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## Taking Stock: The Magnuson-Stevens Act Revisited: The Magnuson Act Thirty-Five Years Later

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# The Magnuson Act Thirty-Five Years Later

**Eric Schwaab\***

Marine fish and fisheries have been vital to the survival and prosperity of communities in the United States for hundreds of years. Commercial and recreational fishing industries depend on healthy and abundant fish stocks and marine ecosystems to provide lasting jobs, food, and recreational opportunities. Currently, fishing in all of its forms generates seventy-two billion dollars per year and 1.9 million full- and part-time jobs for our nation's economy.<sup>1</sup>

Last year marked the 35<sup>th</sup> anniversary of the Magnuson-

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1. NAT'L OCEANIC AND ATMOSPHERIC ADMIN., STATUS OF STOCKS: ANNUAL REPORT TO CONGRESS ON THE STATUS OF U.S. FISHERIES 1 (2011), *available at* <http://www.nmfs.noaa.gov/stories/2011/07/docs/handout.pdf>.

Stevens Fishery Conservation and Management Act<sup>2</sup> as the primary law for managing marine fisheries in Federal waters. Since its initial enactment in 1976 and major reauthorizations in 1996 and 2007, the Magnuson Act has proven to be a key driver for the National Oceanic and Atmospheric Administration (NOAA) in delivering on our nation's commitment to ocean stewardship, sustainable fisheries, and healthy marine ecosystems. This anniversary year marks a critical point in the Act's history. Because of the Magnuson Act, the United States is turning the corner on ending overfishing in federally managed fisheries, rebuilding stocks, and ensuring conservation and sustainable use of our ocean resources. As prescribed by the 2007 reauthorization, we are now on track to have annual catch limits and accountability measures in place for all 528 federally managed fish stocks and complexes.

The successful implementation of the Magnuson Act's provisions to end overfishing and rebuild stocks is the result of strong partnerships and shared commitment among NOAA Fisheries, the eight regional fishery management councils, commercial and recreational fishing industries, environmental groups, and the public. In fact, the Magnuson Act established this partnership framework with a unique, highly participatory management structure – the regional fishery management councils prepare fishery management plans to “achieve and maintain, on a continuing basis, the optimum yield from each fishery.”<sup>3</sup> The councils, composed of stakeholders and the states, are charged with developing region-specific fishery management plans and associated management measures. The councils choose from a variety of options to manage fish stocks – including quotas, area closures, and gear restrictions – and allocate allowable catch among user groups. All plans and management measures are reviewed by NOAA Fisheries for compliance with applicable law – including the Magnuson Act – and are approved, partially approved, or disapproved by the Secretary of Commerce.

To fully understand the progress that has been made under the Magnuson Act, consider events in New England fisheries – an

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2. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884 (2006).

3. *See id.* §§ 1801(b)(4), 1851-1853.

iconic area with four centuries of rich fishing heritage. By the twentieth century, the New England groundfish fishery supported a multitude of domestic industries supporting the fleet and the processing of seafood – from ice houses and salt-mining, to boat building and transportation. Technological developments in the first half of the twentieth century, such as the replacement of the schooner fleet with steam-powered trawlers, allowed ground fish to be caught more efficiently. Transportation and handling innovations led to the development of distant markets for an increasing number and variety of fish harvested from New England waters. However, by 1930 there were clear signs that the fleet had grown too efficient in relation to the capacity of the stocks to sustain growth in landings. After World War II, fleets from Europe and Asia also began to ply the waters off New England, especially in the then-international waters beyond three miles from shore. This increase in fishing pressure more than doubled the landings of groundfish off New England from the early 1950s to 1965. Soon after, fish stocks declined sharply. The access to fisheries off U.S. coasts by foreign fleets needed to be managed.

Recognizing the need for action, Congress passed and President Ford signed into law the Fishery Conservation and Management Act of 1976. Through this Act, the United States extended its exclusive fishery conservation zone, later replaced by an exclusive economic zone, to 200 miles, thereby regulating foreign fishing. The Act's primary purpose was "to take immediate action to conserve and manage the fishery resources found off the coasts of the United States . . ."<sup>4</sup> Thus it became the primary law for managing marine and anadromous fisheries in Federal waters. Senator Warren G. Magnuson of Washington referred to the Act as "the best hope we can have of obtaining fishery management decisions which in fact protect the fish . . ."<sup>5</sup> The Act would later be renamed the Magnuson Fishery Conservation and Management Act in honor of the Senator.

As foreign fishing was phased out, the status of some stocks improved temporarily, but domestic fleets soon expanded to fill the void. For example, increases in domestic fishing efforts in

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4. *Id.* § 1801(b)(1).

5. 122 Cong. Rec. 115 (1976).

New England led to the collapse of haddock and yellowtail flounder stocks in the late 1980s. Stock collapses were not unique to New England. Numerous other fisheries collapsed during the 1980s and 1990s, including certain species of Pacific Coast groundfish and several important Gulf of Mexico reef fish. While domestic fisheries contributed to the declines, such collapses may have been inevitable due to the pre-1976 exploitation by foreign fleets and the rapid increase of technological ability, which far out-paced the slower development of the public-private, science-based process in place today.

Finding that important fish stocks still remained overfished twenty years after passage of the Fishery Conservation and Management Act, Congress took action again in 1996. In passing the Sustainable Fisheries Act, Congress found that

Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses . . . .<sup>6</sup>

At the same time, Congress honored Senator Ted Stevens of Alaska by giving the Act its current name, the Magnuson-Stevens Fishery Conservation and Management Act. Senator Stevens' commitment to sustainable use and growing concern over unsustainable international fishing practices and the need to look at "ecosystem" implications helped galvanize and build on Senator Magnuson's earlier vision.

Finally, on January 12, 2007, the latest reauthorization bill was signed into law. This law was groundbreaking in many respects and put in place many new key provisions to end overfishing and rebuild stocks in a way that reduces capacity and uses market-based programs.

Fisheries management under the Magnuson-Stevens Act is now guided by ten National Standards for fishery conservation and management. These standards, which have their roots in the original 1976 Act, provide a yardstick against which all fishery

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6. 16 U.S.C. § 1801(a)(2) (2006).

management plans and measures developed by the regional councils are held. National Standard 1 requires that conservation and management measures prevent overfishing while achieving optimum yield on a continuing basis from each fishery for the U.S. fishing industry.<sup>7</sup> Thus the councils must carefully balance fishing and conservation when developing their plans. Other National Standards mandate that conservation and management measures be based upon the best scientific information available, not discriminate between residents of different states, take into account variations in fisheries and catches, minimize bycatch, and promote the safety of human life at sea.

Since the 2007 reauthorization, the Magnuson-Stevens Act also now requires Annual Catch Limits (ACLs) for all fisheries, with some limited exceptions. Based on scientific assessments and surveys, ACLs must include measures to limit fishing to levels that ensure “overfishing does not occur.”<sup>8</sup> ACLs are proving to be the game-changer for locking-in a robust process of science-based management that is responsive and flexible to ensure the sustained use of the resource and its ecosystem factors (i.e., any bycatch and habitat impacts related to the fishery). ACLs are being phased in over four years, with all fisheries on board by the end of 2011. We have been emphasizing this as a major milestone for turning the corner in ending overfishing in the United States.

Complementing the implementation of ACLs, new provisions placed emphasis on use of market-based fishery management programs, such as limited access privilege programs, or more recently referred to as catch share programs – a generic term describing programs that allocate a specific portion of the total allowable catch to individuals, cooperatives, communities, or other entities. These programs, established and managed regionally by the regional fishery management councils, provide fishermen increased flexibility and use of innovative fishing practices to better utilize available catch, even while they work to meet conservation objectives.

In addition, the Magnuson-Stevens Act pays an unprecedented level of attention to international fisheries to

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7. 50 C.F.R. § 600.310 (2009) (This entire section sets forth a detailed management plan whereby each fishery in the United States will be monitored to ensure it is producing an optimum yield).

8. *Id.* § 600.310(b)(2)(iii).

address the very real challenge of practices that are undermining the health and abundance of our global ocean resources. The overarching approach is a call for the Secretary of Commerce to work multilaterally through various forums, such as international Regional Fishery Management Organizations, to address illegal, unregulated, and unreported fishing – known as IUU Fisheries – as well as bycatch of protected living marine resources.

Recognizing the need for long-term sustainability, the Magnuson-Stevens Act is clear on requirements to rebuild overfished stocks to healthy population levels as quickly as possible, taking into account the status and biology of the stock, needs of fishing communities, international commitments, and the stock's interactions within the marine ecosystem.

The 2010 annual Status of Stocks Report to Congress, released on July 14, 2011, demonstrates the strength of the science-based management process established under the Magnuson-Stevens Act: the majority of U.S. fish stocks surveyed for the report were determined to be at sustainable levels. Since the 2009 report, three additional stocks have been rebuilt, bringing the current national total of fully rebuilt stocks since 2000 to twenty-one. But work remains. Forty of 213 stocks assessed remain subject to overfishing and forty-eight stocks are still determined to be overfished, meaning they have not reached target abundance levels.<sup>9</sup> All forty stocks experiencing overfishing are being actively managed under ACLs or equivalent measures to end overfishing, and all but eight of the stocks determined to be at an “overfished” status are under rebuilding plans.<sup>10</sup> These eight stocks are newly determined and, within the public process mandated by the Act, have two years to complete development and approval of a rebuilding plan appropriate to that fishery.

The Magnuson-Stevens Act also recognizes the non-fishing-related causes of stock depletion in the form of indirect and direct habitat losses. As we end overfishing, environmental factors – such as pollution, ocean acidification, and climate change – present further challenges that we must address to ensure the long-term sustainability of our nation's fisheries. By approaching these challenges from an ecosystem perspective we can better

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9. NAT'L OCEANIC AND ATMOSPHERIC ADMIN., *supra* note 1, at 2.

10. *Id.*

address long-term threats to the sustainability of our marine resources.

The dynamic science-based management process first envisioned by Congress thirty-five years ago with the initial passage of the Magnuson Act is now in place. The rebuilding of our fisheries is underway, and we are beginning to see tangible benefits for fishermen, fishing communities, and our commercial and recreational fishing industries. Fully rebuilt fisheries in the United States could add an estimated thirty-one billion dollars and 500,000 jobs to the national economy.<sup>11</sup> Our particular challenge during these currently difficult economic times is to keep focus on the current and long-term benefits of our science-based management process while also moving forward to address the more complicated challenges of pollution and internationally unsustainable practices that can undermine our progress to manage domestic fisheries sustainably. The success of the Magnuson-Stevens Act and the visions of its architects have placed us on solid ground for this continuing journey.

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11. *Id.* at 1.