

MEMORANDUM

TO: Legislative Committee Members
FROM: David Witherell, Executive Director
DATE: January 29, 2021
SUBJECT: Review of Legislative issues

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| ESTIMATED TIME 3 HOURS |
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ACTION REQUIRED - Review and prepare comments as necessary.

BACKGROUND

The Legislative Committee will meet to discuss potential impacts of proposed legislation and other proposals to revise the Magnuson -Stevens Act (MSA), including revisions to address concerns regarding the authority of the State to manage salmon fisheries in Federal Waters. The agenda and all materials are posted on the meeting page: <https://meetings.npfmc.org/Meeting/Details/1850>

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.

Some useful background information on legislative issues can be found on the regional fishery management council's website: <http://www.fisherycouncils.org/msa-reauthorization> and the CCC working paper:

<https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/5f6e44b5665ac95d0b4213f9/1601062078720/CCC+Working+Paper+April+30+2020.pdf>

H.R. 8632

On November 20, 2020, Representative Grijalva (D-Arizona) introduced H.R. 8632, the "Ocean-Based Climate Solutions Act". This bill would direct the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration, to provide for ocean-based climate solutions to reduce carbon emissions and global warming; to make coastal communities more resilient; and to provide for the conservation and restoration of ocean and coastal habitats, biodiversity, and marine mammal and fish populations; and for other purposes. A summary of the bill prepared by the Pacific Council is attached, and as a ppt here: <https://www.pcouncil.org/documents/2020/11/c-4-supplemental-attachment-5-staff-presentation-to-legislative-committee-ocean-based-climate-solutions-act.pdf/>.

It is not clear what might become of this draft legislation. The legislation could be introduced in the 117th Congress, or pieces could potentially be implemented through other avenues such as by Executive Order or through other legislation.

The Council has requested that the Legislative Committee review this legislation and inform the Council on potential impacts to the Council's authorities and management program. There are several provisions that could impact North Pacific fisheries, and in some cases, supersede the Council and NMFS existing management authorities. I have attached a summary of these critical provisions with preliminary NPFMC staff notes on potential effects.

Huffman Discussion Draft for MSA Reauthorization

On December 18, 2020, Congressman Jared Huffman (D-San Rafael), Chair of the Water, Oceans, and Wildlife Subcommittee, and subcommittee member Ed Case (D-Honolulu) introduced a discussion draft to reauthorize the Magnuson-Stevens Act (MSA). This bill resulted from a series of listening sessions that the Congressman held in 2019 and 2020. NPFMC Vice-chair Bill Tweit provided testimony at the Seattle session; his testimony focused on forage fish, climate change, and habitat and is available here:

https://www.npfmc.org/wp-content/PDFdocuments/CM/2020/010920/112219_TweitTestimonyHuffman.pdf

While we have not yet been asked to comment on the draft legislation, we may receive such a request in the future. Thus, the Legislative Committee should review this legislation and inform the Council as to how the legislation 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. I have attached a section by section summary of the bill (wording from Chairman Huffman's office), with preliminary NPFMC staff notes on potential impacts of some of the bill's major provisions.

While the Council cannot provide comments unless specifically requested by a member of Congress or their staff, Chairman Huffman has an open invitation for the public to comment on the draft bill through his web page. See <https://huffman.house.gov/msa>

H.R. 59

On January 7, Congressman Young (R-Alaska) has reintroduced legislation (H.R. 59) to reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act in the new 117th Congress. The text of the bill is not yet available, but you can track the progress of the bill here:

<https://www.congress.gov/bill/117th-congress/house-bill/59/all-actions?s=1&r=4&overview=closed>

The bill is likely to be similar to the bill introduced in the 116th Congress (H.R. 3697) and 115th Congress (H.R. 200). The Council's prior comments on H.R. 200 can be found here:

https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/5ac27e4a8a922dfd6530b483/1522695754219/040218_NPFMCCommentltrYoung_HR200_HR2079.pdf

H.R. 272

Representative Young (R-AK) recently introduced a bill (H.R. 272) to amend the National Marine Sanctuaries Act to prescribe an additional requirement for the designation of marine sanctuaries off the coast of Alaska, and for other purposes. Essentially, this bill would prohibit designation of a National Marine Sanctuary off Alaska unless it was directly authorized by Congress. See

https://donyoung.house.gov/uploadedfiles/marine_sanc.pdf

Keep Fish Free Act

Representative Young (R-AK) recently introduced a bill (Keep Fish Free Act of 2021) that would prohibit the Secretary of Commerce and the Secretary of Interior from authorizing finfish aquaculture in the U.S. EEZ. See: https://donyoung.house.gov/uploadedfiles/fin_fish_free_act_21.pdf

Potential MSA revision to address EEZ Salmon Management

On December 17, 2020, Senator Sullivan’s staff sent an email to the Council’s Executive Director requesting comments. I have included the language here, noting that in addition to commenting on a particular proposal, alternative proposals could also be suggested.

“We’re reaching out to you regarding the NPFMC’s recent decision to close federal waters in Cook Inlet to commercial salmon fishing. Subsequent to this action the State of Alaska, through a letter from Commissioner Vincent-Lang, reiterated a request for congressional action to affirmatively authorize the Council to delegate management in federal waters to a state—absent an FMP. A draft of that legislative proposal is included within the attached letter.

We welcome the views of the NPFMC on this proposal. Additionally, please share any unintended consequences that the Council may identify that could arise through this legislative proposal, and alternative legislative proposals, if any, that the Council views as preferable.”

The State’s suggestion proposal (attached to meeting agenda) is to amend the MSA Section 302 (h)(1) by adding the word “federal” in the following manner:

(h) FUNCTIONS —Each Council shall, in accordance with the provisions of this Act—
(1) for each fishery under its authority that requires **federal** conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in another fishery substantially affect the fishery for which such plan was developed)

The Legislative Committee could discuss unintended consequences of this proposal, and the pros and cons of this approach (and other approaches) relative to the Council’s ability to meet its management goals, objectives, and responsibilities under its grant. However, the Committee should avoid providing any recommendation on this or alternative statutory language, as such a recommendation could be construed as lobbying. Additionally, the Council could suggest that the Senator’s office reach out to NMFS for technical drafting assistance on draft legislation to address any proposed approach to solution through legislation.