

Magnuson Reauthorization, let's get it right this time

Nils E. Stolpe/FishNet USA

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“The Regional Council system was designed to allow regional, participatory governance by knowledgeable people with a stake in fishery management” (U.S. Regional Fishery Management Councils, <http://www.fisherycouncils.org/>).

A bit of history

When the Magnuson-Stevens Act (MSA) became law On April 13, 1976, one of its primary selling points, along with reserving the fish and shellfish in our coastal waters out to two hundred miles for U.S. fishermen, was that the eight regional Fishery Management Councils that it established had as voting members both government employees who were involved in fisheries management and private citizens who were knowledgeable about fisheries. Ideally this made for balanced decision making, allowing for both the official view of what's going on in particular fisheries and the on-the-water observations of people with an actual working knowledge of the fisheries, and with the Secretary of Commerce required to sign off on any fishery management actions. (It's important to note that this was well before supposed environmental crises were supporting a multi-billion dollar industry.)

After decades of watching foreign fleets harvesting the fish in our near-shore waters, the enactment of the MSA generated a sense of euphoria in both the domestic fishing industry and in the investment community (encouraged by a very favorable investment climate fueled by federal underwriting of risk in the form of low-interest loans), with the predictable outcome of overcapitalization – too many boats working on extensive, though limited, fisheries resources.

In a number of instances this led to overfishing – removing more fish than natural production can replace.

Understandably chronic overfishing is undesirable. Accordingly the management regime responded, and responded appropriately, by enacting reasonable – and potentially effective – measures to reduce mortality. And these measures were (and would have been) in large part thanks to the input of the public members on the Councils. For the most part they realized that the welfare of the fishermen and the businesses and communities that depended upon them could be, and should be, balanced with the welfare of the fish. And they also realized that fisheries statistics, no matter how tortuously they were manipulated, did not always tell the full story about what was going on in the oceans.

Unfortunately this was all occurring concurrently with the burgeoning of the environmental crisis industry, and fishermen became the targets of choice for some of its most powerful members (and for a handful of their mega-foundation bank-rollers).

This resulted in the enactment in 1996 of the Sustainable Fisheries Act (SFA), a series of changes to the MSA which among other things removed almost all of the discretion from the federal management process. What this meant was that a complex tangle of largely inadequate estimates of fish stock parameters cranked into any of a number of computer models that were well beyond the grasp of just about everyone, and the with reductions applied because of the inadequacy of those estimates, would result in a determination of the permissible catch level in a particular fishery. This catch level couldn't be exceeded, regardless of any other factors – and if it were, one or several ENGOs on the mega-foundation gravy train would sue the Secretary of Commerce.

And the last Magnuson reauthorization in 2006 *“included additional mandates for conserving and rebuilding fish stocks and strengthening the role of scientific advice in fisheries management.”* (National Research Council of the National

Academies of Science, Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States, [https://www.nap.edu/catalog/18488/evaluating-the-effectiveness-of-fish-stock-rebuilding-plans-in-the-united-states.](https://www.nap.edu/catalog/18488/evaluating-the-effectiveness-of-fish-stock-rebuilding-plans-in-the-united-states))

The trend in Magnuson-based federal fisheries management has been an increasing reliance in what is still tremendously imprecise fisheries science and a minimization of reliance on what is now known disparagingly as anecdotal information, even though it is generally based on on-the-water observations by people whose livelihood depends on “getting it right,” often stretching back for generations.

“Scientific concepts are characterizations of nature. However, science is imperfect in its characterizations. Consequently, the law sometimes oversimplifies scientific concepts or applies them inaccurately or in an unclear way. In practice, what is represented as being the law is actually a combination of Executive Branch policies and legal judgments constrained by court rulings. It may or may not be the best interpretation of the science, and there may be other reasonable scientific interpretations. Most importantly, interpretations of the law must be consistent with the realities of nature. The Act does not recognize the dynamic nature of fish stocks and the limits of science. Although the NSIG (National Standard 1 Guidelines) help, they provide little practical guidance for many, if not the majority, of stocks.” (National Research Council of the National Academies of Science, as above)

Best available? So what?

The Magnuson requirement that management decisions be based on the best available science rather than on science that is adequate to the task, coupled with the fact that since 1996 there has been no place in the process for the exercise of judgement based on on-the-water observation and experience belies the stated claim of the Councils on the home page of their website *“to allow regional, participatory governance by knowledgeable people with a stake in fishery management”* (<http://www.fisherycouncils.org/>). In essence fisheries policy in federal waters is entirely in the hands of the scientists, regardless of how inadequate their level of understanding is or how unproven their computer models. And the worse the underlying science is, the more the permissible catch quotas are reduced because of something called the precautionary principle.

We tried to fix it seven years ago

On February 24, 2010 the Keep Fishermen Fishing Rally was held on the steps of the Capitol in Washington. Sponsored by over 30 recreational and commercial fishing groups, it attracted an estimated 5,000 plus people who were fishermen, were in fisheries-dependent occupations, or were family/friends of fishermen. Another 5,000 plus people signed an on-line petition in support of the goals of the rally.



Two dozen federal, state and local officials spoke at the rally.

The rally organizers, the petition signers and the people who trekked from as far from the Nation's Capital as Alaska to attend in-person, and the twenty-plus elected and appointed officials participated for one reason; the federal government's fisheries policies were not working for the fishermen and some necessary changes to the MSA were long overdue.

What these changes boiled down to was that a restoration of the management flexibility that was an integral part of the Act since it was originally conceived, and that was removed by intense lobbying by mega-foundation founded ENGOs and the fishermen they had coopted, had to be restored if the recreational, commercial and party-charter fishing industries were to survive.

Then again five years ago

There was a follow-up rally two years later. In the words of the organizers:

The 2012 Keep Fishermen Fishing Rally in Washington on the grounds of the U.S. Capitol was a great success. The organizers' expectations were exceeded in the number and the range of the federal and state legislators and other public officials who interrupted their busy schedules to address the assembled fishermen, focusing on the NOAA/NMFS excessively rigid interpretation and implementation of the Magnuson-Stevens Act. This rigidity is unnecessarily forcing too many fishermen and folks in fishing-related jobs off the water and out of work while our fisheries are more productive than they've been for years. In 2012 it's hard to imagine as politically diverse a group of Senators and Representatives sharing the same platform and repeating the same message. There were 21 Democrats and Republicans, ranging from the most liberal of the liberal to the most conservative of the conservative, and they were all there to support commercial and recreational fishermen and to get the Magnuson Act back to where its original authors intended it to be, with a reasonable balance between commerce and conservation with an emphasis on keeping fishermen fishing.

In spite of continuing industry and political support, the opposition to any changes by the anti-fishing foundations and ENGOs along with the ill-informed leadership in Congress and an agency that was disturbingly and increasingly "green," the MSA has remained a text book example of top down bureaucratic control.

NOAA/NMFS at the Keep Fishermen Fishing rally

It's interesting to note that the newly appointed NOAA Assistant Administrator for Fisheries, Eric Schwaab, while purposely not invited to speak at either rally, attended the first. While he was ostensibly there to meet with participants, he passed out a prepared statement saying in essence everything was ok with the Magnuson-Stevens Act and it didn't need any changes. (For more on Mr. Schwaab's visit to the rally to "talk to fishermen" see my column Fishermen find their voice at [http://www.fishnet-usa.com/Fishermen find their voice.pdf](http://www.fishnet-usa.com/Fishermen%20find%20their%20voice.pdf).)

This was a federal agency head who had been on the job for only a week. Unfortunately his words were nowhere near accurate in 2010 and they continue to be as equally inaccurate today. At the time everything wasn't ok with Magnuson. Hence the rally. Ditto in 2012. Hence the second rally. And it's still not ok now.

In spite of all of the effort and all of the political support back then, none of the proposed "fix Magnuson" legislation (see <http://www.fishunited.com/msamendments.html>) went anywhere. Fishermen today are still trying to contend with the same arbitrary and inflexible federal management regime that they were trying to contend with since 1996 when federal fisheries management was turned into a virtual strait jacket giving all of the breaks to the fish and none to the fishermen.

(See my *So how are we doing 2017 edition* at <http://fishernation.com/fishnet-usaso-how-are-we-doing-2017-edition> for an indication of how the domestic commercial fishing industry has fared under NOAA/NMFS leadership over the last two decades).

But it appears as if we can finally see some light at the end of this particular tunnel

On August 1 the Senate Commerce Committee's Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing on **Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: NOAA and Council Perspectives**. Two witnesses testified: Chris Oliver, who only a month prior had left his job as Executive Director of the North Pacific Fishery Management Council to become the head of the National Marine Fisheries Service, and John Quinn, Chairman of the New England Fishery Management Council and also of the Council Coordinating Committee (a group of regional Fishery Management Council leaders).

It's hard to imagine two people better qualified to talk about federal fisheries management from the managers' perspective. Between them they unquestionably have a thorough understanding of the good, the bad and the ugly when it comes to how we are managing our domestic fisheries.

Excerpted from their testimony (the written testimony and video of the hearing are available at <https://tinyurl.com/ycrly8wa>):

*The current Act works very well for most fisheries. However I believe that there are opportunities **to provide additional flexibility to allow us to more effectively manage some of these fisheries**, particularly those that have different catch accounting challenges or can benefit generally from alternate management approaches (C. Oliver recorded testimony @ 45 minutes, 20 seconds).*

*We also need to remember that practicality and common sense are important as we engage strategically. We look forward to working with Congress on fisheries management issues in a holistic, comprehensive way that builds on its success **and considers the needs of the fish, fishermen, ecosystems, and communities** (C. Oliver, written testimony).*

*We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts. For example, increased flexibility in rebuilding timelines **would allow for a better balance between the biology of the fish and the socioeconomic needs of fishermen** (J. Quinn, written testimony).*

While the anti-fishing "conservationists" would have everyone believe that the MSA was written to protect the fish, and that if the fish are "taken care of" the fisheries that depended upon them will prosper, this obviously hasn't been the case in fishery after fishery. One of the reasons for this is the inflexibility that was injected into the MSA by the Sustainable Fisheries Act (SFA). Both Mr. Oliver and Dr. Quinn recognized this in their testimony.

So what's so bad about overfishing?

One of the major selling points employed by the proponents of the SFA was that it was supposed to end "overfishing" in every federally managed fishery by some arbitrary date (generally within ten years), and that this was to be accomplished regardless of the impact on fishermen, fishing businesses and fishing communities.

From the outside looking in, one could think that this is a good thing, but is it really?

In the first place, a fishery can be declared "overfished" even if it only supports an insignificant fishery. When this happens, more important fisheries which unavoidably catch these species – known as a choke species – as bycatch will be shut down when their allocation of the choke species is caught. So there can be super-abundance in a far more valuable fishery but if catching that particular species involves unavoidable bycatch of the technically overfished choke species, the more valuable fishery will be shut down regardless of how much of its quota has been harvested.

There is overfishing that is bad – that's the kind where catching too many fish is allowed to go on year after year. But then there's overfishing that isn't bad – that's the kind where catching too many fish for a limited (and carefully monitored) period is allowed to get a fishery, port, or region over a bad spell. If it's a matter of shutting down businesses because they can't get enough fish or shellfish to operate or of keeping them open and allowing what is very possibly an arbitrary quota to be exceeded for a season or two with no permanent damage to the stock, why not go with the latter?

The answer today is because the Magnuson Stevens Act won't allow it.

And then there is the term “overfished,” a misnomer of classic proportions

At present, when a stock falls below a minimum biomass, it is described as “overfished” and a rebuilding plan is required. While fishing can be the cause of a reduced stock, there may be other reasons as well, such as warming ocean waters or degraded habitat. An alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors.... Furthermore, the term “overfished” can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other (perhaps unknown) factors (J. Quinn, written testimony).

Are there not enough fish because the waters in the normal range of the species are now too warm? The fishery is “overfished.” Not enough fish because domestic pollution (think birth control meds or other non-industrial pollutants) has reduced the fecundity of the species? The fishery is “overfished.” Not enough fish because another species is out-competing the managed species (think spiny dogfish)? The fishery is “overfished.”

If a fishery is deemed to be overfished, regardless of the reason, the managers must cut back on fishing, regardless of whether it can or will do anything to actually address the cause(s) of the supposed “overfishing.”

Obviously this is a public relations bonanza for anti-fishing organizations as well as for any entities (Drug manufacturers? Water treatment facilities? Generating stations? Seismic testers?) that might be engaged in actions that could significantly impact fisheries. Not enough fish? It can't be blamed on any other industry, it has to be the fishing industry because if it wasn't the fishermen's fault it wouldn't be called overfishing!

So where are we now?

We have what appears to be almost universal appreciation of the inexactitude of fishery science. That “almost” is there to exclude some fishery scientists and a host of anti-fishing activists (aka marine conservationists) who use that inexactitude as a weapon against fishermen.

We have a federal law which, when it was written in 1976, recognized how inexact fishery science was and addressed that inexactitude by including in the management process “*knowledgeable people with a stake in fishery management,*” whose experience and judgment could make up for the shortcomings of the inexact science.

The influence of these knowledgeable people in the management process has been steadily eroded by the anti-fishing lobby for well over two decades and is now at the point where it is almost inconsequential. The science and the scientists are in charge, but there are no requirements for the science employed other than that it has to be “the best available.”

We have two of the top managers in the federal fisheries hierarchy who have recognized – and who have gone on the record supporting – putting some much needed flexibility back into Magnuson. The imprecision and unfairness of using “overfished” in instances where there aren't enough fish in a stock due to any of a number of non-fishing reasons, and the fact that the welfare of domestic fishermen, fishing businesses and fishing communities should be as important to the fishery management establishment as the welfare of the fish have been brought to the attention of Congress by impeccable witnesses with no ulterior motives.

Now it's up to our supporters in Congress to finally take this ball and run with it. We in the U.S. have what are among the most productive coastal waters in the world and yet we are importing over 90% of the seafood we consume. We have a fishing industry that is as collectively conservation-minded as any. Let's get back to a federal management system that recognizes the limits of today's fishery science and gives due credit to judgment and experience.

(Note: the concept of overfishing itself is fairly complicated. In *Congress Must Make Magnuson Recognize Existence, Content of National Standards in Fishery Plans*, Brian Rothschild, Montgomery Charter Professor of Marine Science at the University of Massachusetts Dartmouth, wrote:

“Arriving at a determination of overfishing depends on the choice of model (there are several). The magnitude of a overfishing “value” generally differs among “models”. For example, overfishing can be defined in the context of production models, age-structured production models, or yield-per-recruit models, each of which gives a different view of stock status. It is also often the case, amidst this profusion/confusion, that all of these definitions are just simply ignored and replaced by arbitrary “proxies” that rely upon highly uncertain age-structured production models.

Consider also that two different forms of overfishing are well-known: “stock overfishing” and “recruitment overfishing”. Each is determined on the basis of different information requirements. Each has different conservation content.”

The article is available on the Saving Seafood website at <http://www.savingseafood.org/opinion/dr-brian-rothschild-congress-must-make-magnuson-recognize-existence-content-national-standards-fishery-plans/> and I highly recommend it.)