DRAFT Minutes
CCC Legislative Committee Meeting
October 11, 2019

Members Present: David Witherell (chair), Tom Nies (Vice Chair), Carlos Farchette, Josh DeMello (for Kitty Simonds), Jessica McCawley, Marc Gorelnik, John Gourley, Carrie Simmons, Mary Sabo, Gregg Waugh, and Dave Whaley.

Updates: The Committee reviewed the changes made at the CCC meeting in May, including terms of officers, election of Tom Nies as vice-chair, and revised CCC consensus statements.

Legislative Report: Dave Whaley reported on the status of MSA reauthorization and other bills. The only reauthorization bill introduced thus far is H.R. 3697 "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act" which is the same as last year's bill (HR200) with one minor provision removed. Dave noted that Congressmen Huffman has held two roundtable discussions on MSA; both were held in California. Marc Gorelnik was one of the invited witnesses, and he stated that the issues discussed were sustainability of fishing communities, EFH, water issues, and Dungeness crab. Gregg Waugh noted that there is time on the November CCC agenda for a possible roundtable discussion with Congressman Huffman (or his staff), and that Dave has reached out to them. While Chairman Huffman originally said that he would introduce a bill in the spring, it is unlikely to get much traction in Congress if not introduced until the spring given the events in DC and 2020 being an election year.

Three councils had received a request from Congressman Rob Bishop to comment on H.R. 1979 "The Driftnet Modernization and Bycatch Reduction Act", and H.R. 2236 "The Forage Fish Conservation Act". **The Committee recommended that comment letters from the Councils should be shared and posted on the fisherycouncils.org website.**

CCC Legislative Working Paper: Dave Witherell reviewed the proposed revisions to the working paper draft dated August 2019, including a revised introduction with updated consensus statements and consistent formatting throughout. **The Committee recommended that the introduction be turned into an Executive Summary**. The Executive Summary could also be posted as a separate document, as Dave Whaley had suggested that this could be put in the record during hearings. He further suggested that the General Comments section should be at the beginning of the Executive Summary.

The Committee recommended a new topic for the working paper - "Timing for FMP Revisions", or something along those lines. Councils could utilize the summary papers they prepared for this over the summer as their regional perspectives. The Committee will draft a consensus statement for consideration by the CCC.

The Committee noted that the working paper has evolved over time as new topics have been added when they were raised. When the working paper was first drafted, issues were ordered by priority. With new issues added, the working paper is now essentially a laundry list without prioritization. The **Committee suggested that the topics be reorganized into logical groups, such as science and data, management, and process, and topics prioritized within each group.** A draft list of issues by group was reviewed by Committee members following the teleconference. **The committee proposes organizing the topics in the following categories:**

Science and Data Issues

1. Stock Rebuilding
2. Climate Change and Regional Action Plans
3. Recreational Data
4. Commercial Data
5. Stock Assessment and Survey Data
6. Cooperative Research
7. Cooperative Data Collection

Fishery Management Issues

1. Ending Overfishing
2. Annual Catch Limit Requirements and Exceptions
3. Forage Fish
4. Catch Share Programs
5. Mixed Use LAPP Moratorium

Council Process & Authority

1. Resources Available for Additional Mandates
2. Transparency Requirements
3. NEPA Compliance
4. Other Federal Statutes
5. EFP Authority
6. Timing for FMP Revisions
7. Deeming and Transmittal Process
8. Aquaculture

Several Councils provided new and revised regional perspectives, and these will be incorporated into the next draft.

Topic 1 Revisions: Committee members discussed a component of a prior bill in which stocks not on track to meet rebuilding biomass by the time set forth in the rebuilding plan would be required to rebuild to that biomass with a 75% probability of achieving rebuilt status in the timeframe. It was not entirely clear to Committee members how the 75% probability translates into impacts on fish communities, and it seemed to the Committee that some explanatory text may help. New England has quite a bit of experience preparing rebuilding plans, and Tom offered to provide a paragraph for the working paper for review by the Committee. **The Committee recommends that the following paragraph be included in the introductory section of Topic 1:**

> The short-term impacts of a rebuilding plan on fishermen and fishing communities are a function of the catches allowed during the plan. Catches during a rebuilding period are determined in large measure by two factors: the target date for rebuilding the stock (i.e., the length of the plan) and the targeted probability of success. These two factors determine the fishing mortality rate during the rebuilding plan. For a fixed ending date, increasing the probability of success will generally result in a lower mortality target and, as a result, lower catches during rebuilding. In the case of multispecies fisheries, lower catches for individual "choke" stocks may reduce overall revenues from the fishery. Once a stock is rebuilt, catches may increase because the target fishing mortality rate is higher than the rebuilding rate. As a result, it is possible that in some cases the economic benefits of rebuilding more quickly to these higher catches may compensate for the reduced catches during the rebuilding period. This is likely to occur only for very productive stocks that rebuild quickly.

Revised consensus statement for Forage Fish: With the introduction of H.R. 2236, Committee members had noted that the existing consensus statement no longer reflected the concerns of the fishery management councils. Dave Witherell provided draft language that was considered and discussed by the Committee. Committee members agreed that the bill should not set forth criteria to define forage fish, and that forage fish identification should be left up to the councils to allow regional differences in achieving FMP objectives. While there was some discussion of excluding invertebrates, it was decided that we should stick with the main message that forage fish identification be left up to the councils, as some invertebrates are target species (e.g., squid) or are considered forage fish (e.g., krill) by different councils.

It was suggested that a generic definition of forage fish could be developed to include in the working paper. Following the teleconference several Committee members noted the apparent inconsistency of having a general description of forage fish, and then saying in our consensus statement that it can't be defined. So rather than attempt to provide a generic description, Committee members suggested adding a few sentences to the forage fish consensus statement to make this point exactly.

The committee touched on a number of other issues and considerations to address in the consensus statement. It was noted that NOAA and the states do not currently have enough resources to survey target stocks, let alone forage species. And the short life spans of most forage species make the populations somewhat cyclic and sensitive to environmental factors. Marc noted that the PFMC legislative committee needs to agree with CCC consensus statements before they can support it, so additional changes may need to be made in the future. For now, though, t**he Committee recommends the CCC adopt the following revised consensus statement for forage fish**:

> The Councils recognize that forage fish cannot be defined with a one-size-fits-all description or criteria. Species identified as forage fish by the Councils tend to be small species with short lifespans and may have an important role in the marine ecosystem of the region. Some of these species may exhibit schooling behavior, highly variable stock sizes due to their short life spans, and sensitivity to environmental conditions. Some forage species may consume plankton, and some may be an important food source for marine mammals and seabirds. The term "forage fish" appears to imply a special importance of the species as prey, however nearly all fish species are prey to larger predators and thus all fish species provide energy transfer up the food chain.
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> Councils should have the authority to determine which species should be considered and managed as forage fish. Under existing MSA provisions, some Councils already recognize the importance of forage fish to the larger ecosystem functions and those species are regulated under the Council's FMPs where appropriate. The CCC is concerned that any legislative definition of forage fish, based on broad criteria -- such as all low trophic level fish (plankton consumers) that contribute to the diets of upper tropic levels – will not include other important types of forage (e.g., squid), unintentionally include important target fish species (e.g., sockeye salmon), and allow for various interpretations by different interested parties and thus invite litigation.
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> Provisions that would require Councils to specify catch limits for forage fish species to account for the diet needs of marine mammals, birds, and other marine life would greatly impact the ability of Councils to fulfill their responsibilities under the MSA. Many predators are opportunistic feeders and shift their prey based on abundance and availability. As a result, determining the exact amount of individual prey needed each year would be an enormous undertaking, and would divert limited research monies away from other critical research such as surveys and stock assessments.
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> NOAA and the states do not currently have enough resources to survey target stocks, let alone prepare stocks assessments for forage species that would be needed to set scientifically based annual catch limits. In the absence of this critical information and necessary resources, catch limits would need to be restricted to account for this largely incalculable uncertainty. Prey needs for upper trophic predators are already accounted for as natural mortality removals in stock assessment models.

Councils should retain the authority to determine species requiring conservation and management through development of FMPs. Any legislation that directs the Secretary to prepare or amend fishery management plans (e.g., recent legislation to add shad and river herring as managed species) creates conflicts with current management under other existing authorities.