

SUGGESTED MFCMA AMENDMENTS

July, 1981

- * Endorsed by all eight Regional Councils. Sections not asterisked had one or more councils abstaining or opposing but were supported by a majority of those present.

Sections 201(a)(1) and 204(d) *

Although no specific language was suggested, participants at the Chairmen's meeting agreed that all reference to foreign recreational fishing should be deleted from the Act and left to the states involved.

Section 301(a)(1)

Conservation and management measures shall prevent overfishing while allowing, on a continuing basis, the full utilization of optimum yield from each fishery by United States harvesters.

Section 301(b)

GUIDELINES. The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans. Such guidelines shall not have the effect of law.

Section 302(a)(8) *

WESTERN PACIFIC COUNCIL. The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam, ~~and~~ the Northern Mariana Islands, and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

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and other U.S. possessions in the Central & Western Pacific Ocean

Section 302(h)(1) *

FUNCTIONS. Each council shall, in accordance with the provisions of this Act

- (1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority which the Council shall determine requires conservation and management through a fishery management plan and, from time to time, such amendments to each such plan as are necessary;

Section 302(h)(3) *

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- (3) conduct public hearings, at such times and locations, ^{in the geographical area concerned and such other areas} as the Council shall deem necessary and appropriate, in order to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act.

Section 302(i) *

DISCRETIONARY FUNCTIONS. Each council may, in connection with its other functions and responsibilities, comment on or make recommendations concerning any activity by any person or group or by any State or Federal agency that directly or indirectly impacts upon any fishery resource for which the council has responsibility. Within 45 days of receiving such comment or recommendations the head of any Federal agency shall respond to the Council fully and in detail, stating how such comment or recommendation will be addressed.

Section 302(j) *

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PROCEDURES. The primary function of the councils is to develop fishery management policy for their respective regions. The councils are not advisory committees and the provisions of the Federal Advisory Committee Act (5 USC App. I) shall not apply to the councils ^{their subcommittees} or the scientific and statistical committees established under section 302(g)(1), or any advisory panel established under section 302(g)(2). In order to assure public participation in its activities, each council shall adopt the following procedures:

- no
- no
- (1) Each council shall establish its own procedures with respect to the purposes, duties and composition of its subcommittees, scientific and statistical committee and its advisory panels.
 - (2) Each council meeting and each meeting of any scientific and statistical committee and each advisory panel shall be open to the public, except as provided in subsection (7).
 - (3) Timely notice of each meeting of a council shall be published in the Federal Register except that councils may meet without such notice in the event that the chairman and the vice-chairman determine that an emergency exists. If such a determination is made, public notice shall be given by appropriate publication in the newspapers having the widest circulation in the major ports of the council's region and/or by such other means as will result in wide publicity.
 - (4) Interested persons shall be permitted ^{fishing} to file statements with the council, the scientific and statistical ^{appear before or} committee, or any advisory panel of the council.
 - (5) Subject to section 552(b) of Title 5 and guidelines concerning the confidentiality of data prescribed by the Secretary or by the councils under section 303(d), the administrative record, including minutes of meetings, records, or other documents which were made

available to or prepared for or by each council, shall be available for public inspection and copying at a single location in the offices of the council.

- (6) Minutes of each meeting of a council shall be kept and shall contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the council.
- (7) Subsections (2), (4), (5), and (6) of this section shall not apply to any portion of a meeting of the council, scientific and statistical committee or advisory panel that is closed to the public in accordance with this subsection. A council may close all or any portion of a meeting to the public upon 15 days notice to the Secretary. Such notice shall be in writing and shall set forth the time and place of the meeting and the reason for closure. A meeting may be closed to the public for reasons of foreign policy, or for discussion of personnel matters, privileged or confidential information, or other matters listed in section 552(b) of Title 5 United States Code.

Sections 303(b)(7) and (8) *

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- (7) state the factors (if any) which have impeded full utilization of the optimum yield ~~by fishing vessels of~~ the United States and measures which would be useful to eliminate or reduce the obstacles to full domestic utilization of the optimum yield;
- (8) [No change in text, re-numbered from (7)]

Section 303(c) *

COOPERATIVE PERMIT AGREEMENTS. The Secretary may enter into cooperative agreements with individual states and the U.S. Coast Guard to administer any permitting requirements established pursuant to section 303(b)(1) under their system of boat or vessel registration. Under such agreement, the fees collected for such permits shall accrue to the involved states or the U.S. Coast Guard.

Re-numbered Section 303(e)

CONFIDENTIALITY OF STATISTICS. Any statistics submitted to the Councils by any person with a written request that such statistics be regarded as confidential and any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) or any other data gathering program related to fishery management shall not be disclosed, except when required by court order. Each council shall establish its own procedures to preserve such confidentiality with respect to such confidential data submitted to it. Such procedures shall be designed to establish (i) the need of any council employee for access to such statistics; (ii) that no conflict of interest will result from the disclosure of such statistics to such employee; and (iii) that data submitted by any state shall be subject to safeguards that

are consistent with that state's own regulations. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of statistics submitted to him pursuant to fishery management plans, except that on request the Secretary must disclose such statistics to the staff of the council or councils responsible for, or having a demonstrable interest in, the plan pursuant to which they were obtained or any plan to which they are relevant, except when such disclosure is prohibited by existing state-federal data agreements. The Secretary or any Council may release or make public any statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

Re-written Section 304(a) *

ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.

- (1) Any fishery management plan or amendment to such plan which is prepared by any council shall be reviewed and either approved or rejected within a period of 60 days after its receipt by the Secretary. The Secretary shall review and notify the council in writing as promptly as possible if it is his intention to reject such plan or amendment on the grounds that it is inconsistent with the requirements of the national standards, section 303(a) of this Act, or any other applicable law. Such notice shall specify with particularity (i) the applicable law or laws with which such plan or amendment is inconsistent and (ii) the nature of such inconsistency. Such notice shall also set forth in detail the recommendation of the Secretary concerning the action required to be taken by the council to conform such plan or amendment to the requirements of such applicable law.
- (2) The 60-day review period shall be deemed to be interrupted as of the date of the Secretary's notice of his intention to reject such plan or amendment until such Council shall have resubmitted such plan or amendment to the Secretary. The tolling of the 60-day review period shall resume on the date the revised plan or amendment is received by the Secretary.
- (3) *ME* ~~At the conclusion of the first 20 days of the 60-day review period,~~ A fishery management plan or amendment to such plan shall be presumed to be consistent with Section 303(a) of this Act and all other applicable laws, but not with the national standards, except as specified in such notice of intent to reject.
- (4) After the Secretary receives a fishery management plan, or any amendment to such plan, revised by a council in response to the Secretary's notice of intention to reject the original of such plan or amendment and within the overall period of 60 days, the Secretary shall review such revised plan or amendment. The Secretary's review of any revised plan or amendment shall be limited to determining (i) whether such plan or amendment as revised by such council in response to the Secretary's notice is responsive to the recommendations by the Secretary in such notice and (ii) whether such plan or amendment as revised is consistent with the national standards.

- (5) In the event that the Secretary shall determine that any revised fishery management plan or amendment to any such plan is not responsive to the Secretary's recommendations contained in a notice of intent or is not consistent with the national standards, the Secretary shall notify such council in writing of his intent to reject such revised plan or amendment. Such second notice of intent to reject shall specify with respect to the revisions made by the council the deficiencies in such revisions and with respect to any inconsistency with the national standards the exact nature of such inconsistency, and such notice shall set forth in detail the action required to be undertaken by the council to cure such deficiencies or such inconsistency.
- (6) Within 45 days after any council which receives a second notice of intent from the Secretary, such council shall resubmit such fishery management plan or amendment to the Secretary revised in accordance with the recommendations contained in such notice, or shall notify the Secretary of its intention to redraft such plan or amendment. Upon submission for approval by the Secretary any such plan or such amendment redrafted pursuant to this subsection shall be deemed to be a plan or amendment submitted under subsection (1) of this section.
- (7) In the event that the Secretary shall: (i) fail to notify a council of his intent to reject a fishery management plan or amendment to such a plan within 60 days of the date of receipt of such plan, or (ii) fail to notify a council of his intent to reject a revised fishery management plan or revised amendment to any such plan within the remaining portion of the 60-day review period, such plan or amendment shall become effective and the Secretary shall promulgate the regulations which accompany such plan.

Existing Section 304(b)

Delete in entirety.

Re-numbered Section 304(c) *

ESTABLISHMENT OF FEES. The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits, except that fees at levels exceeding administrative costs may be established pursuant to section 303(b)(6).

Section 304(f) *

ADDITIONAL DATA REQUIREMENTS. Upon the request of a Council the Secretary may by regulation require persons engaged in the fishery to submit to the Secretary data that would be pertinent to a fishery under Section 303(a)(5) and which the Council determines are necessary and appropriate for determining the need for a plan or for the preparation of a preliminary fishery management plan or preparation of a fishery management plan for the fishery.

Section 305 *

The following principles were developed as guidelines for redrafting Section 305:

1. Regulations must accompany fishery management plans or amendments submitted for Secretarial review.
2. Add to plan development the requirement that the Secretary has 30 days after plan approval to approve the regulations submitted or they will go into effect by default.
3. Make sure that in-season adjustments required within the framework of a plan do not require review.

Existing Sections 305(b) and (c)

Delete in entirety.

Existing Section 305(d)

Re-number as 305(b).

Re-numbered Section 305(c) *

EMERGENCY ACTIONS. If any council finds that an emergency involving any fishery exists, it may

- (1) for any fishery for which there is a fishery management plan
 - (A) request the Secretary to promulgate emergency regulations to implement any fishery management plan if such emergency so requires; or
 - (B) request the Secretary to promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency;

And, if the Secretary concurs that such emergency exists, he may comply with the council's request. Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection shall be published in the Federal Register together with the reasons therefor; and shall remain in effect until the Secretary of such council shall determine that such emergency no longer exists. From time to time and at least once in each 90-day period following the declaration of an emergency under this section, the Secretary and such council shall review all the circumstances leading to such declaration in order to determine whether such emergency continues to exist; or

(2) for any fishery for which no fishery management plan has been prepared or is being prepared and which is engaged in predominantly within the fishery conservation zone, by 2/3 vote of the voting council members, authorize the Secretary to promulgate emergency regulations. Such regulations shall remain in effect for a period of 90 days and may at the discretion of the Secretary be extended for an additional 90 days.

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(3) *Nothing in these subsections shall affect the Secretary's authority to take emergency action for a fishery managed under a PMP*
Section 306(c) *

COUNCIL-STATE PLANS FOR SHARED FISHERIES. Nothing under (a) and (b) above shall be construed as negating the authority of a fishery management council and its constituent state, if acting in concurrence and unanimous agreement, to develop fishery management plans for fisheries within and beyond state boundaries. However, such an action by a council and its states shall not be interpreted as a commitment by the individual states to adopt the management regime and regulations that could be recommended by the fishery management plan.

Section 311(a) *

RESPONSIBILITY. The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semi-annually to each committee of the Congress listed in section 203(b) and to the councils on the degree and extent of known and estimated compliance with the provisions of this Act.

Said report shall include, but not be limited to, an assessment of the following:

- (1) the degree and extent of violations of the provisions of this Act by foreign and domestic fishing vessels and enforcement action taken in each instance of reported violation;
- (2) estimates of the overall effectiveness of the enforcement activities of the provisions of this Act as applied to the foreign and domestic fishing fleet;
- (3) identification of factors which enhanced or impeded enforcement activities under the Act;
- (4) recommendations to reduce or eliminate any impediments to effective enforcement which may exist;
- (5) evaluation of current and estimation of future adequacy of personnel, equipment, and facilities at the disposal of the Secretaries to enforce the provisions of the Act; and
- (6) description of the utilization of the personnel, equipment, services, and facilities of other federal agencies as authorized by the Act.