

DRAFT Minutes
Legislative Committee Meeting
1-4 pm, February 5, 2018

Members Present: Dan Hull (chair), Bill Tweit, Steve Marx, Jim Balsiger, Sam Cotten (by phone). Dave Witherell (staff) and Lauren Smoker (NOAA GC by phone) also participated in the discussion.

Public present: Keith Bruton and Mary Beth Tooley (O’Hara Corporation), Arthur Severance (Coastal Villages Region Fund), Becca Robins Gisclair (Ocean Conservancy) and Chris Woodley (Groundfish Forum).

Chairman Hull opened the meeting with introductions and a review of the agenda, and potential outcomes of the committee meeting that might include recommendations for a Council comment letter on H.R. 200, if requested. He noted the legal guidance for making comments, 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.

Dave Witherell reviewed the background materials including an action memo and handouts. Following the presentation, public testimony was taken, and summarized below:

- Arthur Severance – Requested the Council to recommend a population-based CDQ allocation to Congress for existing CDQ groups to correct economic inequities. He provided a handout showing CDQ allocations on a per-capita basis that illustrates major differences in economic benefits among the CDQ groups. He also noted the Aleut Corporation allocation language in HR200 essentially makes Adak a CDQ group but without any requirement to follow the provisions of the CDQ program, and that it’s per-capita allocation would be disproportionate to its population.
- Mary Beth Tooley – Stated that she is glad the committee is preparing comments on H.R. 200 and other legislation.
- Becca Gisclair – Highlighted the Council comments that the MSA not weaken existing ACL provisions. She noted concerns with possible precedent set by H.R. 3588 and illustrates the challenges that occur when management is moved outside the MSA structure with no clear understanding that similar conservation and management practices will be followed.

Discussion of Amended H.R. 200

The Committee noted that the amended H.R. 200 contains several important changes that affect the management of fisheries in the North Pacific. The committee focused its discussion only on changes to the legislation and did not revisit those elements of H.R. 200 the Council previously commented on in their 10/17/17 letter to Senator Sullivan. Significant revisions and concerns raised by the committee are addressed below.

Section 204 Modifications to the ACL requirement. The amended H.R. 200 brings in language from S. 1520 which allows a council to maintain its current ACL for a stock where ACL is > 25% below the OFL, a peer-reviewed survey and stock assessment have not been done in the last 5 years, and the stock is not subject to overfishing. Within 2 years of receiving a notice from a council that there is such as stock, the Secretary must complete a peer-reviewed survey and stock assessment.

In the previous comments on S. 1520 the Council noted that the requirement for the Secretary to perform surveys and stock assessments within 2 years is entirely unrealistic and extremely costly, and may cause a reallocation of research funds from the Alaska region to regions where surveys are very challenging (e.g., coral reef areas) and expensive. Consequently, it may provide little added benefit to conservation of the stocks and management of those fisheries. NMFS is currently conducting a Stock Assessment and Improvement Plan that will address many of the issues that this bill seems to identify.

The Committee further noted the provision that nothing in this section of the bill shall be construed as providing an exemption from the requirements of the National Standards.

Section 206 Study of LAPPs for Mixed-Use Fisheries – The amended H.R. 200 incorporates language from S. 1520 that requires a study by the National Academy of Sciences on the use of limited access privilege programs (LAPP) for mixed-use fisheries. Additionally, there is a moratorium on the submittal and approval of such a LAPP program until the study is submitted to Congress.

The NPFMC noted in its comments on S.1520 that NAS studies incur costs to the agency (typically ~ \$1 million) that in turn, affect the councils by reducing funding for NMFS scientific and management support. Additionally, prescribing a national moratorium on LAPPs limits the ability of Councils to use proven management tools based on regional needs and determinations, to fulfill their conservation and management responsibilities.

Section 207. Cooperative data collection. The amended H.R. 200 replaced the original language from Section 27(2) with language from S. 1520 on data collection from non-governmental sources. The bill requires the Secretary to prepare a report on facilitating greater incorporation of data, analysis, stock assessments and surveys from State agencies and non-governmental sources (fishermen, fishing communities, universities, and other institutions).

The Council noted in its comments on S. 1520 that although cooperative data collection can be very valuable to our management process and scientific understanding (e.g., the expanded Bering Sea crab surveys done by industry several years ago), the studies and results need to have adequate peer review. The concern isn't specifically with other non-government data sources per se, it is the notion that they won't be adequately peer reviewed or vetted. The Council had suggested that in developing the report, the Secretary also identify a process for ensuring adequate scientific peer review of the data and analysis. Basing management decisions on poorly designed studies can be highly detrimental to the conservation of our stocks and management of the fisheries.

Report on Fees – This section was dropped from the amended draft of H.R. 200 (perhaps unintentionally?). *The Council had previously commented that requiring the Secretary to report annually, to both Congress and the Councils, on the amount collected from each fishery subject to fees, is consistent with information requests previously made by the NPFMC to NMFS. This information would greatly assist the Councils, and NMFS, with information to effectively and fairly develop, implement, and review fee programs in the future.*

Section 302 Transparency – The amended H.R. 200 retained the requirement for audio, video or written transcript of each council and SSC meetings be posted within 30 days. *The Council has commented that this requirement would add significant costs with little or no marginal benefit to the public.*

Additionally, the amended H.R. 200 retained the detailed requirements for preparing a fishery impact statement and having it completed and available at least 14 days before a council took final action. *In the Council's previous comment letter, it was noted that this change may only make a marginal improvement to the regulatory process, and could, at least in the near term, complicate our regulatory process, and associated legal processes.*

The amended H.R. 200 took out the paragraph that actions taken to prepare fishery impact statements were deemed to fulfill the requirements of NEPA. *The Committee noted that rather than replacing the NEPA analysis with an expanded fishery impact analysis, staff would now have to prepare two separate analysis, and further increase the litigation risk, with no apparent benefit of doing so. The Committee further noted that the PFMC provide additional concerns with the language as amended.*

Section 304 Exempted Fishing Permits – The amended H.R. 200 adds a new section, based on the language from S.1520, but without the 12-month limit on duration. *The Council had provided comments on S.1520 regarding problems with the 12-month duration, as well as the required economic impact analysis required for the SOC to certify would greatly reduce the industry's and Council's ability to get EFPs developed and approved in a timely manner. The amended H.R. 200 still contains the onerous analytical requirements. The Committee also agreed with the PFMC comments regarding the requirement that the proposed EFP "...will have a positive and direct impact..." presumes the results of the EFP fishery. The purpose of EFPs is often to determine empirically if it will have a positive impact.*

Section 406 AI Pollock Allocation – The bill now includes a new section on Allocation of Unused Aleutian Island pollock allocation. This section requires that if the Aleut Corporation (the pollock allocation holder named in section 803 of the Consolidated Appropriations Act of 2004 – see attachment) will not harvest some or all of its AI pollock allocation, the NMFS regional administrator shall reallocate this amount to the Bering Sea for harvest by the Aleut Corporation for purposes of economic development of Adak. The Aleut Corporation retains control over the allocation, and presumably can harvest that amount itself, or lease the allocation for harvest by "other vessels" with written permission. The provision requires the Council to modify the regulations to comply, and NMFS to manage to ensure compliance. *The Committee noted that there will be some added workload for the staff and the Council to address this requirement.*

The Committee noted that under this provision, with the allocation and leasing of Bering Sea pollock quota, Adak appears to become a defacto CDQ group. Congress gave some thought to the oversight for all CDQ groups and may want to consider that for Adak. It is not clear what the impacts of this provision would be to other sectors, including CDQ groups, and it would be helpful to understand more clearly how this provision affects management. Additionally, the provision provides no details on the mechanics of the allocation, or the oversight and management of this allocation. Similar questions remain about the provision to establish an Arctic CDQ allocation. Committee members noted that other sectors besides AFA vessels may be interested in participating in the harvest of the Adak pollock allocation.

Discussion of H.R. 3588 – The Red Snapper Act

Although H.R. 3588 does not affect the North Pacific directly, it does include some novel provisions with respect to fishery management legislation that may set a precedent for future MSA amendments.

- It requires the GMFMC to establish separate catch limits for private recreational fishing, charter fishing, and commercial fishing in any plan or regulatory amendment for the red snapper fishery.
- It gives exclusive authority for the individual Gulf states (TX, LA, MS, AL, FL) to set the fishing seasons for the recreational fisheries for red snapper in the area out to 25 fathoms or a minimum of 25 nautical miles from shore (only 3 miles in the case of FL) for the years 2018-2024. In setting the seasons, a State must ensure to the extent practicable, that they are consistent with National Standards. The SOC (presumably through the GMFMC) retains the authority to set the overall ABC and TAC.
- For the purposes of managing the red snapper fishery, the seaward boundary of a Gulf State is 9 miles seaward from the baseline (I presume this includes all 3 sectors for the fishery).
- The bill sets an allocation for the charter and commercial sectors and the duration of the fishery, unless amended by the SOC. For the commercial sector, the allocation and duration of the fisheries is that applied for the most recent fishing year. For the charter sector, the allocation must be at least the allocation and duration for the most recent fishing year (and they can fish within the states 9 miles boundary if the EEZ is open).
- There is a provision that requires the SOC to certify or deny the use of a State recreational fisheries survey to make catch estimates for red snapper landed in such State. The SOC must make suggestions to modify the survey to be certifiable. After resubmission by a state with a proposed modified survey, the SOC has 30 days to certify or deny it; the survey is automatically deemed to be certified if the 30 days expires before an SOC determination.

The Committee noted that it is unknown how the MSA provisions will be met. This bill appears to 1) create inconsistencies in management across Federal and State jurisdictions, and among the states as well, 2) make it difficult to achieve the GMFMC allocation goals, and 3) make it more difficult for the Council and NMFS to prevent overfishing of the stock. Several specific issues were identified:

- A requirement that the GMFMC allocate among three defined user groups reduces the flexibility for the Councils to establish allocations as needed. The council already has the authority to allocate resources among user groups.
- Establishing the duration of a fishery in legislation based on past history doesn't allow flexibility to adapt to changes in effort, catch rates, or stock size. Changing this will require a Secretarial amendment each time it needs to be adjusted, which can be a slow process. With 5 different states involved, it may be may be a contentious process as well.
- With each state managing the recreation snapper fishery out to 25+ nm, and the charter sector and commercial sector out to 9 nm, and the outside areas managed under Federal regulations, there is likely to be inconsistencies in the management of the fishery overall. There were also questions and concerns from committee members about extending State jurisdiction out beyond 3 miles for individual species through MSA legislation.

- With individual states each setting their own seasons independent of other states, it is quite possible that the sum of the seasons could allow more effort (and thus catch) than the amount that could be supported under the overall TAC. It may be difficult to coordinate among the states to evaluate the potential catch that would be taken, before fishing begins, and ensure that catch doesn't exceed the overall allocated TAC during the season. Presumably, if the recreational catch is monitored inseason, the SOC would shut the fishery down when ABC is reached, including other sectors when overfishing is being approached. This could be an incentive for each state to set its recreational season prior to the other states.
- If the total catch is not determined or known until after the end of the fishing seasons, and if the overall ABC was exceeded, the SOC would presumably be required to take additional restrictive measures (e.g., size limits, fishing seasons in Federal waters)) to control the fishery to prevent overfishing the following year. The Committee notes that this process may be very challenging and contentious, as appears not to solve to the current situation with red snapper management.

Committee Recommendations

The Committee recommended that the Council draft a letter on the amended H.R. 200, so we are prepared in case there is a request for comments. The comment letter should include previous points on S.1520 as relevant, comments on the earlier version of H.R. 200, as well as the concerns noted in the Committee's review of the amended H.R. 200 (as captured in the prior section), and comments on any measures that were removed from the original H.R. 200 that the Council believes are beneficial to maintain.

The Committee recommended that the concerns raised about H.R. 3588 be considered and brought into the discussion through the CCC process (e.g., CCC Legislative Working Group) as appropriate.