

The Federal-Public Partnership in Fisheries Management: Benefits and Failures

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Admiral Watkins and Members of the Commission,

I am Terry L. Leitzell, General Counsel of Icicle Seafoods. Icicle Seafoods is an Alaska corporation founded in 1965. We started with a single salmon cannery in Petersburg, Alaska and have expanded over the years with multiple locations throughout Alaska that process salmon, crab, herring, halibut, sablefish, cod and pollock. We have processing operations throughout Alaska, including Petersburg, Seward, Homer, Dutch Harbor, Adak, and St. Paul. In addition, we operate five floating processing vessels that process fish in various remote parts of Alaska. In addition to Alaska, we have two plants in the State of Washington and jointly own a canned salmon labeling warehouse in Astoria, Oregon. Although we do own a small number of catcher vessels, over 85% of our business is a result of purchasing fish from independent fishermen throughout Alaska.

Enactment of the Magnuson-Stevens Act

From January 1978 through June 1981, I was the Assistant Administrator for Fisheries in NOAA and the head of the National Marine Fisheries Service. The Magnuson-Stevens Act had been recently enacted and became effective in April 1977, less than a year before I took office. I had been a senior State Department negotiator in the U.N. Law of the Sea negotiations from 1971 through the fall of 1978.

The issues of jurisdiction over ocean resources, including fisheries, in the area beyond the traditional three-mile territorial sea, were new and the U.N. negotiations were far from completion in the mid-1970's. Ecuador had unilaterally extended its fisheries jurisdiction to 200 miles, the United Kingdom and Iceland had engaged in serious military confrontation during the "cod wars", and the U.S. and the U.S.S.R. both negotiated hard to retain freedom of movement for their military ships and aircraft. At the height of tension on oceans issues internationally, the Congress enacted, and President Ford signed, the legislation that extended U.S. fisheries jurisdiction to 200 miles.

The United States launched a fisheries management system to cover vast areas of the oceans off all U.S. coasts, including several of the largest and most valuable fisheries in the world. Prior to 1977, U.S. fisheries were managed by the individual states within the three-mile territorial sea. The only exceptions were fisheries that extended beyond U.S. jurisdiction into international waters and the territorial sea of other countries. Those fisheries were managed under several international agreements with Canada, the U.S.S.R., and Japan.

NOAA and the National Marine Fisheries Service were given the regulatory authority to implement the fisheries management system in spite of a lack of experienced people in the federal government. A significant number of state government fishery managers joined NMFS, but the agency was essentially a scientific research organization, not a regulatory agency. NMFS had received regulatory mandates in the early 1970's with enactment of the Endangered Species Act and the Marine Mammal Protection Act, but the century-old agency was staffed mostly by scientists working on research programs.

Establishment of the Fishery Management Council System

The eight fishery management Councils were formed, Council staffs were hired, and NMFS began to build the unique regulatory partnership with the Councils. Congress had sent a clear policy message that fisheries management was to be a shared enterprise between the federal government (NMFS) and the affected public acting through the eight Councils. No other U.S. federal regulatory activity occurs through such a partnership even today, twenty-five years later.

We scrambled at NMFS to make the new system work, but the problems were extensive. NMFS fishery stock assessment scientists were in the public spotlight, speaking at Council meetings on the status of various stocks and making recommendations for allowable catches. Council members pushed for very specific recommendations while scientists were only comfortable in providing ranges. The balance of authority between the Councils and NMFS was constantly tested, particularly in New England, and the political battles began. Members of Congress leaned hard on us at NMFS to let the Councils make the decisions. NMFS' unwillingness to accept some Council actions, for example on New England groundfish, brought intense political pressure. In Alaska, the initial focus was on building the U.S. fishing industry and moving the foreign fishing and processing fleets out of the U.S. 200-mile zone.

In the 1980's, NMFS gave the Councils more and more authority in practice, although the legislative mandate had not changed. Most Council actions were approved, the U.S. industry flourished, and the political heat evaporated. In the 1990's, Congress returned to the field and imposed extensive new statutory requirements on the fishery management system for habitat protection, rebuilding of overfished stocks, and reduction of effort. In the last few years, litigation against NMFS exploded along with attacks on Council actions, putting stress on both NMFS and Council staff and threatening closure of fisheries.

Current Status of the Regulatory Partnership Experiment

The Magnuson-Stevens Act fishery management system is not broken, but its implementation is flawed, at least in some parts of the country. Over the last two decades, the Councils have gradually obtained increasing decision-making power in practice. Recently, several national environmental organizations have taken an increasing interest in fishery management decisions and have sued NMFS over Council decisions. The mushrooming of litigation to over 100 lawsuits nationwide has put immense pressure on the NMFS-Council partnership, leading to almost complete collapse of that partnership in some regions.

At the same time, the North Pacific Fishery Management Council and the NMFS Alaska Region have worked well together, demonstrating that the two-headed partnership can work. The North Pacific Council is a model of effective, transparent government. At the federal level, no other regulatory process so exemplifies the goal of government in the sunshine.

Recommendations for Change

The Council system is here to stay and should remain in place. Congress could not summon the political will to eliminate the Councils and should not do so. But the balance between NMFS and the Councils needs to be adjusted to restore a more healthy give-and-take in fishery management and conservation decisions. A consistent national process and approach will improve the fishery conservation and management system. The following examines several weak points in the current system and provides my personal recommendations.

1. **Council Appointments.** The Act requires that the public seats on the Councils be filled by the Secretary of Commerce choosing from lists of possible appointees submitted by Governors. Appointments to any government body are inherently political and the Council appointment process is subject to political pressures on both the Governors and the Secretary. That cannot be eliminated. However, for at least some Councils, the current system results in choices being made solely by the Governors, some of whom submit the preferred candidate's name along with others that will surely not be chosen. The Secretary has little or no practical ability to ensure that each Council has a balanced representation from the fishing industry, communities, environmental and conservation groups and other public interests. The balance must be altered.

Recommendation: require each Governor to submit no fewer than seven names for a Council seat and to provide balance in the list. Provide the Secretary the authority to reject an entire list and to request that the Governor submit a new list.

2. **Scientific Research.** The North Pacific Council has a fourteen-person Science and Statistical Committee with members from NMFS, the Alaska Department of Fish & Game, the Washington Department of Fisheries, and several academic institutions. The SSC meets just prior to each Council meeting to review and make written recommendations on all matters before the Council. The SSC Chairman presents the written report, provides oral comments, and answers questions from the Council in open Council sessions. The Magnuson-Stevens Act requires that each Council establish an SSC, but provides no guidance on size or process for the SSC. At least one Council ignores its SSC, while interest groups in another region want a statutory requirement for outside peer review. Good science is essential to good management and conservation, and NMFS research programs should be better-supported and better-funded.

Recommendations:

1. **Require each Council to appoint a Science and Statistical Committee of no fewer than ten members, with membership from federal and state agencies and from academic institutions. Require that a Council receive advice and recommendations from its SSC before taking final action on any matter and require that the SSC Chair certify that its advice has been given.**
2. **Reject any new requirement for additional peer review of NMFS research that supports fishery management and conservation decisions.**

3. **Advisory Panels.** The Act requires each Council to establish an advisory panel of at least seven persons representing commercial, recreational, and other interests. The North Pacific Council AP has twenty-one members representing harvesters, processors, environmental groups, recreational fishermen, observers, and other public interests.

Recommendations:

1. **Add a statutory requirement that environmental and conservation groups be included in each AP and that each AP consist of at least twelve members.**
 2. **Require that each Council receive advice and recommendations from its AP on each matter before the Council for final action and that the AP Chairman certify that its advice and recommendations have been given.**
4. **NMFS Approvals/Disapprovals of FMPs, FMP Amendments and other Council Regulatory Actions.** The Magnuson-Stevens Act provides that NMFS (delegated authority from the Secretary of Commerce) may disapprove or partially disapprove any fishery management action taken by a Council and may request the Council to revise the action. If the Council fails to take further action, NMFS may act to initiate a revised action on its own and move forward, after seeking Council comment. In practice, NMFS has disapproved some Council actions and some Councils have proposed revised actions. However, in other cases, the Council has not submitted a revised action and the process has stalled. The other alternative for NMFS is to use its “stick” of preparing its own action, but that is fraught with political heat and consequently is seldom used. The current structure is too stark in the choices available for NMFS.

Recommendation: revise the Act to provide NMFS with the authority to initiate a revised action to be acted upon by the Council. Following disapproval, if the Council does not approve a revised action within 60 days, the NMFS Regional Administrator on that Council may propose a revised action and the Council must vote on that proposal at its next scheduled meeting.

5. **Development of Agendas for Fishery Management and Conservation.** In other federal regulatory settings, the agency head has the ability to set the agenda, determine which regulatory actions should be taken, and approve or disapprove such actions. In the Magnuson-Stevens Act process, the NMFS head has no authority to set the fishery management agenda for a Council. As in the case of a disapproval of a Council action in Recommendation # 4 above, the NMFS head can only take the drastic action of initiating a NMFS plan, without the cooperation of the Council.

Recommendation: revise the Act to require that the NMFS Regional Administrator and each Council Chairman agree to a written agenda for that Council for the subsequent year.

Conclusion: Twenty-five years of extensive regulatory actions for fishery conservation and management have produced a mixed result, with a U.S. industry that has grown and prospered in many areas, and many fisheries that are highly productive and well-managed. On the negative side, a significant number of stocks are over-fished and some industry segments and their communities are struggling economically. The benefits are that the regulatory process is more open and transparent than any other federal process. We must not lose that benefit. The system can be rebalanced by applying a limited number of additional requirements to the Councils and by providing some additional authority to NMFS. The Councils have proved that they are strong and can survive in this partnership. They will continue to be strong and the overall system will be improved by these changes.

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Monitoring and Catch Accounting in the North Pacific

During the two panel presentations this afternoon, several participants will discuss aspects of the North Pacific fisheries management program. I want to make a few comments on the NMFS and State of Alaska program for catch accounting and monitoring of fishing effort. Overall, the system is excellent and is perhaps the best in the country.

Objectives

NMFS and the Alaska Department of Fish and Game coordinate closely on the collection of fishery management and conservation data. The purposes are several, including the following:

- Monitoring of all catches, both in directed fisheries and for bycatch, to ensure that quotas are not exceeded.
- Collection of fisheries data such as time and place of all catches for use in ongoing scientific research.
- Enforcement of closed or restricted areas where fishing may be prohibited for all or part of the year, of areas in which certain gear may be restricted, and of areas designated for protection of endangered species.

Methods

Fish Tickets. The basic document for data collection is the fish ticket required by the Alaska Department of Fish and Game which includes information on the coordinates of the fishing site, catch by pounds of each species and its disposition, discard species and amounts, name of the catcher vessel, and place of delivery. Fish ticket data is submitted to both ADF&G and to NMFS and is entered into a data base maintained by ADF&G.

Permits. Each vessel participating in a federal fishery must have a federal fishery permit and, in the case of the groundfish and crab fisheries, must have a License Limitation Program permit. Each processor must obtain a federal processing permit for its facilities, whether onshore or floating.

Logbooks. Each catcher vessel must maintain a fishing log that records place, time, and catch data and must submit it to NMFS quarterly. Processing facilities must maintain production logbooks with information on catch deliveries, pounds of products made, and discards.

Observers. Federally-required observers are present in many onshore processing plants, offshore catcher-processors, and catcher vessels. In the Bering Sea groundfish fisheries, for

example, onshore processing plants and offshore catcher-processors have two full-time observers to ensure 24-hour coverage. Groundfish catcher vessels over 125 feet in length have 100% coverage and vessels between 60 and 124 feet have 30% coverage. We estimate that approximately 80% of the Bering Sea groundfish catches are on vessels with observers.

Vessel Monitoring System. Automatic position-reporting equipment has been placed on all American Fisheries Act pollock trawlers to provide continuous reports to NMFS on the exact location of each vessel, mostly for purposes of enforcing area restrictions for the protection of endangered Steller sea lions.

Overall, the data collection and monitoring system is extensive, with federal reporting requirements covering forty-one pages of regulations. Many reports are required to be made electronically so that federal fishery managers can make real-time decisions on closing areas or fisheries to ensure that quotas are not exceeded. In some fisheries, cooperative efforts between NMFS and the fishing industry have lightened the burden on NMFS without any reduction in the accuracy or usefulness of the data collected. For example, the American Fisheries Act catcher vessel cooperatives in the Bering Sea pollock fishery have agreed to monitor pollock catches and to order their member vessels to stop fishing before quotas are reached. The result has been very accurate achievement of those quotas, with no catches exceeding quotas and only small amounts of quota unutilized. The cooperatives have also undertaken a voluntary, and successful, program to reduce bycatch of salmon through twice-daily reporting and required movement away from areas of high bycatch.

Thank you.