

MAGNUSON - STEVENS ACT REAUTHORIZATION ISSUES

***PRELIMINARY DRAFT OF WORKING CONSIDERATIONS FOR AN
ADMINISTRATION POSITION***

APRIL 15, 2005

Primary issues:

- 1. Ecosystem Approaches to Management (EAM) and the MSA.** What is the most appropriate and effective way to incorporate EAM in the MSA? Through regional ecosystem plans that address more than just fisheries, through fishery ecosystem plans that “upgrade” the current fishery management plans, or through something in between? What role should FMPs play in ecosystem-based management of marine fisheries? Do we even need any fundamental changes to the MSA to accomplish the goals of EAM?
- 2. Dedicated Access Privileges (Individual Fishing Quotas, Community Quotas, Area-based Quotas, and Fishing Cooperatives).** Should the MSA be amended to authorize all types of DAPs (and not just IFQs), and, if the answer is in the affirmative, what provisions of the MSA would have to be changed?
- 3. Governor’s nomination of Council members.** Are the Councils sufficiently representative and should the MSA be amended to require Governors to submit more broadly representative slates of Council member nominees?
- 4. MSA and NEPA objectives.** Does the MSA effectively apply the same or reasonably similar procedural requirements as NEPA, and, if so, should the MSA be somehow amended to reflect that fact?
- 5. NS1: Rebuilding Time Frame.** Is the current 10-year rebuilding time frame excessively strict (or ambiguous), and should it be amended?
- 6. NS2: Separation of Science from Allocation (NS2 and Best Available Science)** Should the MSA be amended to somehow separate the science (TAC determination) and allocation functions? Should the role of the Scientific and Statistical Committee be revised?
- 7. The MSA Does Not Expressly Recognize Framework Actions.** Should the MSA be amended to expressly recognize all, or some subset of, framework management actions?
- 8. NS9 (Bycatch).** Do we need a revised and more precise-worded national standard 9 that better addresses bycatch reduction and the minimization of bycatch mortality?

9. **EFH in the MSA - Secs. 303(a)(7) and 305(b).** Should the MSA be amended to revise the EFH designation requirement, including the description of habitat areas of particular concern? Should the MSA be amended to authorize Secretarial designation of EFH for species managed by interstate fishery commissions and individual states?
 10. **FACA and Council Chairs meetings.** Are there genuine FACA issues that need to be legislatively addressed? Are there any other outstanding FACA issues?
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Secondary issues:

11. **Marine and Coastal Habitat Restoration.** Should the MSA be amended to expressly include the agency's habitat restoration activities?
12. **Fishing Capacity Reduction Program: MSA Section 312(b)-(e).** Given the heightened interest in capacity reduction programs, should the MSA be amended to streamline and strengthen and/or relocate this activity?
13. **Cost Recovery in Section 304(d)(2).** Cost recovery currently applies solely to IFQ and CDQ programs. Should this provision be amended to apply more broadly to other types of DAPs, and are there other technical issues that should also be addressed?
14. **Central Lien Registry.** The central lien registry, section 305(h) of the MSA, is an unfulfilled mandate, and, therefore, some suggest that this provision should be deleted or amended.
15. **Payment of Attorney Fees from DOJ Judgment Fund.** In some lawsuits, courts may order NOAA to pay the attorneys' fees for the opposing party. An MSA change that addresses this situation may be warranted.
16. **Judicial Review of MSA Actions.** Should the MSA be amended to apply judicial review to all final agency actions, and not just some?
17. **Idaho County Codification (of EFH).** Should the MSA be amended to state more precisely what actions are subject to the notice and public comment provisions of the Administrative Procedure Act?
18. **APA Waiver for Emergency Rules.** Should the MSA be amended to exempt emergency rules from the notice and public comment requirements of the Administrative Procedure Act?
19. **Sections 303 and 402 preclude the collection of sufficient social and economic data.** Should the MSA be amended to improve access to social and economic data?

- 20. The Use of Other Agencies' Data to Meet NMFS' Needs.** Should the MSA be amended to facilitate NMFS access to confidential data collected by other Federal agencies?
- 21. National Commercial Fishing Permit System.** Should the MSA be amended to give the Secretary the right to require permits and charge fees in any federally managed fishery?
- 22. Single SSN/TIN Permit Identifier.** Should the MSA be amended to require the use of a single identifier, probably a Social Security Number or Tax Identification Number, in all fishing permit programs in federally managed fisheries?
- 23. Fees for Permits - Section 303(b)(1).** Should the MSA be amended to require the collection of fees in all permit programs and to address the disposition of those fees?
- 24. National Saltwater Recreational License.** Should the MSA be amended to establish a national saltwater recreational license requirement?
- 25. Confidentiality of observer data.** Clarification is needed regarding the confidentiality of observer data to reconcile inconsistencies between agency policy and practice. Such clarification may require an MSA amendment.
- 26. Authorization and funding of observer programs.** Should NMFS and the Administration revisit its 2003 MSA proposal to authorize observer programs and establish funding mechanisms for these programs, bearing in mind that the quality of observer data is a higher priority issue than it was a few years ago?
- 27. MSA definition of an “observer”.** Observers operate both on-board fishing vessels and in shore-side stations, but the current MSA definition is restricted to observers on vessels. Should the MSA definition be amended to address this discrepancy?
- 28. Annual Report to Congress on the Status of U.S. Fisheries - Sec. 304(e)(1).** Should the MSA be amended to improve the usefulness of the annual status of stocks report, especially with respect to (1) the confusion between “overfishing” and “overfished” and (2) the current negative bias in the MSA provisions addressing this report.
- 29. Sec. 401 of MSA - Standardized Fishing Vessel Registration and Information System.** Should the MSA be amended to update the report to Congress on a “Standardized Fishing Vessel Registration and Information System” and to project upcoming needs over the next 10 years?
- 30. Western Alaska Community Development Quota (CDQ) Program - Eligible Communities - Sec. 305(i)(1)(A).** Should the MSA be amended to address discrepancies between the 1996 MSA and the subsequent NMFS regulations regarding eligibility of communities for the CDQ program?

- 31. Western Alaska Community Development Quota Program – Allowing Allocations to the State of Alaska Sec. 305(i)(1).** Should the MSA be amended to authorize the Secretarial allocation of CDQ quota directly to the State of Alaska, who will further allocate said quota among eligible communities?
- 32. Aquaculture and the MSA.** Should the MSA be amended to expressly be compatible with the Administration’s offshore aquaculture initiative?
- 33. The roles of NMFS and the Councils for regulating high seas fisheries.** Should the MSA be amended to expressly address the Councils and Secretary’s management authority beyond 200 miles, especially with respect to high seas corals/sponges and seamounts?
- 34. State jurisdiction in Section 306(a)(C): Jurisdiction over Alaska salmon and certain crab fisheries.** Should the MSA be amended to transfer management authority over salmon and certain crab species to the State of Alaska?
- 35. State jurisdiction over Dungeness crab.** Should the MSA be amended to make permanent the transfer of management authority over Dungeness crab to the States of California, Oregon, and Washington?
- 36. Fisheries Disaster Relief: MSA Section 312(a).** Should the MSA be amended to somehow improve this program, or delete it?
- 37. Funding of the Regional Fishery Management Councils.** Should the MSA be amended to change the Councils’ annual funding from a “grant” to some other legal basis?