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BY THE U.S. GENERAL ACCOUNTING OFFICE

# Report To The Secretary Of Commerce

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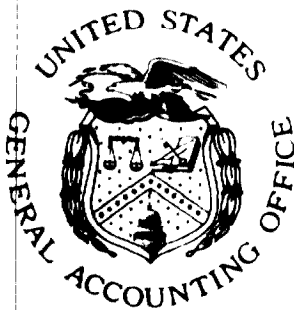
## Need To Improve Fishery Management Plan Process

Under the Magnuson Fishery Conservation and Management Act, regional fishery management councils prepare, monitor, and revise fishery management plans and the Department of Commerce reviews, approves, and implements them. GAO found that, although much progress has been made in placing fisheries under management plans, the process takes too long for responsive fishery management.

This report discusses Commerce's plans and efforts to shorten the process and makes recommendations for further improvement.



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GAO/RCED-83-72  
JANUARY 7, 1983

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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

B-207301

The Honorable Malcolm Baldrige  
The Secretary of Commerce

Dear Mr. Secretary:

We recently completed a review of the fishery management planning process authorized under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). The act extended U.S. jurisdiction over fisheries to 200 miles from the U.S. coastline and established eight regional fishery management councils to manage fisheries in conjunction with the States and the Department of Commerce's National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS). The councils prepare, monitor, and revise fishery management plans, and the Secretary of Commerce, through NMFS, reviews, approves, and implements them. These plans provide the basis and describe the conservation, management, and regulatory measures to govern and control specific fisheries.

The regional management councils and NMFS have made considerable progress in developing and implementing fishery management plans. The Department, sensitive to the interest expressed by the Congress and others in developing and implementing an effective fishery management program, is working on organizational and administrative changes to make the plan review and approval process more efficient and improve the working relationships between the regional councils and the Department. Among the changes under consideration are transferring authority and responsibility from headquarters to field offices and developing "framework" management plans to help expedite the process. Nevertheless, opinions continue to differ about the councils' and the Department's roles in fishery plan development. Also, the Department needs to reduce, to the extent possible, unnecessary regulatory requirements that are impeding fishery plan development and implementation.

OBJECTIVES, SCOPE, AND METHODOLOGY

The main objective of the review was to determine the councils' and NMFS' progress in developing, processing, and implementing fishery plans, plan amendments, and related regulations. We focused our attention on the fishery management plan review and approval process.

We performed work at the New England, Gulf, and Pacific Fishery Management Councils; NOAA and NMFS headquarters in Washington, D.C.; and NOAA and NMFS regional offices in Gloucester, Massachusetts; St. Petersburg, Florida; and Seattle, Washington. We also visited the Mid-Atlantic and South Atlantic Fishery Management Councils.

We reviewed the Magnuson Act, its legislative history, and recently proposed amendments to the act; congressional oversight hearings and reports; other applicable laws and executive orders; relevant studies; and pertinent NOAA and NMFS policies, directives, guidelines, manuals, legal opinions, task force reports, testimony, correspondence, and administrative procedures related to the fishery management plan process.

We met with council members and their staffs to discuss fishery management issues and the problems encountered in the fishery plan development and approval process. We attended council meetings; analyzed council correspondence, testimony, and other records; and reviewed management plans and plan amendments as well as related environmental and regulatory impact statements. We also met with NMFS headquarters and regional officials and NOAA headquarters and regional attorneys to obtain their views on the planning process and the actions taken or planned to improve the process. We interviewed officials of the Environmental Protection Agency, the Council on Environmental Quality, and the Office of Management and Budget to obtain their views on the Federal regulatory requirements.

We performed this review in accordance with generally accepted government audit standards.

#### STATUS OF FISHERY MANAGEMENT PLANS

Since the Magnuson Act was passed in 1976, NMFS and the regional councils have made progress in fisheries management. As of December 1982, 24 management plans had been approved and implemented, 4 had been approved but not yet implemented, and 3 were under Secretarial review. NMFS estimates that a total of 42 plans will be approved and implemented by December 1985. The total number of plans to be developed is not certain because the number will vary as the regional councils recognize the ever changing biological, social, environmental, and economic conditions in both the regulated and unregulated fisheries and adjust management activities to meet these changing conditions. Also, future plans may be consolidated to cover multispecies.

Notwithstanding this progress, NMFS, the regional councils, industry, and the Congress have expressed concern about the fishery management plan review and approval process. One concern is that the process takes an inordinate amount of time. Another is that councils and NMFS differ over issues such as whether a specific fishery needs to be managed and who is primarily responsible for developing specific conservation and management measures.

According to NMFS, the councils generally take between 1 and 1-1/2 years to prepare a draft fishery management plan. NMFS generally takes at least a year to review, approve, and implement the plan. These estimates assume that major policy conflicts do not occur. In some cases the process has taken much longer, especially where there is substantial disagreement between the councils and NMFS.

EFFORTS TO IMPROVE THE FISHERY MANAGEMENT  
PLAN REVIEW AND APPROVAL PROCESS

NMFS has attempted to improve and streamline the fishery management process. For example, it is considering delegating authority to NMFS regional directors to approve, disapprove, or partially disapprove fishery plans and amendments, which will make them accountable for the plans and possibly minimize duplicative reviews. NMFS has also prepared revised guidelines for interpreting the national standards set forth in the Magnuson Act. (See app. I.) Fishery plans and implementing regulations must be consistent with these standards which call for conservation and management measures that help prevent overfishing while achieving optimum yield, are based on the best scientific information available, and minimize costs.

In addition, several bills have been submitted in the Congress calling for changes in the Magnuson Act primarily to streamline the fishery management plan review process.

Plans to increase regional responsibility

NMFS established a special task force in July 1981 to identify and analyze problems that were causing delays in the fishery management plan review and approval process. The task force concluded in its September 1981 report that delays were caused by many things, including the following:

- Documents drafted by NMFS regional offices, such as "action" memos for plan approval; draft and final regulations; and environmental and regulatory impact analyses; were poorly written or were submitted to headquarters too late.
- NOAA legal reviews of plans were seldom provided to councils during the draft stage of the review process, and frequently major legal and policy issues were not raised until after the councils submitted their plans to the Secretary for final approval.
- Too much duplication occurred in reviewing and revising various documents. NOAA headquarters staff often rewrote documents prepared by the regions.

The task force also concluded that increased regional responsibility--shifting the "lead" for review and approval from NMFS headquarters to its regional offices--would be the single most effective means of expediting the process.

The Department is considering delegating authority to the NMFS regional directors to approve or disapprove plans and plan amendments. The Department, however, plans to establish a "parallel" review function at the headquarters level to help ensure consistency and compliance with issues of national concern. This review will include a "quality control" check to ensure the adequacy of regional reviews.

Members of several councils said they welcomed the idea of having more responsibility for the review process but added that if the Department does not limit its review to matters affecting national issues, very little will be accomplished by the transfer of authority to field offices. In the past the headquarters review did not always deal with substantive matters and questions were often raised on such things as plan format which delayed plan approval. Council members also told us that the NOAA legal review of plans was useful in identifying major deficiencies but legal questions were often not raised until the final review stage. They said that legal comments would be more useful if brought to their attention earlier in the review process.

A final decision on transferring authority to the field offices has not been made. Although NMFS has initiated action to regionalize the fishery management plan process, the final action will not be taken until the Congress acts on the pending legislation to streamline the process.

#### Framework fishery management plans

The dynamic nature of fisheries requires fast regulatory and management responses to protect fishery stocks, which can change rapidly, and to help meet fishing industry needs. The NOAA task force concluded that the fishery management plan process takes too long. Delays in the process make management unresponsive to changing situations, frustrate all involved, increase costs, and place an unreasonable burden on the fishing industry.

In a January 1979 report, 1/ we recommended that the Department streamline and improve the fishery management planning process. In response to our recommendations, NMFS said it looked into several options to build flexibility into management plans and to permit inseason adjustments. A framework management plan concept was developed, which NOAA's Assistant Administrator for Fisheries said offers the best prospect for improving fishery management. NMFS' informal guidelines for preparing framework fishery management plans were distributed to the councils in May 1982.

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1/ "Progress and Problems of Fisheries Management Under the Fishery Conservation and Management Act" (CED-79-23, Jan. 9, 1979).

A framework fishery management plan establishes broad parameters for multiyear management of fisheries by describing the processes by which a fishery will be managed under a wide range of conditions. The plan contains all the essential elements of a fishery plan but describes by formula rather than specific number such things as how to determine the optimum yield of the fishery each year and how U.S. harvesting and processing capacity should be assessed. It specifies both the criteria and the procedures for changes necessary to keep the plan current, thereby eliminating the need for a separate annual review. Changes and adjustments in fishery management procedures may be made without amending the plan, which helps avoid repeated reviews of amended plans and could shorten the process once the plan has been approved. In essence, a framework plan indicates how fishery management can be adjusted to meet changing conditions.

The framework plan concept offers opportunities to improve the responsiveness and effectiveness of fishery management. However, some councils said they have reservations about using it. They perceive that it may shift the decisionmaking authority from the councils to the Secretary and this, in their opinion, would not be in accordance with the basic premise of the Magnuson Act.

NMFS said it recognizes some of the problems expressed by the councils but stated that in the final analysis the Department cannot take action without the councils' participation and involvement. NMFS also said it is not the intent of framework plans to shift the decisionmaking authority from the councils to the Secretary.

We believe the framework management plan concept could improve the planning process and should be encouraged by the Department to help alleviate some of the problems we identified in our 1979 report. To date, however, only limited progress has been made in using the framework management plan concept. According to NMFS, none of the councils have developed framework plans but some approved plans contain certain framework measures and/or procedures.

We believe the Department should work with the councils--especially those expressing reservations--in developing fishery plans using the framework management plan concept.

Pending legislation to  
improve the review process

The Congress is considering amendments to the Magnuson Act to streamline the fishery management plan review and approval process. For example, pending legislation would require the Secretary of Commerce to act on plans, amendments, and regulations within specified time limits after receiving them for Secretarial review or they would be considered as approved. Although the act now states that the Secretary should review a fishery plan or



amendment within 60 days after receiving it and notify the council of his approval, disapproval, or partial disapproval, this process has taken much longer.

Another proposed amendment would require councils to include proposed regulations with their final plans when submitting them for Secretarial review. In our January 1979 report we recommended that NMFS work with the councils to develop implementing regulations concurrently with the final plans. Although NMFS encourages councils to follow this practice, regulations are usually not submitted to NMFS until after the Secretarial review begins, which delays implementation of the plan.

#### FISHERY MANAGEMENT COUNCILS QUESTION THE DEPARTMENT'S REVIEW POLICIES AND PROCEDURES

Council members believe the Department of Commerce has frequently exceeded its legislative authority in reviewing fishery management plans. They said in some cases NMFS has substituted its judgment for that of the councils on regional fishery management issues. This practice, council members point out, adds to their frustration and confusion in trying to get fishery management plans approved and results in unwarranted delays.

Under the Magnuson Act, councils are expected to make the initial decisions regarding the need for specific fishery management plans and the procedures that should be established for conserving and managing fishery resources in their areas. Councils conclude that they have the principal role in establishing fishery management policies and believe the Secretary's role should be limited to reviewing plans and amendments for consistency with the national standards.

During the September 1981 oversight hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, council members expressed concern regarding the Department's role in reviewing fishery plans. For example:

--The chairman of the Western Pacific Council said council attempts to manage fisheries have been seriously hampered by continued disagreements on the respective roles and authorities of the councils and NMFS in preparing and implementing management plans. The council's view is that the Congress intended the councils to be regional spokesmen for fisheries in their geographical areas. He added that the councils' judgment on the appropriate means for fisheries management should be presumed to be acceptable unless the Secretary of Commerce specifically determines that they are inconsistent with the national standards or other applicable Federal laws.

--The chairman of the New England Council said councils must have the primary, and not an advisory, role in developing fishery management policies in their regions and the NMFS role should be to review and implement the policies. He added that the extent of the councils' authority has been the subject of too many conflicting interpretations and should be clarified so the fishery management review process can work more effectively.

--A member of the North Pacific Council stated that NMFS headquarters' "second-guessing" the councils on management measures and plans submitted for review is unnecessary and extremely time consuming.

In April 1982, during Senate Committee on Commerce, Science, and Transportation hearings, the councils once again expressed objections to the Secretary's review practices.

Mid-Atlantic Council officials told us the council prepared, but NMFS rejected, fishery management measures to establish a limit on the size of surf clams that could be harvested. NMFS rejected the council's proposed regulations because they would be too difficult to enforce. The council disagreed and said regulations on minimum size requirements for surf clams could be enforced by direct observation and test counts. Shortly thereafter fishermen began harvesting surf clams at a rate which, in the council's view, would seriously impair future yields. The council then called upon the Secretary of Commerce to issue emergency regulations--which he did--to establish a minimum size limit on surf clams.

A September 1981 report by the House Subcommittee on Fisheries and Wildlife Conservation and the Environment stated that the Congress intended the councils to have more independence in the fishery management plan review process than they perceive the Secretary has given them. The report stated also that the regional councils have primary responsibility for managing fisheries and that the Secretary of Commerce may not disapprove a fishery plan or amendments to a plan unless the council's proposals disregard the national standards or violate applicable Federal laws. The report concluded that the Secretary may not substitute his judgment for that of a council on how to manage a fishery.

Obvious differences of opinion exist on the role and responsibility of the regional councils and the Department in developing and implementing management and conservation procedures and regulations. Undeniably the Secretary has broad-based discretionary authority and responsibility for determining whether proposed management measures are consistent with the national standards, other provisions of the Magnuson Act, and other applicable Federal laws. The Secretary, therefore, can permit regional councils to exercise wider latitude in developing regulations and procedures to manage fisheries under their jurisdiction. Further, during

the Secretarial review process, when councils' proposed plans or amendments are questioned, the Secretary should provide councils with the basis for his decision, including how the proposed plan or amendments would conflict with the national standards or other applicable Federal laws.

FISHERY MANAGEMENT PLANS ARE DELAYED  
BY ENVIRONMENTAL IMPACT REVIEWS

The Department's policies regarding National Environmental Policy Act (NEPA) compliance exceed what is needed to satisfy the act, represent an unwarranted Federal regulatory burden, and delay the fishery management plan approval process.

The Department has classified fishery management plans as "major Federal actions that significantly affect the quality of the human environment." As such, the Department has taken the position that regional councils must prepare an environmental impact statement for each fishery plan they submit for approval. However, in accordance with NEPA requirements, potential environmental impact can be evaluated by a council first completing an environmental assessment (primarily to determine whether a significant adverse potential exists) and then, if warranted, preparing a more comprehensive environmental impact statement.

In its 1981 report, the House Subcommittee on Fisheries and Wildlife Conservation and the Environment concluded that fishery management plans may not have potential consequences that warrant an environmental impact statement and therefore each plan should be considered on a case-by-case basis. NOAA, the report stated, should abandon its policy of requiring an impact statement in every instance.

A member of the North Pacific Council pointed out during hearings that, at the very most, an environmental impact statement for a specific area--which would include all of the fisheries and resources in that area--should be adequate. Developing environmental impact statements for four or five fisheries in the same area--all of which are closely related--is redundant, time consuming, and expensive.

Members of the Gulf Council told us that NEPA and the other applicable Federal laws force councils to assess more thoroughly the potential impact of fishery plan management measures and this ensures greater public protection. They added, however, that councils should be permitted to perform an environmental assessment first to determine if an impact statement is needed. This would save considerable time and effort, especially in cases where no potential adverse environmental impact is noted. The Gulf Council's fishery management measures have not indicated any adverse environmental impact.

The chairman of the South Atlantic Council told us that the council would strongly encourage the use of a "generic" environmental impact statement that would cover several plans. The councils then would not have to prepare--as they do now--a separate impact statement for each plan. In our 1979 report, we discussed a number of options to speed up fishery management plan development. We recommended that generic environmental impact statements be used, where feasible.

Several NMFS regional officials said they questioned the extent to which fishery plans should be subjected to NEPA requirements because the Magnuson Act contemplates much of the same analysis NEPA requires. They said NOAA should exempt fishery plans from the lengthy environmental impact statement process if the plans discuss the environmental impact of the proposed management measures. They added that if environmental assessments are performed, a finding of "no significant impact" would result in many cases and there would be no need to prepare an impact statement.

NOAA headquarters officials told us that preparing environmental impact statements for all management plans, in their view, affords the Department some protection from possible litigation. We believe, however, that the NEPA requirements can be fully satisfied by allowing councils to prepare an environmental assessment first and then requiring an environmental impact statement only if warranted. We also maintain that generic environmental impact statements in certain cases will help speed up the fishery plan development process.

#### CONCLUSIONS

Under the Magnuson Act, considerable progress has been made in fishery conservation, management, and regulatory activities. A number of fishery plans have been approved and implemented; however, more remains to be accomplished to improve the fishery plan review process.

The process is untimely and unresponsive. It includes duplicate layers of review and review comments are not always provided to councils in a timely manner. The Department has recognized these problems and has proposed--through NMFS--broad-based corrective steps, including transfer of authority and responsibility to NMFS regional offices. Still, more needs to be done to alleviate the continuing role and responsibility conflict between the councils and the Department including granting, where feasible, greater latitude to the councils in formulating fishery management and regulatory measures.

We believe that the Department has imposed a stricter policy on the councils concerning environmental impact statements than is needed to meet NEPA requirements.

RECOMMENDATIONS

We recommend that the Secretary of Commerce direct the Administrator, NOAA, to:

- Provide additional information to the councils on the benefits of using the framework management plan concept. Special attention should be directed to alleviating the councils' expressed concerns in the development and use of framework plans, including designating authority to change approved management measures.
- Allow councils wide latitude in determining how fisheries should be managed and limit reviews to matters that affect the national standards and other applicable Federal laws.
- Permit regional councils to prepare environmental assessments in developing fishery plans and prepare environmental impact statements only when warranted. Criteria should be developed to assist councils in determining when an environmental impact statement is needed.
- Develop, in consultation with the regional councils, a generic environmental impact statement that could be applied to several fishery plans in the same geographical area.

We discussed the matters in this report with officials of NOAA's Office of Fisheries. They expressed their appreciation for our suggestions to help improve the fishery management plan process and the day-to-day working relationships with the regional councils. They said they are concerned about the delays in the process and have initiated several steps to expedite the process. In conclusion, they said they plan to continue these efforts and, in line with our recommendations, will take whatever additional actions are appropriate.

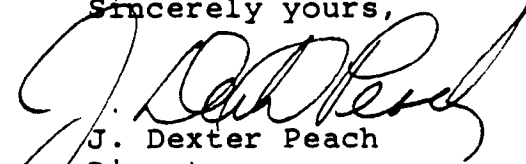
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As you know, 31 U.S.C. §720 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the above House and Senate committees; the Chairman, House Committee on Merchant Marine and Fisheries and its Subcommittee on Fisheries and Wildlife Conservation and the Environment; the Chairman, Senate

Committee on Commerce, Science, and Transportation; and the Director, Office of Management and Budget. We are also sending copies to your Assistant Secretary for Administration and your Inspector General; the Administrator, NOAA; and NOAA's Assistant Administrator for Fisheries.

Sincerely yours,



J. Dexter Peach  
Director

NATIONAL STANDARDS FOR  
FISHERY CONSERVATION AND MANAGEMENT

The major purpose of the Magnuson Act is to provide for the conservation and management of fishery resources found off the coasts of the United States. The act established a national fishery management program and national standards for fishery conservation and management to achieve this purpose. Plans and implementing regulations developed under the fishery management program must be consistent with the following national standards described in section 301(a) of the act (16 U.S.C. 1851(a)):

- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.
- (2) Conservation and management measures shall be based upon the best scientific information available.
- (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
- (4) Conservation and management measures shall not discriminate among residents of different States. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be fair and equitable to all such fishermen; reasonably calculated to promote conservation; and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
- (5) Conservation and management measures shall, where practicable, promote 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 variations among, and contingencies in, fisheries, fishery resources, and catches.
- (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

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