

Fisheries Governance

Background Information for ‘Managing Our Nation’s Fisheries II’

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These are exciting times for fisheries governance. In the 2003 *Managing our Nation’s Fisheries* conference, the governance panel focused on three broad issues: separating scientific from allocation determination; Council membership; and legal implementation requirements. These issues are still topical. However, in the year since the last meeting, many other fisheries governance issues have exploded into prominence. In response, it is appropriate for the governance panel at this conference to focus on this wider range of issues being proposed to address current and future fisheries and oceans problems for the nation. The charge made of this panel is to review several of the most important issues and come up with thoughts towards the best path for future governance of our nation’s fisheries.

Reauthorization of the Magnuson-Stevens Act is in process, and numerous other bills have been submitted to Congress, focusing on implementing changes in federal fisheries management and ocean policy for federal waters off the U.S. The reports of two major commissions have added intense public focus on ocean resources and management issues, making sweeping recommendations for changes to management of the nation’s oceans. The U.S. Commission on Ocean Policy speaks of fisheries governance as a cornerstone of implementation of a new National Ocean Policy. In the text box to the right, the bold section states that decision makers and the public should be held accountable for decisions and actions that affect the ocean and its resources. This quote is, perhaps, a good place for the panel to start their discussion on fisheries governance. Do the panel members agree with this statement?

*National ocean policy can only be implemented if an effective governance system is in place. Many of the guiding principles defined in this chapter speak directly to this need. An effective governance system will be predictable, efficient and accountable. Laws, policies and programs must be well coordinated and easily understood by regulated parties and the public. A comprehensive framework should be in place that defines the appropriate roles for all levels of government, the private sector and citizens in managing ocean and coastal resources. **Equally important, decisions makers and the public should be accountable for decisions and actions that affect the ocean and its resources.***

U.S. Oceans Commission, April 2004
(emphasis added)

Existing Legislative Authorization - the Magnuson-Stevens Act

The Magnuson Fisheries and Conservation and Management Act (FCMA) of 1976 established control of fisheries resources within the Exclusive Economic Zone (EEZ) of the coastline of the United States, from 3 to 200 miles. Prior to implementation of the FCMA, fishing activities of foreign nations in waters off the U.S. were regulated (at best) through continuing bilateral treaties or (at worst) not regulated at all. The act established eight Regional Fishery Management Councils that began managing the fisheries within the FCZ in 1977 and continue with that responsibility today.

There have been a number of amendments to the Magnuson/Magnuson-Stevens Act since 1977. Comprehensive amendments included the 1996 Sustainable Fisheries Act and the 1998 American Fisheries Act. In 1996, MFCMA was amended through the Sustainable Fisheries Act (SFA) to become the Magnuson-Stevens Fishery Conservation and Management Act (MSA). From the perspective of

fisheries governance, perhaps the most notable provisions of the SFA was the establishment of the Ecosystems Principles Advisory Panel (EPAP). A 1998 report from the EPAP made a recommendation that regional fishery management councils be required to develop a Fisheries Ecosystem Plan (FEP) for the ecosystem under the Councils' respective jurisdictions (EPAP, 1999).

Congressional Action on Fishery Management Issues

The Magnuson-Stevens Act is scheduled for reauthorization. There was an array of congressional bills introduced into the 108th Congress, and others that were developed for later introduction. The slate of bills to address reauthorization did not receive action by the end of the 108th Congress and will need to be reintroduced for future consideration. Until these bills are reintroduced, it will not be clear if the revisions have been made to the versions introduced into the 108th Congress. Table 1 in the Appendix to this discussion provides a brief overview of some of the previously introduced legislation that could (if passed by Congress) change the structure for fisheries governance of our nation's fisheries.

U.S. Ocean Commissions Report

In September 2004, the U.S. Commission on Ocean Policy (USCOP) released their comprehensive report on a new ocean policy for the future. Some of the major recommendations likely to affect fisheries governance are listed in Table 2 at the end of this discussion. The level of public prominence vested with the Commission is likely to lend many of its recommendations sufficient impetus to become implemented in the future.

One important aspect of the U.S. Commission on Ocean Policy is the low level of discussion regarding interaction and cooperation with the regional fishery management council system currently in place. For example, Chapter 5 – Advancing a Regional Approach, makes only one mention of coordination with the existing Council system. The single citation reads, “*The regional ocean councils are not intended to supplant any existing authorities, such as RFMCs, state agencies, and tribal governments. Rather, the councils will work with these authorities to further regional goals, providing a mechanism for coordination on myriad regional issues. However, the structure and function of a council may evolve over time. For example, participants might choose to pursue more formal mechanisms for implementing decisions, such as interstate compacts, interagency agreements, or changes to regulatory requirements.*”

Despite this explanation, there remain participants within the fishery management council system with strong concerns that regional ocean councils having broad ecosystem focus will eventually focus on fishing issues for a number of reasons. One reason being the elusive and difficult nature of many ecosystem considerations versus more easily observed and quantified impacts from fishing activities. If this shift occurs, the regional ocean/ecosystem councils would likely result in jurisdictional and fiscal conflicts with the existing regional fishery management councils.

U.S. Ocean Action Plan

The Office of the President released the Bush administration's response to the U.S. Ocean Commission on December 17, 2004. The report embraces some recommendations of the U.S. Ocean Commission and provides a general schedule on enacting policy changes. Table 2 also provides an overview of some of the recommendations from the Bush Administration's U.S. Oceans Action Plan that relate to fisheries governance concerns.

Pew Oceans Commission Report

The Pew Oceans Commission released its report in May of 2003. Its recommendations have been utilized in requests by groups promoting or supporting changes to existing fishery management practices. Table 2 also provides an overview of some of the recommendations from the Pew Oceans Commission that relate to governance concerns.

Discussion Topics for Fisheries Governance

This section introduced several topics for the governance panel to address. There is a short description for each issue, outlining some of the recent activity and impetus for change.

Regional ocean councils

One of the most important issues for the governance panel to address is the role of regional ocean councils and their potential interaction with the fishery management council system. Recommendation 5-1 of the U.S. Oceans Commission states the following:

The National Ocean Council should work with Congress, the President's Council of Advisors on Ocean Policy, and state, territorial, tribal and local leaders, including representatives from the private sector, nongovernmental organizations, and academia, to develop a flexible and voluntary process for the creation of regional ocean councils. States, working with relevant stakeholders, should use this process to establish regional ocean councils, with support from the National Ocean Council (emphasis added).

The regional ocean council (or regional ecosystem councils) concept also appears in NOAA presentations (e.g. Lent, 2004) and in legislation that was introduced in the 108th Congress. The potential operation and jurisdiction of regional ocean councils remain largely undefined. Based on what has been proposed in the past, it appears that implementation of the regional oceans councils may not be part of Magnuson-Stevens reauthorization but may come from independent legislation. A legislative approach to defining and implementing regional councils could remain uncertain until the President's cabinet-level Committee on Ocean Policy reports 18 months from now.

Aside from tasking the Committee on Ocean Policy to do a review of “*issues that affect governance principles*”, the Bush Administration’s U.S. Ocean Action Plan makes no direct mention of the regional ocean councils or regional ecosystem councils. This lack of notice also suggests that action on this issue will come from Congress.

The governance panel has the opportunity to make recommendation on a new governance structure relative to the proposed concept of regional ocean (or ecosystem) councils and the overall overlapping authority for fishery management and ecosystem management.

Potential questions for the panel include:

- *At the broadest level, how is fisheries governance at the Council level affected by the interaction between an ecosystem approach to fisheries management and an ecosystem approach to oceans management?*
- *What should be the role for the 'regional oceans councils' recommended in the U.S. Oceans Commission report and elsewhere?*
- *How should regional ocean councils interact with the regional fishery management councils?*

- *Do you think regional ocean/ecosystem councils will inevitably expand their focus on marine fisheries thereby potentially coming into conflict with regional fishery management councils?*
- *Does the existing RFMC structure provide an appropriate application of the 'ocean/ecosystem' council concept?*

Separating scientific from allocation decisions

This issue was addressed by the fisheries governance panel in 2003. However, it continues to be in the public focus. Recommendations for change come from draft legislation submitted to Congress, the Pew Oceans report and other reports (e.g. Eagle et. al. 2003).

There is a segment of the public that believes the fishery management council process to be flawed in not utilizing the best scientific information in its decisions, sometimes resulting in exceeding the allocable catch limits determined by rigorous scientific analysis. This issue relates to the Council policies and practices for reviews by the Scientific and Statistical Committees as well as the practices of the Council process in utilizing scientific information and making decisions.

A letter from the executive directors of all eight regional fishery management councils sent to the Chairman of the Commission on Ocean Policy (McIssac et. al. 2003) refuted the need to separate science from management in the Council process. The main points from this letter were:

- “The stated need for further separation of science from management is faulty.”
- “There are practical problems with institutionally separating science and management.”
- A request that “The Ocean Commission not recommend generically separating the scientific considerations in marine fishery management from the RFMC process”. Instead of this separation, the letter asks “The Ocean Commission consider recommending strengthening the SSC composition and role in all RFMC’s along the lines of the successful Council models that currently exist.” A final request lists the executive directors’ opposition to a mechanism whereby SSC members would be appointed by a National Marine Fisheries Service central authority.

Despite this letter, the Commission did include this issue in its final report. Specifically, the Commission on Oceans Policy included the following statement:

To strengthen the link between strong science and sustainable fishery management, RFMCs should be required to rely on the peer-reviewed advice of their Scientific and Statistical Committees (SSC's), particularly in setting harvest levels. In particular, an RFMC should not be allowed to approve any measure that exceeds the allowable biological catch recommended by its SSC. Because of their importance in the process, SSC members should be nominated by the RFMCs but appointed by the Administrator of NOAA, and their credentials and potential conflicts of interest should be vetted by an external organization.”

U.S. Commission on Oceans Policy report, page 20.

H.R. 4706, submitted to the 108th Congress to amend the Magnuson-Stevens Act, contained a number of provisions that would have directed the use of scientific information in the fishery management council process. The current MSA says “*Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature*” (MSA 104-297 Section 302(g)(5)). The individual councils make appointments to their respective SSC committees.

Under changes proposed under H.R. 4706, a new level of scientific and technical review would be added to the fishery management council process. Section 302(g) of the Magnuson-Stevens Act would have

been amended to: add a “*regional science and technical team*” established by the Secretary which “*shall – based on the best scientific information available, recommend to the Secretary – (I) acceptable biological catch limits and bycatch limits, including annual limits, that are consistent with the national standards set forth in section 302 (a)(1) and that consider predator-prey relationships and other ecological factors.*”

H.R. 4706 continues to add to the scientific review process by requiring that recommendations from the regional science and technical team submitted to the Secretary must be subjected to peer review by “qualified independent scientists”. Compared with current regulations, this change would give a much stronger voice to scientific review.

Other proposed congressional changes would address the same issue by adding new rigor to the scientific review process for the regional fishery management councils. H.R. 4749 would have utilized the National Academy of Sciences for determining what should be the best scientific information available for actions by the regional fishery management councils.

Potential questions for the panel include:

- *Should the scientific review process of the fishery management councils be changed?*
- *If so, what changes are recommended by this panel?*
- *What is the best way to implement these changes?*

Council membership

This topic was also addressed by the conference fisheries governance working group in 2003. Recommendations for changes to the appointment process and conduct standards for members of regional fishery management councils have been raised in a number of forums including the U.S. Commission on Ocean Policy, the Pew Oceans Commission and proposed legislative changes to the Magnuson-Stevens Act (see also Eagle et. al. 2003, Okey, 2002). The synopsis from the 2004 governance panel pointed out that the group discussed how the current appointment process (i.e. a slate of nominations from the Governor of each applicable applicant state) may create or exacerbate the public perception of bias that the public’s interest in fishery resources are not adequately protected. Several possible measures to resolve this issue were suggested during 2004 panel deliberations, including: broader council representation (beyond commercial and sport fishing interests); having nominations for council membership come from an independent body such as the National Academy of Sciences rather than through the Governors; and new rules for disclosure of financial conflict of interest and recusal. Part of the discussion focused on the idea that addressing issues of concern might reduce legal and political “end runs” on Council decisions by disaffected stakeholders.

H.R. 4706 proposed a number of changes to council membership, relating specifically to: qualifications for members; disclosure of financial interest and recusal; and training for new council members.

Potential questions for the panel include:

- *Should the appointment process for council members be changed? If so, how?*
- *Should new seats be designated for certain interest areas such as environmental/ecosystem concerns, protected species conservation and habitat protection?*
- *What changes are appropriate in council procedures to address conflict of interest concerns?*
- *Are new procedural rules for disclosure of financial interest and recusal of council members needed?*
- *Are rules needed to prevent the appearance of conflict of interest in order to increase public confidence?*

Table 1: Overview of proposed legislation

Issues	Gilchrest HR 4749 MSA Amendments of	Collins S 482 Fisheries Science & Mgmt Improvement Act of 2003	Snowe S 2066 Fishery Conservation & Mgmt Amds Act of 2004	HR 4900 Oceans 21 (Ocean conservation, education and national strategy for the 21 st century act	H R4706 Rahall Fisheries Management Reform Act
	108 th Congress	108 th Congress	108 th Congress	108 th Congress	108 th Congress
Regional Ocean/Ecosystem Councils – Changes to Fisheries Management Authority					
Regional ocean councils				<ul style="list-style-type: none"> -The President shall appoint a National Oceans Advisor and a National Oceans Council -definition of ocean regions - Within 120 days following enactment, the NOAA Administrator shall establish regional ocean councils -within 5 years, each Regional Ocean Council will submit to the NOAA Administrator a Regional Ocean Ecosystem Plan. -Regional ocean council advisory committees shall be established for each Regional Ocean Council, including a science advisory council, a citizen advisory council and an inland states advisory council 	
Council Appointments/procedures					
Council appointments	New NEFMC seat for NY			<ul style="list-style-type: none"> -declaration of federal governance responsibility through the Administrator of NOAA 	<ul style="list-style-type: none"> -FMC members appointed by NOAA administrator -Voting member disclosure of financial interest, with recusal for affected members -Add criteria for nominees “and representatives of conservation organizations” -Add training for new council members-to be completed prior to voting
Reform to advisory panels			Establish standard operating procedures for all stock assessments, economic and social analyses		

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Role of Science/SSC Panels					
Standards for best science	Utilize National Academy of Sciences to develop guidance and standards for 'best scientific information'	Definition of 'best scientific information' to use in fishery conservation and management		The Chair of the National Oceans Committee shall establish a Committee on Ocean Science, Education and Operations.	-Establish a new regional science and technical team to provide the Secretary with recommendations on fishery management plans -technical team recommendations to be peer reviewed by independent panel
Independent review		-Add "one or more" scientific review committees to conduct peer reviews of all stock assessments -The Secretary shall conduct an independent and confidential peer review	-Every 5 years, the National Research Council shall provide a review of the effectiveness of IFQ systems implemented in federal waters - The National Academy of Sciences shall review and recommend measures for improving NMFS procedures for data in the stock assessment program		-Overview by National science council -SSC appointments from Sec. of Commerce -technical team to make recommendations for catch and bycatch limits

Table 2: Additional Policy-level Report Recommendations

U.S. Commission on Ocean Policy – selected recommendations:

- Congress should establish a National Ocean Council (NOC) within the Executive Office of the President, and a nonfederal President’s Council of Advisors on Ocean Policy to provide enhanced federal leadership and coordination for the ocean and coasts.
- The National Ocean Council (NOC) should adopt the principle of ecosystem-based management and assist federal agencies in moving towards an ecosystem-based management approach.
- The President should designate an Assistant to the President to provide leadership and support for national ocean and coastal policy.
- The President’s Council of Advisors on Ocean Policy, a format structure for input from nonfederal individuals and organizations, should advise the President on ocean and coastal policy matters.
- The National Ocean Council (NOC) should establish a Committee on Ocean Resource Management to better integrate the resource management activities of ocean-related agencies. This committee should oversee and coordinate the work of existing ocean and coastal interagency groups and less formal efforts, recommend the creation of new topical task forces as needed, and coordinate with government-wide environmental and natural resource efforts that have important ocean components.
- The National Ocean Council (NOC) should review all existing ocean-related councils and commissions and make recommendations about their ongoing utility, reporting structure and connections to the NOC.
- The National Ocean Council should work with Congress, the President’s Council of Advisors on Ocean Policy, and state, territorial, tribal, and local leaders, including representatives from the private sector, nongovernmental organizations and academia, to develop a flexible and voluntary process for the creation of regional ocean councils. States, working with relevant stakeholders, should use this process to establish regional ocean councils, with support from the National Ocean Council.
- Congress, working with the National Ocean Council, (NOC) and regional ocean councils, should establish a balanced, ecosystem-based offshore management regime that sets forth guiding principles for the coordination of offshore activities, including a policy that requires a reasonable portion of the resource rents derived from such activities to be returned to the public.

The Pew Oceans Commission Report:

The Pew Oceans Commission report contains recommendations for fisheries governance issues. Selected recommendations that relate to fisheries governance are listed below:

Chapter 10 – Governance for Sustainable Seas

- Develop a new National Ocean Policy.
- Implement Regional Ocean Governance – establish regional ecosystem councils
- Establish an Independent Oceans Agency
- Establish a Permanent National Oceans Council

Chapter 11 – Restoring America’s Fisheries

- Refine the Principle Objective of American Marine Fishery Policy to Protect Marine Ecosystems
- Separate Conservation and Allocation Decisions
- Implement Ecosystem-Based Planning and Zoning

U.S. Ocean Action Plan:

- Establish guidelines and procedures for the use of science in management

References

- 1) Eagle, Josh, Sarah Newkirk and Barton. H. Thompson Jr. Taking Stock of the Regional Fishery Management Councils, Island Press Publication Services, 2003. Available at: http://www.pewtrusts.com/ideas/ideas_item.cfm?content_item_id=1887&content_type_id=8.
- 2) Ecosystem Principles Advisory Panel. Ecosystem-Based Fishery Management, a Report to Congress, November 1998. Available at: http://www.st.nmfs.gov/st7/documents/epep_report.pdf.
- 3) Lent, Rebecca. The Evolution Toward an Ecosystem Approach to U.S. Fishery Management, November 9, 2004. Available at: http://www.oceansatlas.org/cds_upload/1100636687610_Lent.Ecosystem_Approach.ppt.
- 4) Magnuson-Stevens Fishery Conservation and Management Act. Public Law 94-265 as amended through October 11, 1996 – An Act to provide for the conservation and management of the fisheries, and for other purposes, J.Feder version (12/19/96). Available at: <http://www.nmfs.noaa.gov/sfa/magact/mag3.html#s302>.
- 5) McIssac, D. O. et. al. Letter from the executive directors of all eight regional fishery management councils to Admiral James D. Watkins (retired), Chairman of the Commission on Ocean Policy re: Marine Fishery Management Governance and the Concept of Separating Science from Management in the Regional Fishery Management Council Process, December 30, 2003.
- 6) Okey, Thomas A. Membership of the Eight Regional Councils in the United States: Are Special Interests Over-Represented?, Marine Policy 27 (2003) 193-206. Available at: <http://www.sciencedirect.com>.
- 7) Pew Oceans Commission. America's Living Oceans: Charting a Course for Sea Change, May 2002. Available at: <http://www.pewoceans.org>.
- 8) U.S. Commission on Ocean Policy. An Ocean Blueprint for the 21st Century, Final Report (pre-publication copy), April 2004. Available at: <http://oceancommission.gov>.