



JUN 27 2014

MEMORANDUM FOR: Eileen Sobeck  
Assistant Administrator for NOAA Fisheries

FROM: Keith Rizzardi *KWRizzard*  
Chair, Marine Fisheries Advisory Committee

SUBJECT: Recommendations on MSA reauthorization

This memo transmits recommendations by the Marine Fisheries Advisory Committee on three issues for consideration during the effort to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These findings and recommendations were discussed at the Managing Our Nation's Fisheries 3 Conference, deliberated by the Committee over the past few months, and finalized at our June 12<sup>th</sup> and 17<sup>th</sup> teleconference meetings.

MAFAC's recommendations are:

1. Add a Definition for Subsistence Fishing  
*The Committee recommends adding a definition for "subsistence fishing" and including subsistence fishing in appropriate sections in the Act.*
2. Establish an Aquaculture Definition and a National Aquaculture Management Program  
*The Committee recommends clearly defining aquaculture and including in the MSA a new Title that establishes a management and research program for aquaculture taking place in the EEZ.*
3. Flexibility in Rebuilding Plans  
*The Committee recommends maintaining existing language in the MSA regarding rebuilding plans; however the committee generally recommends the addition of the following: "Where new data suggests that a fishery was erroneously designated as overfished, MAFAC recommends that rebuilding plans should be expeditiously re-evaluated."*

Separate recommendation statements were developed for each of the three issues and are attached. The development of this work was accomplished by extensive effort of three separate working groups which assessed different options for each issue. The Committee respectfully requests that you forward the reports and recommendations on behalf of the Committee to the Secretary of Commerce or other appropriate senior federal officials.

If you or senior staff would like to receive a briefing on the June results from MAFAC leadership, as well as to discuss your ideas or tasks for the Committee's continued work in 2014, please contact me or Heidi Lovett, the Committee's Designated Federal Officer (Acting) at your earliest convenience.

Cc: Dr. Kathryn Sullivan, Acting Under Secretary for Oceans and Atmosphere  
Dr. Mark Schaefer, Assistant Secretary for Conservation and Management

Attachment





## **MAFAC Recommendation**

### **Define Subsistence Fishing in the Magnuson-Stevens Act**

#### **Issue Statement**

Although there are references to the “unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining [the] economic growth” of Pacific Insular Areas, the term “subsistence” is not specifically defined in the Magnuson-Stevens Act (MSA). Additionally, subsistence fishing can be important in other regions of the United States, in addition to the Pacific Insular Areas. Subsistence fishing may, in part, be inferred in the definitions of commercial or recreational fishing (as used in the MSA), but not in its entirety from some perspectives. Commercial fishing is defined in the MSA to mean “fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.” Although subsistence fishermen may use fish they harvest in barter or trade, they would never consider it as having “entered commerce.” The purpose of the barter or trade is usually for cultural or traditional purposes, rather than commerce.

For these reasons, many participants at the Managing Our Nations Fisheries 3 conference and at other venues have voiced the desire that a clear definition of “subsistence fishing” be included in the reauthorization of the MSA as a distinct form of fishing.

#### **MAFAC Recommendation**

Upon review of definitions developed by the Western Pacific Regional Fishery Management Council; in the Final Rule on Fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments; State of Hawaii; and State of Alaska, MAFAC recommends that NOAA Fisheries propose adding the following under Section 3, Definitions in the MSA:

The term “subsistence fishing” means fishing in which the fish or marine resources harvested from waters customarily fished by that community are intended for personal, family, or community consumption or traditional uses through sharing or customary exchange. All fish or marine resources harvested by subsistence fishing must be compliant with all other laws.

Additionally, “family” and “customary exchange” should be defined as:

The term “customary exchange” means the nonmarket exchange of marine resources between fishermen and community residents, including family and friends, for goods, and/or services for cultural, social, or religious reasons.

The term “family” means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

## **Sections of MSA affected**

In addition to placing this definition in Section 3 of the MSA, MAFAC further proposes that NOAA Fisheries propose the following:

- Add a new section in Section 2(a), Findings, Purpose, and Policy that describes importance of subsistence fishing.
- Modify Section 2(a)(9) by replacing “commercial and recreational fisheries” with “all fisheries.”
- Expand Section 2(a)(10) describing the uniqueness of the Pacific Island Areas to include term “subsistence.”
- Expand Section 2(b)(3) to include “subsistence” along with commercial and recreational fishing.



## MAFAC Recommendation

### Flexibility of Rebuilding Plans

#### Issue Statement

MSA Section 301 currently requires overfished stocks to be rebuilt in as short a time possible, not to exceed 10 years, with exceptions for species' biological differences, international agreements, and environmental conditions. Draft legislation and a coalition of fishing groups have called for the flexibility to establish longer rebuilding times and an extended emergency regulation period, which would require changes in the MSA.

Those supporting flexible rebuilding times are primarily concerned with the short-term socioeconomic effects of the 10-year rebuilding times. Reduced harvest levels are disruptive to individual fishermen, related businesses, and fishing communities and supporters believe that flexible rebuilding times will mitigate adverse short-term socioeconomic impacts to certain user groups. Others advocate replacing the 10-year timeframe with biologically-based rebuilding time frames for each overfished stock.

However, there is evidence of successful rebuilding under the existing MSA rebuilding time frames. A 2013 National Academy of Sciences report<sup>1</sup> found that three quarters of 35 stocks were either rebuilt or making progress toward rebuilding. Additionally, a 2010 review of rebuilding plans worldwide<sup>2</sup> found that large harvest reductions at the beginning of a rebuilding period are key to successful rebuilding in most cases. To rebuild biomass, a fish stock needs to have good recruitment at the same time that fishing mortality is reduced. The smaller reductions in fishing mortality implied by longer, flexible, or phased in rebuilding times may ease socioeconomic effects in the short term, but short stop the potential long term maximum sustainable yield and require much longer periods of restricted harvests.

Emergency regulations can last for 180 days and provide management while a full plan amendment is drafted. The expedited process for an emergency rule limits public comment and analysis by science and user panels. Extending the period is not necessary since fishery management councils have used a series of 180 day regulations while a full amendment is considered when necessary.

#### MAFAC recommendation

MAFAC recommends maintaining the existing MSA language on rebuilding times. MAFAC supports one addition to the MSA section on rebuilding:

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<sup>1</sup> National Research Council. Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States. Washington, DC: The National Academies Press, 2014. [http://www.nap.edu/openbook.php?record\\_id=18488](http://www.nap.edu/openbook.php?record_id=18488)

<sup>2</sup> Murawski, S. A. 2010. Rebuilding depleted fish stocks: the good, the bad, and, mostly, the ugly. – ICES Journal of Marine Science, 67: 1830–1840. <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=18488>

“Where new data suggests that a fishery was erroneously designated as overfished, MAFAC recommends that rebuilding plans should be expeditiously re-evaluated.”

Longer rebuilding times will slow down rates of recovery and delay economic and social benefits of rebuilt stocks. The current MSA language allows longer rebuilding times when the biology of a stock dictates. Additionally, emergency regulations should remain limited to 180 days, since they are based on limited analysis by science and advisory panels and limited public input.



## MAFAC Recommendation Establishing a National Aquaculture Management Program in the Magnuson-Stevens Act

### 1.0 ISSUE STATEMENT

#### 1.1 Overview

NOAA Fisheries regulates fishing in the U.S. Exclusive Economic Zone (EEZ) pursuant to Magnuson-Stevens Fishery Conservation and Management Act (MSA) based on Fishery Management Plans (FMP) created by the Regional Fishery Management Councils. NOAA has embraced using the authorities in MSA and a 1993 legal opinion that aquaculture in the EEZ meets the definition of fishing to facilitate implementation of critical national aquaculture policy and planning initiatives. Yet, aquaculture is not currently mentioned in MSA by name.

Recent planning and policy documents by the President's National Ocean Council (NOC), the Department of Commerce and NOAA have taken the strong position that sustainable commercial marine aquaculture should be developed in federal waters, e.g., Vision 2020: The Future of U.S. Marine Fisheries, MAFAC, 2007; NOAA Marine Aquaculture Policy, NOAA, 2011; National Aquaculture Research and Development Strategic Plan, JSA, 2012; National Ocean Policy Implementation Plan, NOC, 2012. This mandate is consistent with the expanding global investment in aquaculture technologies to meet current and future seafood needs.

It is becoming abundantly clear the United States should increase domestic seafood supplies, reduce reliance on imports and improve food security. The country currently imports 91% of the seafood it consumes, adding substantially to the trade deficit. As global competition for seafood increases, the risk of supply chain disruption and sudden increases in seafood prices grows, unless we reliably produce more seafood domestically. Increased landings of wild fish appear to be constrained going forward by conservation concerns, while tremendous potential for increased fish and shellfish production from offshore aquaculture exists.

MAFAC has also taken a strong position to support marine aquaculture development in its 2012 policy advice to the Secretary of Commerce and NOAA. Moreover, several regional fishery management councils have actively moved forward developing positive policy statements and prototype permitting processes for commercial projects in the EEZ. NOAA in its support of these initiatives issued national guidelines for EEZ aquaculture development in 2011 and indicated the Gulf Coast Council's planning and rule making process could be the model for the other Regional councils. NOAA is promulgating rules for implementation of the Gulf Council's Management Plan (GFMP) for offshore marine aquaculture (adopted in 2009), which, according to NOAA, will likewise serve as guidance for other councils.

Since NOAA has determined that MSA provides the legal authority to regulate aquaculture and definitive actions have been taken by several Fishery Councils towards siting research and commercial projects in the EEZ, it would be prudent to formalize this authority during the current MSA reauthorization. Important issues to address with MSA include: a definition for aquaculture (**pointed out by the recent Managing Our Nation's Fisheries Conference 3, Advancing Sustainability held in 2013**), general national regulatory and management guidance











(C) and includes the use of propagation and rearing technologies for food and commercial products, stock replenishment of commercial and recreational fisheries, rebuilding populations of threatened and endangered species, and restoration and conservation of aquatic habitat;

(no.?) the term “carrying capacity” means the maximum number of permitted aquaculture facilities a site can sustain without causing unacceptable negative impacts on ocean water and bottom quality, ecosystem structure, productivity, or native species.

#### **4.3 Outline Title V National Aquaculture Management Program – some specific language provided**

##### Title V – NATIONAL AQUACULTURE MANAGEMENT PROGRAM

##### Sec. (?) NATIONAL STANDARDS FOR AQUACULTURE CONSERVATION AND MANAGEMENT

(a) In General - Any aquaculture management plan prepared and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for aquaculture conservation and management.

(no.?) Conservation and management measures shall prevent exceeding the total annual aquaculture production value set for the region and the carrying capacity of a farm site, while achieving, on a continuing basis, yield for the United States aquaculture industry.

(no.?) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate sites among various United States aquaculturists, such allocation shall be (A) fair and equitable to all such aquaculturists; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of area.

(no.?) Conservation and management measures shall be based upon the best scientific information and be consistent with sustainable harvest and conservation of wild stocks.

(no.?) Conservation and management measures shall, where practicable consider efficiency in the utilization of fishery resources for aquaculture; except that no such measure shall have economic allocation as its sole purpose.

(no.?) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(no.?) Conservation and management measures shall, consistent with the conservation requirements of this Act, take into account the importance of fishery resources for aquaculture to coastal communities by utilizing economic and social data that are based on best scientific information, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize averse economic impacts on such communities.

(no.?) Conservation and management measures shall to the extent practicable, promote the safety of human life at sea.

Sec. (?) REGIONAL FISHERY MANAGEMENT COUNCILS AND AQUACULTURE MANAGEMENT

(a) GENERAL Each Regional Fishery Management Council, as defined by Section: 302 of this Act, shall have jurisdiction over permitting the siting and operation of aquaculture facilities culturing permitted species in the federal waters under each Council's management authority.

Sec. (?) CONTENTS OF FISHERY MANGEMENT PLANS FOR AQUACULTURE (Similar Language to Title 3 needed)

(a) REQUIRED PROVISIONS

(b) DESCRETIONARY PROVISIONS

(c) PROPOSED REGULATIONS

(d) SITING AQUACULTURE FACILITIES, EXCLUSIVE USE, PROEPRTY RIGHTS, AND LEGAL PROTECTIONS. (New, needs to be defined for commercial aquaculture operations)

Sec. (?) ACTION BY THE SECRETARY (Similar language to Title 3 needed)

(a) REVIEW OF AQUACULTUE PLANS

(b) REVIEW OF AQUACULTURE REGULATIONS

(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS

(d) ESTABLISHMENT OF FEES

(e) REPEAL OR REVOCATION OF AN AQUACULTURE MANAGEMENT PLAN

(f) ENVIRONMENTAL REVIEW PROCESS

Sec. (?) OTHER REQUIREMENTS AND AUTHORITY (Similar language to Title 3 needed)

(a) INFRASTRUCTURE EVALUATION AND NOTIFICATION OF ENTRY

(b) EMERGENCY ACTIONS AND INGTERIM MEASURES

(c) RESPONSIBILITY OF THE SECRETARY

(d) EFFECT OF CERTAIN LAWS AND CERTAIN TIME REQUIREMENTS

(e) JUDICIAL REVIEW

(f) NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES

(g) CENTRAL REGISTRY SYSTEM FOR AQUACULTURE FACILITIES

Sec. (?) STATE JURISDICTION (Similar language to Title 3 needed)

(a) IN GENERAL

(b) EXCEPTION

Sec. (?) PROHIBITED ACTS (Similar language to Title 3 needed)

Sec. (?) CIVIL PENALTIES AND PERMIT SANCTIONS (Similar language to Title 3 needed)

Sec. (?) CRIMINAL OFFENSES (Similar language to Title 3 needed)

Sec. (?) CIVIL FORFEITURES (Similar language to Title 3 needed)

Sec. (?) ENFORCEMENT (Similar language to Title 3 needed)

Sec. (?) AQUACULTURE PROGRAM, MONITORING, RESEARCH PLANS AND OPERATIONAL FUNDING (Similar language to Title 4 needed and new language)

(a) REGISTRATION AND INFORMATION MANAGEMENT

(b) INFORMATION COLLECTION

(c) AQUACULTURE RESEARCH PLAN

**4.4 Outline Title V New Funding Authorization – Some specific language provided**

(d) FUNDING AUTHORIZATION TO CARRY OUT THE PROVISIONS OF TITLE V – Provides new funding to support establishing the aquaculture permitting program for the United States Exclusive Economic Zone and provide regulatory oversight and tools for effective management and to support aquaculture research, demonstration and commercialization projects to improve technologies for utilizing federal waters.

There is authorized to be appropriated to the Secretary to carry out the provisions of this title

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(1) \$ xxx for fiscal year 2015

(2) \$ xxx for fiscal year 2016

(3) \$ xxx for fiscal year 2017

(4) \$ xxx for fiscal year 2018

(5) \$ xxx for fiscal year 2019

(6) \$ xxx for fiscal year 2020

(7) \$ xxx for fiscal year 2021

**5.0 REFERENCES USED**

Magnuson-Stevens Fishery Conservation and Management Act, 2007.

Proceedings Managing Our Nation's Fisheries 3, Advancing Sustainability, May 6-9, 2013.

Vision 2020: The Future of U.S. Marine Fisheries, MAFAC, 2007.

NOAA Marine Aquaculture Policy, 2011.

National Ocean Policy Implementation Plan, USDOC, 2012.

Final Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico, Gulf of Mexico Fishery Management Council and NOAA, NMFS, 2009

Comments on the Gulf of Mexico FMP, Coalition for U.S. Seafood Production, 2013