

Minutes
CCC Legislative Workgroup Meeting
April 22, 2021

The CCC Legislative Workgroup met virtually from 9-10:30 am on April 22 to discuss several issues and provide recommendations to the CCC for the May meeting.

Members Present: David Witherell (chair), Tom Nies (Vice Chair), Carlos Farchette, Josh DeMello, Jessica McCawley, Marc Gorelnik, Carrie Simmons, Ryan Rindone, Mary Sabo, John Carmichael, John Gourley, and Dave Whaley.

Revised Consensus Statement on Aquaculture: In 2020, the Fifth Circuit Court issued an opinion that NOAA does not have statutory authority to issue regulations for aquaculture under the MSA and that the Councils do not have the ability to adopt FMPs to address aquaculture. In response, the CCC passed a motion in September recommending the Legislative Committee revise the consensus statement on aquaculture, and provide a draft for CCC review and approval.

The Workgroup discussed a draft prepared by Carrie, and offered several revisions. The draft was further revised following the meeting to avoid language that could appear to be lobbying. **The final revised consensus statement from the workgroup is provided as an attachment.**

CCC Legislative Working Paper: Mary noted that the Legislative Working paper contained links that no longer work, particularly for references to old legislation. She proposed that the links in the working paper be deleted and replaced with a link to the MSA reauthorization page on fisherycouncils.org where she has updated these links. **The workgroup agreed that it makes more sense to update only the website with links to various fishery legislation, and remove these links from the working paper.**

Dave will make the changes to the working paper for posting to the CCC agenda by May 11. Any other updates to regional perspectives from workgroup members should be sent to Dave prior to May 4.

Legislative Report: Dave Whaley reported on the status of MSA reauthorization and other bills, and the new leadership of fishery related Senate and House Committees and subcommittees. He noted that both Senate and House margins are tight (and the ratios in committees are based on House and Senate ratios), so getting bills through will be more difficult this congress. Leadership has changed in the Senate and therefore also on the Senate Commerce, Science, and Transportation Committee, with Sen. Cantwell (D-Washington) now the chair and Sen. Wicker (R-Mississippi) now the ranking republican member. On the house side, Rep. Grijalva (D-Arizona) remains chair and Rep. Westerman (R- Arkansas) is the new ranking republican member. Dave identified the key staff for the fisheries committees and will include a full list in his monthly report: Nikky Teutschel is staff person for fisheries issues on the Senate Commerce Committee – working for Chair Cantwell; on Republican side, the fisheries staffer is Fern Gibbons; Lora Snyder is the fisheries staff on the House Natural Resources Committee for Rep. Grijalva; Annick Miller along with Kiel Weaver and Rob MacGregor will be working on fisheries legislation for the republicans on the House Natural Resources Committee. In addition, Christine Sur is the fisheries point person in Congressman Huffman’s personal office and is the lead staff on his Magnuson-Stevens Act reauthorization bill.

Dave Whaley opined that there appears less interest in doing big bills and more interest in single species and regional legislation (e.g., shark, billfish, drift net, red snapper, fluke, etc.) in the last few Congresses including this Congress (so far). This does not necessarily mean that big fisheries bills will not be introduced for discussion in the House. Rep. Young’s (R-Alaska) bill on MSA reauthorization from last

Congress was reintroduced in this Congress. Rep. Huffman's (D-California) discussion draft was still being circulated for comments and Dave thought a new bill would be introduced in the next few months (June or July most likely). While no additional listening sessions were planned due to COVID, a single hearing after the bill is released is likely. Dave suggested that it would be good to have the CCC chair, or a representative of the Councils, testify at that hearing.

Dave Whaley thought that the Senate would not be interested in any MSA reauthorization bill. However, if the House passes a bipartisan bill, the Senate would be under some pressure to take action. The two House bills on MSA reauthorization (Rep. Young bill and Rep. Huffman draft) are very far apart in terms of policy so a bipartisan bill appears unlikely in the House.

Discussion of Potential Additional Topics for Working Paper: New proposed provisions were included in several pieces of draft legislation circulated at the end of the last congress, the Workgroup discussed whether or not to add additional topics to the working paper. For example, the current working paper does not include sections on marine protected areas, deep sea corals, shifting stocks, the use of "to the extent practicable" with respect to EFH and bycatch. Dave Whaley noted that the MPA section of the Grijalva bill likely would be removed as the 30 by 30 initiative was addressed by EO 14008. Dave also noted that the working paper is getting large, and we should be cautious about adding new topics that are not yet in existing draft legislation. **The Workgroup recommended that we revisit the possibility of adding additional topics to the working paper should legislation (e.g., Huffman draft) be introduced later this year.** In addition, the Workgroup suggested revisiting the working paper to take out comments on old legislative initiatives that were not current.

Other Issues: Dave Witherell noted that this was his last meeting as Workgroup Chair, but will remain as a workgroup member. Tom Nies will be the Chair for the upcoming 2-year term, and the CCC will approve a new Vice Chair in May.

DRAFT AQUACULTURE CONSENSUS POSITION

OLD

“The CCC believes that Regional Fishery Management Councils have existing authority under the MSA to develop fishery management plans for aquaculture/mariculture, which is consistent with NMFS’ longstanding interpretation. This authority allows the Councils to address in a public and transparent manner, major topics like permitting process and duration, approval of systems and siting, species that may be cultured, and record keeping and reporting. However, conflicting court decisions have caused confusion and specific mention of aquaculture/mariculture in the MSA would affirm the Councils’ authority to manage such activities that impact existing fishery management plans.”

Proposed DRAFT

As stewards of our nation’s fishery resources, the Councils have an interest in ensuring that wild fish stocks, fish habitats, and commercial and recreational fisheries are minimally affected by the development and operation of aquaculture/mariculture facilities. To this end, the CCC believes that if the Councils have a clearly defined role in the siting, permitting, and review of aquaculture operations in federal waters, the permitting process will proceed more smoothly and conflicts between user groups will be minimized. For similar reasons, the appropriate Council(s) should be included during the identification and assessment of aquaculture projects including Aquaculture Opportunity Areas (AOAs) and the development of the associated programmatic environmental impact statements. Additionally, the Councils should be included on the AOA implementation teams.

The CCC also believes in the importance of clear and ongoing communication between all parties throughout the aquaculture permitting and authorization process. These parties include fishery management councils, commercial and recreational fishermen, developers, regulating and consulting agencies, and members of the public. The Councils have well-established relationships with fishery constituents and are ideally positioned to identify potential fishery conflicts and facilitate communication with stakeholders who may be affected by proposed aquaculture facilities. The Councils also provide an open and transparent forum for scientific review, public input, and full consideration of potential interactions with fisheries. Permitting agencies and aquaculture developers should engage the appropriate Council(s), early and often, when identifying potential sites and during the project design phase to allow for early stakeholder input and mitigation of impacts to fish habitats and fisheries.