

LEGISLATIVE COMMITTEE REPORT

The Legislative Committee (LC) met December 1, 2005 at the office of the Pacific Fishery Management Council (Council) in Portland, Oregon. The LC focused discussions on proposed legislation pertaining to the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and S. 1195, the *National Offshore Aquaculture Act of 2005*. The following LC recommendations have been reviewed by the Council, including the members of the LC, and have been approved by the Council Chair as formal Council input on these important legislative matters.

Members Present:

Mr. Robert Alverson, Council Member, Fishing Vessel Owner's Association
Dr. David Hanson, LC Chair, Council Parliamentarian, Pacific States Marine Fisheries Commission
Mr. Rod Moore, Council Member, West Coast Seafood Processors Association
Mr. Roger Thomas, Council Member, Golden Gate Fisherman's Association

Members Absent:

Mr. Don Hansen, Council Chairman, Dana Wharf Sportfishing

Others Present:

Dr. Donald McIsaac, Executive Director, Pacific Fishery Management Council
Dr. John Coon, Deputy Director, Pacific Fishery Management Council
Mr. Mike Burner, Staff Officer, Pacific Fishery Management Council
Mr. Ben Enticknap, Pacific Project Manager, Oceana
Ms. Dorothy Lowman, Natural Resource Consultant, Environmental Defense
Mr. Dan Waldeck, Executive Director, Pacific Whiting Conservation Cooperative

Opening Remarks

Dr. Hanson opened the meeting and reviewed the agenda. Relative to MSA reauthorization legislation, the LC reviewed the Administration Bill and a Senate Bill. The LC opted to focus the majority of the meeting on S. 2012, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005* introduced in the U.S. Senate by Senator Stevens, cosponsored by Senators Boxer, Cantwell, Inouye, Snowe, and Vitter. Additionally, the LC anticipates introduction of an MSA reauthorization bill in the U.S. House of Representatives sponsored by Representative Pombo. The LC recommends this full report be provided to both the Senate and the House for full congressional consideration.

Relative to other federal legislative matters, the LC planned to conclude the meeting with a thorough discussion of S. 1195, the *National Offshore Aquaculture Act of 2005*. The LC opted not to discuss S. 1549, the *Cooperative Hake Improvement and Conservation Act of 2005* as no new information has been made available since the LC's last review.

MSA Reauthorization

S. 2012 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005.

The LC spent considerable time conducting a section-by-section review of S 2012. Generally, this report is silent on sections of the bill where the LC was in agreement with the text of the bill or on sections of the bill dedicated to areas or issues outside the jurisdiction of the Council.

Detailed comments on the text of the bill:

S. 2012 Section 101 - Cumulative Impacts.

(b) Contents of Plans

The LC agrees the proposed change to include analyses of likely cumulative economic and social impacts represents a laudable goal, one the Council currently pursues to the extent practicable; however, the LC noted adequate economic and social data, or the funding to collect and analyze such data, does not currently exist. Although the LC noted the proposed language refers to use of the “best available social and economic data,” requiring social and economic analyses in the development of fishery management plans, plan amendments or management measures could be problematic if only poor data sources are available.

S. 2012 Section 103 - Regional Fishery Management Councils.

(a) Tribal Alternate on Pacific Council

The LC strongly supports this language providing for a tribal alternate on the Council.

(b) Scientific and Statistical Committees

The LC was receptive to the concept of a peer review process for the review of scientific information but recommends the first sentence proposed for MSA Section 302(g)(1)(D) (16 U.S.C. 1852 (g)(1)(D)) be changed to read “Each Council may establish a peer review process for that Council, developed in consultation with the Secretary for scientific information used to advise the Council about the conservation and management of the fishery.” The LC believes the Pacific Council currently has a strong scientific review process and felt that consultation with the Secretary rather than the Council coordination committee was appropriate.

The LC was not in favor of providing stipends to members of the Scientific and Statistical Committee (SSC) and recommends removing language proposed under MSA Section 302 (g)(1)(E) (16 U.S.C. 1852 (g)(1)(E)) from the bill. The LC agreed the SSC should preserve its independent status and noted that the Council has not experienced any difficulty in attracting qualified candidates in the absence of stipends. Further, the LC stressed that if stipends are ultimately approved, funds for those stipends should not come from Council appropriations.

(f) Training

The LC recommends mandatory training for new Council members and agreed that the lack of such training should not prevent a Council member from voting in cases where the training may

be delayed after appointments have been made. To clarify that training for existing members is available but not required, the LC recommends the proposed language for MSA Section 302 (k)(2) (16 U.S.C. 1852 (k)(2)) should be changed to read “MEMBER TRAINING - The training course shall be available to new Council members, and may be made available to existing Council, committee, or advisory panel members as resources allow.”

(g) Procedural Matters

The LC endorses the proposed exemption from the Federal Advisory Committee Act for the Council coordination committee, thereby preserving the ability of this effective group to meet as is currently done.

(h) Conflict of Interest

The LC strongly recommends Section 103(h)(1) and Section 103(h)(2) be removed from S. 2012. The proposed language would require affected Council members to disclose the financial interests of the *members* of associations the Council member is employed by or contracted with. The LC believes the existing MSA language is adequate and the new requirements are overly burdensome as many associations may have hundreds of members to track and reliable information is unattainable.

S. 2012 Section 104 - Fishery Management Plan Requirements.

The LC is supportive of the additional requirements included in this section for the collection of additional fishery data, particularly fish processing data and economic information.

The LC notes it has not been the practice of the Council to deduct or increase annual catch limits in the following year in response to the previous year’s harvest. Council-managed groundfish fisheries operate under a biennial management process that is not amenable to such a mechanism. Additionally, catch data is often not timely enough for such a management response. The LC recommends striking the language in Section 104 (a)(5) proposed for MSA Section 303(a)(15) after “optimum yield”.

S. 2012 Section 106 - Limited Access Privilege Programs.

The Council is currently in the process of developing an individual quota program for the trawl sector of the groundfish fishery. The LC notes that the authority to amend existing limited access privilege programs was dropped from the previous MSA draft and it is unclear where that authority now exists. The LC strongly recommends that nothing in S. 2012 or any other MSA reauthorization legislation apply to, or disrupt the ongoing development of potential future amendment of the Council’s groundfish trawl individual quota program. Therefore, the LC recommends amending the proposed language under MSA Title III Section 303A(g) (U.S.C. 1851 et seq.) as follows:

“(g) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—

Nothing in this Act, or the amendments by this Act, shall be construed to—

(1) require a reallocation of individual quota shares or processor quota shares or other quota programs, including sector allocation, submitted by a Council or approved by the Secretary or Congressional action before the date of enactment of

the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005; or

(2) prohibit the Pacific Fishery Management Council from completing and submitting, or the Secretary from approving and implementing, sector allocations in the West Coast groundfish fishery and the Groundfish Trawl Individual Quota Program or future amendments to the Groundfish Trawl Individual Quota Program.”

The LC finds the requirement for a fishery to be managed under a limited access program for one year prior to submission of a limited access privilege program would add an additional three to five years to program implementation, would be costly, and would be redundant as limited access would need to be considered in conjunction with the development of a limited access privilege program of necessity. The LC recommends striking the phrase “for a fishery that has been managed under a limited access system for at least 1 year” from the language proposed for MSA Section 303A(a).

Regarding proposed language for MSA Section 303A(c)(1)(D) (16 U.S.C. 1851 (c)(1)(D)) requiring fish processing by U.S. vessels or on U.S. soil, the LC felt this requirement, along with other provisions of S. 2012, should not apply to existing individual quota programs or individual quota programs currently under development. Additionally, the LC recommends the definition of processing be clarified (i.e. does a fish with the head and gut removed qualify as processed for export?). The definition of processing in this context is different from that under existing law defining processing and non-processing vessels (46 U.S.C. 2101 (11)(b)).

For clarity, the LC recommends the language proposed for MSA Section 303A(c)(2)(A)(iii) (16 U.S.C. 1851 (c)(2)(A)(iii)) be changed to read “consist of residents, some of whom conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council’s management area; and....”

The LC is supportive of measures to prevent limited access privilege holders from attaining excessive shares but, the LC also notes that some consolidation within fishery sectors is beneficial and recommends the language proposed for MSA Section 303A(c)(3)(E) (16 U.S.C. 1851 (c)(3)(E)) be changed to read “establish procedures to minimize, to the extent practicable, geographic or other consolidation in both the harvesting and processing sectors of the fishery; and....”

During the LC discussion of MSA Section 303A(c)(3)(F) (16 U.S.C. 1851 (c)(3)(F)) regarding the allocation of limited access privileges only to persons who substantially participate in the fishery, the LC noted this restriction seemingly prohibits organizations such as environmental groups from attaining privileges.

Regarding language proposed for MSA Section 303A(c)(4) (16 U.S.C. 1851 (c)(4)) on the matter of initiating a limited access privilege program, the LC felt strongly that Regional Fishery Management Councils (RFMCs) have been charged by Congress and the authority of MSA to best manage the fishery. If a Council, with its extensive public process, deems a limited access privilege as a viable and useful tool for fishery management, the Council should be allowed to initiate a limited access privilege program without the proposed petition process.

As an editorial comment, the LC noted Section 303A(c)(5)(E) (16 U.S.C. 1851 (c)(5)(E)) appears to have a typographical error and recommends the addition of the word “or” after the word “associations”.

S. 2012 Section 107- Environmental Review Process.

The LC was appreciative of efforts under S. 2012 to address environmental review under MSA and the National Environmental Policy Act (NEPA) but, the LC felt the proposed language is inconclusive and delays needed clarification on these competing statutes. The LC continues to be supportive of the language recommended by the Regional Fishery Management Council Chairs as reported in their April 2005 report as follows:

MSA and National Environmental Policy Act

Following the addition of critical provisions to MSA Sections 302, 303, and 305, thereby making MSA fully compliant with the essential intent of NEPA, reauthorized legislation should specify MSA as the functional equivalent of NEPA and exempt from NEPA in the same manner as the MSA is exempt from the Federal Advisory Committee Act (FACA). Areas to be addressed include analyzing a full assessment of environmental impacts, a range of reasonable alternatives, cumulative effects, and the extent of analysis on effects to the human environment, as well as a comprehensive public participation process. The specific proposed amendment language is as follows:

SEC. 302 [16 U.S.C. § 1852] REGIONAL FISHERY MANAGEMENT COUNCILS CONTENTS OF FISHERY MANAGEMENT PLANS
(i) PROCEDURAL MATTERS.

(7) Prior to a Council submitting a fishery management plan, plan amendment, or proposed regulations to the Secretary as described in Section 303, a Council shall prepare a fishery impact statement that shall

(a) include a range of reasonable alternatives;

(b) specify and assess likely direct and cumulative effects of each alternative on the physical, biological and human environment, including

(i) participants in the fisheries and fishing communities affected by the plan, amendment, or regulation and

(ii) participants in fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council representatives of those participants;

(c) be considered in draft forms during at least two Council meetings; and

(d) be made available to the public in draft form at least 10 days prior to the date of final Council action.

A final fishery impact statement shall be submitted to the Secretary coincident with a final recommendation.

SEC. 303 [16 U.S.C. § 1853] CONTENTS OF FISHERY MANAGEMENT PLANS

(a) REQUIRED PROVISIONS.

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

...

(9) include a fishery impact statement of the plan or amendment (in the case of a plan or amendment thereto submitted to ~~or prepared by~~ the Secretary after October 4, 1990~~2005~~) which will assess, specify, and describe the likely effects, ~~if any~~, of the conservation and management measures ~~on~~ **as described in Section 302 (i) 7. Fishery management plans prepared by the Secretary shall conform to the requirements of Section 302 (i) 7.**

~~(A) participants in the fisheries and fishing communities affected by the plan or amendment; and~~

~~(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council representatives of those participants;~~

SEC. 305 [16 U.S.C. § 1855] OTHER REQUIREMENTS AND AUTHORITY

...

(e) EFFECT OF CERTAIN LAWS.—

(1) The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of Section 304 as they apply to the functions of the Secretary under such provisions.

(2) Any plan or amendment or regulation developed under Sections 302, 303, and 304 of this act, is deemed to be in compliance with the National Environmental Policy Act.

S. 2012 Section 112 - Joint Enforcement Agreements.

The LC is supportive of efforts to provide data from enforcement tools such as Global Maritime Distress and Safety Systems and vessel monitoring systems (VMS) to law enforcement entities under a Joint Enforcement Agreement. State enforcement representatives to the Council process have repeatedly stated the importance of VMS as a tool for the enforcement of closed areas along the West Coast. To further assist state law enforcement efforts, the LC recommends any MSA reauthorization bill include provisions to allow the use of VMS data in the prosecution of state laws in state courts.

To clarify which states are eligible for Joint Enforcement Agreements, the LC recommends the proposed language for MSA Section 311(h)(2) (16 U.S.C. 1861 (h)(2)) be changed to read “(2) ELIGIBLE STATE - A State is eligible to participate in the cooperative enforcement agreements under this section if it has a voting seat on a Regional Fishery Management Council.”

To clarify allowable uses of VMS data in law enforcement, the LC recommends Section 311(i) (16 U.S.C. 1861 (i)) specifically name vessel monitoring systems along with Global Maritime

Distress and Safety Systems and that MSA Section 311(i)(A) (16 U.S.C. 1861 (i)(A)) be changed to read “directly accessible on a real-time basis and available for the prosecution of State laws in State courts involving federally managed species, by State enforcement officers authorized under subsection (a) of this section.”

S. 2012 Section 113 - Transition to Sustainable Fisheries.

Regarding fishing capacity reduction programs the LC focused their discussion on the collection of industry fees. The LC felt the collection of such fees should not necessarily be the responsibility of the fish purchaser by inserting the word “may” at the beginning of MSA Section 312 (d)(2)(C) (16 U.S.C. 1861a (d)(2)(C)). Additionally, the LC recommends MSA Section 312 (b)(1)(C) (16 U.S.C. 1861a (b)(1)(C)) read “is cost-efficient and, in the instance of a program involving an industry fee system, capable of repaying any debt obligation incurred under section 111 of title XI of the Merchant Marine Act, 1936.”

S. 2012 Section 203 - Access to Certain Information.

This section makes provisions for the use of confidential information by State employees but, it is unclear whether confidential information could also be made available to State contractors.

S. 2012 Section 204 - Cooperative Research and Management Program.

Under the proposed new section of the MSA being proposed for this program, the LC recommends that critical needs for project funding be first identified by the Regional Fishery Management Councils and suggests that Section 317 (b) (16 U.S.C. 1851 (b)) read “The Secretary shall make funds available under the program for the support of projects to address critical needs identified by the Council in consultation with the Secretary. The program....”

S. 2012 Section 208 - Fisheries Conservation and Management Fund.

The LC is generally in favor of the fund but recommends focusing the use of the funds on immediate needs for fishery management, not on improving the quality or marketing of fish products. Therefore, the LC recommends striking S. 2012 Section 208 (b)(3), Section 208 (b)(4), and Section 208 (b)(5) and replacing them with a new Section 208 (b)(3) which reads “the analysis and development of new conservation and management initiatives by a Council.”

S. 2012 Section 209 - Use of Fishery Finance Program and Capital Construction Fund for Sustainable Purposes.

The LC recommends this section be removed from the bill for procedural reasons. The LC agreed improvements to the Capital Construction Fund are best addressed under separate legislation.

S. 2012 Section 302 - Reauthorization of Other Fisheries Acts.

Regarding S. 2012 Section 302 (f) State Authority for Dungeness Crab Fishery Management, the LC believes the current management and assessment of the Dungeness crab resource is adequate and notes stock status and trend forecasts for this species are unattainable. Additionally, the LC recommends removing the sunset clause as the law already contains provisions for the

termination of State authority upon completion of a fishery management plan under MSA. Therefore, the LC recommends striking S. 2012 Section 302 (f)(2) and Section 302 (f)(3) and changing Section 302 (f)(1) to read “by striking subsection (i).”

S. 2012 Section 403 - Action to End Illegal, Unreported, or Unregulated Fishing and Reduce Bycatch of Protected Marine Species.

The LC is supportive of the proposed language in this section but did not see the need to specifically mention bottom trawling and recommends removing the phrase “including bottom-trawling” from the proposed changes to the High Seas Driftnet Fishing Moratorium Protection Act language under Section 609 (e)(3)(C).

S. 2012 Section 406 - International Overfishing and Domestic Equity.

The LC agreed that developing recommendations to address the impacts of U.S. vessels on stocks experiencing excessive international fishing pressure within one year of the Secretary’s determination is reasonable. However, the LC notes that amending a fishery management plan (FMP) and implementing regulations will require more time.

Important Omissions from S. 2012.

The LC would like to highlight two key omissions from S. 2012. The LC and the Council continue to request that reauthorization of MSA address fishery management authority in national marine sanctuaries and rebuilding requirements for depleted stocks. The LC recommends the Council’s June 2005 decision to support the April 2005 positions of the Regional Fishery Management Council Chairs on these matters be submitted for consideration under S. 2012, as follows:

MSA and National Marine Sanctuary Act

Fishery management authority in national marine sanctuaries (NMS), for all species of fish as defined in the current MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority shall not be limited to species of fish covered by approved FMPs, but shall include all species of fish as defined in the current MSA and shall cover the full range of the species in the marine environment. Prior to reaching decisions on the management regulations affecting fishing in NMS waters, an RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.

In addition to the proposed changes in the MSA above, the RFMCs also recommend the National Marine Sanctuaries Act be amended to achieve jurisdictional clarity as follows:

NATIONAL MARINE SANCTUARIES ACT

SEC. 302. [16 U.S.C. § 1432] DEFINITIONS

As used in this chapter, the term-

...

(8)"sanctuary resource" means any living or nonliving resource of a national marine sanctuary, **excluding fish and Continental Shelf fishery resources under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1811)**, that contributes to the conservation, recreational, ecological, historical, education, cultural, archaeological, scientific, or aesthetic value of the sanctuary; and

SEC. 304. [16 U.S.C. § 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

(a) Sanctuary Proposal

...

(5) FISHING REGULATIONS-**The appropriate Regional Fishery Management Council shall prepare fishing regulations for any fish and Continental Shelf fishery resources within a sanctuary in accordance with Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852). The Secretary shall review the proposed fishing regulations in accordance with Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1854), and other applicable statutes. Regional Fishery Management Councils shall cooperate with the Secretary and other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practical stage in drafting any sanctuary fishing regulations. Preparation of fishing regulations under this section shall constitute compliance with Section 304(d) of this Act. Fishing in compliance with regulations prepared under this section shall not constitute a violation of this Act.**

Rebuilding Time Frame

The Regional Fishery Management Councils recommend MSA Section 304 (e)(4)(A)(ii) be deleted as follows to address the problems associated with the arbitrary ten-year rebuilding time boundary:

- (2) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—
 - (A) end overfishing within one year, and specify a rebuilding period that shall—
 - (i) be as short as possible, taking into account the status, mean generation time, and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in

which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

~~(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;~~

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery relative to other nations, by fishermen of the United States.

MSA Reauthorization Bills in the U.S. House of Representatives

The LC discussed anticipated legislation in the U.S. House of Representatives regarding reauthorization of MSA but did not have a draft bill for consideration at this meeting. The LC agreed to forward this report to the House Committee on Resources with a cover letter stressing the importance of issues not addressed in S. 2012.

National Offshore Aquaculture Act of 2005

The LC discussed the following three alternative positions on S. 1195 and stated a preference for Alternative 3 at this time.

Alternative 1) Support a ban or moratorium on offshore aquaculture operations in federal waters until significant issues such as pollution, waste management, disease control, genetic impacts, food safety, and socioeconomic impacts are fully addressed.

Alternative 2) Oppose S. 1195 as written and attempt to develop acceptable amendatory language.

Alternative 3) Oppose S. 1195 on the grounds that the legislation is incomplete and is not ready for implementation for the following reasons.

- The process of locating sites that do not unduly overlap with productive fishing areas is not addressed. U.S. Coast Guard enforcement of aquaculture sites could be in conflict with active fishing practices and could divert limited enforcement resources away from the enforcement of fishing regulations.
- The LC is concerned that under S. 1195, aquaculture would be under the sole jurisdiction of U.S. federal courts. This could leave the States with a limited ability to enforce and prosecute state laws, such as landing requirements, in state courts.
- There needs to be parity between aquaculture and traditional fishing and fish processing operations on issues like environmental laws (NEPA), worker protective laws (Jones Act, OSHA), and Health safety standards (HACCP).

- The role of Councils in permitting aquaculture activities needs to be strengthened beyond the current consultation requirement. Secretarial approval of aquaculture activity should be contingent upon approval by the appropriate RFMC.
- Provisions must be made to allow a state to opt out of aquaculture in federal waters off their state.

PFMC
12/09/05