

North Pacific Fishery Management Council

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DRAFT minutes Legislative Committee Meeting 1-4 pm, October 3, 2017

Members Present: Dan Hull (chair), Bill Tweit, Steve Marx, Jim Balsiger, Dave Hanson, Dave Witherell (staff).

Public present: Mike Szymanski, Lauren Smoker (NOAA GC), Arne Fuglvog, Chris Woodley, Buck Laukitis, Lori Swanson, Mary Beth Tooley, Jeff Regnart (ADFG), Brent Paine, Arthur Severance, Linda Kozak, Anne Vanderhoeven, Elizabeth Reed, Inigo Montoya.

Chairman Hull opened the meeting with introductions and a review of the agenda. He also provided a summary of the August 23 hearing of the Senate Commerce Committee in Soldotna, and discussed the charge to the committee in developing comments for Council consideration.

Dave Witherell provided the request from Senator Sullivan's office for Council comments on several fishery related bills including:

- S. 1520 Modernizing Recreational Fishing Management Act of 2017,
- Hr. 200 Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act,
- Huffman discussion draft: Strengthening Fishing Communities Through Improving Science, Increasing Flexibility, and Modernizing Fisheries Management Act;
- S. 1323 Young Fishermen's Development Act of 2017;
- S. 1322 American Fisheries Advisory Committee Act

The Committee discussed the proposed procedures to develop comments on these bills, noting the NMFS and NOAA guidance on providing comment to Congress. Any comments the Council submits should be tied to the Council's performance of its grant as specifically as possible. The Council should explain how the Council believes specific provisions of the bills could have harmful or beneficial impacts on the Council's ability to fulfill its responsibilities under the MSA, or affect the Council ability to conserve and manage marine resources and resources users. The agreed-upon procedure would be for the Committee to provide recommendations for the public to comment on and the Council to review as part of the B-reports. From this input, the Council (through its Executive Director and Chair) would prepare a letter that summarizes specific comments on each bill, along with a table that provides a comparison of issues across the three comprehensive MSA amendment bills, along with Council comments. The letter would incorporate prior comments on H.R. 200, sections in other bills that have already been addressed in H.R. 200 comments and NPFMC perspectives in the CCC working draft, Chairman Hull's MSA hearing testimony, discussions and comments by the Legislative Committee as applicable, and other comments the Council may have on these bills.

Public testimony was provided by Lori Swanson (Marine Conservation alliance) and Arthur Severance (Coastal Villages). Ms. Swanson noted that the Huffington draft language on requiring an assessment of conflict of interest provides an avenue for the Council to comment on recusal language and interpretation. Mr. Severance noted that 1) because we have been asked to comment on MSA reauthorization generally,

in that broad context providing comment on recusals is within bounds, 2) H.R. 200 language on the Arctic CDQ provides an avenue for the Council to comment on the allocation of fish among Arctic villages should be based on population size, and 3) that Congress should review the existing allocations to Western Alaska CDQ groups.

Committee comments on specific bills are as follows:

S.1322 The American Fisheries Advisory Committee Act

The Committee notes that the S-K proposal review process has been subject to criticism over who does the reviews, the criteria used to evaluate reviews, the timing of the notification and time for review comments, and transparency of the process. This draft legislation addresses some of these concerns by establishing a formal committee process for decision-making, and making the evaluation criteria more explicit. The Committee suggest that a comparison of how the proposed structure compares with the existing proposal funding process would be helpful to understand the improvements made by the legislation. The Committee notes that under the legislation, representation of Alaska fisheries on the Committee may be very limited (possibly only one or two members). Further, representation from tribal or indigenous communities -- as well as membership from the conservation community -- is lacking (unless included in the group as marine scientists). Additionally, it appears that only 2 of the 25 members of the Committee represent fisheries research expertise, even though the criteria for funding establishes that applicants must have the requisite technical capabilities to carry out the project, and that projects have sound design and a methodology for evaluating the success of project.

The Committee notes that it will be very challenging for the committee to evaluate the scientific design and methodology of these proposals. The Committee notes that the North Pacific Research Board utilizes a separate Science Panel to review all proposals for scientific adequacy prior to Board deciding on what proposals to fund. The Committee suggests that a review of NPRB's process for developing the RFP, scientific review and evaluation of proposals, may be beneficial to the structure of this bill. The Committee notes that poorly designed projects affect our ability to effectively conserve and manage the resources. A well-designed experiment gives us the ability to build our management program on a strong scientific foundation.

S. 1323 Young Fishermen's Development Act of 2017

The Committee notes that is not clear how the funding for this grant program falls in the priorities of other activities funded through Section 311 (e). Does the \$2 million come off the top before the other uses of the money specified in the MSA (e.g., costs incurred in storage of seized property, rewards to whistleblowers, enforcement costs, liens on forfeited property and other claims, reimbursement to any Federal or State agency for services) are spent? In a 2014 comment letter on MSA legislation to Congressman Doc Hastings, the Council noted that funds from this source are critical to various enforcement and investigative activities of the NOAA Office of Law Enforcement, and reductions in these activities could be detrimental to the Council's overall management objectives. The Committee notes that the proposed language of proportionality addresses concerns about funds being be used only in the region in which they were collected. The Committee further notes that "a beginning commercial fisherman" is undefined and provides little guidance in determining who can participate in the program. The Committee also suggests providing clarification of the term 'desires to participate in commercial fisheries...' in 2(A)(i).

S. 1520, H.R. 200, and Huffman Discussion Draft

The Committee reviewed and provided comments on the issues and sections most relevant to the North Pacific. These comments are included in the attached table.

DRAFT comparison of proposed MSA legislation, focusing on issues of importance to the North Pacific, with Legislative Committee comments.

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
Definitions	Mixed-use fisheries means a federal fishery in which two or more of the following occur: recreational, charter, or commercial fishing. LAPP program also defined as program meeting requirements described in 303A.	Defines subsistence fishing.	Defines subsistence fishing. Defines habitat areas of particular concern to include the importance of the habitat in maintaining and restoring the biomass, demographic, spatial, and genetic characteristics of fish populations. Defines adverse effect wrt EFH and HAPC. Defines forage fish.	S. 1520 doesn't include subsistence fisheries, or clarify mixed-use in terms of bycatch in one fishery and target of another. For example, is pollock a mixed-use fishery if a few are caught in a recreational fishery? The Huffman draft redefines HAPC from guidelines and includes spatial and genetic objectives, which greatly broadens the definition of HAPC currently found in the EFH guidelines.	
Alternative Fishery Management	Provides authority to use alternative measures in recreational fisheries including extraction rates, fishing mortality targets, harvest control rules, or traditional or cultural practices of native communities.	Provides authority to use alternative measures in recreational fisheries including extraction rates, fishing mortality targets, harvest control rules.	Provides authority to use alternative measures such as extraction rates, fishing mortality targets, harvest control rules <i>particularly</i> in recreational fisheries.	The Council has noted previously that it is unclear if this replaces the requirements of ACLs. Traditional or cultural practices of native communities are not normally considered as recreational fisheries.	Yes
LAPPs	Requires a NAS study within 1 year on the use of LAPPs for mixed-use fisheries with consideration of referenda, auctions or lotteries, limited duration, sector allocation analysis, and compensated reallocation. A moratorium is in place on new LAPPs for mixed-use fisheries until NAS study submitted.	Slightly modifies existing review requirements to clarify specific aspects of the review.		Studies cost money for the agency (typically ~ \$1 m) that in turn, affect the council by reduced funding for NMFS scientific and management assistance. Deadlines and moratoriums affect the ability of the council to complete their work efficiently.	

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
<p>Rebuilding Overfished Fisheries</p>	<p>Requires rebuilding as short as possible... and not exceed 10 years, or the time to Bmsy in the absence of fishing mortality plus one generation time.</p>	<p>Requires rebuilding as short as 'practicable'... and not exceed the time to Bmsy in the absence of fishing mortality plus one generation time, EXCEPT in cases where biology or environmental conditions dictate otherwise, or the SOC determines that: 1) rebuilding cannot be effective by just limiting fishing, 2) one stock in a mixed-use fishery cannot be rebuilt without significant economic harm, 3) rebuilding is impacted by international agreements, or 4) unusual effects make rebuilding improbably without significant economic impact to communities. Allows the use of alternative measures (e.g., target mortality rates) to rebuild the stock.</p>	<p>Requires rebuilding to be as short as possible... not exceed the time for the stock to be rebuilt without fishing occurring plus one generation. Provides for the SOC to review rebuilding progress and notify council if not. Any rebuilding plan must have a 75% of rebuilding within the time limit proposed by the Council. Allows the use of alternative measures for rebuilding. This section also includes a requirement that, at least every 5 years, the SOC reviews the Councils newly required plans to protect and recover EFH and reduce bycatch, and if adequate progress is no being made, make recommendations to do so.</p>	<p>The council noted that this provides more flexibility by not just relying on an arbitrary 10 year requirement, but also the term 'practicable' seems to imply more flexibility than the term 'possible'. It is unclear how alternative measures work wrt ACLs. S. 1520 maintains the current arbitrary 10 year Tmax rebuilding requirement. Thus, there is discontinuity for stocks that can rebuild in the absence of fishing in 9 years, versus 11 years.</p>	<p>Yes</p>
<p>Modification to ACL requirement</p>	<p>A council may maintain its current ACL for a stock where ACL is >25% below the OFL, a peer-reviewed survey and stock assessment have not be 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 SOC has to complete a peer-review survey and stock assessment. Councils can also establish ACLs for complexes and ACLs with a 3 year duration.</p>	<p>ACLs not required for ecosystem component species or stocks with 1-year life cycle. ACLs may take into account fishing or life history outside of EEZ. ACLs can be established for complexes and with a 3-year duration. Ecosystem component species are defined as a non-target incidentally harvested stock of fish in a fishery.</p>	<p>ACLs not required for ecosystem component species or stocks with 1-year life cycle. ACLs may take into account fishing or life history outside of EEZ. ACLs can be established for complexes and with a 3-year duration. Ecosystem component species are defined as a stock that does not require conservation and management but should be listed in an FMP to achieve ecosystem management objectives.</p>	<p>In our H.R.200 comments, we noted the flexibility provided to the Councils wrt stock complexes, multiyear ACLs, and ecosystem component species. We did note possible confusion regarding the use of non-target stocks in the definition of ecosystem component species, and suggested taking out the term "in a fishery". Requiring SOC to performs surveys and assessments within 2 years is unrealistic and extremely costly, and cause a reallocation of funds to regions where surveys are extremely challenging and expensive, and may provide little added benefit to conservation and management.</p>	<p>Yes</p>

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
<p>Exempted fishing permits</p>	<p>The SOC must direct a joint peer-review of EFP applications by the science center and State marine fisheries commission. The SOC must also certify that EFP fishing activity would not negatively impact other measures or conservation objectives, have only minimal social and economic impacts in both \$ and lost fishing opportunities, information collected would have a positive and direct impact on management, the Governor of each state potential affected has been consulted. EFPs shall expire after 12 months of issuance.</p>			<p>The Council in the CCC Working group paper noted it has major concerns with the 1-year duration limit, and the analytical burdens associated with this language. See the CCC regional perspective and consensus statement. The Committee notes that a representative from each state sits on the Council, so the need to consult with a Governor is duplicative, adds another hurdle to the process.</p>	<p>Yes</p>
<p>Cooperative Data Collection and Scientific Information</p>	<p>Requires the SOC 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 SOC is also instructed to implement to the extent feasible, the recommendations from the NAS on Marine Recreational Information Program (MRIP).</p>	<p>Defines stock assessment; requires SOC to schedule stock assessments for all FMP species within 2 years; requires guidelines for incorporation of stock assessment information from non-governmental sources; as appropriate, such information will be considered "best information available"; requires cost-reduction report within 1 year to assess and compare costs of monitoring and enforcement (e.g., EM)</p>	<p>Requires SOC to report on stock assessment methods, schedule, and data and analysis needed and if it could be provided by non-govt sources. Adds finding that management most effective when it includes data from non-govt sources. Requires SOC to report on monitoring and enforcement programs including EM and VMS. Requires to conduct a cooperative research plan with priorities of using fishing vessels, electronic reporting, and EM. Authorizes SOC to accept outside funding for this program.</p>	<p>The Council noted it has concerns with the provision to incorporate information from a variety of non-governmental sources, and potentially require that information be considered 'best available information' in that it will increase burdens on staff and SSC, and invite potential litigation. The Committee noted that cooperative data collection can be very valuable to our management process and scientific understanding (e.g., BS crab surveys done by industry). The concern isn't specifically with other non-government data sources per se, it is the notion that they won't be peer reviewed or vetted, and the other provision that requires and explanation if the Council chooses not to use these data adds an unnecessary burden. Tight deadlines can detract NMFS for completing important conservation/mgmt actions.</p>	<p>In progress</p>

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
Recreational data collection.	The SOC must develop guidance, in cooperation with the States that detail best practices for State programs, so that the information from State programs can be determined to meet the threshold for use in conservation and management of recreational fisheries. This section also includes a requirement that the SOC provide biennial reports on the information used and improvements that could be made, grants to States using S-K funding to improve State data collection programs. Lastly, the NAS is required to evaluate and report on the MRIP and the appropriateness of using in-season management of ACLs for recreational fisheries.	The SOC must develop guidance, in cooperation with the States that detail best practices for State programs, so that the information from State programs can be determined to meet the threshold for use in conservation and management of recreational fisheries. This section also includes a requirement that the SOC provide biennial reports on the information used and improvements that could be made, SOC may make grants to States funding to improve State data collection programs. Lastly, the NAS is required to evaluate recreational survey methods and limitations of MRIP.	The SOC must develop guidance, in cooperation with the States that detail best practices for State programs, so that the information from State programs can be determined to meet the threshold for use in conservation and management of recreational fisheries. This section also includes a requirement that the SOC provide biennial reports on the information used and improvements that could be made, SOC may make grants to States funding to improve State data collection programs. Lastly, the NAS is required to evaluate MRIP.	The MSA requires a registration program for recreational fishermen who fish in the EEZ, for anadromous fisheries, or beyond the EEZ. The SOC can exempt from the registration program fishermen from a given State, but only if the SOC determines the State registration and data collection program is suitable for use in conservation and management. [Note – Alaska has been exempt from the registration program because it has a functioning program for accurately accounting for catch in recreational fisheries]. The bill would basically require that the Secretary and States come to agreement on the threshold for what is suitable information. The Committee questioned why Council's are bypassed in providing input, and noted that this section requires added funding and workload.	Yes
Distinguishing between overfished and depleted		Strikes the term Overfished, and replaces it with "Depleted". Requires the annual report to congress to distinguish if stocks were depleted do to fishing or not.	Strikes the term Overfished, and replaces it with "Overfished or Otherwise Depleted"	Council has previously recommended the term 'depleted'. 'Overfished or Otherwise Depleted' addresses CCC concerns about how to categorize and the term use in other laws. The Committee noted the "and" "or" inconsistency in the title and text of the Huffman bill.	Yes
NEPA		Incorporates NEPA requirements into Sec 303 (fishery impact statements) of MSA and requires Councils and NMFS to develop procedures to comply with this requirement and establishes a modified process for SOC review and approval.		In its draft comment letter on H.R. 200, the Council has noted many concerns with incorporating NEPA into MSA.	Yes

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
<p>Transparency and Public Process</p>		<p>Requires webcast, audio recording, or live broadcast of council and CCC meetings to the extent practicable on a council's website. Councils must post audio, video or written transcript of Council and SSC meetings on the website within 30 days of the meeting.</p>	<p>Requires webcast, recording, or live broadcast of council and CCC meetings to the extent practicable on a council's website. Councils must post audio, video or written transcript of Council and SSC meetings on the website within 30 days of the meeting. Roll call votes required at the request of any member. Also requires recorded vote on all non-procedural matters before the council.</p>	<p>Relative to recordings and live broadcasts, the Council noted that this would be new for the SSC meetings, the added costs associated with transcripts; and the quality of internet connections at remote coastal communities. The Committee notes that the use of webcasting where people may not be technologically savvy or in areas with limited internet accessibility may actually reduce transparency and public participation.</p>	<p>Yes</p>
<p>Council Meetings</p>			<p>Requires each Council to the extent possible to minimize the amount and cost of member and staff travel by the use of electronic means for remote participation during meetings, including voting.</p>	<p>Since electronic means of meetings is almost always possible, and 'shall' is interpreted to be mandatory, the Committee concludes that this means that Council meetings would no longer be conducted in person. Changing 'possible' to 'practicable', and 'shall' to 'may' would allow the Council to meet in person if they determine it is not practicable to hold a meeting by WebEx or some other electronic means. The Committee notes that in-person meetings provide better interpersonal communications (citation), and make Council members more accessible to the public.</p>	

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
Plans to Protect EFH and Reduce bycatch			Requires councils to develop and implement plans to 1) protect and recover essential fish habitat, and 2) reduce bycatch; each with quantitative and measurable milestones and goals.	The requirement for EFH and bycatch plans would take considerable time and resources to develop and monitor, and implies that the existing phrase 'to the extent practicable' has not been met. NMFS is already addressing bycatch reduction planning with standardized bycatch reporting and its bycatch reduction plan. The EFH plan implies we have authorities to implement actions that we simply don't have.	
Accounting for Grant Money			Requires a report from the U.S. Comptroller General on a full accounting of all grant money received and distributed by the Councils, and an assessment of interactions of the Councils and staff with Congress for the past 10 years, and an assessment of conflicts of interest.	The Committee notes that it is not clear what problem this is trying to address, or the meaning of 'grant money received and distributed', but it may take considerable staff resources to dig through our records. The council has noted concerns with the conflict of interest and recusal interpretation.	
Subsistence Fishing		Requires to Governor of Alaska to consult with subsistence interests when making a council appointment, and adds subsistence fishing to qualifications for council appointment.	Requires the Governor of Alaska to consult with subsistence interests when making a council appointment, and adds subsistence fishing to qualifications for council appointment.	The Council previously noted that the inclusion of subsistence is a proper addition.	
Fishery Resource disasters		SOC shall publish cost of recovery from a disaster within 30 days, and make a decision within 90 days of receiving estimate of economic impact from requesting entity.	SOC shall publish cost of recovery from a disaster within 30 days, and make a decision within 90 days of receiving estimate of economic impact from requesting entity.	The Council noted that this provides useful clarification of the disaster declaration process.	

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
North Pacific Clarification for State Authority		Strikes the August 1, 1996 date so that State management is authorized in the absence of an FMP.	Strikes the August 1, 1996 date so that State management is authorized in the absence of an FMP.	The Council firmly supported this change, thereby allowing regulation of fishing in the EEZ by the State of Alaska, which is essential to the effective management and enforcement of these fisheries.	
Ecosystem-based Management			Identifies the sense of Congress that applying ecosystem science to fishery management reduces uncertainty and increases resilience of stocks. Directs NMFS to refine and implement EBFM.	The committee notes that this section seems to reaffirm the direction all regional councils are heading. However, the Committee notes that applying EBFM will not reduce management uncertainty or increase resilience of stocks, and suggests rewording this section using language from the NMFS policy for EBFM.	
Protecting Habitat			Requires the SOC to notify an action agency of measure that could be taken to avoid adverse effects on EFH. Action agencies must avoid or mitigate adverse impacts, or explain why not. Councils would be required to prevent adverse effects on HAPC caused by fishing, monitor to prevent adverse effects and identify other actions for conservation and management of HAPC.	The language “to prevent adverse effects” suggests that regulations must prevent any amount of impact due to fishing. Our approach with HAPC has been that we monitor and minimize adverse impacts but do not prevent all adverse impacts. Under the proposed language, we may be required to prohibit all fishing activity at sites designated as HAPC such as Bering Sea skate egg deposition sites and the GOA Fairweather Grounds coral areas.	
Modernizing Fisheries Data Collection			Encourage the development of video survey and acoustic survey technologies. US Digital Service to make recommendations to modernize data collection, processing, analysis and storage of NMFS data.	This might be useful. However, the Committee notes that the bill should ensure that the Digital Service maintains existing protocol for protecting confidential information.	

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
Gulf of Mexico Red Snapper			Requires implementation of a real-time data collection program for snapper fishery and is a priority use of funds for S-K grants; requires cooperative research program.	Defines a priority use of S-K funds in the GM over other uses.	
Science and Management of Shifting Stocks			Prohibits development of a new fishery only if the ecosystem impacts have been analyzed; requires councils to revisit and narrow list of approved fisheries including limiting geographic range.	This is similar to the policy established by the Arctic FMP. However, by limited geographic range in the list of approved fisheries, fish may no longer be able to be fully harvested if fish distribution shifts (until ecosystem impacts evaluated). Distribution changes may be impossible to predict and may be abrupt, and may raise critical transboundary or cross-council issues. This requires a flexible and adaptive response by the Councils. The Committee suggests NMFS guidelines instead of requirements to address this concern.	
Report on Fee		Requires SOC to report annually on amount of money collected from each fishery under a fee program and detail how the funds were spent.		The Council noted that this is consistent with requests previously made by NPFMC and will greatly assist the Councils to fairly develop, implement, and review fee programs in the future.	
Limitation on Future Catch Share Programs		Catch shares are defined; Requires a referendum for East Coast programs before a new program can be approved.		The NPFMC perspective in the CCC working paper notes that objectives are largely being met in our catch share programs.	Yes
Cooperative Research		Requires the SOC, in consultation with the Councils, to publish a plan for cooperative research within 1 year; priority given to expanded use of EM or other technologies.		The Council noted that an explicit plan would benefit management, and prioritizing EM was consistent with efforts underway in the North Pacific.	

Issue	S. 1520	H.R. 200	Huffman Draft	Comments	CCC Consensus?
Limitation on Harvest in North Pacific Pollock Fishery		Authorizes the Council to increase the pollock harvest cap set under AFA up to 24%.		Council noted it had no position on this issue.	
Ensuring Consistent Management of Fisheries Throughout their Range		In case of conflict between MSA and the National Marine Sanctuaries Act or Antiquities Act, the MSA shall control; any restrictions on fisheries necessary to implement a recovery plan under ESA shall be implemented through MSA.		The Council noted that prioritizing the authority of MSA relative to the other statutes is agreeable, it was not clear on the actual affect of the language.	Yes
Arctic CDQ		A minimum of 10% must be set aside for CDQ coastal villages located north and east of the Bering Strait, if council establishes a commercial fishery in the Arctic.		Council noted it had no opinion on this issue, but noted that it might be useful if Congress provided more specificity with regards to eligible villages. The Committee also suggested congress provide criteria for allocation.	