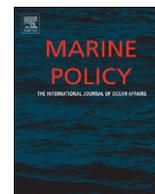




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## The Magnuson–Stevens act (1976) and its reauthorizations: Failure or success for the implementation of fishery sustainability and management in the US?

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### ABSTRACT

The Magnuson–Stevens Fishery Conservation and Management Act (1976), opened a new era of federal fishery management in the United States. It was enacted primarily to establish a system for conserving and managing fisheries in the new 200-mile (EEZ). The US assumed exclusive authority for managing all fisheries within the EEZ, except for highly migratory species such as tunas and billfishes. Within the framework of the Act, eight Regional Fishery Management Councils (Regional Councils) were created, which are responsible for preparing Fisheries Management Plans (FMPs) in federal waters under their jurisdiction. Each FMP must meet a series of National Standards (NSs) for conservation and management. The Act was reauthorized in 1996 with the passage of the Sustainable Fisheries Act (SFA), which aimed at fine tuning the fishery regulatory apparatus that was established under the original Act. This “fine tuning” involved increased attention to biological concerns, and removal of ambiguities within it. The Act was reauthorized again in 2007, mainly to provide for more clear directives and regulations to end overfishing. After more than thirty years since the Act was passed into law, the debate among conservationists, commercial and recreational fishery representatives, and politicians on the effectiveness of the Act in achieving its purported goals it still continues. Is the Act delivering on its promises? Do NSs reflect the most important priorities for the US fishery resources, conservation and sustainable exploitation? Do the Regional Councils represent all parties that should be involved in the fisheries resources management? The aim of this paper is to provide a critical analysis to answer these questions. This paper begins with a review of the Act and its background, followed by discussion and analysis of the Act’s benefits and flaws. Finally, suggestions for the implementation of its structure and future directions in fishery management strategies are made.

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### 1. Introduction

The environment is a prime site of conflict between competing values and interests [1]. Thus, managers of natural resources have to strike the balance between highly political, economic, and conservationist lobbying pressure, which complicates their job of providing the most efficient management design for resource sustainability. Some experts [2] assert that central governments should control the management of most natural resource systems. Others see resource privatization as the only way to save common resources [3]. The Magnuson–Stevens Fishery Conservation and Management Act (hereinafter referred to as the MSFCMA or the Act), Public Law 94–265 as amended, provides for the conservation and management of fisheries resources within the

US EEZ. The EEZ extends from the seaward boundary of three nautical miles of each of the coastal States (nine nautical miles for Texas, Puerto Rico, and the Gulf of Mexico coast of Florida) to 200 nautical miles from shore. In order to hold its validity as a tool to ensure and promote the fishery sustainability in the US, it has been the object of further reauthorizations, which redefined its objectives under more conservative political influence [4]. However, the belief that a complete understanding of the complex interrelationships in an ecosystem would improve the management, with no regard for the socioeconomic aspects of those decisions, is naïve and ineffective, as the Chesapeake Bay ecosystem studies demonstrated [4]. The cause of this ecosystem deterioration is the excessive concentrations of phosphate and nitrogen run off. Increasing the efficiency of sewage treatment plant in removing those inorganic nutrients and closing the oyster fishery so that these populations of filter feeders can increase and clean the bay’s water are the most clear solutions [4]. However, all interactions among species in an ecosystem are difficult to be

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understood and require consistent investments for their research [4]. This misleading strategy brought to the erroneous conclusion that the Act failed in delivering its conservation promises, shifting the search for problem solutions to the symptom, instead of the real cause of the problem, that is the – open access – nature of the fisheries in US waters.

Giving the possibility that fisheries resources protection issues have at least a partial non-anthropocentric ethical dimension for a significant portion of the American public [5], what are the implications for the concerns of different parties involved? What are their different values, priorities, and needs in the current institutional arrangements for the US fisheries management, namely the MFCMA? Is the Act delivering on its promises? Are the National Standards reflecting the most important priorities for the US fisheries resources conservation and sustainable exploitation? Do the Regional Councils represent all parties that should be involved in the fisheries resources management?

## 2. The origin of the Act, its structure, and implementation through time

Passed into law in 1976, the Act was a direct answer to the increasing level of exploitation on the fish stocks off the US coasts caused by foreign fishing fleets, which were perceived as a threat to both the US fishing industry and the resource itself. In 1975, foreign fishing took 6.4 billion pounds of the 7 billion pound catch from the waters 12–200 miles off the US coast [6]. This foreign fishing effort was identified as the primary cause of the depletion of many coastal species at the time [7].

The Act established eight Regional Fishery Management Councils (Regional Councils) which are responsible for preparing their own Fishery Management Plans (FMPs) for the fisheries within their EEZ sub areas of jurisdiction [8]. Each FMP must meet a series of National Standards (NS) for conservation and management, as set forth in the Act (Table 1). Membership in each Regional Council consists of a set size of voting and nonvoting members. The voting members are the principal State officials with marine fishery management responsibilities, the regional director of the NOAA National Marine Fisheries Service (NMFS), and up to 17 “qualified members” that are appointed by the US Secretary of Commerce from a list of individuals nominated by the Governor of each State, with knowledge or expertise in fishery management, conservation, or recreational harvest of the relevant fisheries. The nonvoting members include the regional or area director of the US Fish and Wildlife Service for the geographical area concerned, the commander of the relevant US Coast Guard district, the executive director of the Marine Fisheries Commission of the concerned region, if any, and a representative of the US State Department [7–9].

The Act was reauthorized and amended in 1996, with the enactment of the SFA, as an answer toward increasing concern on conservation and ecosystem preservation. Provisions of the SFA included the following: (1) the removal of discretion over the definition of overfishing, and the required rebuilding of overfished stocks within a specified time period (usually 10 years); (2) new requirements to reduce bycatch and waste; and (3) provisions protecting essential habitat for fisheries systems [10].

The Act was reauthorized in 2007 to (1) mandate the use of annual catch limits and accountability measures to end overfishing (it is declared that each State has to define its annual catch limits for each specific fishery and that overfishing has to be stopped for 2011); (2) provide for widespread market-based fishery management through limited access privilege programs; and (3) call for increased international cooperation [11].

**Table 1**

National Standards (NS) for fishery conservation and management (MFCMA 2007).

|    |   |
|----|---|
|    | Any Fishery 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 fishery conservation and management:  |
| 1  | Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.  |
| 2  | Conservation and management measures shall be based on the best scientific information available.   |
| 3  | To the extent practicable, an individual stock shall be managed as a unit through its range, and interrelated stocks shall be managed as a unit or in close coordination.   |
| 4  | Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various US fishers, such allocation shall be fair and equitable to all, reasonably calculated to promote conservation and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of the privileges.   |
| 5  | Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.   |
| 6  | Conservation and management measures shall take into account and allow for variances in fisheries, fishery resources, and catches.  |
| 7  | Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.  |
| 8  | Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities. |
| 9  | Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.  |
| 10 | Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.   |

The NMFS is the agency responsible for managing the fisheries under US jurisdiction. The NMFS is an office within the National Oceanic and Atmospheric Administration agency (NOAA), which is an administration within the US Department of Commerce (DOC). The Secretary of the DOC and the Director of the NMFS are appointed by the US President. The mission of NMFS is (1) to rebuild and maintain sustainable fisheries; (2) to promote the recovery of protected species; and (3) to protect and maintain the health of coastal marine habitats [12].

The mission of the DOC is (1) to build for the future and promote US competitiveness in the global marketplace by strengthening and safeguarding the Nation's economic infrastructure; (2) to keep America competitive with cutting-edge science and technology and an unrivaled information base; and (3) to provide effective management and stewardship of the nation's resources and assets to ensure sustainable economic opportunities [12].

The goals of the National Fishery Management Program (NFMP), as listed in the MSFMCA Section 2(a) (6), are to (1) prevent overfishing; (2) rebuild overfished stocks; (3) ensure conservation; (4) facilitate long-term protection of essential fish habitats; and (5) realize the full potential of the Nation's fishery resources [13]. The NFMP was premised on the conclusion “that fishery resources must be conserved and managed in such a way as to assure that an optimum supply of food and other fish products, and that recreational opportunities involving fishing, are available on a continuing basis and that irreversible or long-term adverse effects on fishery resources are minimized” [7].

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