


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director 

DATE: June 3, 1999

SUBJECT: Magnuson-Stevens Act Reauthorization

ESTIMATED TIME  
1 HOUR

**ACTION REQUIRED**

Discussion of potential reauthorization issues.

**BACKGROUND**

The Magnuson-Stevens Act is up for reauthorization in 2000. It is looking more and more likely that there will be some House oversight hearings this summer in July. The topic also will be on the Council Chairmen's meeting scheduled for the end of June in Rhode Island. Item C-4(a) has recommendations from the Gulf and Pacific councils and Alaska Marine Conservation Council. NMFS also is working up their recommendations, but they may not be available until the chairmen's meeting. We should take public input on any burning issues in our area and then be prepared to carry forward to the chairmen's meeting, those issues deemed important by the Council.

**GULF OF MEXICO FISHERY MANAGEMENT COUNCIL**

The Commons at Rivergate

3018 U.S. Highway 301 North, Suite 1000 • Tampa, Florida 33619-2266

(813) 228-2815 • FAX (813) 225-7015

e-mail: [gulf.council@noaa.gov](mailto:gulf.council@noaa.gov)

June 2, 1999

**MEMORANDUM**

TO: Paul Howard  
New England Fishery Management Council

FROM: Wayne Swingle *Wayne*

SUBJECT: Magnuson-Stevens Act Reauthorization

Attached are the recommendations of our Council on the amendments needed in reauthorizing the Act.

WES:plk

Attachment

c: Hal Osburn, w/attachment  
Kay Williams, w/attachment  
Susan Hanna, w/attachment  
Council Executive Directors, w/attachment  
Technical Staff, w/attachment

**MAGNUSON-STEVENS ACT (MSA) GMFMC REAUTHORIZATION  
RECOMMENDATIONS**

- **Rescinding the Congressional Prohibitions on IFOs (or ITOs)**

Currently Section 303(d)(1) of MSA prohibits a Council from submitting or the Secretary approving an IFQ system before October 1, 2000. Section 407(b) prohibits the Gulf Council from undertaking or continuing the preparation of a red snapper individual fishing quota (IFQ) or any system that provides for the consolidation of permits to create a trip limit before October 1, 2000. If the reauthorization process is completed in 1999 the Council supports that those provisions be rescinded before the year 2000 deadline.

- **Regional Flexibility in Designing IFO Systems**

The Council, while philosophically opposed to fees, and concerned over the ability of the overcapitalized Gulf fleets to pay fees, does support the National Academy of Science (NAS) recommendation that Congressional action allow the maximum flexibility to the Councils in designing IFQ systems and allowing flexibility in setting the fees to be charged for initial allocations, first sale and leasing of individual transferable quota (ITQs) [MSA Sections 303(d)(2-5) and 304(d)(2)].

- **Coordinated Review and Approval of Plan Amendments and Regulations**

The Sustainable Fisheries Act (SFA) amended Sections 304(a) and (b) of the MSA to create separate sections for review and approval of plans and for review and approval of regulations. This has resulted in the approval process for these two actions proceeding in different time periods, rather than concurrently as before the SFA Amendment, which also deleted the 304(a) provision allowing disapproval or partial disapproval of the amendment within the first 15 days. The Council and the Timely Review Panel recommend these sections be modified to include the original language allowing concurrent approval actions for plan amendments and regulations and providing for the initial 15-day disapproval process.

- **Regulating Non-Fishing Activities of Vessels**

The Council recommends that Section 303(b) of MSA be amended to provide authority to Councils to regulate non-fishing activities that adversely impact fisheries or essential fish habitat (EFH) by vessels. One of the most damaging activities to such habitat is anchoring of large vessels near habitat areas of particular concern (HAPC) or other EFH (e.g., coral reefs, etc.). When these ships swing on the chain deployed for anchoring in 100 feet, 20 to

70 acres of bottom may be plowed up by the chain dragging over the bottom. Regulation of this type of activity should be allowed.

- **Fishing Communities**

The Congressional Research Service (CRS) report raises the issue of whether fishing communities should be more narrowly defined or more broadly defined. A more important issue to call to the attention of Congress is that in almost all incidences, there is completely inadequate economic, and especially social data to analyze the impacts of management measures on individual fishing communities for the southeast. A major research program is needed to develop these data bases.

Congress should also be made aware that the data on employment and salaries collected under the National Census is not useable. That is because the employment information on industries collected combines employment for fisheries with that for agriculture and the mineral industries. Similarly, information for self-employed persons in the census is combined for persons employed in fishing, farming, and forestry. Consolidating all of these occupations on the reporting form by the census-taker makes the data not useable for fisheries impact assessments in the Gulf region. Congress should legislate or interface with the Census Bureau to require that such employment data be collected separately for fisheries in each of the coastal counties of the five Gulf states. Limiting such collection to the coastal counties would be sufficient to collect part of the economic and demographic data needed for fishing community-impact analyses.

- **Bycatch**

The MSA, under Section 405, Incidental Harvest Research, provided for conclusion of a program to (1) assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery of the Gulf and South Atlantic, and (2) development of technological devices or other changes to fishing operations necessary to minimize incidental mortality of bycatch in the course of shrimp trawl activity, etc. Because this program has been the principal vehicle under which research and data collection has been carried out, the Council recommended this program be extended and funded for another three years.

- **Gulf of Mexico Red Snapper Research (Section 407)**

The research provided for has been completed. This section also provides, in Subsection (c), that a referendum be conducted by the National Marine Fisheries Service (NMFS) of persons holding commercial red snapper licenses, to determine if a majority support proceeding with an IFQ program and in Subsection (d) makes the recreational red snapper allocation a quota and provides for closure of the fishery when that quota is reached. The Council recommends that both subsections be rescinded. The recreational fishery closure is having severe adverse economic impacts on the charter and head boat sectors. This year that fishery is projected

to close on August 29. As the red snapper stock is being restored the size of fish increases each year and the closure comes earlier each year, e.g. November 27 in 1997 to August 29 in 1999.

• **Collection of Economic Data [Sections 303(b)(7)]**

**Situation:** Language throughout the MSA specifies the collection of biological, economic, and sociocultural data to meet specific objectives of the Act and for the fishery management councils to consider in their deliberations. However, Section 303(d) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting "proprietary or confidential commercial or financial information." Without this information, multi-disciplinary analysis of fishery management regulations is not possible, preventing NMFS/Councils from satisfying the requirements of the Act and of the Regulatory Flexibility Act (RFA). Economic data are required to meet the requirements of RFA and other laws, yet MSA restricts the economic information that can be collected under the authority of the MSA.

**Recommendation:** Amend the Act to eliminate these MSA restrictions on the collection of economic data, and "proprietary or confidential commercial or financial information." Amending Section 303(b)(7) by removing "other than economic data" would allow NMFS to require fish processors who first receive fish that are subject to the plan to submit economic data to us.

**Discussion:** Removing this current restriction will strengthen the ability of NMFS to collect necessary data and eliminate the appearance of a contradiction in the law requiring economic analysis without allowing the collection of necessary data. NMFS and the Councils need data to be able to comply with RFA, and we should not be prohibited from requiring it.

• **Confidentiality of Information [Section 402(b)]**

**Situation:** Section 402 replaced and modified former Sections 303(d) and (e). The SFA replaced the word "statistics" with the word "information" expanded confidential protection from information submitted in compliance with the requirements of an FMP to information submitted in compliance with any requirement of the MSA, and broadened the exceptions to confidentiality to allow for disclosure in several new circumstances.

**Recommendation:** The following draft language clarifies the word "information" in 402(b)(1) and (2) by adding the same parenthetical used in (a), and deletes the provision regarding observer information. The revised section would read as follows (additions in bold):

**(b) Confidentiality of Information.**

(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act and that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations shall not be disclosed, except:

- a. to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;
- b. to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;
- c. when required by court order;
- d. when such information is used to verify catch under an individual fishing quota program; or
- e. when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement under this Act and that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

**Congressional Funding of Observer Programs**

**Situation:** Currently, the Secretary is not authorized to collect fees from the fishing industry for funding of observer programs. Funding of observer programs has been through MSA or MMPA appropriations.

The lack of adequate appropriations to run observer programs has resulted in statistically inadequate observer programs that do not satisfy the monitoring requirements of the statutes. This is of particular concern with regard to observer requirements that are a requirement or condition of an ESA biological opinion or a condition of a take reduction plan or take exemption under the MMPA. In addition, funding is taken from extremely important

recovery and rebuilding programs to pay for the observer requirements. Consequently, investigations into fishing practices or gear modification (or other areas that would actually prevent the lethal take from occurring or causing serious injury in the first place) cannot proceed.

**Recommendation:** If the MSA is not amended to authorize the Secretary to collect fees from the fishing industry, then those fisheries that are required to carry observers as a condition of a biological opinion under the ESA, or as a condition of a take exemption under the MMPA, should be funded through the Congressional appropriations directed towards fisheries management under the MSA.

- **Defining Overfished and Overfishing [Section 3(29)]**

Currently both overfished and overfishing are defined as a rate of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield (MSY) on a continuing basis. The Administration proposed redefining these to be consistent with NMFS' guidelines in the guidelines for National Standard 1. The Council opposes this change and feels no change is needed.

- **State Fishery Jurisdiction**

The Council supports language in the Act to establish the authority of the states to manage species harvested in the exclusive economic zone (EEZ), that occur in both the state territorial waters and the EEZ, in the absence of a council fishery management plan similar to the language specified for Alaska in the last amendment to the Act.

FROM: PACIFIC FISHERY MNGT

FAX NO.: 583 326 6831

84-26-99 09:19 P.02

**Supplemental Legislative Committee Report D.2.  
April 1999****REPORT OF THE LEGISLATIVE COMMITTEE**

The Council's Legislative Committee met Monday at 10 a.m. and adopted the following recommendations concerning the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and Marine Mammal Protection Act.

**Magnuson-Stevens Act**

- Reaffirm support to give discretionary authority to the Council to establish fees to help fund observer programs. This is the same position the Council adopted during the last reauthorization.
- Remove the moratorium on the use of individual quotas as a discretionary management tool.

**Marine Mammal Protection Act**

- Support the National Marine Fisheries Service report recommendations dated February 10, 1999 (recommendations attached). Congressional hearings are expected to be held in June. If asked, the Council should provide testimony supporting the report recommendations.

**Other Legislation**

The Committee briefly discussed draft legislation on seafood marketing, but did not take a position.

PFMC  
04/05/99



---

Mail for Clarence Pautzke

---

**Date:** 4/2/99  
**Sender:** steve@akmarine.org  
**To:** Clarence Pautzke  
**cc:** dorothy@akmarine.org  
**Priority:** Normal  
**Subject:** MSA Reauthorization

---

Clarence,

Dorothy mentioned a coming Council Chairmans meeting where suggestions for the MSA reauthorization may be discussed. The recommendations from the NRC Ecosystems Principles Panel may be an appropriate issue for the Chairmen to discuss and possibly advance.

Specifically, AMCC will likely endorse the NRC recommendation that Fisheries Ecosystems Plans (FEP) be developed for each ecosystem under a Councils jurisdiction. We would encourage the NPFMC to support this as well. The NRC further recommends that each Council FMP would then be required to demonstrate that its objectives and conservation and management measures are consistent with the findings and recommendations of the FEP. Recognizing the FEPs would be living documents, and that the NPFMC could jump start off of the Ecosystems Considerations chapters, this seems like a productive exercise to take stock of what has been done, any gaps that may exist, and to identify analyses needed to apply new measures. I believe the NRC calls for model FEPs and the NPFMC should volunteer as one.

Thanks for considering our ideas.

Steve Ganey  
Alaska Marine Conservation Council  
P.O. Box 101145 Anchorage, Alaska 99510  
ph (907) 277-5357 fax (907) 277-5975  
E-mail: [steve@akmarine.org](mailto:steve@akmarine.org)  
<http://www.akmarine.org>