

**Marine Fisheries Advisory Committee
Magnuson-Stevens Act Reauthorization (MSA) Report
March 22, 2005**

The Marine Fisheries Advisory Committee (MAFAC) approved on March 22, 2005 via e-mail, the Magnuson-Stevens Act Reauthorization Working Group-report as submitted below and based on the oral report submitted to MAFAC on January 14, 2005.

MSA Working Group Members:

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Summary Discussion.

The Marine Fisheries Advisory Committee (MAFAC), which advises the Secretary of Commerce on marine resource issues, met in January 2005 to discuss, among other things, NOAA Fisheries' efforts to craft an administration bill for the Magnuson-Stevens Act reauthorization. MAFAC established a Magnuson-Stevens Act Working Group to consider the issue and this paper encapsulates the Working Group's discussion and consideration by the full committee.

The Working Group recommended that NOAA Fisheries solicit stakeholder input at the Managing Our Nation's Fisheries II conference scheduled for March 24-26, 2005 before drafting the administration's Magnuson-Stevens Act reauthorization bill. A number of MAFAC members also plan to attend the March conference, and the Working Group recommended that MAFAC withhold making recommendations to the Secretary on Magnuson-Stevens Act policy issues until after the conference.

Fostering an Informed Debate of Magnuson-Stevens Act Issues.

In adopting the Working Group's report, MAFAC requested that NOAA Fisheries prepare three reports to foster informed public debate on key Magnuson-Stevens Act reauthorization issues and to assist Congress in its deliberations. The three reports, which would complement reports issued by the two oceans commissions and other contributions by stakeholders, are:

1. For dissemination at the March conference, MAFAC recommended that NOAA Fisheries prepare a report card that, among other things, details the

agency's conservation and management accomplishments since passage of the 1996 Sustainable Fisheries Act (SFA).

2. MAFAC discussed whether the role of Scientific and Statistical Committees (SSCs) in the regional Council process should be better articulated in the law. MAFAC requested that NOAA Fisheries prepare a report comparing and contrasting the roles that SSCs and other advisory panels play in each of the eight Council regions. The findings of such a report would help guide MAFAC, and others, to better evaluate what changes in the law are needed, if any, to standardize and/or enhance the roles of SSCs and other panels in the management system. This report should include the necessary analysis to assist policy makers in evaluating the efficacy of the U.S. Commission on Ocean Policy's (USCOP's) recommendation that the Magnuson-Stevens Act be amended to require SSCs to establish Acceptable Biological Catch (ABC) levels for fisheries and that regional councils be required to set Total Allowable Catch (TAC) levels at or below the ABC.
3. MAFAC requested that NOAA Fisheries prepare a side-by-side comparison of the Fishery Management Plan requirements of the Magnuson-Stevens Act and the relevant requirements of the National Environmental Policy Act (NEPA) to assist decision makers in evaluating what provisions of the two statutes are complementary, redundant or result in unnecessary delays in implementing fishery management measures.

MAFAC's Comments on NOAA Fisheries Magnuson-Stevens Act Presentation.

The Working Group's report to MAFAC in January offered the following recommendations to NOAA Fisheries as it approaches reauthorization of the Magnuson-Stevens Act. These recommendations are intended to supplement the options identified by NOAA Fisheries in its presentation to MAFAC.

1. The Regional Fishery Management Council System.

Background: Among others, the USCOP suggested changes in the law regarding the operation of regional Councils. Specifically, the USCOP focused on the relationships between Councils and SSCs, which varies significantly from region to region. Also, the USCOP issued recommendations pertaining to membership composition of Councils and the appointments process.

With respect to the issue raised by the USCOP of standardizing and/or enhancing the roles of SSCs in the Council system, MAFAC (as noted above) requested that NOAA Fisheries prepare a report comparing and contrasting the roles of SSCs and other advisory panels in the eight Council regions. The findings of such a report would help guide

MAFAC, and others, to better evaluate what changes in the law are needed, if any, to standardize and/or enhance the roles of SSCs and other panels in the management system.

Options:

- **SSCs set ABC Levels**—The USCOP recommended that SSCs establish ABC levels and that Councils recommend TAC levels at or below the ABC. Some Working Group members cautioned that the challenges of multi-species management and the often wide variations in probability in rebuilding scenarios needed to be considered in evaluating the efficacy of the USCOP’s recommendation. That is, some argue that authority should be reserved for policy makers to determine an appropriate course of action when science is imprecise and management measures must be determined from a range of acceptable alternatives developed by SSCs.
- **The Council Appointments Process**—A number of Working Group members expressed strong support for maintaining the current appointments process for regional fishery management Council members, specifically that Governors nominate and the Secretary appoints Council members. Working Group members agree that the USCOP recommendation for amending current law to require Governors to submit slates of nominees that include two commercial, two recreational and two other (academic, environmental, consumer, etc.) deserves additional discussion. The Working Group also offers for discussion amending the Act to require Governors to submit a slate of five (5) or more nominees with at least one individual representing the range of interests identified by the USCOP.
- **Standardized Training for Council Members**—The Working Group supports a standardized training program for all newly appointed voting Council members as recommended by the USCOP.

2. Ecosystem Approach to Management (EAM).

Background: Concern exists that current fisheries management fails to adequately account for and address the full range of challenges affecting fish stocks, including multi-species interactions and a wide range of habitat based considerations.

An ecosystem approach to management has been suggested as a means to more fully account in the management process for inter species interactions, protect important aquatic habitats, integrate current habitat constraints into the management process, and choose among management actions that balance needs of fish and user groups. MAFAC urged NOAA Fisheries to develop a wide range of policy alternatives for further advancing an Ecosystem Approach to Management (EAM), including non-legislative options for fostering EAM. The preliminary options paper developed by NOAA Fisheries did not contain an adequate range of alternatives. MAFAC offers the following additional considerations:

Options:

- **Guidelines to Councils**—The Working Group suggested as one option that NOAA Fisheries issue EAM guidelines to regional fishery management Councils, including EAM principles that would be incorporated into current and future fishery management plans and plan amendments. Issuance of such guidelines could be based upon recommendations included in the National Research Council's 1999 report, *Sustaining Marine Fisheries* as well as the report of the Ecosystem Advisory Panel.

Guidelines could also suggest that each Council develop a broad strategic ecosystem plan that articulates key interspecies relationships and priority habitat concerns, identifies priority research and information needs and sets forth principles used by Councils in resolving discrepancies among Fishery Management Plans for species that interact within habitats, in competition for prey or through predator-prey relationships.

- **Reform the Essential Fish Habitat Process**—Recognizing that one key consideration in an EAM is adequate protection of fish habitat, and noting existing concerns with the utility and effectiveness of standards and implementation of the current Essential Fish Habitat (EFH) provisions of the current law, MAFAC notes that meaningful reform in EFH standards and practice is an important opportunity for progress. Effectively characterizing and protecting EFH would satisfy an important element of an EAM.
- **Standards for Marine Protected Areas**—An EAM, by definition, spatially explicit. In addition, any ecosystem based analysis or action must integrate actions of fishermen fully into geographic based management decisions, including decisions that involve the designation of marine protected areas. Standards and practices for the establishment and maintenance of new closure areas should be developed in conjunction with new guidelines to establish an EAM within the areas of council and NMFS jurisdiction.
- **Further Improvements in Bycatch Reduction**—Recognizing that another key consideration in an EAM is the accounting and minimization of bycatch in fisheries, MAFAC recommends that NMFS review current bycatch accounting methods and regional bycatch reduction plans to ensure that continued progress is being made consistent with relevant provisions of the Magnuson-Stevens Act.
- **Set a Research Agenda**—Recognizing that EAM is an iterative, adaptive process for marine resource management, it was recommended that NOAA Fisheries' regional offices and science centers work with regional Councils to identify research priorities and address information gaps that must be bridged to take next steps in EAM.

- **Pilot Projects**—An EAM could be advanced effectively through the use of pilot projects. Authorization and funding for Councils to experiment with EAM on a voluntary basis through pilot applications should be considered.

Notes:

- Effective ecosystem based management decisions would be hampered by actions intended to “separate science and allocation decisions.” An EAM would require Council members to make policy choices prioritizing species when setting target biomass levels and fishing rates. In addition Councils would need to take into account current capacity of habitats to sustain various population levels when setting biomass thresholds and targets. While these choices must be informed by the best science advice possible, only Councils could make the appropriate policy choices in multi species and habitat dependant decisions.

3. Streamlining the Federal Fishery Management Process.

Background: Some believe that provisions of the National Environmental Policy Act (NEPA) are inconsistent with, or duplicative of, Magnuson-Stevens Act provisions pertaining to developing fishery management plans and plan amendments. Others cite NEPA requirements as a necessary environmental safeguard in addition to conservation and management requirements of the Magnuson-Stevens Act.

As noted above, MAFAC requested that NOAA Fisheries prepare a side-by-side comparison of the two statutes to assist decision makers in evaluating what provisions, if any, of the two statutes are redundant or lead to unnecessary delays in implementing fishery management measures.

Options:

- **Adjust Time Lines**—Where only time line conflicts exist, 1) reconcile Magnuson-Stevens Act provisions to match NEPA guidelines, or 2) in cases where NEPA time lines are not practical for fishery management purposes, establish that Magnuson-Stevens Act time lines will satisfy NEPA requirements.

4. National Standard #1—Preventing Overfishing and Achieving Optimum Yield.

Background: National Standard #1 of the Magnuson-Stevens Act reads, “*Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*” The Sustainable Fisheries Act of 1996 provided a definition for “overfishing” and modified the definition of “optimum yield,” and NOAA Fisheries subsequently rewrote the National Standard #1 Guidelines. NOAA Fisheries is proposing further revisions of the Guidelines. Notwithstanding NOAA Fisheries’ rewriting of the National Standard #1 Guidelines, NOAA Fisheries suggested ongoing concerns about implementation of this standard, as amended under the SFA.

Options:

- **Fishing Mortality and Biomass Levels**—NOAA Fisheries posed the question of whether the Magnuson-Stevens Act should focus more on fishing mortality than on biomass levels. Several MAFAC members agreed that such a perspective reflected an EAM approach. Other Working Group members expressed caution about agency efforts to shift stock rebuilding focus from biomass targets to fishing mortality targets, if such a shift would jeopardize the ability of regional fishery management councils to “phase in” reductions in fishing mortality (F), noting that there is evidence in existing fishery management plans that a phased F reduction strategy can be successful.
- **Simplifying the Rebuilding Standard**—In considering a range of alternatives for further amendment to National Standard #1, some argued that the guidelines, as re-drafted, failed to clarify approaches to “mixed stock” management. Others, including NOAA Fisheries, floated for discussion the notion of simplifying the rebuilding standard.
- **Stakeholder Participation**—Consider stakeholder input, including public comments received in response to proposed changes to National Standard One Guidelines, in considering further action.

5. Other Issues.

NOAA Fisheries’ presentation highlighted a number of other key issues, including Essential Fish Habitat (EFH); Dedicated Access Privileges or Individual Fishing Quotas (IFQs); and federal fishery observer program funding and program requirements. There was not sufficient time available for MAFAC to discuss and identify policy options for these and other issues, but MAFAC expects to offer recommendations on these key issues following the March fisheries conference.

Future Committee Action: This is an interim final draft to be further discussed at the next full committee meeting.