

# DRAFT

## **Fishery Management Council Executive Directors-NMFS Session on Magnuson-Stevens Act Reauthorization**

July 25, 2001 1-5 PM  
Loews L'Enfant Plaza Hotel  
Washington, DC

The session was attended by Wayne Swingle, Kay Williams, Bob Mahood, Clarence Pautzke, Dan Furlong, Miguel Rolon, Graciela Garcia-Moliner, Don McIsaac, Kitty Simonds and Kathy Cousins from the Councils. NMFS/NOAA headquarters and field staff included Bruce Morehead, George Darcy, Matt Milazzo, Bill Chappell, Laurie Allen, Mariam McCall, Rod Dalton, Mike MacLemore, Svein Fougner, Bill Robinson, Jay Ginter, Michelle Kuruc; Laurie Allen, Val Chambers, Charles Karnella, Marilyn Luipold, and Michelle Fox.

During this session, the above-named representatives from NMFS and the Councils exchanged views on the respective positions developed to date by NMFS and the Councils on Magnuson-Stevens Act reauthorization issues. The NMFS positions (attached) were contained in a document developed by an internal agency task force and cleared by agency leadership for discussions with NMFS constituencies, but do not represent official agency positions. It was stated that NMFS will be developing positions on other issues e.g., IFQs, over the next few months and will continue to seek Council feedback. The Council positions reviewed (attached) were contained in a May 23, 2001 document that reflected the consensus views of the Council chairmen, but do not necessarily represent the views of individual councils.

The results of the discussion of each recommendation are summarized below. They represent the general views and comments made by those present on these documents and do not represent official positions by NMFS or any Council. The Executive Directors will share these documents with their Councils to provide a basis for discussion of future Council positions and recommendations back to NMFS on reauthorization issues. NMFS will consider the results of this discussion, along with any additional recommendations of the Councils and Council Chairs in future revisions to the Task Force recommendations.

Discussion of Task Force Recommendations:

**1. Recouple the FMP/amendment and regulatory process.**

There was general agreement that this recommendation is appropriate. This recommendation is also found in Bullet # 9 of the Council Chairs' document.

**2. Tighten the language for preliminary Secretarial review of FMPs and amendments.**

This issue is similar to, but not the same as, the recommendation in Bullet #10 of the Council Chairs' document. No one brought up any concerns.

**3. Amend the comment period on framework regulations**

There was general agreement that this recommendation is appropriate, with no concerns voiced.

**4. Modify Section 305(c) on emergency actions to make them applicable, as required, for one calendar year**

There was general agreement that this recommendation is appropriate, with no concerns voiced.

**5. Facilitate notifications of Council meetings**

Everyone agreed that this is an appropriate recommendation. This recommendation is also included in Bullet #22 of the Council Chairs' document.

**6. Modify the definitions of "overfishing" and "overfished"**

While there was general agreement that separate definitions of the two terms is appropriate, the Council Executive Directors (EDs) expressed concern about the difficulties with the MSY-based definition of overfishing. There were also concerns raised about what happens when a Council does not follow the guidelines, which now define "overfishing" and "overfished". It was also pointed out that definitions using SPRs are no longer acceptable as a proxy for biomass estimates. This recommendation is also addressed in Bullet #2 of the Council Chairs' document.

The following seven issues discuss fisheries law enforcement. After a discussion of the background to the issues, there was general consensus among the group that these recommendations were appropriate. The EDs will present them to their Council members for additional comment and recommendations. The NOAA Regional Counsels will be prepared to answer questions regarding these issues, as will NOAA General Counsel for Enforcement and Litigation.

**7. Amend the authority for investigatory subpoenas**

**8. Amend the authority for forfeiture of catch when written warnings are issued**

**9. Prevent a transfer of a permit from extinguishing a permit sanction**

**10. Increase civil penalties and criminal fines**

**11. Increase through amendment the maximum penalty**

**12. Promote Federal-State partnerships in fisheries law enforcement**

While the Council Chairs and all present support the implementation of cooperative enforcement plans (See Bullet #18 of the Council Chairs' document), there continues to be debate among the states on how to use data for law enforcement purposes. This may make this recommendation problematic for some states and Councils.

**13. Amend the Northern Pacific Halibut Act to provide for permit sanctions**

**14. Amend Section 303(b) to enable NMFS to obtain data from processors**

There was general agreement that this recommendation is appropriate, with no concerns voiced. This recommendation is supported by Bullet #15 of the Council Chairs' document.

**15. Issue: Improve the agency's ability to collect social and economic data**

This recommendation includes two parts; one mandatory and one discretionary. Some participants expressed concern about the mandatory collection of a wide range of social and economic data from many sectors, including commercial and recreational fishermen. For a comparison, see Bullet #15 of the Council Chairs' document.

**16. Modify Section 402(a) to enable the Councils to obtain proprietary and confidential information.**

There was general consensus that this recommendation is appropriate, as supported by Bullet #15 of the Council Chairs' document.

**17. Amend the agency's use of confidential information in limited entry determinations.**

There was general discussion, with no concerns voiced. This recommendation came from the Alaska Region.

**18. Protection of Fish Habitat**

Participants agreed on the need to deal with non-fishing activities of vessels. However, some thought that actions of persons (e.g., divers) should also be regulated if those actions negatively impact habitat. There was general consensus that it was appropriate to include "persons" in the language to allow their actions to be regulated. The precise meaning of the term "motorized watercraft" was also discussed, and the term may have to be revised. This recommendation is substantially supported by Bullet #14 of the Council

Chairs' document.

**19. Amend the Magnuson-Stevens Act to accommodate US-Canadian reciprocal albacore tuna fisheries in each other's zones**

There was general agreement that this recommendation is appropriate. However, one participant expressed a concern that this recommendation could have the effect of legitimizing Canadian tuna fishing in U.S. Central Pacific waters.

**20. Amend the requirement for 100 percent observer coverage of foreign vessels operating under Pacific Insular Area fishery agreements.**

There was general agreement that this recommendation is appropriate, with no discussion or concerns voiced. This change is specific to the Western Pacific.

**21. Clarify the inner boundary of the EEZ.**

This recommendation would formalize current NMFS practice. There were some technical questions regarding the extent of the EEZ off Puerto Rico, which will be discussed between the Caribbean Council and General Counsel for Fisheries.

**22. Amend the statute of limitations for limited entry determinations**

There was general agreement that this recommendation is appropriate. This recommendation was made by the Alaska Region, but is pertinent to any limited entry program.

**23. Modify Section 313 and 403 provisions that deal with funding for observers**

The participants agreed that it is necessary to address industry fees to fund observer programs. However, many EDs expressed the view that such fees should remain in the region in which they were paid. See Bullets #7 and #16 of the Council Chairs' document.

The last three Task Force recommendations apply to specific Regions/Councils. There was some clarifying discussion but no objections to the recommendations.

**24. Fix the mistaken SFA coordinates for Maine pocket waters, thereby solving various legal and enforcement problems**

**25. Expand the jurisdiction of the Caribbean Council to include Navassa Island**

This recommendation is also addressed under Bullet #22 to the Council Chairs'

document.

**26. Amend provisions that apply to grants for Western Pacific demonstration projects**

Discussion of Council Chairs Recommendations:

**1. NEPA and judicial review**

The Chairs' recommendation would restrict judicial review under NEPA to the substance of the analysis or the process used in the analysis without restricting the results of the action. NMFS feels that action can comply with NEPA without changes to the Magnuson-Stevens Act. There is concern about consequences to the fishermen while actions are on hold during judicial review.

**2. Redefining overfishing**

This recommendation was discussed under Task Force recommendation #6.

**3. Essential Fish Habitat**

There was general agreement that more emphasis on HAPCs was appropriate, with no concerns voiced.

**4. Rebuilding Periods**

There was considerable discussion around the current limits in the rebuilding schedule being 10 years or 10 years plus a mean generation. Some species seem to fall between the cracks. NMFS is continuing internal discussion on this problem.

**5. Executive Order for MPAs**

Several expressed the view that the Councils have been and should continue to be the appropriate entities to manage fishing through MPAs. NMFS noted that the Administration has put the current MPA initiative on hold.

**6. Rescinding the Congressional Prohibitions on IFQs and ITQs**

NMFS favors expiration of the moratorium on IFQs/ITQs; however, there is considerable concern about the implementation of these programs. There was general agreement that such programs should be a management tool for the Councils, and that maximum flexibility should be afforded the Councils in designing them.

**7. Observer Program**

This recommendation was discussed under Task Force recommendation #23.

**8. Endangered Species Act (ESA)/ Marine Mammal Protection Act(MMPA)**

NMFS reiterated the agency's position that the Councils are not Federal action agencies, but that NMFS is taking steps to make the consultation process more open.

**9. Coordinated Review and Approval of Plans and their Amendments and Regulations**

The Councils want the opportunity to resubmit responsive measures for disapproved sections without going through an entire FMP amendment process. They also want earlier notice of problems discovered in the review process.

**10. FMP Review Program**

The discussion centered around how NMFS can provide better advice and recommendations to the Council prior to approval/disapproval of the action and how to provide information to correct such deficiencies before NMFS disapproves actions.

**11. Council Member Compensation**

There was no discussion of this issue.

**12. Receipt of Funds From Any State of Federal or Government Organization**

Councils could have access to a variety of funding resources, but are constrained to receiving them only through DOC/NOAA/NMFS. NMFS/General Council for Fisheries reaffirmed the position that Council funding must go through DOC/NOAA/NMFS.

**13. Review of Research Proposals**

Closing meetings for reviewing research proposals because of confidentiality issues has not yet been addressed by NMFS.

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

This issue was addressed under Task Force recommendation #18.

**15. Collection of Economic Data**

This issue was addressed under Task Force recommendations ##14 and 15.

**16. Establishment of Fees**

Council representatives again emphasized that any fees should be assessed on a Regional basis. The issue was also addressed under Task Force recommendation #23 and the Bullet #7 of the Council Chairs' document.

**17. NMFS Regional Administrator Emergency or Interim Action Vote**

NMFS' position is that a unanimous vote requiring the Executive Branch to act calls into question the Constitutional separation between the Legislative and Executive branches. Removing the Regional Administrator from the vote would not change this determination.

**18. Enforcement**

This issue was addressed under Task Force recommendations ##7 through 13. Task Force recommendation 12 specifically discussed cooperative agreements. The executive directors will bring these recommendations to their Councils.

**19. Fisheries Disaster Relief**

The NMFS Task Force is looking at various disaster relief issues in more depth. It will consider the Chairs' proposal to include closures of a fishery under court order as a reason to provide disaster relief.

**20. Confidentiality of Information**

It was the consensus of the participants that the Task Force and the Chairs' recommendation was compatible regarding Council access to information (economic information, primarily); however, participants from the Councils were generally not comfortable with adding economic data collection as a requirement of FMPs. This issue was addressed under Task Force recommendations ##14 and 15.

**21. Bycatch**

The NMFS Task Force will consider the issue of making the definitions of bycatch on the West Coast and East Coast consistent in future versions of its recommendations.

**22. Notification of Meetings**

This issue was addressed under Task Force recommendation #22.

**23. Caribbean Council**

This issue was addressed under Task Force recommendation #25.