



North Pacific Fishery Management Council

Simon Kinneen, Chair | David Witherell, Executive Director
605 W. 4th Avenue, Suite 306, Anchorage, AK 99501
Phone 907-271-2809 | www.npfmc.org

Legislative Committee

Oct 2, 2019 3pm-5pm, Harbor Room, Land's End, Homer, Alaska

Action Memo

Council Staff: David Witherell
Action Required: Review and prepare comments as necessary

BACKGROUND

News from the CC meeting

Council legislative liaison Dave Whaley provided an update at the CCC meeting in May. Dave said that a full MSA reauthorization bill was unlikely in 2019, although some legislation may pass piecemeal. He noted that the legislative working paper is important and helpful to congressional staff.

Regarding aquaculture legislation, he stated that the legislation introduced by Senator Wicker (R-Mississippi) in the 115th Congress has not yet been reintroduced in the 116th Congress. Legislation has been introduced in the House of Representatives by Congressman Young (R-Alaska) to prohibit aquaculture permitting in the EEZ by either the Secretary of Commerce or the Secretary of the Interior until legislation is enacted by Congress to authorize aquaculture permitting.

In light of potential Congressional action on the following issues, Dave Whaley suggested that each Council document what they currently are doing on key issues to quickly address questions or responding to requests for Council input on these topics. Following the CCC meeting, each Executive Director prepared summaries that describe how their council is addressing shifting stocks and changing ocean conditions, and management of forage fish. We also prepared a summary of the average time it takes to prepare and implement FMP or regulatory amendments in our region. Copies of NPFMC summaries are available upon request.

The CCC also approved several consensus statements on new topics added to the CCC Working paper on MSA reauthorization issues, including cooperative research, other federal statutes, cooperative data collection, mixed-use fisheries LAPP moratorium, and aquaculture. Regarding aquaculture, the collective position of the councils was that the councils should retain existing authority to regulate aquaculture, and that a consultation role alone would not adequately address council concerns. The most up-to-date working paper and CCC recommendations can be found on the www.fisherycouncils.org website.

An update on high profile MSA legislation introduced in the 116th Congress

H.R. 3697 - “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” On July 11, Congressmen Young (Alaska) and Van Drew (New Jersey) introduced a Magnuson-Stevens Act reauthorization bill (H.R. 3697), which is the same bill that was passed by the House of Representatives last year (H.R. 200). The H.R. 3697 bill can be accessed here: <https://www.congress.gov/bill/116th-congress/house-bill/3697/text>

For reference, the Council's prior comments on HR 200 can be found here:

https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/5ac27e4a8a922dfd6530b483/1522695754219/040218_NPFMCCommentLtrYoung_HR200_HR2079.pdf

The Council Coordination Committee comments on H.R. 200 can be found here:

https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/5b2aa3d888251b1c3d0b6a3c/1529521112329/060818_CCC_CongressmanYoung.pdf

H.R. 1979 “The Driftnet Modernization and Bycatch Reduction Act”

On March 28, Representative Ted Lieu (California) introduced the Driftnet Modernization and Bycatch Reduction Act. The bill can be viewed here: <https://www.congress.gov/bill/116th-congress/house-bill/1979> This bill addresses certain driftnet fishing (gillnets that drift with ocean currents) with the objective of reducing bycatch.

The use of large-scale drift gillnets with a total length of 2.5 kilometers or more has already been prohibited in the United States. The bill expands the definition of large-scale driftnet fishing to prohibit the use of gillnets with a mesh size of 14 inches or greater. This expanded prohibition does not apply within the U.S. exclusive economic zone for five years however, to provide the fishing industry time to adapt. The bill would require the Department of Commerce to conduct a transition program to facilitate the phase out of large-scale driftnet fishing and to promote the adoption of alternative fishing practices that minimize the incidental catch of living marine resources. Commerce must award grants to program participants.

This bill appears to have no immediate impact on fisheries management in the North Pacific. Gillnets (including setnet and driftnet) are not authorized gear types for use for fisheries in the North Pacific EEZ, with minor exceptions (CFR 600.725). The exceptions are for commercial salmon fisheries which operate primarily in State waters (and in 3 small designated areas of the EEZ), and other commercial fisheries managed by the State of Alaska which I believe occur almost entirely in State waters (e.g., Pacific herring gillnet fisheries). In all cases, gillnet mesh is regulated by the target species and area (the maximum mesh size allowed in the State is 8” stretched mesh) and gillnet length is regulated as well (maximum of 150 fathoms, which equates to about 0.274 kilometers). To date, the EEZ off Alaska has not been suitable habitat for billfish, tunas, or large commercially marketed shark species, so no commercial driftnet or pelagic longline fisheries have been prosecuted for these species in the area.

H.R. 2236 “The Forage Fish Conservation Act”

In June, the Council reviewed the “Forage Fish Conservation Act” which was introduced in April to the US House of Representatives by Rep. Debbie Dingell (Michigan) and Rep. Brian Mast (Florida). The Bill is posted here: <https://www.congress.gov/116/bills/hr2236/BILLS-116hr2236ih.pdf>. A Council comment letter on the bill was sent to Senator Maria Cantwell at the request of her staff.

https://www.npfmc.org/wp-content/PDFdocuments/CM/2019/062819/062819_ForageFishCommentLtr.pdf

Our take home messages in that comment letter were:

- **Because forage fish and ecosystem concerns are adequately addressed by the existing North Pacific management programs developed under existing MSA provisions, HR 2236 does not appear to enhance the Council's ability to meet the MSA's conservation and management goals for forage fish species.** The legislation would limit the Council's flexibility in achieving conservation objectives and in our ability to respond to changing ocean conditions and shifting

ecosystems. Additionally, the bill does not provide enough specificity to avoid lengthy, complex implementing regulations or guidelines.

- **We believe the definition of forage fish is too broad to be unambiguously applied to species already managed under a fishery management plan or fishery regulations.** While likely not intended, it is not clear if some of the most commercially valuable fish species in Alaska (e.g., Alaska pollock, Atka mackerel, and sockeye salmon) would be determined to be forage fish under this definition. In other words, these species could be considered forage fish under this bill if they meet the three criteria of what defines a forage fish:
 - (1) is a low trophic level (defined as fish that generally consume plankton)
 - (2) contribute significantly to the diets of other fish, mammals or birds, and
 - (3) serve as a conduit for energy transfer to species at higher tropic levels.All three of these species mentioned (Alaska pollock, Atka mackerel, and sockeye salmon) are planktivorous, are eaten by fish and mammals (like most every other fish species), and transfer energy up the food chain (like every other fish species). Thus, it could be argued by some that any fish species that eats plankton should be treated as forage fish.
- **We believe that the bill could lessen the burden on councils and the likelihood of litigation by clarifying that the regional fishery management councils (though their fishery management plans) shall make final determinations of which species are considered as forage fish.** The Council is concerned that such a broad definition of forage fish will allow for various interpretations by different interested parties. This ambiguity, particularly with respect to species that could be determined to meet the bill's definition of forage fish but are currently caught in target fisheries (e.g., Alaska pollock, Atka mackerel, sockeye salmon), may invite lawsuits that would ultimately be decided by the courts.
- **We believe that the language in Section 7 of the legislation might be more appropriate in section 303(b) of the MSA.** This would provide the councils discretion to adjust catch limits for forage fish to account for dietary needs, rather than make it a required provision of FMPs. The current language in the MSA already provides the councils with the authority to address forage fish concerns. Predator needs and other forms of natural mortality are already accounted for in the stock assessments and specification of acceptable biological catch limits, within the constraints of the best scientific information available. Additional adjustments to catch limits would require substantial research funding that may divert limited research monies away from critical surveys and stock assessments for harvested stocks. In the absence of additional dietary research, catch limits for target species would need to be extremely restrictive to account for this uncertainty. Greater specificity is unlikely to be appropriate given the rapid evolution of ecosystem science and the high degree of uncertainty that remains regarding interactions among species.
- **The bill could be clarified that *unless subject to a directed fishery*, the SSC and Council should not be required to make catch limit recommendations for forage fish.** Forage fish are considered as ecosystem component species in the North Pacific groundfish FMPs, and by definition, are not subject to a directed fishery. Accordingly, annual catch limits are not established for these species, consistent with the National Standard 1 guidelines. It is not clear how the bill would address ecosystem component species.

Action Required by the Committee

Council Comments Requested: Comments on H.R. 1979 and 2236 have recently been requested by Mr. Rob Bishop of the U.S. House of Representative Committee on Natural Resources. The letter requesting comments is attached to the Council agenda under Item B-1.

The primary purpose of this meeting of the Legislative Committee is to review these bills and provide recommendations. Based on the recommendations of the Committee, and with further input from the full Council, I intend to have a draft comment letter for Council review prior to the end of the Council meeting.

Regarding the Driftnet bill, the Committee may wish to provide comments on how this bill does not appear to affect our fisheries. The Committee may wish to point out that large pelagic driftnets are only authorized and used off the Pacific coast to target swordfish and Thresher sharks, and therefore this MA provision could be region-specific.

Regarding the Forage Fish bill, the Committee may wish to provide focused comments that get to the primary issues the Council is concerned about, and perhaps consider attaching or providing a link to our prior comment letter and forage fish management summary sheet.

NOAA GC has previously provided legal guidance for making Council comments on draft legislation, which is worth repeating here and summarized as follows:

The Council must receive a specific request on legislation from Congress (member or staff) to provide comments. Any comments the Council submits should be tied to the Council's performance of its grant as specifically as possible. Therefore, comments should explain how the council believes specific provisions of the bills (or provisions missing from the bills) could have harmful or beneficial impacts on the Council's ability to fulfill its responsibilities under the MSA, or affect the Council's ability to conserve and manage marine resources and resource users. Comments should not express general support or disfavor with the bill or with a particular provision without description of the impairment.