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We Can and Must Do Better – No time for mediocre fishery management

By Zeke Grader and Dave Bitts

The facts, ma'am, just the facts." Some of you may remember that line from television's Sergeant Joe Friday ("Dragnet") – the intrepid, no-nonsense Los Angeles police detective. It brings to mind the need to examine the facts, and all the facts, in light of the rhetoric coming from the noisy extremes – both the hand wringers of woe on one side, and the "happy double-talk" purveyors on the other – relating to the conduct of our fisheries.

In late August one of the fishery/seafood electronic newsletters published an editorial calling for a push back against the "Chicken Little" types and assorted other critics of fishery management. That piece cited a number of examples of improved fisheries – Maine lobster, Atlantic haddock, summer flounder, Gulf shrimp, Alaskan Pollock, and even the re-opening of the Pacific Coast salmon fishery – as examples of the successes of fishery management and the work of the fishery management councils.

In fairness to that editor, part of his message was aimed at Alaskan halibut charter boat operators who are chafing at the conservation measures imposed on their sector, along with some of the more extreme recreational groups around the country whose business model is to crit-

icize commercial fishermen and deny all commercial allocations or access.

The editor is right that push back is needed against those whose criticism of management is intended solely to take someone else's allocation or to avoid their own conservation responsibilities. But that does not mean current fishery management should get a pass, much less praise. Many problems still remain.

On the surface, the facts look pretty good. Not only was the editorial above accurate in naming improved fisheries, but there is the NMFS Status of US Fisheries report for 2010. That report found that "in 2010, 84 percent of the stocks examined for fishing activity (213 of 253 stocks) were free from overfishing, or not fished at too high a level, and 77 percent of the stocks with known population levels (159 or 207 stocks) were [at population levels] above the overfished level..."

According to the Status report, three fisheries stocks from the Northeast – Georges Bank haddock, Atlantic Pollock and spiny dogfish – "have now been rebuilt to healthy levels, bringing to 21 the number that have been rebuilt since 2000..."

"Beyond the three rebuilt northeastern stocks, there were other positive changes since last year:

- Four stocks were removed from the low-population list, all from the Northeast: Gulf of

Maine haddock, American plaice, Gulf of Maine cod and southern New England windowpane

- Two stocks were removed from the list of stocks being fished at too high a level: Georges Bank yellowtail flounder and Southern Atlantic Coast black grouper.

"Scientists examined more stocks than ever before in 2010, and findings on these stocks with a previously unknown status were mixed:

- Gulf of Mexico black grouper was found to be free from overfishing, and had a population above the low-population level.

- Southern Atlantic Coast black grouper was found to have a population above the low-population level.

- Pacific bluefin tuna was found to be fished at too high a level, though its population was above the low-population level.

- Gulf of Maine/Georges Bank Atlantic wolffish was found to have a low population.



“A handful of other stocks were moved onto the overfishing and overfished lists this year:

- Added to the list of stocks experiencing fishing at too high a level were North-western Atlantic witch flounder, Gulf of Maine/Georges Bank windowpane flounder, and Southern New England/Mid-Atlantic windowpane flounder.

- Added to the list of low-population stocks were Northwestern Atlantic Coast witch flounder, Gulf of Maine/Georges Bank windowpane flounder, Georges Bank winter flounder, Southern Atlantic Coast red grouper, California Central Valley Sacramento (fall) chinook salmon, and Bering Sea southern Tanner crab.”

Based on these facts one would assume the regional fishery management councils and NMFS are doing a good job. Overfishing is being stopped and stocks are rebuilding. A review of all the facts, however, reveals that the regional bodies and NMFS have been dragged along reluctantly, and some of the actions they have taken present serious problems either now or in the future.

At the outset of this examination of the facts, it should be pointed out that some of the fisheries that were cited as improving in the editorial are not under regional council/federal management, or the regional councils had nothing to do with their improvement. New England’s lobster fishery, for example, is not managed by the New England Fishery Management Council.

On the West Coast,

the management measures imposed by the Pacific Fishery Management Council on salmon only prevented fishing on stocks that had been already decimated by dam operations and massive water extractions from rivers and the Sacramento-San Joaquin River Delta. It was improvements in in-river conditions, which the Pacific Council has no authority over, that helped to bring back salmon stocks along the Pacific Coast. The fact is, if any one person or organization deserves the credit for the rebound in Pacific salmon stocks it is probably Earthjustice, whose attorneys represented fishing groups like PCFFA and conservation groups in litigation to protect salmon in rivers such as the Columbia, the Klamath and the Sacramento-San Joaquin. Increased through-Delta and Klamath flows are in direct response to new NMFS Biological Opinions (BiOps) generated by NMFS as a result of those successful legal challenges which overturned earlier, flawed BiOps.

The fact is also that the 1976 Fishery Conservation & Management Act (now called the Magnuson-Stevens Act or “MSA”) called for the prevention of overfishing. However, excepting salmon and some of the fisheries of the North Pacific, overfishing was still allowed by NMFS for many years.

Ignorance of the stocks – mostly because the U.S. sought to manage fisheries on the cheap, rather than investing in the research and data collection needed for setting realistic fishing limits – was partly to blame. But so too was the perverse interpretation of “optimum yield”

used by the regional fishery councils and NMFS to justify overfishing, particularly in mixed stock fisheries where weaker stocks were allowed to be hammered in order to maximize catches of more abundant species.

Only after Congress, in 1996 and again in the 2006 MSA reauthorizations, added stronger “thou shalt not overfish” language, followed by litigation brought by groups such as the Conservation Law Foundation (CLF) and Natural Resources Defense Council (NRDC), was such overfishing finally curtailed and rebuilding plans initiated. Those are the facts. If anyone deserves praise for there now being fewer overfished US stocks it is Congress and the NGO’s such as CLF and NRDC – not NMFS or the regional fishery councils

Let’s also take a look at the facts relating to the health of fish stocks and management:

Salmon Management

True overfishing of salmon has not occurred for many years. The declines of stocks emanating from rivers along the Pacific Coast has been principally caused by in-river habitat destruction, including fish passage barriers, reductions in fresh water flows, change in flow direction, and water quality. Some of these factors have, in turn, made fish more vulnerable to disease, parasites and predation, thus compounding the problem.

Unfortunately the Pacific Fishery Management Council has no authority over salmon in-river. It can only comment on proposed actions by other federal agen-

cies affecting fish habitat, and it has been good about that in recent years due primarily to the activism of its Habitat Committee. NMFS has a little more authority over in-river salmon habitat, but this authority is only under the Endangered Species Act (ESA), not the Magnuson Stevens Fishery Conservation & Management Act (MSA). Once ESA-listed, other government agencies are required to consult with NMFS on those proposed actions affecting listed salmon and other species such as sturgeon. The federal fishery agency is charged with developing Biological Opinions (BiOps) for the protection and recovery of these listed fish.

The problem is that once a species is so depressed it has to be ESA-listed, its population levels are so close to extinction that it then requires Herculean efforts to bring them back to full recovery. What is needed is a way for NMFS to get ahead of the extinction curve and prevent the need for ESA-listings to begin with by protecting in-stream flows and habitat. Sadly, short of an actual ESA-listing, NMFS does not have the legal power to do so – and the various states which in theory do have that power frequently fail to use it, or find their efforts blocked by powerful vested political interests who profit from dewatering rivers and destroying natural salmon habitat in the name of river “development.”

Even for ESA-listed salmonids, NMFS’ record in the Pacific Northwest with regard to salmon protection has been horrible. The agency, or at least its regional lead-



ership, has consistently failed to develop a BiOp sufficient to protect and recover listed salmon runs from the operation of the federal Columbia basin hydroelectric dams. On August 2nd, U.S. District Court Judge James Redden once again found NMFS' plan to be illegal. This is at least the third such BiOp in three different Administrations to be invalidated, in litigation now in its 18th years. For this NMFS should be praised by the fishing industry? A summary dismissal of those in NMFS responsible for the agency's failed plans would be the more appropriate response.

In the Pacific Southwest, NMFS' record on salmon recovery has been a little better. But it wasn't always that way. PCFFA and other fishing and conservation groups had to sue the agency in 2004, shortly after record water diversions triggered a massive salmon fisheries collapse, when its leaders (then under the Bush Administration) overruled their own scientists and found "no jeopardy" for listed species (winter and spring-run chinook salmon, sturgeon) from increased freshwater extraction from the San Francisco Bay-Sacramento/San Joaquin Delta Estuary. A federal judge in Fresno later held NMFS' action declaring "no jeopardy" to be "arbitrary and capricious" and ordered stronger measures to protect the fish, including restrictions on freshwater extraction at the State and Federal Delta pumps during periods when baby salmon are migrating through the Delta on their way to the Bay and the Golden Gate. The measures

imposed by the Judge, and now being implemented by a new NMFS BiOp, are beginning to show signs of success. But this was in spite of NMFS, not because of it.

Problems remain, however, in the Pacific Southwest. NMFS' official position at the Pacific Council, clearly conflicting with its own scientists working in the Delta and members of the National Academy of Science, is that "ocean conditions" were primarily responsible for the recent collapse of Central Valley salmon populations – the economically important fall-run, along with the listed winter and spring-run stocks. This ignores the impacts of massive, unprecedented Delta water withdrawals signed off on by NMFS and invalidated by the U.S. District Court.

That position was reiterated by the NMFS Northwest Regional Director, whom NOAA has anointed as its "Salmon Czar," at the Pacific States Marine Fisheries Commission's annual meeting in late August in Portland. He went on to support an "isolated facility" – read "peripheral canal" – proposed by San Joaquin Valley agribusiness and Southern California land speculators that would maintain or increase the diversion of the Delta's freshwater flows – already at levels above fifty percent of the estuary's lifeblood. For this we are expected to offer praise?

IFQs and Catch Shares

"Catch shares," which include individual fishing quotas (IFQs), sector allocations, and community fishing associations, have a great deal of potential for helping fisheries. As we've heard from fish-

ermen awarded quota in the North Pacific halibut/sablefish fishery, the Gulf snapper fishery or from the "hookers" in New England, catch shares can improve fishing safety, help to get a better price for the fish, and give fishermen more control over their fishing operation. However, the imposition of a catch share program also presents significant challenges and dangers, as has been outlined in this column in previous issues (e.g., "NOAA and Catch Shares: Policy or Platitudes?" *FN* January 2011, www.pcffa.org/fn-jan11.htm; and also, "Can't We Just Get Along? It's Time for Fishing Groups to Find an Accord on IFQs," *FN* November 2002, www.pcffa.org/fn-nov02.htm).

To summarize, unless carefully crafted, a catch share program – or more specifically transferrable IFQs, can lead to: 1) massive consolidation of the fleet, putting control of the fishery into a few hands; 2) an unnecessary loss of vessel participants; 3) an unnecessary loss of crew jobs; 4) significant increases in entry costs that may leave a new fisherman/woman heavily leveraged (destroying any conservation incentive from such a program); 5) create a "sharecropper" situation where non-fishermen are allowed to hold quota (which can undo any safety at sea, or ability to achieve higher prices for the fish from such a program); 6) the loss of access by fishing communities to fish stocks from adjacent waters that those ports have historically depended up, and; 7) result in a de facto privatization of a public trust resource.

It has been nearly a year now since NOAA/NMFS

issued their catch share "policy" and there have been no discernable steps taken to address the serious flaws in virtually every catch share program around the nation. Issues are even arising with the vaunted halibut/sablefish program – probably the best IFQ system in the world – based on the facts reported to us. These include questionable leasing arrangements and pressure from some current quota holders to allow quota to be sold to non-fishing participants, thereby increasing the price a current quota holder would receive when he/she decides to cash out.

Instead, NOAA and its NGO partner/puppet master, Environmental Defense Fund (EDF), continue proselytizing for catch shares in ever more fisheries, seemingly oblivious to the inherent flaws in most of the current programs and unwilling to make needed changes.

Buoyed, perhaps, by three Federal District Court Judges' extreme deference to government on this allocation issue, both NMFS Director Eric Schwab and the NMFS' Northwest Regional Director were in Portland at the PSMFC meeting in August, heaping praise on the Pacific Council's groundfish trawl ratz (IFQ) plan. That scheme allows non-fishermen to hold quota but prohibits other groundfish fishermen from purchasing any of that quota unless they buy a trawl permit – even if the fish are to be taken by hook-and-line or trap – from one of those the Pacific Council gifted with trawl quota. Ironically, however, trawl fishermen are not required to purchase a fixed



gear limited entry permit if they switch over to long-lines or traps to fish all or a portion of their quota. More ironically, since access to target species is controlled by bycatch caps, those with a history of fishing clean don't get enough bycatch quota to operate, while those who fished dirty do. Some conservation measure!

Worse, NMFS has yet to develop sideboards for what community fishing associations (CFAs) need to be to qualify for an initial allocation of quota, as Congress intended in the 2006 reauthorization of the MSA. Those sideboards include defining CFA membership, its responsibility to a community, the rights of members and non-members, the geographic range, relations with other CFAs, etc. NMFS hasn't shown any liking for CFAs and, chances are, it won't do any work to facilitate CFA development (by which time all the fishery quota will have been allocated) until Congress mandates it. This is, after all, the same agency that thumbed its nose at Congress's mandate in the 1996 reauthorization to develop standards for IFQ implementation. The federal fishery agency did nothing; it simply waited out the Congressional IFQ moratorium and then went back to business as usual.

The fact is, if a fisherman breaks the law, he/she goes to jail – witness Arne Fuglvog. But if NMFS skirts the MSA and flaunts the law, it expects praise. And, apparently there are some in the fishery press who are obsequious enough to heap praise on these government, or government-appointed, scofflaws while fishermen such as Fuglvog,

whose transgressions probably caused far less damage to his fishery than some of the Council/NMFS actions on other fisheries, are vilified.

In the case of our nation's fisheries and the promotion and implementation of catch shares to date, indictments, not praise, would seem to be the more appropriate response.

Funding Fishery Research

It has long been acknowledged among thinking fishermen that research and stock assessments are essential for establishing catch limits, seasons, gear restrictions and most other fishing regulations to ensure sustainable fisheries. We wrote about it here eight years ago (*"Planning and Paying for Future Fisheries Research: Fish Stocks and Fishing Communities Depend on Good Research,"* FN August 2003, www.pcffa.org/fn-aug03.htm). Indeed, the requirement that fishery management be grounded in science is now firmly settled in the MSA as a result of the 2006 reauthorization.

The problem is how to pay for the necessary research and stock assessments. As mentioned above, the nation tried to do fishery development following the 1976 passage of the FCMA on the cheap – the government encouraged new fishing vessel construction and development of new fisheries, but refused to invest in the science to determine how much fish were there and what level of fishing effort the stocks could sustain. Now we have a requirement that fishery management be based on biological, not political, science – which is good – but with no plan in place to pay for it,

which is not so good.

A lack of foresight on how to pay for necessary programs should be no real surprise in this country. After all, we've started two wars in the past decade with no thought about how to pay for them, and now have a massive debt that will likely thwart any meaningful stimulus program to get ourselves out of the aftermath of the Great Recession. But these facts are little comfort to fishing fleets that could be highly restricted or shut down simply for lack of necessary data.

In March 2011 PCFFA made a proposal to the Obama Administration and the leaders in NOAA/NMFS for one method of paying for fishery research/stock assessments and other essential fishery programs (see www.pcffa.org/FishFundingLtrtoPresident-17Mar11.pdf). To date, that proposal – aimed at getting funding discussions going – has been met with stone cold silence from the Administration and NOAA.

Others, too, have put forward proposals (see *"Revisiting Fishery Research Funding: Without Research Funds, Fishery Jobs are Threatened,"* FN August 2011, www.pcffa.org/fn-aug11.htm). To date we have heard of no response to those proposals from NOAA/NMFS other than business as usual – trying to squeeze money out of the Congressional appropriations process where nearly all discretionary funding is faced with significant cuts.

Since it's under NOAA, the NMFS budget is also always in competition with items like weather satellites. The satellites of the National Weather Service, it should be remembered, do provide

a sometimes life-saving function for the fishing fleet, and other scientific instrumentation provides information useful for understanding fisheries. The problem is not so much weather satellites versus fishery research, but in NOAA taking funding from the conservation side – research/data collection – and using it for allocation, i.e., for promoting catch share schemes. This is a major mistake.

The option proposed by some of just amending the law to forego science-based decision-making for fishery management is certainly no answer. It only puts the substantial investment of fishermen in their vessels and communities in their infrastructure at higher risk over the long term. We need the science. Yet, the fact is, NOAA/NMFS has neither responded to any proposal aimed at more stable funding for fishery research/data collection, nor offered any proposal of its own. That is not leadership; that is a dereliction of duty. That warrants no praise. Someone needs to be shown the door.

Meeting Future Seafood Demand

As reported in this column last month, in July 2011 NOAA issued its national aquaculture initiative. As we explained in the September FN issue, wild capture fisheries are not and will not in the future be able to meet worldwide demand for fish and seafood products. That means a portion of the world's seafood demand, if it is to be met, will have to be filled by fish farming – aquaculture.

Rather than take a broad



look at where new aquaculture facilities should best be sited and what types of aquaculture should be fostered – the types of fish, the markets, the food needs and conversion ratios, and environmental footprint – NOAA headed straight for the ocean where it felt it could assert permitting authority. The ocean, of course, is probably the worst place to site most aquaculture operations, save for certain shellfish such as oysters, mussels, clams and abalone, because of problems of escape, pollution (in open cages), spread of disease and parasites to the wild, interference with other marine activities, and the general costs and hazards of maintaining such operations in open ocean waters. Open ocean aquaculture presents a threat to both wild fish stocks and to existing fisheries.

Instead of exploring the significant potential for onshore, contained aquaculture development, utilizing species requiring a minimum of wild forage fish for feed, and where there is potential to convert sites ranging from problem farm lands to old urban industrial settings, NOAA's focus is solely on ocean development. It has already issued a permit for an open ocean cage operation in federal waters off Hawaii, claiming authority under the MSA to permit these activities within the 3 to 200 mile offshore area composing the U.S. Exclusive Economic Zone (EEZ). In fact, there is no such authority; the MSA is silent on aquaculture.

NOAA's course with open ocean aquaculture is unlikely to add to total U.S.

fish and seafood output, nor to significantly increase net fish protein production. By narrowly focusing on the ocean and ignoring the vast potential for onshore production, NOAA's effort is most likely simply to replace one form of fish production (wild capture) with another (aquaculture), while they blithely try to convince policy makers and the public that we're going to feed the world's masses with "ranching" bluefin tuna, caged amberjack, farmed halibut, and cultured prawns. And they want huzzahs from fishermen for good management? Think again.

The Grand Experiment – Regional Councils

This year marks the 100th anniversary of Hiram Bingham III's assent up the Andes with his Yale-National Geographic team to find the ancient Inca city of Machu Picchu. Nearly 90 years later, one of Hiram III's grandsons, Nat, was a member of the Pacific Fishery Management Council. Nat Bingham was one of a number of commercial fishermen from around the country who, along with fish processors, recreational and tribal fishing representatives, state fishery agency heads, and a single NMFS voting member, made up each of these bodies charged with developing management plans for fisheries within the US 200-mile zone.

The regional fishery councils were in a sense a grand experiment, a type of collaborative, inclusive management that brought those managed into the decision-making process. Nat Bingham was probably the type of fisherman Senator Magnu-

son envisioned when he crafted the Act. Bingham was an experienced fisherman. He was bright, well-read, considerate and willing to put the best interests of the fishery ahead of any pecuniary interests of his own. He was not afraid to ask questions, nor was he afraid to think or speak out. In the 35 plus years since the passage of the MSA, Nat Bingham, sadly, is also something of an exception.

In calling for pushing back and praising the process, the Editor talked of the threat to the unique system of management the Magnuson-Stevens Act set up to include fishermen and other stakeholders in management decisions. He's right that it is threatened. And, the fishing industry may be partly at fault.

PCFFA, a member of the Marine Fish Conservation Network, has found itself repeatedly defending the management council structure before conservation and science groups who've described it as "the fox guarding the henhouse." The defense put up by PCFFA has been that working fishermen/women play an invaluable role in the council decision making process – they bring with them the knowledge of preparing a vessel and taking it to sea, finding the fish and filling the hold, and then dealing with the business of fishing. That perspective is invaluable in designing seasons around what the science determines can be taken.

The problem is the system doesn't always work like that. In some of the larger, better-heeled fisheries, law-

yers, lobbyists or association executives have been selected to represent fishing interests instead of knowledgeable fishing men and women. These people have gotten appointed to the councils not because of the fishing experience they bring to the process, but because of their skill at manipulating the system to get as much fish as possible for their clients.

Even where actual fishermen have been appointed, there's been a lot of self-dealing that does not do our industry proud. Just look at what happened in the New England and the Pacific Councils on groundfish. Kathy Fosmark lost her seat on the Pacific Council to an EDF-sponsored candidate, in part because she began asking embarrassing (but justified) questions about the groundfish trawl ratz program.

The recent appointment of Oregon fisherman Jeff Feldner to the Pacific Council is a good sign, but more changes are needed in councils across the nation to reestablish public trust in the federal fishery management process, in addition to changes within the federal fishery agency.

The problem with the regional councils is not the inclusion of commercial fishermen per se, but the types of individuals too often nominated by the Governors and selected by the Secretary of Commerce. It's not just the lawyers, lobbyists and association executives. Recreational and other public members, including scientists and conservation reps, have engaged in self-serving actions on the



council, whether it was to score a bigger allocation for their sector, to score a research grant, or to gain a raise or promotion within the association they worked for by advancing a particular ideology.

State fishery directors have been little better. In the early days of the Pacific Council, the state Directors from Washington and Idaho, Oregon, and California were there, it seemed, to make sure salmon conservation would not interfere, respectively, with federal hydropower operations on the Columbia, Oregon's egregious logging practices, or sucking water out of California's streams and Delta for agribusiness and Southern California land speculators.

Another problem is that the council process increasingly excludes working fishermen from participation – not by intent, but by default. To attend and participate in all

the Council meetings now takes so much time and travel that a commercial fisherman could lose as much as 75 percent of his or her fishing income just attending multiple week-long meetings plus many other side meetings before and afterwards. This means that more and more of the people who can attend the council meetings are now paid lobbyists or working for some well-heeled advocacy group and not rank-and-file working fishermen as was originally intended. The only way to cure that problem is to provide some sort of fair compensation program for working fishermen who do attend so as to replace their lost income. Some local fishing associations can do this, but many others cannot.

We need commercial fishermen/women on the regional councils and the voices for recreational and tribal fishermen also have to be there.

But a lot more care has to be taken to ensure it is the very best people getting appointed, in the Nat Bingham mold, and not simply the narrowly focused pursuing their own pecuniary interests – whether that be more fish for themselves or their clients, or grants, raises or promotions.

Conclusion

Carefully examining the facts surrounding the current state of fishery management it's hard to find much good to say about it. The facts, rather, lead to the conclusion that, overall, recent management has been pretty abysmal. Certainly, we can do better.

In fact, we must do better. Now is no time to be praising mediocre performance.

Given the challenges ahead, ranging from (1) new uses proposed for ocean waters – from new offshore drilling, offshore aquaculture, wind and wave energy, and deep sea mining, to

(2) increasingly erratic and extreme weather conditions and other changes (e.g., ocean acidification) brought on by global warming, to (3) the current crisis of how to fund the research and basic data collection that is the underpinning for fishery management, this is no time for self-congratulation.

We have to demand more from ourselves and we need to demand a lot more from fisheries management. Mediocrity is not an option. 🐟

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