebuild without any fishing occurring plus one mean generation time except in the case that: the biology of the stock, other environmental conditions, or other listed exemptions. (The Council is on record supporting this change).

Section 303 would also allow a fishery management plan for any fishery that is considered overfished/depleted to use alternative rebuilding strategies including harvest control rules and fishing mortality rate targets (discussed above).

This section would allow a Council to terminate any rebuilding plan for a fishery that was initially determined to be overfished/depleted and then found not to be overfished/depleted within two years or within 90 days after the completion of the next stock assessment.

Finally, current law allows the Secretary to implement emergency interim measures for fisheries in which overfishing is taking place.

The draft CCC letter comments follow (*italics added*):

In general, the CCC believes that 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. In addition, we agree that exceptions to rebuilding requirements should be limited in scope and carefully defined. Ideally, such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines.

The LC discussed the CCC position at length, along with Washington Department of Fish and Wildlife (WDFW's) supplemental comments (Agenda Item H.1.b, Supplemental WDFW Report 1). In particular, the LC discussed the need to mitigate social and economic impacts of rebuilding actions while considering long-term conservation goals. Although the LC agreed with CCC language in general, they believed it could be seen as supporting using the term "practicable" (which, it should be noted, the Council has supported in the past). In addition, the term "targeted changes" should include a qualifier to make it clear that there is no consensus on the specific changes contained in this section of HR 200.

Exempted Fishing Permits (Sec 304)

Among other things, this section of HR 200 would require a review of each EFP requiring the Council to determine that socioeconomic impacts and loss of fishing opportunities on all participants in each sector of the fishery would be minimal; that all of the information collected under the EFP would have a positive and direct impact on conservation and management; and that the Governor of each coastal state potentially impacted by the EFP had been consulted on the EFP.

The LC did not discuss the issue at this meeting, but the statement in the draft CCC letter is consistent with the consensus position in the CCC working paper.

The Council letter to Senator Cantwell stated:

Exempted fishing permits are an extremely important and useful mechanism... The existing regulations provide a good framework for developing regional processes for issuing and reviewing EFPs.

Any new requirements for the EFP process, such as additional social and economic analysis or further consultation with the state governors and Fisheries Commissions, would greatly reduce the ability to get EFPs developed and approved in a timely manner.

The Pacific Council is concerned that language requiring EFP applications to provide information on the economic effects of the EFP “in dollars” and in terms of lost fishing opportunities for all sectors would elevate the required analysis just to examine the effects on all sectors, which are likely to be negligible for many sectors. This would greatly reduce our ability to get EFPs developed and approved in a timely manner.

The requirement in paragraph (C) that the proposed EFP “...will have a positive and direct impact...” presumes the results of the EFP fishery, whereas the purpose of EFPs is often to determine empirically if it will have a positive or negative impact; or by extension, what the tradeoffs are so that a decision about future regulations can be adequately analyzed.

Ensuring Consistent Management for Fisheries Throughout Their Range (Sec. 307)

Section 307 of HR 200 clarifies that the MSA is the controlling fishery management authority in case of conflicts with other statutes. The statement in the draft CCC letter is consistent with the consensus position in the CCC working paper and the LC concurs.

Other Business

The LC also discussed the following matters:

Support for Cooperative Research and Opposition to Moratorium on Limited Access Privilege Program (LAPP)

The LC was asked by the CCC’s Legislative Committee to discuss the Council’s stance on cooperative research and moratoriums on LAPP programs. The LC briefly discussed and agreed with the current CCC consensus position on these issues.

Aquaculture

The LC discussed the fact that aquaculture has become a high priority for the current administration, and that a national aquaculture bill has been introduced or may be introduced in the near future. If they meet, the LC will discuss this legislation in more detail in June.

Future Meetings

The LC recommends meeting in June to discuss the issues described above.

PFMC
04/09/18