

## NPFMC Legislative Committee Briefing

April 2017

### Legislative Update

Regarding the implementing legislation for the North Pacific Fisheries Convention (signed by the President in December 2016), we are still awaiting more information on the anticipated appointment process for Commissioners and Advisory Committee members. When the implementing legislation was signed in December, DOJ raised concerns about Council Chairs being specified as Commissioners representing the U.S. (and legislation specifically instructing a Presidential appointment). Other views have suggested there is a difference of opinion among DOJ, DOS, and NOAA Fisheries about the role of Commissioners on RFMOs. This will be a topic of further discussion at our upcoming May CCC meeting. The next NPFMC meeting is scheduled for July 10-14.

In January Senator Murkowski introduced S33, “*Improved National Monument Designation Process Act*”, which would require (1) Congressional approval prior to any monument designation; (2) State approval for any part within 100 nautical miles of such State; and (3) compliance with NEPA requirements and analyses (on the House side, Congressman Young has introduced a similar bill – HR222 which has been referred to the House Natural Resource Committee). A previous version of this legislation was introduced in late 2014, and at the Senator’s request we commented on that legislation (**attached**), noting that the current process for monument designation does not allow for adequate input from affected parties, and that the proposed legislation would indeed allow for more appropriate input and consideration of impacts, and greatly improve the designation process. In the event that we are asked to comment on this version (S33) I would recommend we simply reiterate our previous comments, and also re-emphasize the potential benefit of explicitly including a Council role in the consultation process for monument designations. I understand there may be hearings scheduled soon on this issue. At our recent interim CCC meeting our Chairman signed onto a CCC letter to President Trump (similar to 2016 CCC letter to previous Administration) reiterating our collective concerns with the existing designation process, summarizing the potential negative impacts of recent monument designations, and highlighting the benefits of the Council process in terms of spatial management of our oceans (**attached**).

For your information, the **attached** Congressional activities report, prepared by the CCC’s legislative liaison Dave Whaley, lists some additional bills of interest which have been introduced in this Congress. Among them are HR214 the “*American Fisheries Advisory Committee Act*”, introduced by Congressman Young, which would establish five regional committees (with seafood harvesting and processing representation) to assist in the review and awarding of national and regional fisheries research and development grants. HR223, also introduced by Congressman Young, would prohibit the Secretaries of Interior and Commerce from authorizing commercial finfish aquaculture operations in the EEZ except in accordance with a law authorizing such action. The activities report also lists the new membership of various Congressional Committees of immediate interest.

### Engaging with the Trump Administration

Following some discussion about engaging with the new Administration and highlighting the importance of the Regional Fishery Management Councils and our relationship with NMFS, the CCC sent a general

letter to the new Secretary of Commerce Wilbur Ross (**attached**), providing an overview of the Council process, importance of our fisheries resources, and some very general priorities and recommendations (emphasizing our partnership with NMFS, alignment of priorities, baseline funding, and finding efficiencies in our management and regulatory processes).

#### MAGNUSON-STEVENSON ACT REAUTHORIZATION

Regarding MSA reauthorization, HR200 (**attached**) was introduced by Congressman Young in January of this year, and contains provisions similar to HR1335 which was introduced in a previous Congress and for which we submitted comments in July 2015 (previous comments **attached**). Also **attached** is a section-by-section summary of HR200. Our 2015 comments on HR1335 reiterated our long-standing position that “*the current MSA provides a very successful framework for sustainable fisheries management, and major changes are not necessary at this time. However, we also recognize the need for increased flexibility in some circumstances, and we do not oppose amending the Act to provide for such flexibility, with appropriate cautionary notes*”. HR200 contains provisions very similar to HR1335, primarily focused on flexibility with ACL requirements and stock rebuilding requirements.

At our recent interim CCC meeting we discussed MSA reauthorization generally, and to a lesser extent specific provisions of HR200. Based on those discussions, the CCC has drafted a letter with general comments on MSA reauthorization, similar to the CCC letter sent in 2015. This letter will be sent to members of Congress in the event that the CCC is asked to comment on draft legislation before our next CCC meeting in May. In addition, the CCC’s Legislative Workgroup (including Mr. Hull) will work on a more detailed position paper, describing the range of Council positions on key MSA issues, in anticipation of the CCC being asked for comments after the May CCC meeting. We expect to complete this position paper at our May CCC meeting, which could include comments on specific sections of HR200. A cover letter describing common goals and areas of consensus among the RFMCs would accompany this position paper.

Our Council specifically will very likely be requested to provide comments on HR200 and/or asked to testify at upcoming hearings on MSA reauthorization (likely this fall, but possibly sooner). In anticipation of a Congressional request for our comments on HR200 (or MSA reauthorization generally), and in order to inform our input into the CCC position paper, I have prepared some initial thoughts on each (relevant) section of HR200 based upon our previous positions regarding HR1335, Council and CCC discussions which have transpired over the past year, or new information which has come to bear on these issues. These are provided below (*in italics*) for Council consideration:

#### Section 4 – Flexibility in stock rebuilding

Major provisions include: replacing the term “possible” with “practicable”; replacing 10-year requirement with timeframe reflecting life history, plus one mean generation, with exceptions; allows consideration of environmental conditions and use of alternative strategies; requires Councils to specify schedules for reviewing rebuilding targets; allows Councils to terminate rebuilding if determination was found to be in error.

*Recommendation: Similar to previous comments, support this flexibility, noting 10-year rule may not make sense due to particular circumstances of stock in question.*

### Section 5 – Modifications to ACL requirements

Major provisions include: allows consideration of ecosystem and economic needs of fishing communities; exemptions for species with short life spans; allows multi-species complexes and multi-year ACL specifications; clarifies ecosystem component species; incorporates international agreements.

*Recommendation: Similar to previous comments, support this flexibility, noting ABC still represents upper limit of ACL.*

### Section 6 – Distinguishing between overfished and depleted

Major provisions include: replace term ‘overfished’ with ‘depleted’; defines term ‘depleted’ based on biomass rather than fishing rate; requires distinguishing between fisheries that are ‘depleted’ as a result of fishing versus other factors.

*Recommendation: Similar to previous comments, support this distinction, noting that the legislation does not appear to exempt fisheries from rebuilding in cases where ‘depletion’ is unrelated to fishing.*

### Section 7 – Transparency and public process

Major provisions include: require website access to audio, video, or written transcripts of all Council and SSC meetings; incorporates NEPA requirements into section 303 (fishery impact statement) of the MSA; requires Councils/NMFS to prepare procedures (regulations or guidelines) to comply with requirements of this new section; establishes modified process for Secretarial review and approval.

*Recommendation: Council meetings are already covered – this provision would require us to do similar for SSC (webcast or audio transcription), which is unnecessary given public nature of SSC meetings and detailed nature of SSC minutes – recommend deleting requirement for SSC. Regarding incorporation of NEPA requirements into MSA, this section represents a unique opportunity, as well as some potential challenges - it does reflect long-standing intent of the CCC to streamline regulatory processes, eliminate redundancy, and make the Magnuson-Stevens Act the single guiding Act for fisheries actions; however, as constructed, it may not fully accomplish that intent, and could, at least in the near term, increase and complicate our regulatory process. Some of the pros and cons, and possible remedies, are listed below:*

*\*breadth and scope of environmental, economic, and social impact analysis requirements remain similar to those currently in place (which reflects our intent to subsume NEPA environmental impact within MSA).*

*\*NEPA is primarily a process statute – bringing these requirements into MSA may also be elevating content requirements, subject to interpretation of paragraph (6) - see following bullet.*

*\*Councils, subject to approval by the Secretary, will be required to “prepare procedures” to comply with the new fishery impact statement requirements (paragraph 6) – this means development of potentially complex, controversial, interpretive regulations, or at least ‘guidelines’, which would in essence be determined by NMFS and NOAA GC.*

*\*the onus for completion of NEPA requirements technically lies with NMFS (even though our current process attempts to incorporate most of that within the Council process). Under this revised process all*

*of the onus for compliance with the new provisions will lie with the Councils under the MSA process, except for NMFS' final approval authority.*

*\*We have become quite proficient at the NEPA process (albeit cumbersome), and we have an established track record with regard to litigation of fisheries actions under NEPA. While this section COULD streamline the process, it COULD also create fertile grounds for a new body of litigation on fisheries management actions, based on an as-yet-unwritten set of implementing regulations (pursuant to paragraph (6)), and/or attempting to extend previous NEPA case law to the new MSA process. For example, the term "substantially complete", in reference to a draft fishery impact statement, will likely be a subjective determination unless further defined.*

*\*To the extent Councils are experiencing timing/delay issues between the time of final Council action and actual transmittal of the package for Secretarial review, this legislation will not directly address or rectify that problem; i.e., even under this legislation, determination of 'adequacy' of the amendment package for transmittal will still be determined by the agency. It is possible this could be addressed through the "procedures" envisioned under paragraph (6), but there is no guarantee of that.*

*\*This provision will likely be a significant bone of contention and controversy during the reauthorization process.*

*In summary, while this section does accomplish the goal of incorporating NEPA intent into the MSA (without diminishing the intent of NEPA or environmental impact analyses), the potential benefit to our process should be carefully weighed against the potential downsides. At least in the near-term, all of the Councils and NMFS would have to spend substantial time and resources developing and negotiating implementing regulations pursuant to paragraph (6) and possibly paragraph (5) (which ultimately have to be approved by the Secretary). Deletion or modification of paragraph (6) may be one option to address these concerns, as the language of the legislation (in paragraph 2) appears to actually be quite sufficiently clear on the nature and extent of analyses required under the revised procedure (i.e. how we fully capture NEPA intent for content). While I believe the Council should support the intent of this section of HR200, any comments we make should include these cautionary notes, particularly given the apparent need (as currently drafted) to develop implementing procedures (regulations?) which will be subject to approval by NMFS.*

#### Section 9 – Report on fee

Major provisions include: require the Secretary to report annually (to Congress and the Councils) on the amount collected from each fishery under a fee program, and detail how the funds were spent.

*Recommendation: This is consistent with Council requests for such information and would benefit Council considerations in development of fee programs for LAPP fisheries..*

#### Section 10 – Cooperative Research and management

Major provisions include: require Secretary, in consultation with Councils, to publish a plan for cooperative research within one year (and update every 5 years); priority given to expanded use of EM and other technologies.

*Recommendation: Similar to previous comments, supporting this provision.*

#### Section 13 – North Pacific Clarification

Major provisions include: Amending section 306(a)(3)(C) to remove the August 1, 1990 date, so that State management is authorized for fisheries not under an FMP.

*Recommendation: Similar to previous comments, support this change (recognizing that current court directives could alter the approach for certain salmon fisheries occurring in the EEZ).*

#### Section 14 – Ensuring consistent management for fisheries throughout their range

Major provisions include: in case of any conflict between MSA and National Marine Sanctuaries Act or the Antiquities Act, the MSA shall control; any restrictions of fisheries necessary to implement a recovery plan under the ESA shall be implemented through the MSA.

*Recommendation: The intent of this section appears to be to make MSA the controlling Act, but it is unclear how exactly this language would be interpreted, or what the exact net effect(s) would be. It appears, however, to be consistent in intent with the interests of the Council process under MSA, so Councils should support this language's intent.*

#### Section 15 – Limitation on harvest in N Pacific pollock fishery

Major provisions include: Amends American Fisheries Act to allow North Pacific Council to revise pollock harvest limits to not exceed 24%, for any individual, corporation, or entity (current limit is 17.5%).

*Recommendation: none, Council policy call.*

#### Section 16 – Recreational fishing data

Major provisions include: creates federal/state partnerships to improve implementation of state data collection programs; requires biennial reports from Secretary to Congress on programs; federal grants to states; requires National Academy of Science to evaluate programs after one year.

*Recommendations: this section intended for other U.S. regions, but could provide benefit to North Pacific?*

#### Sections 19/20 – Fishery resource disasters

Major provisions include: Secretary shall publish estimated cost of recovery from a disaster within 30 days of declaration of disaster; Secretary shall make decision on disaster request within 90 days after receiving estimate of economic impact from requesting entity.

*Recommendation: none.*

#### Section 22 – Subsistence fishing

Major provisions include: Defines ‘subsistence’ fishing; adds subsistence fishing to qualifications for appointment to Council seat.

*Recommendation: none – does not add any requirements, but highlights subsistence for qualification for appointment.*

#### Section 24 – Arctic CDQ

Major provisions include: requires no less than 10% set aside for CDQ for coastal villages located north and east of the Bering Strait, if Council establishes commercial fishery in Arctic area.

*Recommendation: none.*

#### Section 25 – Preference for students in water resource issues

Major provisions include: hiring preference for student working on information collection for marine recreational fisheries.

*Recommendation: none.*

#### Section 26 – LAPP program review requirements

Major provisions include: modifies existing review requirements to clarify specific aspects of review.

*Recommendation: none, does not appear to substantively alter existing review requirements.*

#### Section 27 – Healthy fisheries through better science

Major provisions include: defines the term ‘stock assessment’; requires Secretary to develop plan and schedule for stock assessments for all FMP species within two years; requires guidelines, within one year, for incorporation of stock assessment information from wide variety of nongovernmental sources; “as appropriate” such information will be considered ‘best information available’, based upon meeting the guidelines; requires ‘cost reduction’ report, within one year, to assess and compare costs of monitoring and enforcement programs for each fishery (for example, human observers vs. EM)

*Recommendation: Support intent of specific plans for stock assessments of all FMP species; express significant caution over designation of various information as ‘best scientific information available’; guidelines will be critical to determining what is considered to be best information available; support cost comparison report on monitoring programs.*

#### Section 29 – Alternative fishery management measures

Major provisions include: Grants authority to use alternative measures in recreational fisheries, including extraction rates, mortality targets, and harvest control rules (*presumably* in lieu of ACL requirements?).

*Recommendation: No specific recommendation, but seek clarity on intent of this section.*

The Council’s Legislative Committee met on Monday, April 3, and reviewed these materials. A report of the Committee’s discussions and recommendations will be available this week for Council consideration.