

## STAFF SUMMARY OF FEDERAL LEGISLATION IN THE 112<sup>TH</sup> U.S. CONGRESS

This summary is intended as a general overview for discussion purposes. Full text of these bills, additional summary and background information, and current status can be found by entering the bill number in the search engine at the THOMAS web site of the Library of Congress (<http://thomas.gov>). Portions of this report are derived from summaries provided by the Congressional Research Service of the Library of Congress.

### Key Legislation for the June 2012 Legislative Committee (Committee) Meeting

**S.2184 Fisheries Investment and Regulatory Relief Act of 2012** – as a mean of redirecting funds collected as fishery import duties under the Saltonstall-Kennedy Act to their intended purpose, the support of sustainable fishery management. Under this bill each regional fishery management council would be required to establish a fishery investment committee to: (1) develop a regional fishery investment plan identifying research, conservation, management needs, and actions to rebuild and maintain healthy fish populations and sustainable fisheries; and (2) make recommendations to the Council on grant applications and projects to implement the respective plans. The grants and projects under this act would put an emphasis on public-private partnerships and would focus funds on research and investment that supports rebuilding and maintaining healthy U.S. fish populations and promotes sustainable fisheries. The bill proposes to fund such activities though a proposed allocation of Saltonstall-Kennedy Act funds that would limit to 10 percent the funds authorized to offset receipts for National Oceanic and Atmospheric Administration (NOAA) operations, research, and facilities while distributing 70 percent to the regional fishery management councils and 20 percent to the Secretary of Commerce for projects in support of fisheries management.

Introduced March 12, 2012, by Senator Kerry, Massachusetts and referred the U.S. Senate Committee on Commerce, Science, and Transportation.

**H.R. 1837 Sacramento-San Joaquin Valley Water Reliability Act** - Amends the Central Valley Project Improvement Act (CVPIA) to redefine "anadromous fish" for purposes of such Act as those native stocks of salmon and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean. Excludes striped bass and American shad from such definition.

Regarding non-native species, the bill would preempt State of California restrictions on the quantity or size of take of non-native species that prey upon on or more native fish species in the Central Valley or the Delta.

Considers all requirements of the Endangered Species Act of 1973 (ESA) to be fully met for the protection and conservation of the species listed pursuant to that Act for the operations of the CVP and the California State Water Project (SWP) if such Projects are operated in a manner consistent with the "Principles for Agreement of the Bay-Delta Standards Between the State of

California and the Federal Government" dated December 15, 1994 (Bay-Delta Accord). Preempts California requirements for the conservation of any species listed under ESA for the CVP and SWP that are more restrictive than the 1994 Bay-Delta Accord.

Prohibits the Secretary from distinguishing between natural-spawned and hatchery-spawned or otherwise artificially propagated strains of a species in making ESA determinations.

Directs the Secretary of the Interior, upon request of the contractor, to renew any existing long-term repayment or water service contract that provides for the delivery of water from the CVP for a period of 40 years and renew such contracts for successive 40-year periods. Requires a contract entered into or renewed pursuant to this provision to include a provision that requires the Secretary to charge only for water actually delivered.

Directs the Secretary to take actions to facilitate and expedite CVP water transfers. Prohibits the Secretary from imposing mitigation or other requirements on a proposed transfer. Authorizes the Secretary to modify CVP operations to provide reasonable water flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish.

Prohibits the Secretary from requiring a payment to the CVP Restoration Fund, or environmental restoration or mitigation fees not otherwise provided by law, as a condition to providing for storage or conveyance of non-CVP water. Requires the Secretary to submit a plan for the expenditure of funds in the Fund, including a cost effectiveness analysis of each expenditure. Establishes a Restoration Fund Advisory Board. Preempts any state law that imposes more restrictive requirements or regulations on activities authorized with respect to San Joaquin River restoration.

Introduced May 11, 2011 by Representative Nunes (CA). Referred to the Subcommittee on Water and Power. Hearings held in June 2011.

On February 16, 2012, the U.S. House Subcommittee on Water and Power referred the bill to the U.S. House Committee on Natural Resources for consideration and markup where an amended bill was reported back to the full U.S. House for consideration.

On February 29, 2012, after considerable floor debate, H.R. 1837 (as amended) passed the U.S. House of Representative on a vote of 246-175.

In early March 2012, the bill was reported in the U.S. Senate where, as of this writing, it has been placed on the U.S. Senate Legislative calendar for consideration.

#### Legislation in 112<sup>th</sup> Congress Previously Reviewed and Commented on by the Council

**H.R. 946 Endangered Salmon Predation Prevention Act** - Amends the Marine Mammal Protection Act of 1972 to authorize the Secretary of the department in which the National Oceanic and Atmospheric Administration (NOAA) is operating to issue one-year permits for the lethal taking of California sea lions on the waters of the Columbia River or its tributaries if the

Secretary determines that alternative measures to reduce sea lion predation on salmonid stocks listed as threatened or endangered under the ESA do not adequately protect such stocks.

Introduced March 8, 2011 by Congressman Hastings, Washington Status: Referred to the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs on March 10th.

Hearings were held on June 14, 2011 and Council comments approved at the June 2011 were submitted via letter from Executive Director, Dr. Donald McIsaac. No Congressional action since.

### Other Legislation in 112<sup>th</sup> Congress of Interest to the Council

#### **Legislation in the U.S. House of Representatives**

Many of the bills listed in this section are focused on amending the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

**H.R. 594 Coastal Jobs Creation Act**– Directs the Secretary of Commerce to implement a Coastal Jobs Creation Grant Program which shall include: (1) cooperative research to collect and compile economic and social data related to recreational and commercial fisheries management; (2) establishment and implementation of state recreational fishing registry programs; (3) training and deploying observers authorized or required under the Magnuson-Stevens Fishery Conservation and Management Act; (4) preservation or restoration of coastal resources identified for their conservation, recreational, ecological, historic, or aesthetic values; (5) redevelopment of deteriorating and underutilized working waterfronts and ports; (6) research to develop, test, and deploy innovations and improvements in coastal and ocean observation technologies; (7) cooperative research to collect data to improve, supplement, or enhance fishery and marine mammal stock assessments; and (8) other specified activities.

Amends the MSA to require the Secretary to enter into contracts with, or provide grants to, states for the purpose of establishing and implementing a registry program to meet the requirements for the exemption from registration of a regional standardized fishing vessel registration and information management system program for state licensed recreational fishermen and charter fishing vessels when the Secretary determines that information from the state program is suitable for the Secretary's use in completing marine recreational fisheries statistical surveys or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.

Introduced February 9, 2011 by Representative Pallone, New Jersey, and referred to the House Committees on Natural Resources and Science, Space and Technology. Hearing held on December 1, 2011.

**H.R. 1646 - American Angler Preservation Act** - Amends the MSA to require each SSC of the eight Regional Councils to provide ongoing risk neutral scientific advice. Prohibits SSCs from recommending to increase or decrease an annual catch limit by 20% or greater unless the recommendation has been approved in a nongovernmental peer review process. Requires fishery management plans, amendments, or regulations for overfished fisheries to specify a time period for ending overfishing and rebuilding the fishery as short as practicable (under current law, as

short as possible). Modifies the exceptions to the requirement that such period not exceed ten years. Related bills include H.R. 3061, the Flexibility and Access in Rebuilding American Fisheries Act of 2011 and S. 632 Flexibility in Rebuilding American Fisheries Act of 2011.

Introduced April 15, 2011 by Congressman Runyan, New Jersey and referred to the House Committee on Natural Resources. Hearing held on December 1, 2011.

**H.R. 2304 (S.1916) Fishery Science Improvement Act of 2011** Amends the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 to postpone from fishing year 2011 to 2014 the effective date upon which a mechanism for specifying annual catch limits and accountability measures for fisheries other than those determined by the Secretary of Commerce to be subject to overfishing must be established in fishery management plans prepared by any Regional Fishery Management Council or the Secretary, implementing regulations, or annual specifications.

Makes the catch limit mechanism, for all fisheries, inapplicable to a fishery for any stock of fish: (1) for which a peer reviewed stock survey and stock assessment have not been performed during the five-year period before enactment of this Act and for which the Secretary determines overfishing is not occurring, and (2) that is an ecosystem stock. Defines "ecosystem stock" as a stock of fish determined by the Secretary to be a nontarget stock that is not overfished or likely to become overfished.

Requires the Secretary, within 270 days after determining that a fishery is overfished, to perform a stock survey and stock assessment of each of the overfished stocks in the fishery and transmit the assessment to the appropriate Council.

Introduced June 22, 2011 by Representative Whittman, Virginia, and referred to the House Committee on Natural Resources. Hearings held December 1, 2011.

**H.R. 2610 Asset Forfeiture Fund Reform and Distribution Act of 2011** — Amends the MSA to require the Secretary of Commerce (Secretary) or the Secretary of the Treasury, after September 30, 2011, to use each of the sums received as fines, penalties, and forfeitures of property for violations of any provisions of such Act, or of any other fishery resource law enforced by the Secretary, to make a payment to: (1) the state in which the violation occurred, (2) the state in which the vessel involved in the violation is homeported if the violation did not occur in a state, or (3) the state most directly affected by a violation neither occurring in a state nor involving a vessel. (Current law authorizes using such sums for certain civil and criminal enforcement costs.)

Directs states to use such amounts for specified research and monitoring activities.

Sets forth transitional rules authorizing the Secretary to use such amounts received before October 1, 2011, to reimburse appropriate legal fees and costs, up to \$200,000 per person, to specified persons the Secretary directed to receive a remittance of at least a portion of a fisheries enforcement penalty.

Introduced July 21, 2011 by Representative Frank, Massachusetts, and referred to the House Committee on Natural Resources. Hearings held December 1, 2011.

**H.R. 2753 Fishery Management Transparency and Accountability Act**– Amends Section 302(i)(2) of the to require regional fishery management councils to provide on their web sites a live broadcast of each meeting of the Council, the Science and Statistical Committee, and the Council Coordination Committee and to provide three years worth of audio and/or video recordings as well as transcripts.

Introduced August 1, 2011 by Representative Jones, North Carolina, and referred to the House Committee on Natural Resources. Hearings held December 1, 2011.

**H.R. 2772 Saving Fishing Jobs Act of 2011**— This bill is not directly applicable to the Pacific Council, but contains provisions of interest to limited access privilege programs. Amends the Magnuson-Stevens Fishery Conservation and Management Act, with respect to multispecies fishing permits in the Gulf of Mexico, to remove a provision limiting the eligible signers (a group of fishermen constituting more than 50% of the permit holders, or holding more than 50% of the allocation in the fishery) of a petition to the Secretary of Commerce requesting that the relevant Regional Fishery Management Council or Councils be authorized to initiate the development of a limited access privilege program to only those participants who have substantially fished the species proposed to be included in the program.

Introduced August 1, 2011 by Representative Runyon, New Jersey, and referred to the House Committee on Natural Resources. Hearings held December 1, 2011.

**H.R. 2840 Commercial Vessel Discharges Reform Act of 2011** — Amends the Federal Water Pollution Control Act (commonly known as the Clean Water Act) to allow a person owning, operating, or chartering by demise a commercial vessel to discharge ballast water into navigable waters only if the discharge: (1) meets the ballast water performance standard, qualifies as a safety exemption, meets the requirements of an alternative method of compliance and the vessel operates exclusively within a geographically limited area or operates pursuant to a geographic restriction; and (2) is in accordance with an approved ballast water management plan. Defines "commercial vessel" to mean a watercraft or other artificial contrivance used or capable of being used as a means of transportation on water that is engaged in commercial service.

Directs the Administrator to determine, within one year, the discharges incidental to the normal operation of a covered vessel for which it is reasonable and practicable to develop best management practices to mitigate adverse impacts on the waters of the United States and to review such determination every five years. Defines a "covered vessel" to mean every description of watercraft, or other artificial contrivance used or capable of being used as a means of transportation on water, that is engaged in commercial service and that is: (1) less than 79 feet in length; or (2) a fishing vessel, regardless of length.

Introduced September 2, 2011 by Representative LoBiondo, New Jersey, and referred to the House Committee on Committee on Transportation and Infrastructure. On November 3, 2011 the bill passed out of Committee as amended and was placed on the calendar for full U.S. House Consideration.

## **Legislation in the U.S. Senate**

**S.46 Coral Reef Conservation Amendments Act of 2011** – A bill to increase protective measures for the Nation’s coral reefs through amendment of the Coral Reef Conservation Act of 2000 and the development of a national coral reef ecosystem action strategy.

Introduced January 25, 2011 by Senator Inouye, Hawaii and referred to the U.S. Senate Committee on Commerce, Science, and Transportation.

On May 5, 2011, the Committee on Commerce, Science, and Transportation ordered the bill be reported to the full Senate without amendment favorably. No new activity at the time of this report.

**S.50 Commercial Seafood Consumer Protection Act** – A bill to strengthen Federal consumer product safety programs and activities with respect to commercially marketed seafood by directing the Secretary of Commerce to coordinate with the Federal Trade Commission and other appropriate Federal agencies to strengthen and coordinate those programs and activities.

Introduced January 25, 2011 by Senator Inouye, Hawaii and referred to the U.S. Senate Committee on Commerce, Science, and Transportation.

On January 26, 2012 the bill was reported without amendment by the Committee on Commerce, Science and Transportation and entered on the calendar for consideration by the full U.S. Senate.

**S. 52 International Fisheries Stewardship and Enforcement Act** - A bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes including implement the Antigua Convention. Includes the Antigua Convention Implementing Act of 2011 that amends the Tuna Conventions Act of 1950 to revise provisions regarding: (1) the Inter-American Tropical Tuna Commission; (2) the General Advisory Committee; (3) the Scientific Advisory Subcommittee; (4) prohibited acts; and (5) enforcement.

Introduced January 25, 2011 by Senator Inouye, Hawaii and referred to the U.S. Senate Committee on Commerce, Science, and Transportation.

On May 5, 2011, the Committee on Commerce, Science, and Transportation ordered the bill be reported to the full Senate without amendment favorably.

On January 26, 2012 the bill was reported without amendment by the Committee on Commerce, Science and Transportation and entered on the calendar for consideration by the full U.S. Senate.

The Committee and the Council reviewed a similar bill in the 11<sup>th</sup> Congress (see Agenda Item K.1.b, Supplemental Legislative Committee Report, April 2010).

**S.171 West Coast Ocean Protection Act of 2011** - A bill to amend the Outer Continental Shelf Lands Act to permanently prohibit the conduct of offshore drilling on the outer Continental Shelf off the coast of California, Oregon, and Washington.

Introduced January 25, 2011 by Senator Boxer, California and cosponsored by the other five U.S. Senators from the West Coast States. The bill has been referred to the U.S. Senate Committee on Energy and Natural Resources. No new activity.

**S.229 and S.230 Pertaining to genetically-engineered fish** - Bills to amend the Federal Food, Drug, and Cosmetic Act to require labeling (S.229) or prevent the approval of (S.230) genetically-engineered fish. Similar legislation has been introduced in the U.S. House.

Introduced January 31, 2011 by Senator Begich, Alaska and referred to the U.S. Senate Committee on Health, Education, Labor, and Pensions. No new activity.

**S.238 FISH Act of 2011** - A bill to amend the MSA to require that Fishery Impact Statements (1) be prepared by an objective person (prohibits U.S. government officers, employees, or entities) selected by the Comptroller General; and (2) determine if the fishery management plan or amendment is consistent with specified national standards for fishery conservation and management, including whether the relevant measures provide for the sustained participation of fishing communities and minimize adverse economic impacts.

Introduced January 31, 2011 by Senator Brown, Massachusetts and referred to the U.S. Senate Committee on Commerce, Science, and Transportation. No new activity.

**S.632 (H.R.3061) Flexibility in Rebuilding American Fisheries Act of 2011** - Amends the MSA to require fishery management plans, amendments, or regulations for overfished fisheries to specify a time period for ending overfishing and rebuilding the fishery that is as short as practicable (under current law, as short as possible). Modifies the exceptions to the requirement that such period not exceed ten years.

Introduced March 17, 2011, by Senator Schumer, New York and referred to referred to the U.S. Senate Committee on Commerce, Science, and Transportation. Similar bill introduced in the U.S. House. Similar bills have been introduced in previous Congresses and reviewed by the Committee. No new activity.

**S.1451 (H.R.2706) Billfish Conservation Act of 2011** - Prohibits any person from offering billfish or billfish products for sale, selling them, or having custody, control, or possession of them for purposes of offering them for sale or selling them.

Treats a violation of this Act as an act prohibited by the MSA. Subjects a person to a maximum civil penalty of \$100,000 for each violation, with each day of a continuing violation constituting a separate offense. Exempts the state of Hawaii and the Pacific Insular Area, except that billfish may be sold under such exemption only in Hawaii and the Pacific Insular Area.

Defines "billfish" as any of the following: (1) blue marlin, (2) striped marlin, (3) black marlin, (4) sailfish, (5) shortbill spearfish, (6) white marlin, (7) roundscale spearfish, (8) Mediterranean spearfish, or (9) longbill spearfish. Excludes swordfish from such definition.

Introduced July 29, 2011, by Senator Vitter, Louisiana and referred to the U.S. Senate Committee on Commerce, Science, and Transportation.

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