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Fixing Magnuson – Again

By Zeke Grader and Glen Spain

At the end of this federal fiscal year the Magnuson-Stevens Act (MSA) is set to expire. Congress is unlikely to let it, but this “sunset” date has set in motion discussions and hearings on what changes are needed in the reauthorization of the nation’s primary fishery law.

The first Congressional MSA reauthorization hearings this year began before the Fisheries, Wildlife, Oceans & Insular Affairs Subcommittee of the House Natural Resources Committee on 13 March, and a week later (16 March) by the Senate Commerce Committee’s Subcommittee on Oceans, Atmosphere, Fisheries & Coast Guard, in what has become a decadal event since passage of H.R. 200, the Fishery Conservation & Management Act, in 1976.

This month (7-9 May), in fact, a major conference is being held in DC, “Managing Our Nation’s Fisheries –Advancing Sustainability” that is expected to explore MSA reauthorization issues.

The March hearings for the upcoming reauthorization included issues dealing with stock allocation between states and shifting of stocks due to climate change, state management of stocks within 20 fathoms of shore, the cost of observer coverage and who would pay, and implementation of “catch share” programs.

Most of the clamor, however, is around “flexibility” in the MSA. The complaints are mainly from groundfish fishery representatives in New England and the West Coast and recreational groups in the Gulf of Mexico. At issue is adherence to strict catch limits (total allowable catch or “TAC”) and stock rebuilding plans, as mandated in the last reauthorization.

The original Fishery Conservation & Management Act (FCMA), now called the “Magnuson-Stevens Act (MSA)” after two of its late Senate sponsors, included language prohibiting overfishing, but it was not until the 1996 reauthorization that Congress inserted explicit language on ending overfishing. In 2006, Congress was even more explicit by requiring rebuilding plans for overfished stocks and mandating management be science-based.

The MSA had succeeded in ending foreign fishing and “Americanized” fishing within the US 200-mile fishing zone, and prevented overfishing in some fisheries such as salmon. However, it had allowed overfishing to occur in other fisheries, most notably groundfish, as a result of perverse interpretations of “optimum yield,” shoddy science and denial.

Fishermen rallies were held in DC in 2010 and 2012 protesting the law, and various bills have been introduced in the

past three years aimed at undermining the MSA’s explicit language on ending overfishing, stock rebuilding and adherence to science. None of these measures have gone anywhere, although there is a chance some of the language from these bills could be packaged up as reauthorization amendments, especially in the House.

The complaints coming from the fishing groups mentioned above is that the 2006 language is “too rigid” – both in its prohibition on overfishing and requirement for 10-year stock rebuilding plans. At the same time that language – prohibiting overfishing, stock rebuilding timelines, and science-based management – has resulted in a fair amount of success for American fisheries in the past few years with all of the nation’s federally-regulated fisheries now either at, or nearing, sustainable levels.

Moreover, the complaints about an inflexible law are by no means universal. There is, in fact, a fair degree of flexibility in the current MSA. The bigger problem seems to be with the agencies – the National Marine Fisheries Service (NMFS) and its meddling “mother,” the National Oceanic & Atmospheric Administration (NOAA) – and the regional councils.

Let’s also be clear that some of these complaints are bogus. Recreational fishing groups in the Gulf of Mexico fought



licensing and now they're incensed that they have to fish under any limits. Their typical solution has been to either take quota from the commercials or just ignore any science that sportfishing, too, can impact fish stocks.

There is a legitimate problem coming out of the Northeast, however, that is not so much about "flexibility" as it is the quality of the science upon which management must base its decisions. Inadequate funding has thwarted the extensive and frequent stock surveys needed to manage fisheries for optimum yield. And, at times, equipment or personnel have not been up to the task of accurately measuring fish populations. Science – whether it's research or on-going stock assessments – costs money. Despite its largesse elsewhere, the US has been cheap when it comes to funding fishery science, and both fish and fishermen have suffered as a result.

The problem of inadequate fishery science funding is by no means unique to the Northeast or to groundfish. This year salmon trollers and anglers along the California and Oregon coast will be constrained over concern for ESA-listed coastal fall-run chinook. Although there is anecdotal information that coastal fall numbers have increased, lack of funding has prevented NMFS from conducting spawning counts to develop current population estimates for these fish, never mind developing legally required recovery plans. Indeed, the problem could have worsened had a Senate Continuing Resolution (S. 933) rider eliminating the Pacific Coast Salmon Recovery Fund (PCSRF) passed in March. NOAA/NMFS funding cutbacks as a result of the sequester will impact fishery science as well.

The first significant fix in reauthorization, therefore, is secure funding for fisheries science. But financial support for observer programs (to avoid putting a financial squeeze on small boat operators), development and utilization of cleaner fishing gear, and even disaster relief, require funding as well. The necessity for fishery science funding has been written about extensively in this column over the past decade (see for example, "Planning and Paying for

Future Fisheries Research" FN Aug 2003, www.pcffa.org/fn-aug03.htm) and this reauthorization may present an opportunity to finally act.

An overlooked provision of the 2006 MSA reauthorization is language inserted by Senators Stevens and Boxer creating a "national fisheries trust fund." The Stevens-Boxer provision established that trust fund, but identifying a substantive funding source was left for later. Later is now here.

PCFFA's recommendation of a nominal ad valorem fee on all seafood sold in the US to support the trust fund never gained traction. In the last Congressional session, the Pew Environmental Group proposed a more modest solution, which PCFFA supported, of using existing Saltonstall-Kennedy (S-K) Act funds to support federal fisheries research. Former Senators John Kerrey and Olympia Snowe introduced a Senate bill, and a companion measure was introduced in the House, but the lateness of the last session and other national issues prevented action on this legislation.

Legislation to earmark S-K monies for fishery science or to underwrite a national fishery trust fund could be introduced again in this Congress, or included in a reauthorization amendments package. There may be two problems, however. First, others are clamoring for S-K funds – for fishery disaster relief and seafood marketing, for instance. Second there is opposition from NMFS which claims it is already using up all the S-K funds – although the agency continues to refuse to give an accounting for its use of S-K.

Whether S-K monies will support better fishery science, or a seafood sale fee to underwrite a fishery trust fund is passed, or some other funding mechanism is advanced, money for better fisheries management has to be at the top of MSA fixes. Fishermen have to be emphatic with Congress on this matter and not allow minor or non-issues to distract us in this reauthorization season. It's the funding, stupid!

As mentioned, great strides have been made rebuilding the nation's fish stocks over the past decade or so. The

same cannot be said for the allocation of those fish stocks and the protection of fishing fleets and fishing communities.

Although promising greater flexibility for fishermen, increased safety, and even a conservation incentive, the individual fishing quota (IFQ) systems promoted in the Bush Administration and, now, "catch shares" under Obama (with a lot of meddling by NOAA leadership and the liberal Environmental Defense Fund) these schemes for allocating quota to individuals or sectors have proven problematic and need to be fixed or scrapped. Consolidation of quota among fewer owners and vessels, third party ownership/control of fish quota, potential loss of access of fishing communities to supporting fish stocks, and privatization of a public trust resource are all at the top of the problems with this allocation method, all needing to be addressed in this reauthorization.

In the 1996 reauthorization, Congress put in place a moratorium on new IFQ systems, charging NMFS with developing standards and guidelines for this allocation system. Instead, NMFS deliberately defied Congress, sat on its hands, and did nothing until the moratorium expired and then went back to business as usual, handing out almost totally unrestricted quota through the regional councils. Congress, in response, did nothing.

In the 2006 reauthorization, Congress inserted language in the Limited Access Privilege Programs (LAPPs) section allowing for the creation of community fishing associations (CFAs) and providing these groups with an initial allocation of quota. This language was developed as an alternative to processor quotas and intended to ensure fishing communities could protect their interest in fish stocks they relied upon from vessels holding quota moving elsewhere or simply selling their quota elsewhere.

NMFS, again, did nothing. And the councils, to date, have done nothing to facilitate formation of CFAs, such as establishing standards and guidelines. But they have continued developing catch share programs and giving out quota. Indeed, the Pacific Council has made CFAs a "trailing action." In other



words the PFMC will give away all the quota first and then, maybe, consider CFAs. CFAs will then be left scrambling for funds to buy-up quota from private owners – quota that was originally a public trust resource given out for free.

Congress cannot ignore the insubordination of NOAA/NMFS and the regional fishery councils following the 1996 and 2006 reauthorizations. In this reauthorization Congress should consider a moratorium on any IFQ/catch share programs – proposed or under development, require an independent review of programs now in place, and develop a set of standards and guidelines for IFQ/catch share programs and CFAs that NMFS and the councils will be required to follow.

Those standards and guidelines should be aimed at ensuring that: 1) the need for an IFQ/catch share program in a particular fishery is identified after all other management alternatives have been thoroughly explored; 2) there is a fair allocation of the resource, eliminating arbitrarily imposed qualifying dates and minimum landing requirements; 3) the ownership of quota/share is restricted to either (a) an individual employed

on or personally operating a vessel for which the take of the quota is to occur, or (b) a community fishing association or sector approved to hold quota on behalf of fishing men/women in a given port or locale; 4) the percentage of quota/shares held by individuals/sectors and CFAs is limited through an enforceable cap facilitating the greatest opportunity for employment and use of vessels consistent with the biological limits of the stocks, while encouraging investment and providing for reasonable middle income living standards; and 5) development of a mechanism facilitating an affordable entry for new participants in the fishery.

Such a moratorium should expire only when NOAA/NMFS and the regional councils are prepared to develop IFQ/catch share programs consistent with such standards and guidelines, and when existing programs, following review, are modified as may be necessary to comply with the new standards and guidelines, or be eliminated.

If these two fixes – funding and allocation – can be achieved in this reauthorization, then some real improvements will be made in our fisheries, at least

from the standpoint of management. There are other uncertainties on the horizon, including climate change and related ocean acidification, but at least making these first two fixes will be forward progress.

Finally, there are other fixes that should be considered including improvements to council management and doing away with the “overfishing” designation for stocks depleted by factors other than fishing (a problem already for salmon, but which could be significant in the future for other stocks as a result of climate change). But what is important is that we keep our focus on the funding and allocation fixes, and not allow ourselves to be distracted by extraneous issues. 🐟

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