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## Agenda 2012: Seven Issues to Pursue in the New Year

By Zeke Grader and Glen Spain

**O**ur initial reaction to the suggestion of putting together a list of what the fishing industry "must" do in the New Year, was a collective groan.

Moreover, given what's happening in DC right now, with a largely dysfunctional federal government and prospects for change looking no better in 2012, some thought the exercise a waste of time.

At best, we felt all that could be hoped for in 2012 was to thwart attacks on our fisheries and occasionally monkey wrench a really bad plan from Congress or the Administration. At the state level, given the financial crunch most states are experiencing, the prospect was not much better for advancing any kind of aggressive agenda on behalf of our fisheries.

On the other hand is the reality that we have to do more than simply react and defend. There may be openings for us in 2012 that we can take advantage of to assert a fishery agenda – assuming we can articulate one. Furthermore, what we do in 2012 will make us better prepared for a new Congress in 2013, and either a new Administration or some hoped for changes in the current one as it prepares for a second term.

What we would like to advance sev-

en items for consideration for a 2012 fishery agenda. And we think these items are in the realm of reality, not just idle wishing.

We have deliberately not included two other potential issues – ecosystem-based management and marine spatial planning. These concepts are sound but are just "not ready for prime time" – either the foundational work has not yet been done, or worse, current agency leadership or their non-government backers are suspect, incompetent or some combination of both. We also discuss these.

In this column we've written on many of the issues numerous times before, so a detailed explanation of each should not be necessary. Here are the seven items we believe constitute an essential, pragmatic legislative agenda for our fisheries for 2012 and beyond:

### Funding A National Fishery Trust

As *FN* readers know, the management of our federal fisheries is supposed to be based on the best available science. That language was in the original Fishery Conservation & Management Act of 1976 and was reemphasized and strengthened again in the reauthorization of the Magnuson-Stevens Act (the renamed FCMA) in 2006. Even without that language, common sense tells us

that managing fish stocks without good data would be foolhardy, either resulting in underfishing or, more likely, overfishing stocks to the long-term detriment of our fishery.

The problem has never been the requirement for basing management decisions on science, but rather the availability and the adequacy of that science. More specifically, the problem has been ongoing lack of Congressional funding for the best science. There has never been adequate Congressional funding even for the most basic data collection programs, and this lack of funding is only going to get worse with deficit cuts.

We wrote about this in *FN* back in August 2003 and again this past August, calling for the establishment of a "National Fisheries Trust Fund" to provide an adequate and dependable revenue source for fishery science and, perhaps, other fishery needs.

In the 2006 Reauthorization of the MSA, Senators Ted Stevens and Barbara Boxer inserted language to establish such a fisheries trust fund, but no significant funding source was identified; that was to occur later.

Now, following an announcement at an October 3rd Commerce Committee field hearing in Boston, Senator John Kerry said he intends to introduce



legislation, the “Fishery Research & Conservation Investment Act,” to focus federal funding under the Saltonstall-Kennedy (S-K) Act on identifying the critical research, conservation and management needs in each fishery region.

Senator Kerry’s bill is intended to ensure that federal S-K funds (derived from a tariff on fish product imports) go where they were originally intended – to address the critical problems facing fishermen. Under this legislation, each fishery region would develop a five-year fishery investment plan that specifically addresses its needs, with S-K money being used to implement those plans. Because fishermen will be involved in developing these plans, they will be able to better tailor solutions to solve the problems facing their regions.

Senator Kerry’s bill is more modest than the trust fund initially proposed eight years ago in this column, but it stands a much better chance of passage and should attract bi-partisan support in both the Senate and House. Passage of this bill should be a “no-brainer” and the top priority for commercial fishermen across the nation.

### **Catch Shares – Communities, Not Consolidation**

We have written extensively in this column over the past five years on individual fishing quotas (IFQs), and more recently on the broader issue of catch shares. We recognize that IFQ programs, when properly crafted, could be a useful management tool – making fishing operations

safer, helping to get a better price for fish, and giving fishermen more control over their operations.

Unfortunately, and this is well-documented, most IFQ programs have not been carefully crafted. They’ve resulted in massive consolidation, job losses, loss of access by communities to fish stocks in adjacent waters, de facto privatization of a public resource, and the commodification of public resources.

It is time for Congress to declare a moratorium on any new or newly implemented IFQ or catch share programs. Such a “time out” would allow for an independent review of all current and proposed catch share schemes, including all the IFQ programs, to determine whether the public’s interests in its fish stocks are being protected, including the broad interests of fishing communities. This independent review should include recommendations for changes.

If these programs are as good as proponents claim, then they should easily pass review with a minimum amount of change. Others, however, including the Mid Atlantic Surf Clam, the BSAI crab “ratz,” and the Pacific groundfish trawl IFQ scheme we doubt will pass the smell test.

It is likewise time for Congress to develop a real policy on catch shares. NMFS was instructed by Congress to develop standards for IFQs following the 1996 MSA reauthorization, but refused. The current NOAA Catch Share policy is no policy at all.

Any real policy needs to address issues of consolidation, employment, commu-

nity access, fairness for other fishermen, new entrants and the public interest in maintaining a public resource, in addition to promoting conservation. In the meantime, Senators Scott Brown and Kelly Ayotte are right to call for the suspension of any catch share program that causes job losses, and Professor Elizabeth Warren is right to warn of the danger of a foreign take-over of our fisheries if quotas are treated as private property and are consolidated. Such programs are ripe for speculators.

The one form of catch shares that could address some of the more egregious problems with current catch share/IFQ programs are those for community fishing associations (CFAs).

The problem is that neither NMFS nor the Councils have lifted a finger to implement this type of catch share program that allows communities to collectively hold quota, and they don’t plan to do so until 2015 or later. That’s too late.

It is time for Congress to establish standards for CFA’s so communities have guidance on how to organize to hold quota before NMFS and the Councils have given quotas all away to their friends. Industry here can play a key role in developing sets of recommendations to Congress on how best CFAs should be structured.

### **Salmon – A Work Plan**

As we have seen many times, every salmon run is important, and the collapse of any major salmon run can trigger coast-wide closures under weak stock management. Yet there is still no overarching or coastwide

salmon recovery plan from this Administration. Here are some elements of such a comprehensive coastwide salmon recovery plan:

*Columbia Stakeholder Negotiations.* In August, US District Court Judge James Redden shot down the latest Northwest NMFS Region Columbia River salmon plan Biological Opinion (BiOp), intended for protection and recovery of ESA-listed salmon and steelhead runs in the Columbia Basin.

This was the fourth federal “Columbia River Salmon Plan” in a row to bite the dust since litigation over these plans first began in 1993. For nearly 20 years, under several Administrations (Democrat and Republican) the NMFS Northwest Region has caved in to political pressure and tried to work its way around dealing with the dams. In this last go-round, the Obama plan tried to substitute largely unknown and unfunded as well as vague “habitat improvements” for an effective plan to deal with the dams.

Credible fishery scientists have made it clear that the four lower Snake River dams must go if salmon in the Columbia are to recover. In June, 2011, the Western Division of the American Fisheries Society ([www.wdafs.org](http://www.wdafs.org)) strongly approved a Resolution recommending Snake River dam removal.

To get the salmon out of court and on the way to recovery, a “Salmon Solutions Table” is needed, where the parties can negotiate a regional solution to these otherwise intractable problems. Negotiated settlements of this sort have succeeded in resolving other salmon con-



flicts in the west, but has never been seriously tried in the Columbia River with all the stakeholders at the table.

PCFFA and other plaintiffs in this litigation have formally requested Judge Redden to order face-to-face stakeholder negotiations. Those Columbia River salmon stakeholder negotiations should proceed as soon as possible, and with all options – including Snake River dam removal – on the table. After 20 years of failure wasting billions of dollars, members of Congress should strongly support a new approach.

*The Central Valley – Stopping Water Grabs.* There are parallel planning and restoration efforts now ongoing to restore the critically important San Francisco Bay Delta, and the Central Valley salmon runs that migrate through this estuary from their Sierra streams to the Golden Gate. The recent collapse of the Delta ecosystem decimated Central Valley chinook runs, putting most West Coast salmon fishermen out of work in 2008-2009 and part of 2010, costing the California and Oregon economies hundreds of millions of dollars.

Fundamentally this fight is over water. Central Valley agribusinesses – mainly the large “farms” on the west side of the San Joaquin Valley – have been drawing more and more water out of the Delta for years to feed their voracious mid-desert operations (and to resell this federally subsidized water at huge profits). Finally they took too much. The once abundant Central Valley salmon, the second largest runs in the lower 48, need more water to survive. All the available sci-

ence confirms this.

As a result of litigation brought by fishing and conservation groups (PCFFA v. Gutierrez) a NMFS BiOp is now in place for protection of the listed Central Valley salmon and these protections also help protect the commercially important fall-run chinook. That BiOp is under legal challenge by Westside growers and their friends in Congress

In addition to the court challenges to NMFS’ BiOp, there is Congressman Devin Nunes’s bill (H.R. 1837) that would suspend most federal environmental protections for California Central Valley ESA-listed salmon runs, force the agencies to maximize water diversions in spite of killing fish, and overturn 150 years of California water law. If successful, the Nunes bill would destroy California and much of Oregon’s commercial salmon fishery. Our work is cut out for us next year in the courts and in the Congress.

Unfortunately, the formal “recovery” process now taking place among the agencies – a “Memorandum of Agreement” has just been signed by the State of California and the Secretary of Interior – exacerbates an already bad situation. The habitat conservation plan (HCP) being proposed for the recovery of ESA-listed Central Valley salmon and other estuary-dependent species, called the “Bay-Delta Conservation Plan” (BDCP), is nothing more than a massive water project – and water grab – disguised as a Habitat Conservation Plan (HCP).

Agency biologists and many independent scientists have all said BDCP’s call for a massive under the Delta tun-

nel, or some version of the old peripheral canal, would destroy our salmon runs, but the Obama and Brown Administrations are persisting in the BDCP folly.

An alternative approach being proposed by the Golden Gate Salmon Association (a coalition of commercial, recreational and Tribal fishing interests) is a salmon plan that includes short and long-term measures, including flow and habitat fixes intended to recover listed salmon and achieve the state and federal “doubling” goals for Central Valley salmon stocks. Pursuing this plan has to be part of any 2012 agenda.

*Klamath Dam Removal.* One bright point on the salmon restoration horizon is in the Klamath Basin. On February 18, 2010, PCFFA with nearly 40 other Klamath Basin stakeholder groups, the Governors of Oregon and California, and the power company PacifiCorp (which owns the Klamath dams) all signed a Klamath Settlement Agreement. This agreement moves the basin in an orderly way toward removal of four fish-killing dams on the mainstem Klamath and the restoration of a free-flowing Klamath River for salmon for the first time in 90 years.

The “Klamath Basin Community and Economic Recovery Act,” now pending in the US Senate, would implement the Klamath Settlement Agreement and must become a very high priority for Congress to both pass in early 2012 and to fully fund.

Failure by Congress to pass this Klamath Settlement enabling bill quickly in 2012 risks plunging the Klamath Basin back into the chaos of

irrigation water shut-downs, massive salmon fish kills, salmon run collapses and coast-wide ocean salmon fisheries closures of the sort we experienced throughout most of the last decade. Failure to act will also ultimately cost Congress far more in periodic Klamath disaster assistance payments, as occurred during the last decade, than it would cost to actually fix these problems and bring economic stability to the Klamath Basin – for both farmers and fishermen – once and for all.

Restoring Coastal Coho and Fall Chinook. In addition to the “big” systems – the Columbia, the Central Valley and the Klamath – fishermen cannot afford to ignore the smaller river systems that produce much of the coastal coho and smaller runs of chinook. If some of these stocks of concern remain languishing under the ESA with no effective recovery plan, salmon fishing will still remain constrained no matter how successful the restoration of the larger systems.

Probably the single largest threat to coastal watersheds at this time is some of the “dewatering” occurring to support new crops in these small basins. Currently, PCFFA and other fishing, conservation and Tribal groups are in litigation attempting to protect or restore flows to coastal watersheds, and even the tributaries to larger systems such as the Scott and Shasta, which are tributaries to the Klamath.

Progress has been achieved through the implementation of “TMDLs” (Total Maximum Daily Load) pollutant limits under the Clean Water Act and making some



watersheds more fish friendly. There is, however, much work to be done to address both flows and water quality problems in many of these smaller watersheds.

The threats of excessive logging to salmon have largely subsided over the past twenty years but there are efforts again, especially on public lands in Oregon for example, to open previously closed area to logging or weaken existing timber harvest rules.

The bigger problem from the standpoint of land use activities damaging salmon streams is encroaching urbanization, and we cannot ignore that in any agenda this next year that includes restoration of coastal salmon populations. The other major water quality threat – the discharge of pesticides and other chemical poisons into salmon streams – is discussed below.

### **Protecting the Protectors – CWA, ESA, MSA**

The nation's fisheries have been major beneficiaries of three of the 1970's eras best environmental legislation. As bad as we may now find the status quo, it is hard to imagine where our fisheries would be today without the Clean Water Act (CWA), the Endangered Species Act (ESA) and the Magnuson-Stevens Act (MSA).

Our rivers no longer catch on fire and fish now thrive (and are edible) in many formerly polluted waterways because of the Clean Water Act. Most runs of salmon from Snake River sockeye to Sacramento winter-run chinook have survived extinction – at least thus far – and many fish stocks are now protected from overfishing and

many important fisheries are being rebuilt. Despite this progress, however, there are aggressive efforts right now, particularly in the House of Representatives, to weaken or revoke substantive portions of these three crucial statutes.

These highly orchestrated Congressional attacks on our rivers, clean air, public health and standards for sustainable fisheries are coming from, and largely funded by, the industries and people who have excessively profited as they screwed up our watersheds, polluted our rivers, fouled our air and nearly destroyed our fisheries. Their motives are very simple: personal profit and corporate greed.

Reasonable environmental regulations make sense, protect human health, and protect the foundational sources of all economic wealth, which is a healthy environment. You cannot catch fish from dead rivers and dying oceans. The fishing industry should be in the forefront in protecting the nation's environmental laws from these kinds of short-sighted Congressional attacks. That includes some of the attacks now taking place to weaken the MSA.

Let's quickly review some of these threats. PCFFA has been in litigation for nearly a decade on the issue of pesticide pollution of our waterways. First it was against the Environmental Protection Agency (EPA) to force them to consult with NMFS on the impacts of 54 of the worst and most pervasive pesticides on ESA-listed salmon and steelhead. We won that fight. EPA was ordered by the Courts to consult with NMFS under the ESA. Then we had to sue the

Bush Administration, which ordered NMFS to do nothing. We won that fight as well, and now NMFS Biological Opinions (BiOps) on the impacts of these pesticides are finding "jeopardy" nearly everywhere as they come out one by one under Court Order.

Meanwhile, PCFFA and co-plaintiffs still had to sue EPA again for ignoring NMFS' BiOps and EPA's failure to adopt stronger pesticide protections to keep these poisons out of salmon-bearing rivers. That lawsuit is still pending.

At the same time some of the dimmer bulbs in Congress are pushing pesticide industry-written bills to exempt ALL pesticides – not just from the Endangered Species Act, but from the Clean Water Act and equivalent state water quality laws as well – all the while citing "lost jobs" they somehow attribute to reasonable efforts to keep fish (and human) poisons out of our nation's water supplies! Such blanket exemptions would make a mockery of the nation's environmental protection laws. Those bills have to be stopped at all costs; this fight too is part of Agenda 2012.

More than reacting to the threats to the CWA and the ESA, our agenda should include efforts to strengthen these existing laws. There need to be tighter timelines for ESA recovery plans, funding to ensure recovery takes place, and financial assistance to land owners and others whose actions may affect listed species where they make good faith efforts to aid recovery.

There is no doubt that stock rebuilding plans under the MSA can be painful. The

problem is that if rebuilding is delayed or doesn't occur, the pain will be long lasting or even permanent. A better course than to delay rebuilding, whether through "flexibility" or just ignoring the science, would be to find ways to employ fishermen and vessels in other activities or provide them some relief so they will still be around when stocks are rebuilt. The change in the MSA that's really needed is not to waive rebuilding, nor to ignore science, but to remove the "overfishing" label from stocks, such as salmon, that have been depleted by activities other than fishing.

### **Safer Aquaculture**

With world population passing 7 billion last month, it's obvious that the world's food supply is going to be strained. One of those strains will be on wild fisheries. We cannot meet new seafood demands from wild fisheries alone.

That means that aquaculture will be needed to augment existing wild production. The issue as we have noted here in the past is whether new aquaculture development will complement existing wild production or conflict with it.

Tragically – and they should know better – the US is embarked on the latter course by aggressively pursuing open ocean aquaculture. This is simply the wrong place for new commercial aquaculture development.

California has already witnessed the destruction of its black abalone populations when they became infected with withering foot disease from out-planted aquaculture stock. Now in the past



few weeks we have learned that wild sockeye in British Columbia have become infected with ISA, undoubtedly traceable back to salmon farm net pen operations in BC waters.

Aquaculture can be much more safely developed on shore, where it can be both sustainable and profitable. That's what we as an industry should be pushing this year, amid the clamor – much of it contrived – from those in NOAA complaining of the national “seafood deficit.” The main deficit is in vision and common sense.

### **Combating Global Heating and Acid Seas**

As one climate scientist recently remarked, if you do not believe in global warming what you are really saying is that you do not believe in thermometers.

There is widespread belief that global heating (calling it “warming” is too polite) is now occurring, and far more rapidly than even the most pessimistic of climate models in the now-outdated 2007 Fourth Assessment of the Intergovernmental Panel on Climate Change (IPCC) predicted.

With increased CO<sub>2</sub> comes ocean acidification. The mechanism by which CO<sub>2</sub> in the air combines with sea water (H<sub>2</sub>O) to form carbonic acid (H<sub>2</sub>CO<sub>3</sub>) is so well known that it can be demonstrated in a high school chemistry lab.

As a result, parts of the world's oceans are today observably more acidic than they were in the 1800s. Worse, at the current rate of worldwide CO<sub>2</sub> emissions the claim is that by the end of this

century the world's oceans will be between 150% to 200% more acidic than they were 250 years ago. This projected acidification level is very close to – and perhaps well over – the “tipping point” at which major ocean ecosystems could collapse causing mass extinctions.

The fishing industry must take the lead in pushing for adaptation to those coastal impacts we know are coming, and are now on their way. We should also become leaders in efforts worldwide to reduce global CO<sub>2</sub> and other greenhouse gas emissions believed to cause global warming as soon as possible. Every year of inaction makes the future of our industry that much more uncertain.

### **Marine Safety**

With release of the most recent Department of Labor statistics about the danger of US fishing, we may expect to see more safety requirements.

One area of safety we need to pursue is the development of a national policy that the Coast Guard or an authorized private party will immediately respond – pending weather conditions – any time a fishing vessel becomes immobilized, including grounding, to provide immediate assistance.

The recent incident of the *F/V Tasu* at the end of the commercial salmon season – where the vessel was grounded (but not immediately damaged) and the Coast Guard, and subsequently a private company, refused to render assistance – cannot be repeated. The vessel could have been safely towed from the beach had either the Coast Guard or the private

company responded. Instead the vessel was destroyed as a result of the delay, and only because of good weather were they able to remove the fuel and avoid an oil spill in a Marine Sanctuary.

In the *Tasu* incident the Coast Guard did not respond, saying there were private companies that could do the job. The private company, however, was not about to move unless it was assured there was a large enough amount on the vessel owners credit card. When there's an emergency, you should respond, you don't dicker over how much a victim has in insurance, in the bank or on their credit card. The financial settlement should occur once the incident has been dealt with. Congress needs to act on this issue now, before there is further loss of property, loss of life and damage to the environment.

### **Not Ready – Ecosystem Management, Marine Spatial Planning**

There are two items we're not including on this agenda. This is not because we don't think they're important, or because the concepts don't make sense, just that they're simply not yet ready for action.

*Ecosystem-Based Management.* In the case of ecosystem-based management (EBM), while the concept of understanding the environment, the interactions within that environment and the impacts of our actions on that environment are important, we first need to build a foundation. Ecosystem-based management requires extensive information and in many

cases we simply don't have most of the science yet.

Secondly, ecosystem-based management is not something that happens overnight. It is something we work towards, knowing that a satisfactory plan may be 25 to 50 years in the making. But of course that doesn't mean we don't start now, or at least soon.

Ecosystem-based management begins with science, which we discussed above. Before getting head long into EBM, it is time to get our funding in order for the science and begin in earnest the research, data collection and stock assessments to provide the foundation for real EBM. Short of that, we are mostly just guessing, which can be dangerous.

*Marine Spatial Planning.* The idea of planning for marine uses – a kind of marine zoning – making a lot of sense, particularly given the number of new (e.g., wave energy) or expanded (e.g., marine shipping) uses being proposed for many ocean waters.

The problem we have right now with marine spatial planning is that it is not a top priority given some of the other more urgent crises we're faced with. But, secondly, we simply don't have confidence in the agencies or NGOs now promoting it.

We worry that with an Administration that is way too friendly to offshore oil (the Obama Administration has approved 98% of the applications for offshore drilling it has received) and to offshore aquaculture, as we mentioned above, there is simply too great a likeli-



hood that uses of the marine environment that should be prohibited will instead be allowed.

Likewise we have witnessed many in the environmental NGO community so anxious for a big grant and big headlines that they are far too willing to sacrifice fisheries for the sake of some area closure they can call a "reserve" or "protected," failing to understand that fishermen need to follow the fish and that migrating fish just don't recognize lines on a chart.

If marine spatial plan-

ning is pursued at this time, the odds are that some very bad uses of the ocean will be approved, while fishing will be greatly restricted for no good reason. Worse, we do not see any enthusiasm by any of the regional fishing Councils to pursue the protection of fish and fish stocks and habitat from a host of non-fishing activities, such as pollution and offshore drilling. Fishing in all its forms is nowhere near as destructive to marine habitats as a single oil spill. Unless we control non-fishing impacts first, "marine reserves" and "pro-

tected areas" become meaningless terms.

We agree that there is value to be found in some sort of marine spatial planning, but the time and players are not yet quite right for this sort of effort.

### **Conclusion**

No, despite the grumbling, we're not going to just react to whatever is thrown at us. The seven issues we've outlined above give us some direction for what we're going to push back on and push for.

What are your thoughts

for a fishermen's agenda for 2012? 🐟

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