

A Washington, D.C. Year in Review

Rick Marks

**Robertson, Monagle & Eastaugh
PSMFC 2019**



BEING A
LOBBYIST

IS EASY. IT'S LIKE

RIDING A BIKE

EXCEPT THE BIKE IS ON FIRE
YOU'RE ON FIRE
EVERYTHING IS ON FIRE
AND YOU'RE IN HELL

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- Magnuson-Stevens Act
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MSFCMA Reauthorization

House Activity

- AK Rep. Don Young's H.R. 200; "*Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act*" (passed the 115th House 7/11/18); reintroduced in the 116th Congress as H.R. 3697 (7/11/19; 2 cosponsors)
- **What's In?** Subsistence definition; "Depleted" (for "overfished"); Science-based rebuild metric replaces 10-yr requirement; "Practicable" (for "possible"); Multi-yr ACLs for stocks; IFQ referendum + 1-yr ban; Studies: GAO GOMEX/SA red snapper IFQ; NAS on LAPPs; Ecosystem component species; ACL exceptions; Rebuilding flexibility; RFMC/SSC transparency; Stock Assess Improvements; Coop research/data collection/MRIP; 90-day disaster declaration; EFP provision; Allocation study in GOMEX/SA; Requirement to end overfishing *unchanged*;
What's not? NEPA sufficiency & MSA as controlling statute
- Democratic version expected from WOW Subcmte Chairman Jared Huffman (CA-D-2nd) to include bycatch, habitat, climate change considerations, ecosystem function, forage fish, etc.; Rep. Huffman's fall "Listening Tour" in advance of a bill
- **ROMEA Prognostication #1**: Democratic version could pass the House on a party line vote, then stall in the Senate

MSFCMA Reauthorization

Senate Activity

- 115th Congress: Sen. Wicker's (R-MISS) S.1520: "*Modernizing Recreational Fisheries Act of 2018*"; substantially revised, passes Congress (12/19/18); S.1520 technically NOT a reauthorization, falls short of substantive reform
- CCC to host a 90-min S.1520 implementation panel discussion on RFMC "alternative management measures" at the November 5-7 meeting in DC
- Consider...Sen. Wicker is now chair of the full Senate Commerce Committee; WA Sen. Cantwell is RM; AK Sen. Sullivan is no longer chair of the Fisheries Subcommittee (and is in 2020 reelection mode); and that we have divided government; the future is uncertain...BUT...
- [ROMEIA Prognostication #2](#): No significant MSFCMA reauthorization in the 116th Congress

Magnuson-Stevens Act (MSFCMA)

- “*Nat’l Fish Habitat Conservation Through Partnerships Act of 2019*”: S.754 (3/12/19; 4 cosponsors) & H.R.1747 (4/1/19; 3 cosponsors)
- NOAA engages sport fishermen: Alaska & West Coast plans available (6/3/19); NOAA revises Policy Directive 04-114 for transitioning to MRIP surveys (effective 9/5/19)
- OR Sen. Wyden/Rep. Blumenauer (D-3rd) intro S.1984 (0)/H.R. 3514 (2) to provide disaster relief for tariff-related failures (6/26/19)
- LA Members request GOMEX disaster (7/8/19); LA/MISS Senators intro *Commercial Fishing & Aquaculture Protection Act of 2019* to est. disaster assistance program (7/24/19); *Fishery Failures: Urgently Needed Disaster Declaration “FUNDD” Act* to improve federal disaster relief program (MISS Sen. Wicker; 7/30/19; legislative hearing 9/25/19)
- NMFS Framework for Determination of BSIA (eff. 5/7/19); See <https://www.fisheries.noaa.gov/national/laws-and-policies/policy-directive-system>
- NOAA “Status of Stocks Report” available (8/2/19): 91% not subject to overfishing; 82% not overfished

Forage Fish Issues #1

- Forage fish issues percolating since 2011...
- 2011: Sportfish/ENGOS sue NMFS on Atlantic river herring (lose in 2019)
- 2012 OCEANA sues NMFS over CPS AM 13 (and lose)
- 2014: AK Sen. Marc Begich MSA draft contains controversial forage fish elements (bill dies); Sportfish lobby sues NMFS over "stocks in the fishery", will likely lose in 2019
- 2014-2016: Sportfish lobby/ENGOS push RFMCs to add shad & river herring (blueback/alewife) to East Coast federal FMPs & MSA reauthorization (multiple attempts unsuccessful)
- 2016: Oceana sues NMFS over anchovy (wins in CA Dist. Court on BSIA grounds 1/18); Court confirms order 6/18; NMFS issues new rule 5/19, ENGOS sue again on 6/19; industry intervenes (8/19)...and the beat goes on!

Forage Fish Issues #2

- 2018: NOAA petitioned by NRDC to ESA list East Coast Blueback Herring & Alewife; NOAA issues a not warranted decision on 6/19/19 (*See* 84 FR 28630)
- CA Rep. Huffman introduces H.R. 2236, "*Forage Fish Conservation Act*" amending MSFCMA to require C & M of forage species, incl. shad & river herring/alewife (4/10/19; 16 cosponsors...); Senate companion expected in 2019...
- H.R. 2236 is controversial: supported by ENGOs & National Sportfish Lobby; opposed by commercial industry; RFMCs concerned over unintended consequences
- ROMEA staff analysis of H.R. 2236 widely circulated (5/8/19); PFMC comments to Sen. Cantwell (7/11/19); Hill request for comment to MAFMC (9/6/19); Stay tuned for further action this fall!

Aquaculture

- Commerce Sec. Ross/NOAA continuing focus on developing U.S. marine offshore aquaculture opportunities
- NOAA to appeal 2018 ruling in the Eastern District of LA = No authority to regulate aquaculture pursuant to the Magnuson Act (10/4/18)
- AK Rep. Don Young introduces H.R. 2467 the "*Keep Fin Fish Free Act*" to prohibit the permitting of fish farms in the EEZ until authorized by Congress (5/7/19; 4 cosponsors)
- Nordic Aquafarms: Humboldt County "Best location on West Coast for fish farm" (Eureka Times, 5/21/19)
- The First Hotly Contested Batch of GM Salmon Eggs Hits the U.S. (S. Fu; The New Food Economy, 6/3/19)
- Sen. Wicker (R-MISS)/Rep. Palazzo (R-4th-MISS) circulating revised: "*Advancing the Quality and Understanding of American Aquaculture Act*" (or AQUAA Act); the **Don't Cage Our Ocean Coalition** holds 1st DC briefing (9/17/19)
- 2013 PSMFC Resolution III supports State opt in/out provision for time, area, species or gear throughout EEZ

EPA NPDES Update

- On December 4, 2018 President Trump signs 2018 USCG bill (Title IX is the *Vessel Incidental Discharge Act (VIDA)*) which permanently exempted all commercial fishing & charter boats regardless of size, and commercial-use vessels <79-ft from NPDES permit requirements for discharges incidental to normal vessel operations. [PSMFC Resolution since 2009]
- Next Steps: EPA 2-yr rulemaking process to implement the new law, including design of national ballast water management standards, State jurisdictional issues, etc.
- USCG draft policy on protocols for ballast water management systems/AIS viability (comments to 9/30/19; See 84 FR 37330); WGA consultation letter (9/9/19); EPA holds Pacific Region Federalism webinar (9/10/19); May see draft rule in 2020?

USCG Reauthorizations

- **In 2018:** USCG Reauthorization Act (P.L. 115-282; 12/4/18) included: ASCP "floating" 3-year delay with a requirement for USCG to engage w/industry [**PSMFC Resolution**]; expanded stability exemption for newly-built commercial fishing vessels up to 180 ft. (up from 79 ft); USCG requirements for additional public outreach; procedural delays to close Newport, OR helo base
- **In 2019:** House passed 2-yr USCG Reauthorization (H.R. 3409, on 7/24/19 (6); Senate Commerce acts (S.2297 (3), on 7/31/19): mostly non-controversial ~ codifies existing laws to allow for commercial fishing vessels over 65-feet to use e-nav charts (in lieu of paper); safety grant improvements, alternative safety compliance program for older boats 50'-79'; approve rulemaking for use of AIS to mark fishing gear; improve oil spill response capabilities; SRKW vessel buffer zone enforcement report for Puget Sound/action plan for USCG District 13
- H.R. 3409 includes a provision for Coal Bank Slough in Coos Bay, OR to allow for bridge replacement

Monuments

- DOI/DOC held 1st ever public comment on 27 monument designations >100,000 acres (on land & sea) since 1/1/96 (5/8/17); 5 of top 6 largest national monuments are in the ocean!
- Pres. Trump reduces 2 UT monuments – *Bears Ears* & *Grand Staircase-Escalante* (12/3/17), NGOs file 5 complaints, case ongoing w/ implications for future terrestrial monument designations
- Pacific Legal Foundation/MA Lobstermen's Assoc. et al. sue the Feds w/ NRDC (intervenor) over the 3/7/17 Obama Northeast Canyons Monument designation (Case: 1:17-cv-00406-JEB; filed 5/22/18); Nat'l Audubon intervenes (6/16/19); oral arguments 10/22/19; implications for future marine monument designations
- While stakeholders await conclusion of Administration's monument review; Democrats intro S.367 (25)/H.R.1050 (108) – *America's Natural Treasures of Immeasurable Quality Unite, Inspire & Together Improve Economies of States* Act – to codify & protect existing monuments from changes by a future administration (2/19/19; House passage likely; Senate passage unlikely)
- Republicans counter with H.R. 1664 (9 cosponsors) to reform the Antiquities Act (3/12/19; passage unlikely)

Native Issues

- Congressional Research Service (CRS) updated review of the Columbia River Treaty (5/21/19; to view report go to... <https://crsreports.congress.gov>; Ref#R43287); **PSMFC 2018 Resolution to add a preamble**
- H.R. 729 – the “*Tribal Coastal Resiliency Act*” (WA Rep. Kilmer-D-8th) introduced (3/19); 14 cosponsors; House WOW legislative hearing (7/25/19)
- ODFW/WDFW/IDFG/Nez Perce plans available for fall Chinook & Coho in the Snake River Basin (84 FR 33062)
- New Marine Mammal Commission report “*Co-Management of Marine Mammals in Alaska: A Case-Study-Based Review*” (MMPA Section 119; 7/19; www.mmc.gov)
- Makah Tribe’s 2005 MMPA waiver application to resume treaty-reserved whaling on ENP gray whale; NOAA proposes hunt regulations (4/5/19; *See* 84 FR 13604); Seattle ALJ hearing set for 11/14/19

Divine Wind

- Offshore wind energy issues: siting & prioritization, USCG S&R operations, DOD operations, Jones Act implications, stakeholder liability, impacts on protected species/birds, interagency coordination, stakeholder cooperation, process transparency, impacts on tourism & coastal communities, etc.
- BOEM conducts Nation's 8th and highest grossing offshore wind lease auction in history (12/18; \$405M); BOEM has 15 active leases, generating ~\$473M in winning bids for 1.7 million acres in federal waters; many more expected; \$\$\$ goes to the Treasury
- 8/10/19: DOI extends review of 1st major wind project (\$2.8B off MASS); NOAA raises concerns about impacts on fishing
- BOEM/NOAA/"RODA" sign 10-yr MOU to coordinate local/regional fishing interests/science & energy development in the Atlantic; See <https://www.boem.gov/Renewable-Energy/>
- House NR Energy Subcommittee field hearing (NJ; 9/16/19)

Divine Wind – West Coast

- CA: 14 wind companies notify BOEM of interest via call for nominations (2018); BOEM/CA initiate competitive bid process for 3 areas of interest: Humboldt Bay, Diablo Canyon & Morrow Bay; 75 outreach meetings
- Ad hoc group of West Coast commercial fishing groups submit comments to BOEM on the 1,703 sq. mi deemed suitable for wind energy development off CA (1/28/19)
- OR: No current projects but OR Gov. Brown may reopen discussions with wind companies for sites on the OCS; OR seafood industry groups continue to discuss potential conflicts/issues
- WA: No current projects



Protected, Endangered, Threatened Species

Slide #1

- Congress passed H.R. 2083, the "*Endangered Salmon & Fisheries Predation Prevention Act*" in late 2018 to allow lethal removal of sea lions in the Columbia and its tributaries; **PSMFC Resolution since 2002!**
- On May 7, 2019 -- OR F&W reports sea lion removals are improving Willamette Steelhead returns
- On June 17, 2019 – WA DFW & a consortium of state and tribal partners file expanded application for sea lion (CA & Eastern SSL) removals beginning in 2020; comments to 10/29/19 (*See* 84 FR 45730)
- NOAA declares Unusual Mortality Event (UME) for gray whales along the West Coast (5/31/19)
- NOAA seeks volunteer waterfront property for whale decomposition (6/12/19; contact NOAA's Michael Milstein at (503) 213-6268))

Protected, Endangered, Threatened Species

Slide #2

- NOAA updates "West Coast Region Deterrence Guidance" for potential methods of deterring marine mammals (10/18/19)
- NOAA/NMFS withdraws 10/13/16 PR to establish "hard caps" for the CA/OR drift gillnet fishery for protected species; triggers *Driftnet Modernization and Bycatch Reduction Act* (S.906 (4)/H.R.1979 (9)) to address protected species/drift nets; Commerce Cmte approves S.906 (4/3/19)
- CBD/Wild Fish Conservancy NW sue Dept. of Commerce over failure to protect So. Res. Killer whales from impacts of salmon fisheries (4/3/19); PCFFA opposes the case (5/28/19); WA Gov. Inslee signs suite of bills aimed at helping SRKW recovery; NOAA reassessing situation
- CBD/Turtle Isle Restoration Network file lawsuit against Commerce for permitting a CA longline fishery (6/6/19); CBD files on oil operations & Cook Inlet belugas (9/4/19)
- Western SSL population 5-year review (initiated 12/8/17) still underway (*See* 82 FR 57955)

Protected, Endangered, Threatened Species

Slide #3

- D-crab protected species entanglements: CBD sues CA (Sec. 7 ESA) in 9th Circuit (10/3/17); CA request for 2.5-yr stay rejected (1/29/19); PCFFA intervenes (5/30/19); case settles ~ Court settlement agreement includes spring closure, deadline to submit take permit application to NOAA; area/gear closures, and adaptive management process ~ Tri-State Dungeness Crab Fishing Group continues efforts to address the situation; FI's down from 40 (in 2018) to 18 (in 2019)
- NOAA publishes response to comments on 2018 MMPA List of Fisheries (*See* 84 FR 28489)
- 2019 Senate USCG Reauthorization bill (S.2297) includes protection provisions for SRKWs in Puget Sound/District 13
- Japan withdraws from IWC (12/18); resumes commercial whaling after 31-yr hiatus; 1st landing of 2 minke whales (7/1/19)

Protected, Endangered, Threatened Species

Slide #4

- No. Pacific Right Whale 5-yr review initiated (2017; *See* 82 FR 29842)
- First Chinook return to the San Joaquin/Battle Creek system
- Restaurants Hungry for Harbour Seals; First Nations Asked to Harvest Pinnipeds for Toxin Tests: R. Shore, Vancouver Province (2/6/19)
- Since 2014...North Pacific & Arctic coastlines have experienced 7 seabird mass mortality events, 4 off AK incl. the largest in 2015-16; leading hypotheses: warming ocean impacts on food web & harmful algal toxins. To learn more go to:
[https://www.nps.gov/subjects/aknatureandscience/commonmu
rrewreck.htm](https://www.nps.gov/subjects/aknatureandscience/commonmu
rrewreck.htm)
- USFWS publishes proposed rule to delist gray wolf (*See* 84 FR 9648); Re-listing of Yellowstone Griz (7/31/19)

Protected, Endangered, Threatened Species

Slide #5

- **ESA Regulatory Reforms**: NOAA/USFWS joint press release (7/18/19) outlining efforts to improve ESA regulatory processes. See proposed regulatory revisions: http://www.fws.gov/endangered/improving_ESA/regulation-revisions.html
- 84 FR 45020: Listing & Designating CH (Sec 4)
- 84 FR 44753: Prohibitions to Threatened Species (4(d))
- 84 FR 44976: Interagency Cooperation (Sec 7)
- **All 3 Final Rules effective 9/26/19; litigation is expected...**

Shark!

- *Shark Fin Trade Elimination Act of 2019* : S.877; 13 cosponsors, Commerce Cmte moves (4/3/19); H.R.737 has 228 cosponsors; WOW Subcmte hearing (3/26/19; mark up 9/17/19))
- *Sustainable Shark Fisheries Trade Act of 2019* : S.1008 (4 cosponsors); H.R. 788 (21 cosponsors)
- Canada becomes 1st G-20 nation to ban fins (6/19)
- SAMFC sends letter at stakeholder request to NOAA seeking increased shark quotas to address growing interactions (5/16/19)
- NOAA increases commercial shark trip limit by 1 order of magnitude (6/19); and 30%+ (8/16)
- ENGOs (e.g. *Blue Planet Society, Shark Allies & Shark Angels*) target 111 sportfish shark tournaments with online petitions
- Huge Great White munches chum bag off private fishing boat, stuns FL Keys residents (4/24/19; [geek.com](#))
- FL offers free sport licenses to encourage the harvest of sharks in state waters (7/1/19)
- Multiple shark attacks & human fatalities* in 2018-19: FL, NC, MA*, HI*, Bahamas*
- *"Sharks on Cape Cod: Just how scared should we be? The odds of an attack are low but experts advise to not go in the water above your waist"* (Globe Mag.; 7/9/19)

PSMFC "Grab Bag" #1

- NOAA R&D Plan out for public comment (83 FR 63482)
- Final NOAA Fisheries Strategic Plan 2019-2022 (7/25/19)
- 71 countries negotiating marine biodiversity treaty beyond national jurisdictions (9/19/18)
- *Recovering America's Wildlife Act* ("RAWA") reintroduced for 2nd time (Dingell & Fortenbery (H.R. 3742; 7/12/19); \$1.4B for state/tribal action plans/fish & wildlife conservation, etc.; 105 cosponsors (116 last session)
- Senate Resolution 251 recognizes 2019 as the "International Year of the Salmon" (6/13/19)
- USACE accepts comments on Pebble Mine DEIS (thru 7/1/19); FEIS and decision on 404 permit expected in early 2020
- EPA/USACE seeks additional comment on "WOTUS" definition & repeal; (12/11/18); Nat'l public hearing (2/27/19); See <http://www.epa.gov/wotus-rule>
**WOTUS repealed 9/12/19, effective in 60 days, reinstates pre-2015 definition, litigation expected...
- U.S. trade issues with China, EU, Canada/Mexico & "Brexit". RE: China/ U.S. tariffs = \$620B (incl. U.S. seafood); DC hearing (6/17/19); U.S.- China to meet in DC (October)
- 2019 World Sustainable Ocean Summit "SOS" (Paris, 11/20-22); See www.sustainableoceansummit.org
- Senate passes NDAA w/fisheries components: IUU & human trafficking in seafood industry (6/27/19)
- Intro of Nat'l Coral Reef Reauth Act as "*Restoring Resilient Reefs Act of 2019*" (8/2/19; H.R. 4160/S. 2429)

PSMFC "Grab Bag" #2

- *Young Fishermen's Act* (S.496 (8); H.R. 1240 (11)); House WOW hearing (5/8/19); Commerce Cmte moves S.496 (7/24/19)
- IUU Seafood Import Monitoring (SIMP) effective 1/1/2018; NOAA petitioned by NGOs to ban New Zealand (2/6/19); ban rejected (7/10/19)
- 12/11/18: West Coast Regional Planning Body now the West Coast Ocean Alliance under new EO on Ocean Policy; new Regional Work Plan go to...
www.westcoastalliance.org/
- Commerce Cmte passes S.2166, *Regional Ocean Partnership Act* (7/24/19); enhance coordination
- S-K reform bills (H.R. 1218 (1)/S.494 (4)); Commerce Cmte approved S.494 (4/3/19); House Subcmte hearing (5/8/19); NOAA opposes
- House Nat Res Cmte passes H.R. 1305; *Albatross & Petrel Conservation Act*; promotes international seabird protection (6/19/19); uncertain future, should not impact U.S. fisheries; NOAA PR on West Coast groundfish seabird avoidance (84 FR 48094; comments to 10/15/19)
- CEQ issues a NPRM (83 FR 28591) to update NEPA implementing regulations; comment period expected in 2019; this has been done 1X in 40-ys
- DHS/USCG evaluating Alaskan Arctic Coast Port Access Route; comments to 1/30/20; contact...
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PSMFC "Grab Bag" #3

- House bills restricting GMO Salmon (H.R. 1103; 1104; 1105)
- "Blue Globe Act" (S.933 (1)/H.R.3548 (4)) to improve ocean management
- House passes Ocean Acidification bills H.R. 1237; 1716; 1921; 988 (6/5/19); **Consistent with PSMFC 2016 Resolution funding/research for changing ocean conditions; PMFC letter of support to Rep. Bonamici (D-OR-1st; 3/4/19)**
- H.R. 1322 approved by House T&I Cmte to require USCG report on climate impacts on 10 most vulnerable USCG stations
- NOAA improves CZMA process; Final Rule *See* 84 FR 38118
- House Caucuses of interest: Oceans (Bonamici/Young); & Wild Salmon (Huffman/Young); Invasive Species (Stefanik/Thompson); Arctic (Larsen/Young)
- Bipartisan H.R. 3458/S.1967 the "*Recreation Not Red Tape Act*" to improve recreation on public lands (6/25/19)
- Bipartisan H.R. 1225 "*Restore Our Parks and Public Lands Act*" to improve nat'l parks; passes House Nat Res Cmte (6/26/19; 307 cosponsors)
- S.47 (AK Sen. Murkowski): *J. Dingell Conservation, Mgmt & Recreation Act* passes Congress; P.L. 116-9 (3/12/19)

Rick's Summer Reading Tips!

Touching the Dragon

James Hatch & Christian D'Andrea (2018)

Killing Patton

Bill O'Reilly & Martin Dugard (2014)

The Great Alone

Kristin Hannah (2018)

David & Goliath: Underdogs, Misfits & The Art of Battling Giants

Malcolm Gladwell (2013)



AND YES, YOU HEARD IT HERE...

- Not Again! Arctic Tour ship with 16 Climate Change Warriors Aboard Gets Stuck in Ice, CCW's Airlifted to Safety: E. Vaughn (9/10/19)
- Amish Man Fined \$28,000 for Poaching a 26-point Buck: L. Hayhurst (12/30/18)
- Man Survives Bear Attack and Shark Attack In One Year: U.S. News (4/23/18)
- 1.3 Million Want to Raid Area 51 to "See them Aliens": D. Van Boom, C/News (7/16/19)
- Man Sits on Toilet for 116 Hours to Set New Guinness Record: UPI (7/15/19)
- Microplastics Found In Human Poop For the First Time: M. Solly, Smithsonian.com (10/23/18)
- Two Men Accused of Shooting Each Other While Taking Turns Wearing a Bulletproof Vest: AP (4/3/19)
- Sheep Eyeball Juice Maggotty Cheese Among Yuckiest Exhibits At The Disgusting Food Museum: Weird News (11/2/18)
- 'Meth-Gators': Tennessee Police Warn Flushing Drugs Could Create Hyper-Aggressive Gators: US News (7/16/19)
- Grumpy Cat Dies; Her Spirit Will Live on, Family Says: NPR (5/17/19)
- Thousands of Dead Fish in Kentucky River After Jim Beam Fire: BBC News (7/8/19)

