



NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

605 W. 4th Ave. Suite 306
Anchorage, AK 99501
(907) 271-2809
Fax (907) 271-2817

Action Memo

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Dan Hull, Chairman
Chris Oliver, Executive Director

SUBJECT:
Executive Director's Report

Legislative Update

There has been no movement on Magnuson-Stevens Act (MSA) reauthorization, and no firm indication that anything will transpire this year. On March 1, the week after the interim Council Coordination Committee (CCC) meeting in Washington, D.C., the House Resources Subcommittee on Water, Power, and Oceans held a legislative hearing on HR4576, "Ensuring Access to Pacific Fisheries Act", which is implementing legislation for the North Pacific Fisheries Convention (as well as the South Pacific Fisheries Convention, and amendments to the Western and Central Pacific Fisheries Convention). We were invited to testify at that hearing (attached), and Chairman Hull provided testimony to the Subcommittee reflecting our comments on previous versions of implementing legislation, and summarizing our perspectives on HR4576 (attached). The provisions of HR4576 pertaining to the North Pacific Fisheries Convention (NPFC) are virtually identical to the Senate version which passed out of the Senate Commerce Committee last summer, and appear to address all of our comments and concerns with prior draft legislation. HR4576 may go through the mark-up process sometime this spring, and potentially be approved by Congress this year.

Council Coordination Committee

The Council Coordination Committee (CCC) held its interim meeting February 23-25 in Washington, D.C. and discussed a number of issues including: NEPA procedures for fisheries management actions; the draft guidance for reviews of catch share programs (CSPs); budget status; observer program/electronic monitoring funding; conflict of interest/ recusal determinations; Saltonstall-Kennedy (S-K) grant process; the proposed rule for standardized bycatch reporting methodology (SBRM); and, the draft National Bycatch Reduction Strategy. Additional detail on some of the more significant issues is provided below:

NEPA - after 10 years, a draft Policy Directive, a couple of proposed rules, consideration of several alternative approaches to reconcile the process and analytical requirements of NEPA and MSA, and input from the CCC NEPA Working Group, we finally have some resolution of the issue. Revised and Updated Procedures for MSA Fishery Management Actions has been approved by the Council on Environmental Quality (CEQ) and published in the Federal Register (attached). These procedures will take the form of a supplement to the NOAA Administrative Order 216-6, which contains the NEPA provisions for fishery management actions. It is the agency's position that this now constitutes compliance with section 304(i) of the 2007 MSA reauthorization, which required the Secretary to "revise and update agency procedures for compliance with NEPA in the context of fishery management actions developed pursuant to MSA, and to do so in coordination with CEQ and the Councils".

The revised NOA216-6 supplement, in my opinion, does nothing but reiterate the status quo, and therefore does not really satisfy the MSA section 304(i) directive. However, I have lost that argument. The good news is

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that (1) the revised document does not erode the status quo; i.e., erode the Council's MSA authorities, as did the original policy directive from February 19, 2013, -thanks to the agency for accommodating most of the revisions from the CCC workgroup!-and (2) we're doing a pretty good job with the status quo process, as cumbersome as it may be. So, the NEPA issue appears to be settled for now, unless it is re-addressed somehow in future MSA reauthorization or other legislation.

Catch share program reviews - in fall 2015 NMFS released its DRAFT Guidance for Reviews of Catch Share Programs (CSPs). Based upon significant concerns expressed by all of the regional fishery management Councils, NMFS agreed to postpone finalizing this guidance pending further discussions by the CCC. In February I provided you with a draft comment letter which detailed these concerns, and we submitted that letter prior to the late-February CCC meeting (attached). At the CCC meeting NMFS agreed to consider revisions to the guidance document, and we will review the revised guidance at our May CCC meeting. Following those CCC discussions, and following any further comments from individual Councils based on their June meetings (with a comment deadline of July 31), NMFS will then work to finalize these guidelines. This is a significant issue, given the tremendous workload implied by the draft Guidance document, particularly given the number of 'catch share' programs we have operating in the North Pacific.

Recusal determinations - At our request last year the agency agreed to examine the recusal determination process, particularly the issue we raised with regard to calculating a member's financial interest (i.e., the policy of attributing 100% of a company's activities to that member's calculation, as opposed to a proportional percentage). We requested that the agency consider changing the regulations which implement the conflict of interest provisions, or consider changing their interpretation of the existing regulations (which do not specify an attribution standard). Senator Sullivan's office has also requested the agency to reconsider this issue. At our interim CCC meeting in late February we discussed this issue again, at some length, with NOAA Fisheries leadership, including Mr. Rauch and Mr. Adam Issenberg with the Office of General Counsel (GC). At that time the agency acknowledged our concerns with the process, and described their application of the attribution percentage as consistent with long-standing practice nationally; however, they also acknowledged that their application of the attribution methodology is indeed a policy decision, and not based on any statutory or regulatory requirement. The position of NMFS leadership was that this is a policy issue to be determined by NOAA GC, rather than by NOAA Fisheries. We reiterated our request for them to revisit this policy decision, and have requested an update on this issue at our upcoming CCC meeting in May.

National bycatch initiatives - Just prior to the interim CCC meeting NMFS unveiled two important bycatch related items. The first is a proposed rule which would provide guidance (requirements?) to amend each FMP to reflect standardized bycatch reporting methodologies (SBRMs). This rule appears to be in response to litigation outcomes on east coast fisheries where the SBRM was found to be deficient. That proposed rule is attached, with a comment deadline of April 25. Our SBRMs essentially consist of our in-season catch accounting system, as underpinned by our comprehensive observer program and recordkeeping and reporting requirements. While this methodology no doubt satisfies the SBRM requirements as intended by the MSA, the proposed rule provisions will likely require us to do considerable work to amend our FMPs to satisfy these provisions, particularly section (c) 'Adaptable implementation', which would require us to specify in extreme detail how that methodology might be adjusted in the future. Much like the rulemaking to implement the annual catch limit (ACL) requirements, we will be required to do considerable work to amend our FMPs to more explicitly describe what we are already doing, as well as develop speculative criteria for how we might adjust the methodology in the future. I have developed draft comments (attached) and welcome Council input in order to finalize these comments prior to the deadline.

The second item is another strategic plan initiative - NOAA Fisheries Draft National Bycatch Reduction Strategy (attached). This document is intended to "guide and coordinate (our) efforts to reduce bycatch and bycatch mortality in the coming years". Comments are due by June 3. Because this draft strategy is couched

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in very general terms (broad objectives followed by generalized strategies, largely expressed in terms such as “improve, consider, support, continue, promote, encourage, track...”), and because it is intended to be followed with development of national and regional ‘action plans’, it may be premature to provide any meaningful comment on the draft strategy document. However, one comment may simply be to stress the necessity for close coordination with the Council(s) in development of the ‘action plans’, particularly at the regional level. I would also note that the draft strategy defines ‘bycatch’ more broadly than the MSA definition; i.e., inclusion of marine mammals and seabirds. For reference, attached is our July 2015 letter to NOAA on bycatch issues in general, which includes initial suggestions relative to the then pending Bycatch (Reduction) Strategy document.

National EFH Summit

This year marks the 20th anniversary of the essential fish habitat (EFH) provisions of the 1996 MSA reauthorization (Sustainable Fisheries Act), and the Fisheries Leadership and Sustainability Forum is organizing this Summit May 17-19 in Annapolis, MD. The Summit will convene Council and NOAA fisheries habitat experts to share ideas and experience, support communication within and across regions, and help build a community of practice around the effective implementation and use of EFH authorities. A more complete description of the Summit is attached. Our Council will be represented at the Summit by Bill Tweit, David Witherell, and Steve Maclean.

Recent Council/Staff activities

Diana Stram, Sam Cunningham, and Steve MacLean attended the annual meeting of the Federal Subsistence Regional Advisory Councils on March 7, 2016 in Anchorage, AK, where they provided an overview of the Council process and summarized recent activities related to salmon and halibut bycatch management in the Bering Sea and Gulf of Alaska to more than 100 RAC members from all over Alaska.

In February David Witherell and Maria Shawback attended the Council Communications Workgroup meeting in Hawaii. The Communications Workgroup met to discuss best practices and technology for communication and outreach, develop a plan to update the fisherycouncils.org website, and initiate preparation of a brochure to celebrate the 40th anniversary of the regional fishery management councils. We expect that brochure to be available in May, in time for the CCC meeting being hosted by the Caribbean Fisheries Management Council.

David Witherell also participated as a member of the North Pacific Research Board (NPRB) Science Advisory Panel meeting in March, to provide scientific peer reviews of research proposals, review Arctic IERP proposals, and review graduate student award applications.

In addition to testifying at the House Resources Committee hearing in early March, Chairman Dan Hull also provided a presentation on Council issues (highlighting our recent work on bycatch management) at the March 2016 annual meeting of the Southwest Alaska Municipal Conference (SWAMC) held in Anchorage.

Steve Maclean has been a reviewer of proposals for the 4th International Marine Conservation Congress to be held this summer in St. John’s, Newfoundland where he is also scheduled to present a paper on the Council’s coral conservation efforts in the North Pacific, including the Bering Sea canyons issue considered by the Council.

June Council Meeting

Because of the scheduling and logistics associated with our Kodiak meeting, including the need for folks to get their travel and hotel reservations confirmed as soon as possible, I am providing an early draft of the June Council meeting agenda (attached), which I have reviewed with Chairman Hull. This draft is basically

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consistent with what is reflected in our 3-meeting outlook, and we can discuss as necessary later in our meeting. A couple of cautionary notes-it will be very difficult to make any major changes in the sequencing of major agenda items due to the necessary sequencing through our SSC and AP, coupled with Council and agency staff availability (which is in turn linked to the tight hotel room availability throughout that week). Further, it will be very difficult to add any items to this agenda, given that it is already a full agenda, and adding items could also bring into play the logistical challenge of accommodating constituents who would want to be present for such Council discussions. Also, as a reminder, please use the Alaska Airlines discount codes for this meeting (and all Council meetings) that Shannon has been distributing-and note that these discount codes are available to anyone attending our meetings.

Alaska's own Mr. T

On Wednesday evening April 6 the Alaska Humanities Forum, in partnership with the Rasmuson Foundation, will present the film premiere of Magnetic North: Clem Tillion. This is a half-hour documentary film reflecting on the career (and life) of the 'Fish Czar' himself, and is the first in a planned series of films that will explore the personality and character of living Alaskans who have shaped the history and spirit of Alaska. This event will be held at the Top of the World (Hilton Hotel) beginning with a reception from 5:30 to 6:15 pm, followed by the film premiere from 6:30 to 7:00 pm. This event is open to all, and additional details are attached.

Congratulations to Steve Davis

Mr. Steven K. Davis, long-time Council family member, will retire from federal service at the end of June, after working for 35 years in North Pacific Fisheries. Steve began his career as a fisheries biologist for the North Pacific Council in 1981, where he rose to the position of Deputy Director before leaving the Council staff for the private sector in 1992, where he worked for LGL Research Associates until joining NOAA Fisheries in 1998. For over 17 years Steve has worked for NMFS in their Anchorage offices, most recently as Supervisory Biologist and Senior Policy Advisor. He has remained actively connected to the Council process, and is a long-time friend of that process and many of the folks involved, including myself. Steve is most directly responsible for hiring me as the Council's Gulf of Alaska Plan Coordinator in 1990, so if anyone is looking for someone to blame...

Some of you may be able to recall some of Steve's most significant career achievements, such as in 1986 when he developed the first bycatch estimation model, which was in response to the IPHC's request for a ceiling on halibut mortality in the Gulf of Alaska-this model was used by the Council in setting limits that year and was expanded to the Bering Sea the following year. In that same year Steve also 'modernized' the Gulf of Alaska FMP, by shepherding Amendment 15, which established the framework procedure for setting annual harvest levels and expanded in-season management authorities for NMFS. Steve was the principal author of the first BSAI King Crab FMP, which was the first FMP in the Nation to defer management authority to a state. In 1991, while still working for the North Pacific Council, Steve was the principal architect of the first federal domestic fisheries observer program, a watershed accomplishment both regionally and nationally. In 1992 Steve planned and co-led the first national bycatch workshop in Newport, Oregon.

In 1999 Steve received an Outstanding Achievement Award from the U.S. Army Corps of Engineers for leading the preparation of the Northstar Development EIS, and from 1999 to 2004 Steve organized and led the development of this Council's programmatic EIS, which contained a review of the previous 25 years of federal fisheries management for our groundfish FMPs. That document was critically important for the Council and NMFS, and continues to provide the necessary NEPA underpinning for our management process. Steve was also co-author of the National Academy of Science's report on the health of the Bering Sea ecosystem. In 2009 he was the NMFS Alaska Region employee of the year.

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As a friend and colleague, I am honored to recognize Steve for his outstanding career in the science and management of North Pacific Fisheries, to express our extreme gratitude for all he and his team have done to support this Council, and to congratulate him on his pending retirement. I know that his wife Nancy, son Matt, and daughter Alex are all extremely proud of him!