


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: December 7, 1992

SUBJECT: Magnuson Act Reauthorization

ACTION REQUIRED

Begin development of Council position on Magnuson Act reauthorization.

BACKGROUND

The Magnuson Act comes up for reauthorization in 1993, but it is not clear now just how far Congress will go in considering the Act and major revisions. I've heard various opinions, but nothing definite about how much the Act will be overhauled. Several other important acts such as marine mammal protection and endangered species also are up for reauthorization, and may take priority over the Magnuson Act. One opinion is that Congress will concentrate on those two acts and other environmental legislation, and that the Magnuson Act will simply be reauthorized for one year and then considered in depth in 1994. A second opinion is that Congress will get to the Magnuson Act early in 1993, make changes, and then go on to the other pending legislation. At this Council meeting, we need to hear from those people closer to Washington, D.C. about reauthorization activities and schedule for 1993.

If there is the chance that there will be major reauthorization proceedings this year, we need to ensure that our positions are developed on changes to the Act so that they can be carried forward to the other Councils and to the Congress. Regional Council chairmen likely will meet in Washington, D.C. or New England in early February so we have this meeting and our January Council meeting to develop our recommendations.

At the September Council meeting, I included in your notebooks under the ED Report, testimony before the National Ocean Policy Study of the Senate Committee on Commerce, Science, and Transportation on September 9, 1992. The main themes of the testimony dealing with the nation as a whole or with the Pacific Northwest and Alaska may be summarized as follows:

Conservation

1. Strengthen conservation standards, incorporate overfishing definitions and rebuilding plans in Act.
2. Prohibit wanton waste, make full utilization a national objective, make bycatch reduction a national policy or standard and provide legal and technical tools to implement individual bycatch quotas.

3. Separate biological from allocation decisions, leaving the former with the Secretary or other independent authority, or require the Secretary to explain any approval of a Council ABC that exceeds an SSC recommendation.
4. Establish a national scientific oversight body to review and approve TACs.
5. Strengthen roles of scientists and professional fisheries managers, and insulate them from political influence.
6. Require managers to consider ecosystem interactions and habitat, and strengthen council review of other federal agency decisions that affect habitat.

Procedures

1. Increase review time, require peer review, and give attention to social and economic impacts on commercial fisheries.
2. Align review procedures and requirements of various Acts to reduce bureaucratic delays.
3. Require super-majority or two-thirds vote by Council to protect those sectors not adequately represented.
4. Make national standard guidelines mandatory and keep Congress out of micromanagement.

Council Composition and Conflicts of Interest

1. Add consumer advocates and environmental representatives to councils.
2. Make councils subject to Federal Advisory Committee Act.
3. Require Council members to declare their interest before votes and to recuse themselves if there is a conflict of interest.
4. Expand disclosures to include representative and fiduciary relationships, and have better agency verification of disclosure statements.
5. Restrict Council membership to those with direct interest in the resource, i.e. no lawyers, association directors, or consultants.

Council Role

1. Secretary should be principal decisionmaker, should be able to substitute his judgement for that of Councils, and Councils should be returned to role of advisory bodies. Council authority should be more limited.
2. Strengthen Council and their staffs and make them more independent of NMFS.

Limited Entry

1. Authorize Secretary to develop limited access programs and promote market-based mechanisms.
2. Require moratorium for any fishery on overfished stocks.

Fisheries Funding

1. Create a funding mechanism such as a fishery trust fund to be invested with ITQ transfer fees or rents, or by repealing the diesel fuel tax exemption, or by money generated from penalties.
2. Create a federal license, user fee, or landing tax, or other means to collect royalties and rents to conserve and manage the fisheries, including stock assessment, council operations, observer programs, gear technology funds, enforcement.

Community Enhancement

Enact CDQ-type policies nationwide to enhance local fishing opportunities and stabilize local economies.

The Council needs to consider which, if any, of these themes to work on for possible changes to the Act. There may be others as well that will come out in future hearings. I think we need to have our interests pretty clearly identified by the end of the January meeting.



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REFORMING THE SYSTEM

Congress Kicks Off Another Review of the Magnuson Act

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The main vehicle for conserving marine fisheries, the Magnuson Fishery Conservation and Management Act, is back in Congress with the hood up. The law will undergo re-authorization next year, technically to renew funding, which expires September 30, 1993. But re-authorization is also an opportunity for Congress to re-write the Act and, hopefully, correct its weaknesses.

Most everyone who's been on the bumpy ride through fisheries management since the Magnuson Act was enacted in 1976 would agree that, despite progress in some areas, it is not taking us where we want to go. One need only count the number of over-exploited fisheries that are running on empty, no longer able to sustain viable fishing industries.

But before the lawmakers roll up their sleeves and go to work repairing the federal management system, they need to sort through the numerous complaints they're hearing from their constituents and answer some basic questions: Which parts are working and which aren't? Why? Is the problem in the design or the operation? Does the system need a major overhaul, or can it be fixed with just minor adjustments?

Hardly anyone is happy with the job Congress did last time the Act was up for renewal. That was made clear at a National Ocean Policy Study (NOPS) hearing held September 9th in Washington, D.C. NOPS is the Senate's fisheries panel, the group that wrote the Fishery Conservation Amendments of 1990. Since then, the trend toward depletion of fish populations and destruction of marine habitat has continued unchecked. While no one expected things to turn around overnight, neither did they expect the situation to get even worse. Certainly, Congress did not anticipate returning to the same issues and hearing the same complaints, only louder, just two years later.

A Preview of Key Issues

The Senate hearing was the official kick-off for Magnuson Act re-authorization, but that process will not begin in earnest until January, when the new 103rd Congress convenes. Nevertheless, the September 9th hearing, attended by representatives of a large cross-section of fishing and conservation interests - more groups than have ever been involved before - offered a revealing preview of what we might expect next year.

The presence of Maine's George Mitchell, Senate majority leader, signaled the high level of political interest in marine fisheries right now. Two of the most important fisheries in Mitchell's corner of the country, groundfish and bluefin tuna, are going down the tubes and threaten to take the northeast fishing industry with them. Mitchell was joined by colleagues John Breaux (LA), Slade Gorton (WA), John Kerry (MA), Bob Packwood (OR) and Ted Stevens (AK), each Senator also representing a state with an enormous stake in the future of fisheries management.

In his opening statement, Mitchell zeroed in on two fundamental issues that are bound to permeate every aspect of the upcoming reauthorization: Who should manage the fisheries, and how should economic concerns be balanced with the interests of conservation?

Both questions speak to the widespread feeling that the Regional Fishery Management Councils are not doing their job and that changes are needed. Responsible for drafting fishery management plans, the Councils are, fairly or unfairly, the focal point of public dissatisfaction with the way our fisheries are being mismanaged. There are eight Councils, and what's true of one is not necessarily true of another. The entire system, however, is the target of reform-minded critics because of the widespread perception that the Councils are the problem.

Conflicts of Interest

If the Councils are the problem, it won't be easy for Congress to find a solution, given that not everyone agrees on what that problem is. Depending on who's complaining, the managers are not doing enough to control fishing, or they're regulating fishermen to death; there aren't enough professional fishermen involved in the decision-making process, or there are too many.

NCMC To Hold 3-Day Symposium to Review Magnuson.

As the latest in its series of conferences on important fisheries issues, the NCMC will sponsor a symposium to evaluate the effectiveness of the Magnuson Act on March 8-10, 1993 in New Orleans. Details on the program and speakers will be featured in the next "Marine Bulletin."

The Councils, as quasi-regulatory bodies, are unique within the federal government in that many of the people deciding who catches how many fish are fishermen themselves, people whose livelihoods are directly effected by Council actions. The intention of Congress in setting up the Councils was to allow decisions to be made locally, by those with the most knowledge and experience with the fisheries being managed. In 1990 Congress went even further, requiring that the Secretary of Commerce, in appointing new members, "ensure a fair and balanced apportionment of the *active participants (or their representatives)* in the commercial and recreational fisheries under the jurisdiction of the Council." (Emphasis added)

Without question, the input of active fishermen is important, not only to coming up with workable management plans but also to gaining acceptance for those plans among the fishermen being regulated. In practice, however, a system that relies on professional fishermen putting the public trust ahead of their vested interest in fishing will never work. Few fishermen will vote to catch less fish and make less money.

Unfortunately, this conflict of interest is accepted by some as a given. Senator Stevens of Alaska, where the North Pacific Council is made up wholly of fishermen from competing segments of the industry, said as much at the hearing, suggesting that the answer lies in just finding the right balance of interests. But there is no magic formula for achieving "balance," whatever that may be. One group of fishermen or another is always going to feel the loser in the tug of war over Council seats. Moreover, balance implies weighing a definable set of interest groups, usually commercial and recreational. But each of these groups consists of subsets with distinct, even disparate, interests. Meanwhile, several environmental groups testified they will seek to amend the law to set aside at least one seat on each Council for a bona fide environmentalist. The number of interests vying for the limited number of appointments is only going to increase.

If Congress should change anything about the way Council members are selected, it should begin by dispensing altogether with the notion of user representation. Fishery managers should represent the broad public interest and as such, the number one objective should be to appoint the most qualified and capable people available. Recognizing that this should not exclude professional fishermen, the Act should be amended to prohibit members from voting on any matter relating to a fishery in which they have a direct or indirect financial interest. This would put an end to people getting on the Councils solely to advance their own special interests.

Highly Migratory Species

Some at the hearing suggested making the Secretary of Commerce (in other words the National Marine Fisheries Service) the principal decision-maker, using the Councils as purely advisory bodies. In fact, that's just what Congress did in 1990 for highly migratory species, turning over to NMFS responsibility for managing tuna, swordfish, billfish and sharks in the Atlantic.

By any measure, this change has been a failure. At best, it only re-directed criticism from the Councils to NMFS. At worst, it forsook a regional system of regular meetings that allows public scrutiny and open debate over management

issues, in favor of a centralized, largely inaccessible bureaucracy. If anything, moving things to Washington only makes it easier for special interests to influence decisions.

What matters most is that management of highly migratory species has not benefited at all. In fact, it would be fair to say nothing has been done for these fish *under the Magnuson Act* since NMFS took over. The shark plan is now undergoing its third revision since 1990, with no implementation date in sight. There has been no follow up work on the billfish plan (see Marine Bulletin No. 61). As for bluefin tuna and swordfish, the only action we've seen to date has been the implementation of international agreements entirely inadequate to the severely overfished condition of these resources.

An alternative proposal aired at the hearing by industry groups was to have the U.S. Commissioners to the International Commission for the Conservation of Atlantic Tunas (ICCAT) take over the lead role in developing regulations for the domestic fisheries for tuna, swordfish, billfish and sharks. But this is not designed to improve U.S. management so much as to remove these fish from the purview of the Magnuson Act and limit management authority to ICCAT.

Better yet, Congress should return management authority in the Atlantic to the Councils, where it is in the Pacific and is working quite well. To address legitimate concerns about coordination among five separate Atlantic Councils, the Act should be amended so that rules under multi-Council plans are approved by all members of the involved Councils voting as a single body with majority rule. In that way, all regions will be represented in the decision, but no slim majority on one Council can thwart the will of the coastwide majority.

Hearing, But Will They Listen?

Council reform and management of highly migratory species are only two of the many issues that will be debated during reauthorization. Other prominent issues raised at the Senate hearing were reducing bycatch, protecting habitat, charging access fees and managing interjurisdictional fisheries. (The Marine Bulletin will address each of these in depth, and others as they arise, in future issues.)

There is great pressure on Congress to restore public confidence in federal fisheries management. Rampant overfishing and widespread stock declines point up the critical need to place more emphasis on conservation as a national priority. Supporting short-term sacrifices for long-term gains always carries some political risk, but it's a stand our leaders must be willing to take if the Magnuson Act is ever to work.

Many of the changes made in 1990 - those mentioned above and others, e.g., exempting shrimpers from bycatch rules - have done more harm than good because they were made for the wrong reasons. Some powerful constituents griped loud enough and Congress over-reacted. This time, too, user groups will exploit reauthorization to get relief from unwanted, but badly needed, regulation. Members of the 103rd Congress - many of them will be new to Washington, much less to fisheries - will be tempted to give them what they want. They must resist. There should be a litmus test for every proposed change to the Magnuson Act. Will it promote a new management ethic, based on conservation and sustainable use, to replace the one that's failed us so far? If it doesn't, we shouldn't do it.