

FISHERMEN'S NEWS

The Advocate for the Commercial Fisherman



Pacific Coast Federation of Fishermen's Associations

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Fulfilling the Promise of the Magnuson-Stevens Act *By Tim Sloane*

IN 1976 CONGRESS PASSED the Fishery Conservation and Management Act, eventually known as the Magnuson-Stevens Act (MSA). It would seem that certain attitudes towards commercial fishing have changed since that time.

Think about it. A United States Congress was so committed to defending the rights of its fishing constituents that it would stake out 200 miles of open ocean as sovereign, and commit those waters to the exclusive use of American-flagged vessels. That's a pretty aggressive act, and a radical concept when considered against many of the regulations passed in the more recent past that take so much from fisheries without any tangible returns, or at least offsetting benefits, in the near term.

Of course the MSA from the get-go also included provisions to manage and conserve fisheries resources for the benefit of the nation. All the way back in 1976, the fishermen pushing for the MSA must have recognized that for all of the new fishing grounds a 200-mile Exclusive Economic Zone (EEZ) was about to open up to them, that opportunity would mean nothing if ongoing stewardship of those marine resources was not a part of the equation.

So the resulting law represented a compromise between two competing values: the opportunity to take fish from the ocean, and the responsibility to leave a enough behind to maintain

the resource. It was a give-and-take that worked for the fishing fleet on both sides of the equation – grow the capital while living on the interest.

The MSA has gone through two successful bipartisan reauthorizations in 1996 and 2006, and this year marks the 40th anniversary of that seminal law. It's up for reauthorization again this year. But the MSA calculus is feeling less and less like the foundational compromise that fishermen originally signed up for. While the restrictions on fishing are increasingly having an impact on the small boat fleet's day-to-day operations, the benefits to the fleet are feeling less and less apparent.

This could be because fish stocks are in such dire straits that there really are no returns for the fleet, but the MSA's proven ability to rebuild depleted stocks suggests that this probably isn't the case.

More likely: benefits are accruing, just not to the small boat commercial fleet.

Catch shares come immediately to mind as indicative of the phenomena in which the actual fishing fleet's ability to fish is restricted while third-party quota lessors derive substantial monetary benefits from the restrictions. The same goes for fishing restrictions on stocks that are depleted for non-fishing reasons, as when West Coast salmon fishermen get their seasons cut because industrial irrigation demand for river water kills

off wild stocks. In such cases, restricting fishing only externalizes the cost of the detrimental fishery impacts that should instead be paid for by those who are impacting the viability of the stocks.

We're not arguing that benefits must correspond directly with achievements in stock rebuilding. Just because a particular stock size improves doesn't mean that we should immediately allow removal of all of the rebuilt stock.

But the social contract underlying the MSA is that if the fleet gives up short-term fishing opportunities to protect at-risk stocks, the fleet should get more robust and sustainable long-term fishing opportunities to make up for the loss. The problem is that there have been so many moves to reduce fishing opportunity in the last forty years, and long term benefits are not being realized at a pace that is offsetting the losses. So what we're seeing is the small boat fishermen burdened with weight of restrictions with little in the way of light at the end of the tunnel.

We need to do better. It's clear that sustaining the fish stocks is critical to sustaining fishing families, and restricting fishing in appropriate cases is a part of that puzzle. But the MSA must also continue working for fishermen by providing benefits to offset short-term losses created by restrictions on fishing.

In this next reauthorization, the MSA must be updated to address four



realities: (1) the small boat fleet is the backbone of America's commercial fishing industry and commercial fishing heritage; (2) restrictions on fishing often disproportionately affect small fishing businesses; (3) there is an ongoing downward trend in the number of small fishing businesses in the United States; and (4) the small boat fleet fishes sustainably.

So here is PCFFA's wish list for Magnuson-Stevens Reauthorization:

I. Offset Short Term Losses With Provisions to Protect Fishing Communities

Given the prominence of catch shares, one critical fix is to anchor a portion of IFQs in fishing communities. Section 303(A) allows fishing communities or regional fishing associations to hold quota on behalf of individual fishermen, but there are no provisions that help individual fishermen get over the hump of forming such organizations and then outfitting them with quota.

The result is that by the time a community organizes itself as an eligible quota-holding entity, the IFQs are already allocated. As it stands, the only opportunity to get quota in an established catch share fishery is to pay to play, and that can be prohibitively expensive. Requiring a certain meaningful percentage of fishing opportunity to be vested in fishing communities at the outset would ensure small boat access to what remains. Despite the shadows cast on them by catch shares, these are public trust fishery resources.

Bonus points for an MSA that requires reallocation of existing IFQ in catch share-managed fisheries to communities that are already feeling the pain.

As of this writing, high on most fishing minds in California is the need for a strong safety net for fishing families to deal with upheavals in their industries from changing environmental conditions. The MSA provides for direct economic relief to fishermen in the event of a fishery disaster, but that relief must come from an appropriation by Congress. This leaves open the very real possibility that Congress may not appropriate funds for relief, even if the Secretary of Commerce determines that a fishery disaster has occurred. And if Congress eventually appropriates relief funds, we are all painfully aware of how long it takes for the appropriations process to proceed and for the funds to be disbursed.

Congress needs to initiate a standing fund for short-term disaster relief for fishing families.

The extent of damages is difficult to calculate even after a fishery disaster has run its course. But it's clear that out-of-work fishing families missing income during emergency fishing closures are microcosmic disasters of their own. It is also clear that such disasters can, and have, happened – and are likely to happen from time to time in the future. Providing funding in advance for probable future fisheries disasters only makes sense. That's why farmers have federally subsidized crop insurance. Fish harvesters ought to be afforded the same benefits.

We've seen at the state level a difficulty in distributing emergency unemployment benefits to fishermen displaced

by the current Dungeness crab closure. California only recently made it mandatory for skippers to contribute to state unemployment insurance coffers on behalf of their crew, and new entrants to the fishery and boat-owning captains aren't necessarily eligible for unemployment even under the new rule. The Department of Commerce could also maintain a fund to be used for exactly this purpose: short-term alleviation of the impacts of unexpected fishery closures resulting from disasters.

Funds could be made available from the Saltonstall-Kennedy (S/K) fund, which is supposed to address the needs of fishing communities in maintaining sustainable fisheries and in dealing with the impacts of conservation and management measures. Presently, of the as much as \$80 million deposited into the S/K fund annually, the majority quietly goes into NOAA's general operating expenses account. In the past, we've called for that money to be put toward the fleet's research needs, but we now expand that call: S/K funds should be utilized by and for the fishing fleet to promote the sustainability of the fleet and the marine resources on which it depends.

II. Account for Communities and Ecosystems

The MSA should require the Regional Councils to promulgate fishing community plans (FCPs) with any FMP or FMP amendment. MSA section 303(a)(9) requires socioeconomic impacts analysis of FMP changes on fishing communities when those changes occur, but it doesn't necessarily require the Councils to do anything about those impacts.

Fishing Community Plans could address how small fishing businesses will deal with the impacts of FMP changes, including how the Councils will facilitate transitions to different gear types, management measures, or otherwise, with the goal of minimizing those impacts. It's not enough to simply understand that changes to fishery management strategies are going to hurt small family fishing businesses. Those impacts need to be addressed and offset by providing new opportunities to fishing families.

That fix should run in lockstep with requirements to consider the bigger picture when make fisheries management decisions. The Councils need to consider stocks, habitat, the food web, and all of the intertwined variables that depend upon each other when putting forth management regimes. The fleet shouldn't put so much pressure on stocks that those stocks don't have access to the building blocks they need to recover from fishing impacts, like food and habitat.

As a corollary, though, the fleet shouldn't be penalized with fishing restrictions when other human activities are causing impacts on target stocks or the complex systems in which those stocks exist. It'd be better to address those human activities that are actually causing both the fishing restrictions and the ecosystem distress, rather than simply restricting fishing and hoping the ecosystem stressors simply go away. They never do.

III. Promote Long-Term Viability of the Fleet

Yes, this article was supposed to be about how to best fulfill the promise of the MSA in the short-term, but at PCFFA we



stand by the proposition that you can't sell tomorrow's fishing opportunity for today's profit. In a way, those conservation provisions that operate over the long-term actually provide a short-term fulfillment of the MSA's promise, in that they give this generation of fishermen a fishery to promise to the next generation. And they're reasons for the new generation to start fishing and fighting for their access to those fish.

In last year's House-passed MSA reauthorization bill, we saw attempts to relax fishery rebuilding timelines (in the name, of course, of "flexibility") that have already proven to be both effective and adequately flexible; a move toward purely political and economic considerations, rather than hard science, as the basis for fishery management decisions; and rollbacks of National Environmental Policy Act (NEPA) and Endangered Species Act protections that protect many of our long-term fishing opportunities. If these proposals make it into the MSA, we won't have much of anything to celebrate at the

80th Anniversary.

With climate change, ocean acidification, drought and pollution putting new pressures on the nation's fisheries, we're going to need all of the tools we can gather to ensure our ability to make a living from the sea into the future. Now is not the time to throw those tools we already have away, but rather to add to them.

So it's better to commit ourselves to the long haul. But we'll be keeping a watchful eye on Congress and our fisheries agencies to make sure that these promises are kept. **EN**

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