Issues In The Reauthorization Of The Magnuson Act

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ISSUES IN THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

Almost 20 years have passed since the Fishery Conservation and Management Act (later renamed the Magnuson Fishery Conservation and Management Act) became law in 1976. In many areas the Act has been highly successful. It succeeded in extending United States fishery management jurisdiction out to 200 nautical miles off the U.S. coastline, it 'Americanized' a valuable economic resource, and it created a new level of the federal government called the regional council system to oversee that resource. Perhaps its greatest success, the Act effectively eliminated foreign fishing within the 200-mile band now known as the exclusive economic zone (EEZ). The foreign vessels that used to fish off the U.S. coasts have been replaced by a fleet of U.S.-owned vessels. These vessels have dramatically increased their catches from about 1.56 billion pounds in 1977 to more than 6.32 billion pounds in 1993. This has not only created billions of dollars in annual revenues for U.S. fishing companies, but has also created thousands of jobs for U.S. citizens.

2. "Fishery" is defined by the Act as: "(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks." 16 U.S.C. § 1802(8) (1988).
4. In 1992, U.S. commercial fishermen earned $3.7 billion in ex-vessel revenue on 4.8 million metric tons of fish and shellfish. About 80% of these landings were used directly for human food. The commercial harvesting and seafood processing sectors
Despite these successes, the Magnuson Act has also had some failures. Many of the fisheries managed under the Act have been severely overfished. The New England groundfish resource is a good example. Other fisheries are heavily overcapitalized. Simply put, too many vessels compete for too few fish, causing economic inefficiency and overfishing. Inefficiency is also apparent in modern fishing techniques which involve the discard of large numbers of fish and which result in the bycatch of non-target marine species. Furthermore, there are significant resource allocation struggles between competing groups of fishermen which hamper the implementation of the Act. These struggles are being resolved by regional councils whose members often have direct financial interests in the outcome of their decisions.

The current authorization for appropriations for the Magnuson Act expired at the end of fiscal year 1993. The issue for the 104th Congress will be how to improve the existing regime for fisheries conservation and management in offshore federal waters given the Act's successes and failures. This research note begins with a discussion of the history of the Magnuson Act in Part I. Part II evaluates the Act and discusses three significant problems associated with the Act: overfishing, inefficiency, and conflicts of interest in the regional councils. Part III analyzes pending bills in the House of Representatives (H.R. 39) and the Senate (S. 39). The note concludes that although the Magnuson Act has failed in preventing overfishing, it contains the tools for effective management and conservation of the U.S. fisheries resource. The proposed modifications will strengthen the Act and enable the U.S. to achieve the long term goal of managing each fishery for a harvest level equivalent to the "optimum yield."

support over 300,000 full time jobs. NATIONAL MARINE FISHERIES SERVICE, UNITED STATES DEP'T OF COMMERCE, OUR LIVING OCEANS: REPORT ON THE STATUS OF U.S. LIVING MARINE RESOURCES, NOAA TECH. MEM. 3 (NMFS-F/SPO-15, Dec. 1993) [hereinafter OUR LIVING OCEANS].

5. "Bycatch" refers to the incidental capture of nontargeted species. Usually bycatch is returned to the sea or discarded. Id. at 19.

6. BUCK, supra note 3, at 7.
I. HISTORY

A. Pre-Magnuson Act Background

To fully appreciate the successes and failures of the Magnuson Act it is necessary to have some understanding of the law of fisheries management before 1976. Prior to the enactment of the Magnuson Act, all vessels were free to fish beyond the three-mile territorial sea\(^7\) and the adjacent nine-mile contiguous zone.\(^8\) Fisheries regulation in the world's oceans beyond this twelve-mile area was governed by sparse international law. Inside the U.S. coastal waters, management of the fisheries fell within the jurisdiction of each individual coastal state.\(^9\)

Prior to the early part of the twentieth century, exploitation of high seas fishery resources proceeded under a regime of unregulated competition among nations.\(^10\) This scheme worked as long as existing fishing effort remained at a level below maximum sustainable yield (MSY).\(^11\) After World War II, fishing effort dramatically increased with the advent of new fishing technologies and the increase in fishermen.

U.S. fishermen interested in restricting foreign access to the rich resources off the U.S. coasts joined forces with oil interests and lobbied the government to extend the United States exclusive jurisdiction. In

\(^7.\) A territorial sea of three nautical miles from the shore was widely acknowledged by the world community as exclusively within the sovereignty of each coastal nation. The rule of freedom of fishing was based on the idea that fish were a common property resource, not "owned" until captured. See FEDERAL FISHERIES MANAGEMENT, A GUIDEBOOK TO THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT 2 (J. Jacobson et al. eds., 1985 & Supp. 1991) [hereinafter GUIDEBOOK].

\(^8.\) In 1966 the United States established a fisheries zone of nine miles contiguous to the territorial sea. Within this zone the U.S. retained the same exclusive jurisdiction over fisheries as it had in the territorial sea. Bartlett Act, Pub. L. No. 89-658, 80 Stat. 908 (1966). The Bartlett Act was later superseded by the Magnuson Act.

\(^9.\) See generally Manchester v. Massachusetts, 139 U.S. 240 (1891) (affirming State's rights to manage menhaden fisheries); Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948) (the individual states, in the absence of federal action, have the right to control fishing); Bayside Fish Flour Co. v. Gentry, 297 U.S. 422 (1936) (California landing law affecting fishing outside State's waters was valid); Skiriotes v. Florida, 313 U.S. 69 (1941) (Florida could validly regulate conduct of resident fishermen even in fisheries located outside of State waters).

\(^10.\) GUIDEBOOK, supra note 7, at 2.

\(^11.\) "Maximum sustainable yield" is defined as "the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions." 50 C.F.R. § 602-11(d)(1) (1994).
1945, President Truman reacted to U.S. interests by issuing two proclamations: The Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas and The Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf. The proclamation concerning coastal fisheries created the first fisheries conservation zone, a zone without defined boundaries.

The proclamation contained two significant principles. First, the United States could establish conservation zones on the high seas for the purpose of protecting its coastal fisheries from overfishing. Second, the United States recognized the right of other nations to take similar steps to protect their coastal fisheries. While the coastal fisheries proclamation was never implemented in the United States, it triggered reactions from other fishing nations. Countries like Peru, Ecuador and Chile unilaterally extended their sovereign jurisdiction out to 200 nautical miles.

The Truman Proclamations provided a basis in customary international law for coastal states to extend their jurisdictions seaward for the conservation of fisheries and the preservation of exclusive fishing rights for the coastal states. This movement affected the United States in two ways due to the peculiar nature of its fishing industry. Fishermen who worked primarily off the coasts of the United States favored the unilateral extension of fisheries jurisdiction as a means of getting rid of their foreign competitors. Alternatively, U.S. distant-water fishermen, who primarily fished off Latin America and in the central Pacific Ocean,

14. Id. at 429.
15. The text of the proclamation stated that the United States regarded it as proper to establish conservation zones in areas contiguous to the coasts. Instead of actually establishing conservation zones, the proclamation resulted in encouraging nations fishing off the United States to participate in treaty negotiations. These treaties ultimately were unsuccessful at reducing foreign fishing effort off the U.S. coasts. See generally Eldon V. Greenberg and Michael E. Shapiro, Federalism in the Fishery Conservation Zone: A New Role for the States in an Era of Federal Regulatory Reform, 55 So. CAL. L. REV. 641 (1982).
16. GUIDEBOOK, supra note 7, at 4.
17. Magnuson, supra note 13, at 430.
opposed extension of fisheries jurisdiction because it severely restricted their fishing range. The loss of fishing access for U.S. distant water fishermen and the increased fishing effort applied by foreign vessels off the U.S. coasts created the impetus for the passage of the Magnuson Act.

B. Structure and Scope of the Magnuson Act

There were two broad purposes of the Magnuson Act: (1) to extend the jurisdiction of the United States for the purpose of regulating marine fisheries out to 200 nautical miles from the coast and (2) to control foreign access to the resources in this zone. The Act was, and still remains, organized in four titles. Title I states the authority of the United States regarding fishery management. In simple terms, it is the basic jurisdiction provision. Title II governs foreign fishing access to fisheries located within the U.S. EEZ. Title III specifies the national fishery management program, and Title IV contains miscellaneous provisions. The Act has been significantly amended since 1976 but the following sets out the original scheme.

Title I establishes the fishery conservation zone, now known as the exclusive economic zone (EEZ), which extends seaward from the coastal baseline out to 200 nautical miles. Within the EEZ the United States proclaimed exclusive fishery management authority over all fish except highly migratory species, defined in the Act as tuna.

18. The most important distant water fishing was the Pacific distant water tuna fishery. Tuna, a highly popular and valuable fish, are primarily located outside of the 200 nautical mile band on the Pacific coast.

19. A comprehensive legislative history of the original Magnuson Act is beyond the scope of this research note. If interested, the reader should consult LIBRARY OF CONGRESS, CONGRESSIONAL RESEARCH SERVICE, OCEAN AND COASTAL RESOURCES PROJECT, 94TH CONG., 2D Sess., A LEGISLATIVE HISTORY OF THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 (Comm. Print 1976) [hereinafter LEGISLATIVE HISTORY].


24. 16 U.S.C. § 1802(14) (1988). The Act also authorizes the management of anadromous species that spawn in U.S. waters throughout their range. This means that
Title II set up a scheme authorizing foreign fishing within the EEZ if (1) a treaty or international fishery agreement is in force and (2) the country wishing to fish enters into a governing international fishery agreement with the United States. Foreign fishermen were given the right to fish for only that portion of the "optimum yield" (OY) that was not harvested by U.S. fishermen. This portion was termed the total allowable level of foreign fishing (TALFF).

Title III establishes eight Regional Fishery Management Councils to implement the management and conservation goals of the Act. The Councils are a new level of government. They are neither state nor federal in character. Their duties are: "(1) to develop and amend fishery management plans (FMPs); (2) to submit periodic reports to the Secretary of Commerce; (3) to review and revise assessments of optimum yield and fishing allowances to foreign vessels; (4) to encourage public participation, through hearings, in the development of fishery management plans and the administration of the Act; (5) to establish scientific and statistical committees and advisory panels; and (6) to undertake other activities necessary for carrying out the Act."

The voting members of the Councils are made up of state fishery management officials, the regional directors of the National Marine Fisheries Service (NMFS), and other individuals who are both knowledgeable and experienced with regard to the management and conservation, or the recreational or commercial harvest of the fishery resources of the geographical area concerned. These individuals are chosen by

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the United States claimed jurisdiction even when the fish were outside the U.S. EEZ. 16 U.S.C. § 1821 (1988).

25. 16 U.S.C. § 1821 (1988). This was later amended as will be discussed within Subpart B.

26. "Optimum yield" is defined as the amount of fish—
(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and
(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.


the Secretary of Commerce from lists submitted by the governors of the states represented on the Councils.30

The Council's main task is to establish FMPs. All FMPs and their implementing regulations must be consistent with seven substantive policies, or, "national standards" for fishery conservation and management.31 The Secretary of Commerce has established guidelines based on these national standards to assist the Councils in their task.32 The plans are to be submitted to the United States Department of Commerce for approval and implementation by federal agency rulemaking.33

II. EVALUATION OF THE MAGNUSON ACT

A. Operation of the Act

The Magnuson Act made five significant changes in the management system of U.S. fisheries. These are: the abandonment of state control of coastal fisheries, the imposition of control over foreign fishing, the use

30. Id.
31. The seven national standards are:
(1) Conservation and management measures shall prevent overfishing while achieving ... 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 ....
(4) Conservation and management measures shall not discriminate between residents of different States.
(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.
of optimum yield as a management concept, the exclusion of tuna from fisheries jurisdiction, and the adoption of the council system.  

1. The Role of the States

The Magnuson Act addresses fishery management so comprehensively that, under the Supremacy Clause of the Constitution,\textsuperscript{35} it preempts any state authority that is not preserved. Only a limited role has been left to the states. Within each state's three-mile territorial sea, the state retains management authority.\textsuperscript{36} Outside of state waters a state may not directly or indirectly regulate any fishing unless a vessel is registered under the laws of that state and such regulation may not conflict with any FMP regulations.\textsuperscript{37}

2. Foreign Fishing

Under the Magnuson Act, Congress put as many controls on foreign fishing as possible to deal with the expansion of foreign fleets fishing off U.S. coasts in the years prior to 1976. Between 1938 and 1973, the quantity of fish harvested off the United States tripled, increasing from around 4.4 billion pounds to 11.8 billion pounds while the landing of American vessels increased only minimally during this period, from 4.3 to 4.7 billion pounds.\textsuperscript{38} Notwithstanding this large foreign take, the Act, at its inception, was aimed at merely controlling foreign fishing, not excluding it entirely.


\textsuperscript{35} \textsc{U.S. Const.} art. VI, cl. 2.

\textsuperscript{36} 16 \textsc{U.S.C.} § 1856(a) (1988). A state's ability to regulate fishermen directly and indirectly has been the subject of at least ten suits since the inception of the Act. \textit{See generally}, State of Alaska v. F/V Baranof, 677 P.2d 1245 (Alaska 1984), Southeastern Fisheries Assoc. v. Chiles, 979 F.2d 1504 (11th Cir. 1992).

\textsuperscript{37} 16 \textsc{U.S.C.} §§ 1856(a)-(b). \textit{See generally}, Jill Bubier & Alison Rieser, \textit{Preemption or Supersession of State Regulation in the Territorial Sea}, 4 \textsc{Terr. Sea} 1 (1984); Martha Grant, \textit{Overlapping State and Federal Jurisdiction Under the FCMA: Judicial Interpretation of Section 306(a) in California v. Weeren}, 1 \textsc{Terr. Sea} 1 (1981).

\textsuperscript{38} \textsc{Guidebook}, \textit{supra} note 7, at 11-12.
3. **Optimum Yield**

A new tool to achieve control of both foreign and U.S. fishermen was embodied in the concept of optimum yield. The optimum yield goal allowed the Regional Councils significant flexibility in determining the total allowable catch of fish. By allowing the Councils to set the optimum yield at levels above the maximum sustainable yield, Congress, in effect, allowed the Councils complete discretion in developing FMPs.

4. **Highly Migratory Species**

In order to reconcile the disparate interests of U.S. coastal fishermen and U.S. distant water fishermen, the Magnuson Act excepted from its application highly migratory species of tuna, defined as those "species which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean." The tuna were the only species exempted from the Magnuson Act's establishment of U.S. fishery management authority within the EEZ. The exemption was officially justified by claiming that the highly migratory nature of the fish precluded individual states from subjecting the fish to national controls. Yet many other nations did not exclude tuna from their claims of exclusive fishery jurisdiction within their EEZs. The real rationale for the U.S. exclusion was to appease the needs of the Pacific distant water fishing fleets. This rationale was stated by Senator Weicker while chairing a hearing before the National Ocean Policy Study in 1981:

This exclusion allows our distant water tuna fleet to disregard judicial claims by other nations on tuna within their own waters. Present U.S. policy therefore allows our tuna boats to enter foreign waters against the will of the claimant nation. A Federal fund, jointly shared with industry is then used to pay the fines of the vessels if seized by a foreign government.

41. LEGISLATIVE HISTORY, supra note 19, at 679.
The Magnuson Act policy allowed the United States to have the best of both worlds. U.S. fishermen were authorized to exploit other nation's EEZs for valuable fish while at the same time the United States could exclude foreigners from taking valuable resources from the U.S. EEZ. The "fund" noted by Senator Weicker referred to a policy enacted in the United States in 1978 through an amendment of the Fishermen's Protective Act of 1954.43

The Fishermen's Protective Act protected U.S. fishermen by providing that, if a vessel was seized by a foreign government for fishing within the government's EEZ, the U.S. would pay any foreign fine or penalty levied and would reimburse the owner of the vessel the amount of the fine. This overall policy of excluding tuna from the Magnuson Act's authority was reversed through a significant amendment to the Act in 1990 and will be discussed below.

5. The Regional Councils

The theory behind the regional council system was to allow interested individuals to participate in fishery management decisions and to recognize regional differences in fisheries and fishing opportunities. Hence, recreational and commercial fishermen were given a prominent role on the Councils. The Act divides the United States into eight regions to allow the people with knowledge of particular local and regional needs to have council representation.44 Further, the Act requires that council members be knowledgeable or experienced with regard to the conservation and management, or the recreational or commercial harvest, of the fishery resources within their geographic area of responsibility. Congress specifically allowed fishing interests to participate in management decisions because Congress believed, in the words of Senator Magnuson, "that this institutional arrangement [was] the best hope [the United States could] have of obtaining fishery

management decisions which in fact protect the fish and which, at the same time, have the support of the fishermen who are regulated.\textsuperscript{45} This requirement has created situations in which council members may have personal or financial interests in a fishery they are responsible for managing.

In fashioning a system where knowledgeable and experienced private citizens are placed on the councils and put in charge of making management decisions Congress was aware of the potential conflicts of interest that could arise.\textsuperscript{46} The authors of the Magnuson Act therefore created several safeguards to mitigate conflicts.

First, they created the national standards upon which fishery management plans were to be based. Second, they imposed a review process on council FMPs. While the regional council may prepare and submit to the Secretary of Commerce proposed regulations that would implement the FMP, it is the Secretary who must promulgate and implement the regulations.\textsuperscript{47} The FMP regulations are then published in the \textit{Federal Register} for public comment. Only after the Secretary approves the FMP does the plan go into effect. Congress recognized that a further check on this system would be afforded through judicial review.

In addition, two further important checks were placed on council decisionmaking.\textsuperscript{48} First, the councils were made subject to the Federal Advisory Committee Act (FACA).\textsuperscript{49} FACA ensures that the operation of advisory committees within the executive branch of government is controlled so that private interests cannot exercise undue influence upon government.\textsuperscript{50} Second, the conflict of interest provisions of the United States Code were imposed on the councils.\textsuperscript{51} This Code prohibits federal

\begin{itemize}
\item \textsuperscript{45} Legislative History \textit{supra} note 19, at 455.
\item \textsuperscript{48} Myhre, \textit{supra} note 46, at 49-50.
\item \textsuperscript{49} 5 U.S.C. app. § 1 (1988).
\item \textsuperscript{50} \textit{See} H.R. REP. No. 1017, 92nd Cong., 2d Sess. 6 (1972), \textit{reprinted in 1972 U.S.C.C.A.N.} 3491, 3496.
\item \textsuperscript{51} 18 U.S.C. § 208 (1988).
\end{itemize}
employees from participating in matters in which they have a financial interest.

Unfortunately, these safeguards have not endured over time to keep the councils free from conflicts of interest. This will be discussed below.

B. Significant Amendments to the Magnuson Act

The Magnuson Act has been significantly modified since it became law in 1976. Understanding the changes that have come before will enable members of the 104th Congress to make wise policy changes during the current reauthorization.

While there have been several amendments to the Act, the most significant changes have been made with respect to foreign fishing by amending Title I and, with respect to the U.S. tuna policy, by amending Title II. Title II was amended in 1980 with the passage of the American Fisheries Protection Act. As previously noted, the Magnuson Act provides that the TALFF for a fishery within the EEZ is limited to that portion of the optimum yield not harvested by U.S. fishing vessels. Many legislators had hoped that, given priority under the Act, the U.S. fishing industry would grow and develop. An expansion of the domestic fishing industry was desirable because it meant more U.S. jobs, increases to the gross national product and increases in exports. But this expansion did not occur immediately. Congress assessed the U.S. fishing industry in 1980 and found that U.S. fishermen were harvesting only 33 percent of the total volume of fish caught in the U.S. EEZ. The anticipated domestic displacement of foreign vessels was not occurring.

The 1980 Act was designed to remedy this. It provided for a phased reduction of foreign fishing by giving the regional councils new formulas for deriving the TALFF. The new reduction formulas allowed

52. The Magnuson Act has been modified with respect to fishery habitat provisions. In 1986, Congress included two habitat provisions as a response to the Councils' concerns regarding adverse effects of habitat changes on fisheries. See 1986 Amendments, 16 U.S.C. §§ 1852(l), 1853(a)(7) (1988).
54. GUIDEBOOK, supra note 7, at 24.
55. Id. at 25.
increases in U.S. fishing to trigger even greater reductions in foreign fishing. The new formulas, combined with a council’s ability to manipulate the optimum yield in a fishery, allowed for the near complete expulsion of foreign fishing in the U.S. EEZ. Foreign harvests declined from about 3.8 billion pounds in 1977, to only about 12 million pounds in 1991. Commensurate with the decline of foreign harvest, domestic harvest increased from about 1.56 billion pounds in 1977 to more than 6.32 billion pounds in 1993.57 Thus, the percent of fish harvested by foreign nations from the U.S. EEZ declined from 71 percent in 1977 to about 0.0 percent in 1992.58 A milestone was reached in 1992 as it was the first year since the Act was implemented when there were no foreign fishing operations in the U.S. EEZ.59 Thus, the Magnuson Act has successfully accomplished its initial goal of Americanizing the fisheries off U.S. coasts.

The second significant amendment to the Magnuson Act concerned Title I, national jurisdiction. The original Act had excluded highly migratory species. The reason articulated for this exclusion was that, because of their transitory nature, efforts to conserve and manage these fish required a high degree of international cooperation and coordination to be effective. The United States had relied on international agreements for managing these highly migratory species. This position had been a source of continued debate since the Act’s enactment in 1976. In contrast to the United States, almost all other nations claimed jurisdiction over all fishery resources, including tuna, within their EEZs. Opponents of the U.S. position persuasively argued that recognition of coastal nation authority over tuna was not necessarily incompatible with international management schemes.50 The opponents suggested that changing the U.S. tuna policy would improve international relations and allow more effective fishery management within the U.S. EEZ.

Congress bowed to the international and domestic pressure to change the tuna policy by enacting the Fishery Conservation Amendments of

57. BUCK supra note 3, at 4.
58. Id.
Effective January 1, 1992, the exception of highly migratory species was struck from the U.S. declaration of sovereign rights and exclusive management authority within the U.S. EEZ. Congress explicitly recognized other nations' sovereign rights to regulate tuna within their own EEZs. Giving up lucrative fishing grounds used by the U.S. distant water tuna fleet was a significant move for the United States. At the time, the distant water tuna fleet had supported one of the largest and most valuable fishery-based industries in the United States. For example, in 1990, 20,000 people were employed in the tuna industry in the United States. In 1989, 700,000,000 pounds of canned tuna worth over $1,000,000,000 were consumed by Americans. During the same period, the United States caught 41,000,000 pounds of tuna, of which 90 percent by weight came from foreign or international waters.

C. Current Problems Under the Existing Magnuson Act

Current problems with the Magnuson Act can be categorized as follows: (1) overfishing; (2) inefficiency; and (3) lack of public confidence in decisions of the Regional Councils due to conflict of interest among voting members.

1. Overfishing

Overall, fisheries management in the United States has not achieved the conservation of fish stocks that was anticipated when the Act was originally passed. U.S. fishermen face strong economic incentives to "race for fish" because most U.S. fisheries are open access. Because the fisheries are open to all, fishermen rationally try to catch as many fish as possible as fast as possible. They know that any fish left in the sea are potential profit for their competitors. They also know that the fishing season may close abruptly when the total allowable catch has been reached. The race for fish often compels fishermen to exceed the total

63. COMMITTEE REPORT, supra note 60, at 3.
64. Id.
allowable catch. Understanding the dimensions of this problem is the first step toward finding a proper solution.

A comprehensive assessment of the status and potential of U.S. living marine resources is difficult because the type, quality, and source of relevant data are highly variable. Yet, based on the best science available, the National Marine Fisheries Service (NMFS) of the United States Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) recently published its assessment of the United States fish stocks. The report concludes that some of the nation's most valuable fisheries are in serious decline. The NMFS considered 231 stocks of fish including about 450 different species and estimated the long-term potential yield (LTPY) of each stock. LTPY is the maximum average yield that could be taken in the long term if an appropriate balance were struck between the level of fishing and the productivity of the resource. When the number of fish caught equals the number of fish produced, the stock is considered "fully utilized." If more fishing effort is needed to achieve this balance, the stock is deemed "underutilized," and if fishing effort exceeds fish production, the stock is deemed "overutilized." As of the 1993 report, 29% of the stocks assessed could not be classified due to insufficient data. Of the stocks with sufficient data, 40% were overutilized, 43% were at full utilization and 17% were underutilized.

By region, the northeast and southeast had the largest percentages of overutilized stocks (45% and 33% respectively). The New England groundfish fishery demonstrates the problem of overutilization. Stocks of cod, haddock and yellowtail flounder have literally collapsed causing disastrous economic and social impacts on the historic fishing communities of New England. Groundfish landings off the coast of New England declined from more than 1.6 billion pounds in 1965 to less than 220 million pounds in 1991. The commercial fishing industry in Massachusetts alone was a $300 million industry in 1990; yet, by 1993,

66. OUR LIVING OCEANS, supra note 4.
67. Id. at 18.
68. Sissenwine & Rosenberg, supra note 65, at 31.
69. OUR LIVING OCEANS supra note 4, at 19.
70. BUCK supra note 3, at 4.
revenues from fishing dropped to almost $232 million.\textsuperscript{71} By one analysis, the cost to New England of depleted groundfish resources in 1993 ran as high as 14,000 lost jobs and $350 million in annual earnings.\textsuperscript{72}

The cause of the depleted groundfish fishery has been the New England Regional Fishery Management Council’s failure to prevent overfishing.\textsuperscript{73} An analysis of the New England Council’s attempts to halt the overfishing will show the weaknesses of the Magnuson Act’s management scheme.

The New England Council’s first FMP was the Fishery Management Plan for Atlantic Groundfish. It was implemented in March of 1977 and established quotas for cod, haddock, and yellowtail, a minimum size for cod and haddock, a minimum mesh size for fishing nets, and two area closures.\textsuperscript{74} The inherent weakness of the plan was its failure to control entry of new fishing vessels into the fishery. The inevitable consequence was that the domestic fleet rapidly expanded.\textsuperscript{75} The domestic expansion overwhelmed the National Marine Fisheries Service’s ability to effectively administer the quotas.\textsuperscript{76} Because quotas were being overfished and because of the economic disaster that would occur if the


\textsuperscript{72} Paul Schneider, {\textit{Breaking Georges Bank: Controversy Over Fishing Problems in the Atlantic Ocean off the New England Coast,}} \textit{AUDUBON} 85 (1993), available in LEXIS, ENVIRN Library, CURNWS file.

\textsuperscript{73} Overfishing is loosely defined as the taking of more fish than a fish population can naturally replace. \textit{Cf.} infra note 105.

\textsuperscript{74} Richard B. Roe, \textit{The New England Multispecies Groundfishery, in CONSERVING AMERICA’S FISHERIES: A NATIONAL SYMPOSIUM ON THE MAGNUSON ACT} 83, 86 (Richard H. Stroud, ed., 1994). Established quotas were 37,000 metric ton (mt) for cod, 14,000 mt for yellowtail and 6,200 mt for haddock. 42 Fed. Reg. 13,998 (1977).

\textsuperscript{75} The United States contributed to the rapid increase in the domestic fleet through incentive programs geared at developing the U.S. fishing industry. \textit{See} Hearings on the Reauthorization of the Magnuson Fishery Conservation and Management Act Before the Subcomm. on Fisheries, Wildlife and Oceans of the House Comm. on Resources, 104th Cong., 1st Sess. (1995) (statement of John J. Magnuson, Chairman, Committee on Fisheries, Ocean Studies Board of the National Research Council) available in LEXIS, LEGIS Library, CNGTST File.

\textsuperscript{76} Roe, \textit{supra} note 74, at 86. The Magnuson Act places general enforcement responsibility on the United States Coast Guard and the Secretary of Commerce. 16 U.S.C. § 1860 (1988). The Secretary has delegated this authority to the National Marine Fisheries Service. Because of the size of the U.S. EEZ, enforcement has been a major fishery management problem.
fishery were simply closed, the Council abandoned the quotas and in 1980 created an "Interim Plan" with less restrictive measures.\(^\text{77}\) These less restrictive measures were large net mesh sizes, area closures and voluntary data reporting.\(^\text{78}\) The Interim Plan was replaced in 1987 with a more long term comprehensive management program. This plan increased the minimum sizes of cod, haddock and yellowtail flounder, set minimum sizes for pollock, increased the number of species regulated and increased minimum net mesh sizes.\(^\text{79}\)

These measures proved ineffective in halting the decline of groundfish stocks.\(^\text{80}\) In 1993 the Council created a plan to reduce groundfish landings by 50% over a five to seven year period.\(^\text{81}\) The plan consisted of a moratorium on new entrants, successive annual reduction in at-sea days for vessels, increases in minimum mesh size for nets and greater area closures.\(^\text{82}\) The Secretary of Commerce considered the plan inadequate to halt the collapse of groundfish stocks, and beginning on January 3, 1994, the National Marine Fisheries Service imposed strict emergency catch limits and tripled the size of the no-fishing areas (from roughly 620 square miles to around 2,000 square miles).\(^\text{83}\) The emergency closure was to be effective through June 12, 1995,\(^\text{84}\) and has now been continued indefinitely, pending new restrictions on fishing efforts under consideration by the New England Fishery Management Council.\(^\text{85}\)

What makes the New England situation particularly tragic is that the overfishing has occurred in an area that formerly was one of the world’s most productive marine regions, Georges Bank.\(^\text{86}\) For centuries, Georges

\(^{77}\) Id.

\(^{78}\) 51 Fed. Reg. 29,642, 29,643 (1986) (the Secretary approved the plan as an interim rule in 1986, indicating that the rule improved matters but was unsatisfactory for long term conservation and management).


\(^{80}\) See Conservation Law Foundation v. Franklin, 989 F.2d 54, 58 (1st Cir. 1993).


\(^{82}\) Id.


\(^{84}\) BUCK supra note 3, at 6.


\(^{86}\) As one commentator noted: "About twice the size of Massachusetts, [Georges Bank is] more than twice as efficient at turning plankton and other tiny organisms into harvestable fish than are the great fishing grounds of the Bering and North seas." Schneider, supra note 72.
Bank had sustained a valuable and culturally significant groundfish fishery. The consequences of years of overfishing may have caused a change in the species composition from groundfish to the much lower valued skates and dogfish. Only time will tell whether this trend is reversible.

2. Inefficiency

A major problem with the management of fisheries under the Magnuson Act has been that it has allowed inefficiency. Two specific area where inefficiency are demonstrated are the overcapitalization of the U.S. fishing fleet and the problems with bycatch. Bycatch refers to fish which are harvested by a fishing vessel, but which are not sold or kept for personal use, including economic and regulatory discards. 87

The National Marine Fisheries Service estimated in 1994 that overfishing and overcapitalization, that is more fishing capacity than is needed to catch the available fish, is depriving the U.S. commercial fishing industry of approximately $3 billion a year in economic benefits. 88 The economic impact to recreational fishermen is not quantified but is presumed to be equally large.

A dramatic example of overcapitalization is that of the southern shrimp trawl fishery. 89 The number of fishing vessels and the amount of fishing effort in the Gulf of Mexico shrimp fishery tripled between 1960 and the late 1980s bringing the estimated 1994 fleet size to 15,000 vessels. 90 Yet during this period of growth, catches decreased by 300 pounds per vessel ton. 91 The South Atlantic region has seen the same phenomenon. In 1930 there were fewer than 650 boats catching 30

87. Economic discards are fish which are the target of a fishery but which are not retained by the fishing vessel which harvested them because they are an unwanted size, sex or quality. Regulatory discards refers are fish caught in a fishery which fishermen are required by regulation to retain but not sell. See H.R. 39, 104th Cong., 1st Sess. § 4(b)(6).


89. OUR LIVING OCEANS, supra note 4, at 71.

90. The Crowded Sea, supra note 88, at 102.

91. Id.
million pounds of shrimp. By 1989 the number of fishermen with fishing permits had increased to 5,300, yet catches remained at or below that same 30 million pound level.92

There are significant negative externalities caused by the race to fish. First, vessels are forced to operate on a 24-hour basis, often in hazardous conditions, until quotas are reached. This risks the safety of both vessel and crew. Additionally, fish too big or small to be conveniently processed are discarded resulting in huge amounts of waste. Lastly, vessels have no incentive to avoid areas of where bycatch levels are high.93

The North Pacific Region is a good example of the U.S. bycatch problem. Every year more fish are discarded dead in the North Pacific than are landed by U.S. fishermen in the North Atlantic.94 Over 740 million pounds of dead or dying fish were dumped over the side in 1993 including 16 million pounds of halibut, 770,000 pounds of herring, 16 million crab an over 370,000 salmon.95 This represents blatant waste of a valuable U.S. resource.

3. Conflicts of Interest Among Voting Members of the Regional Councils

A third problem with management under the Magnuson Act has been the problem of actual or perceived conflicts of interest. Since the original act was passed, the safeguards put in place to prevent conflicts have eroded. This has caused the loss of public confidence in the Councils’ decisionmaking. This is significant because allocation of fishing quotas or opportunities among user groups is undoubtedly one of

92. Id.


95. Id.
the most controversial issues now facing the Councils. Allocation measures are "supposed to be fair and equitable to all fishermen; 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 [fishing] privileges." Public confidence in, and thus adherence to, fisheries management measures depends on the absence of even an appearance of conflict.

The erosion of the safeguards put in place to prevent conflicts began shortly after the Act was passed. First, in 1982 Congress exempted the entire Council system from the Federal Advisory Committee Act. The action was justified on the grounds that the FACA's procedural requirements were too burdensome and hampered the Councils' interaction with their scientific and statistical committees. Second, Congress exempted Council members from the principal conflict of interest provisions of the U.S. Code.

Congress attempted to limit the effect of this exemption by requiring the voting members and the executive director of each Council to disclose any financial interest in the harvesting, processing, or marketing of fishery resources under the jurisdiction of the Council held by that person, or any relative or partner of that person. The limiting effect was insignificant because the disclosure forms simply had to be filed for public inspection at the Council offices and because Congress did not require those voting members with a conflict of interest to abstain from voting. Thus, as it stands now, no penalty is imposed on a voting member for voting in a manner that results in a direct financial benefit to that member.

This situation has made some Council members uncomfortable. Walter Pereyra, a member of the North Pacific Fishery Management Council and a Seattle fishing boat owner told the Seattle Times, "I shouldn't even be on the council making these kinds of decisions [with respect to pollock quotas] that I have a conflict on ... I think that's true

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98. Myhre, supra note 46, at 50.
of every member of the council. It should be in the hands of the professional managers.\textsuperscript{101}

Not only Council members, but almost all participants in the fishery management debates view reform of the Council system as necessary to the attainment of the conservation objectives of the Act. Fishermen, conservationists, the public at large, state government officials and the Inspector General of the Department of Commerce have uniformly voiced the need to restore confidence in the Council system by mitigating conflicts of interest.\textsuperscript{102}

### III. REAUTHORIZATION OF THE MAGNUSON ACT

The current authorization for appropriations under the Magnuson Act lapsed on September 30, 1993. Because Congress failed to reauthorize the law in both 1993 and 1994, the reauthorization is taking place in 1995. Two significant bills, the Sustainable Fisheries Act,\textsuperscript{103} and the Fishery Conservation and Management Amendments of 1995,\textsuperscript{104} have been proposed to address the problems of overfishing, inefficiency and conflicts of interest. Generally, the bills represent the first major amendments to Title III of the Act, the U.S. fishery management system. Each bill dramatically improves the existing regime for fisheries conservation and management.

#### A. The Senate's Sustainable Fisheries Act of 1994—S. 39

The Sustainable Fisheries Act of 1994 would amend the Act to extend the authorization of appropriations through 1999. Its major provisions include:

\begin{itemize}
  \item \textsuperscript{101} Ross Anderson and Duff Wilson, \textit{A Fishy Situation—Critics Say Members of Panel Set Up to Manage Rich Fisheries Zone Off Alaska are Watching Over Their Own Self-Interests at the Same Time}, \textit{Seattle Times}, Nov. 10, 1991, at A1.
  \item \textsuperscript{102} See generally, Conflict Hearing, supra note 96 (statements by Robert Endreson, President, Hawaii Fishermen's Foundation; Bill Mott, Campaign Director, The Marine Fish Conservation Network; Mindy Cameron, Seattle Times editorial writer; Mike Lowry, Governor, State of Washington; and Frank DeGeorge, Inspector General, U.S. Dep't of Commerce).
  \item \textsuperscript{103} S. 39, 104th Cong., 1st Sess. (1995).
  \item \textsuperscript{104} H.R. 39, supra note 87.
\end{itemize}
1. *Fisheries Conservation*

In an effort to prevent further decline in fish stocks, the bill defines overfishing, a term left ambiguous in the original Act. In addition, each FMP is required to specify objective and measurable criteria for classifying when the fishery to which the plan applies would be or is overfished, with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery. It also calls for an annual report by the Secretary of Commerce on the status of fisheries that are overfished or approaching an overfished condition. Each Council would be given one year to propose a plan to halt overfishing and restore the fishery. The FMP must specify a time period for stopping overfishing and rebuilding the fishery. A 10-year maximum time period is set out in the bill, modified by a statement that it should be as "short as possible." As a final measure, if a Council fails to come up with a plan to halt overfishing, the Secretary may step in and implement an FMP to do so.

The bill has three provisions to deal with the inevitable economic consequences to fishermen of a stock rebuilding program. First, the Secretary may work with the Councils, affected states, fishery dependent communities, the fishing industry, conservation organizations, and other interested parties, to develop a sustainable development strategy for any fishery defined as overfished. This includes the identification of federal and state programs which can be used to provide assistance to fishery dependent communities during the recovery effort as well as the development of a comprehensive long-term plan to guide the transition to a sustainable fishery. Second, at the Secretary's discretion, he may

105. S. 39, supra note 103, at 103(8). The terms "overfishing" and "overfished" mean "a level or rate of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis." Id.
106. Id. § 111(a)(10).
107. Id. § 113.
108. Id.
109. Id.
110. Id. § 111(e)(1)(C). Additionally, if a Council finds that an emergency exists involving any fishery, the Secretary must promulgate emergency regulations necessary to address the problem. Id. § 113.
111. Id. § 119(a).
112. Id.
declare a fishery resource disaster. The Secretary is then authorized to make money available to be used by the affected state. Lastly, the bill sets out a vessel buy-out program for the purposes of reducing the number of vessels and fishing effort in the overfished fishery and easing the financial burdens on fishermen displaced by the recovery effort.

2. Waste Reduction

The bill specifically targets the problems of overcapitalization and bycatch. Overcapitalization is addressed in two ways. First, through the vessel buy-back program set out above, and second, through the encouragement of the use of individual transferable quotas (ITQs) in appropriate fisheries. Individual transferable quotas are defined as a "revocable federal authorization to harvest or process a quantity of fish under a unit or quota share that represents a percentage of the total allowable catch of a stock of fish, that may be received or held by a [person] ... for their exclusive use, and that may be transferred ... to another person...." ITQs are a means of restricting access in a fishery. Under the current Magnuson Act, FMPs are allowed to create ITQs but in practice, these measures are not often used. The bill encourages the use of ITQs by instructing the Secretary of Commerce to promulgate mandatory guidelines for the establishment of any ITQ.

113. Id. § 119.
114. Funds are to come from the Ocean Conservation Trust Fund, established by the bill for this limited purpose only. Money is to be generated for the fund by assessing annual fees on holders of fishing permits. Id. § 119(a).
115. Id. § 119(a). The buy-out program is highly controversial because it addresses the economic needs of fishing vessel owners and does not protect crew members or fishery dependent businesses. The buy-out program would require that (1) a fishery management plan is in place that limits access to the fishery and prevents replacement of fishing effort that is bought out; (2) vessel or permits acquired under the buy-out program cannot re-enter the fishery or contribute to excess fishing effort in other fisheries; and (3) criteria are established to determine the types and numbers of vessels which are eligible for participation.
116. Id. § 103(5).
117. ITQs were not often used as a management tool because fishermen felt that controlling the number of people allowed to fish revoked their traditional rights to fish. The collapse of many important fisheries has caused an increasing number of fishermen to realize that limiting entry may be an effective management tool. ITQs are in place in the Atlantic Surf Clam and Ocean Quahog Fishery (50 C.F.R. § 652 (1993)) and the South Atlantic wreckfish fishery (50 C.F.R. § 646.10 (1993)).
Guidelines are important because under the Act the Councils and the Secretary must take into account "present participation in the fishery" when establishing a system for limiting access to the fishery. Because specific guidelines have not been stated in the past, Councils have been reluctant to use this management tool for fear of the legal and policy issues that may be raised in allocating fishing privileges. The guidelines mandated in the bill are meant to help Councils overcome this fear by dealing with ITQ-related issues such as initial allocation, eligibility for participation, consolidation, and access by entry-level fishermen.

The bill also calls for waste reduction. It defines categories of bycatch and requires any FMP developed by a Council or the Secretary to (1) assess the level of bycatch occurring in each fishery including the effect of a fishery on other stocks of fish in the ecosystem; and (2) minimize, to the extent practicable, mortality caused by waste and discards of unusable fish. Additionally the bill encourages Councils to adopt management measures that provide a harvest preference or other incentives for fishing vessels within each gear group that employ fishing practices resulting in lower levels of bycatch.

3. Council Reform

S. 39 contains significant measures to reform the Council process. The bill requires Council members to recuse themselves from voting on Council decisions that would have a "significant and predictable effect" on their financial interests. A Council decision would be considered to have a "significant and predictable effect" if there is a "close causal link between the Council decision and an expected and disproportionate benefit, shared only by a minority of persons within the same industry sector or gear group, to the financial interest of the Council member."

118. S. 39, supra note 103, § 111(c).
120. ITQs are a fishing privilege and not a property right. S. 39 states that an ITQ is not a property right and authorizes the Secretary to terminate or limit any ITQ at any time without paying compensation to the holder of the quota. S. 39, supra note 103, § 111(c).
121. Id. § 111(a)(5).
122. Id. § 111(b)(4).
123. Id. § 110(g)(8).
124. Id.
This language prevents Council members from voting on decisions benefitting only themselves or a minority in their gear group, but permits them to express their views on matters on which they have expertise. It thus prevents Council members from voting on certain matters without requiring so much abstention from voting that the Councils are rendered ineffective. The bill directs the Secretary to select a "designated official" with federal conflict of interest experience to attend Council meeting and make determinations regarding the financial interests of members. These determinations are to occur at the request of the affected Council member or at the initiative of the designated official.


The Fishery Conservation and Management Amendments would also extend the authorization for appropriations through 1999. Its major provisions include:

1. Fisheries Conservation

The House bill also defines overfishing and requires the Regional Councils to define overfishing in every FMP. Each FMP must include a measurable and objective determination of what constitutes overfishing in a fishery and must include a rebuilding program for any fishery which the Council or the Secretary has determined is overfished. If the Secretary determines that overfishing has occurred in any fishery, he must notify the Council and request that action be taken to halt the overfishing. If the Council fails to take action to stop the overfishing within one year, the Secretary is directed to prepare an FMP to establish the necessary rebuilding program.
2. Waste Reduction

The House bill has three provisions relating to waste reduction. First, it requires FMPs to include conservation and management measures necessary to minimize bycatch to the maximum extent practicable, including incentive and harvest preferences within a fishing gear group to promote the avoidance of bycatch.130

Second, it includes a fishing capacity reduction program.131 The bill authorizes the Secretary to permanently reduce fishing capacity at the least cost, and in the shortest period of time, through the removal of vessels and permits from a fishery.132 The Secretary is to make payments to scrap, or otherwise render permanently unusable for fishing in the United States, vessels that operate in a given fishery and to acquire federal fishing permits that authorize participation in a fishery.133 Funding for the government expenditures are to come from payments from the participants of each fishery.134

Third, the bill authorizes the creation of an individual quota limited access programs. The term individual quota is defined as a grant of permission to harvest or process a quantity of fish in a fishery, during each fishing season for which the permission is granted, equal to a stated percentage of the total allowable catch for the fishery.135 Similar to the Senate bill, the House bill includes language stating that an individual quota is not to be construed as a property right but is rather a grant of permission to the holder to engage in fishing activities.136 Thus, the grant may be revoked without conferring any right of compensation to the holder of the individual quota. In contrast to the Senate bill, the House version provides that an individual quota is to expire not later than seven years after the date it is issued, in accordance with the terms of a fishery management plan.137

The individual quota system is designed to generate funds to help pay for the vessel buy-out and permit buy-back programs outlined above. Fees equal to one percent of the value of fish authorized to be harvested

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130. Id. § 7.
131. Id. § 17.
132. Id.
133. Id.
134. Id.
135. Id. § 16(b).
136. Id.
137. Id.
in one year under the individual quota are to be collected from the initial holder of the individual quota.\textsuperscript{138} Thereafter, an annual fee of four percent of the value of the fish authorized to be harvested each year under an individual quota share are to be collected from the holder of the individual quota share.\textsuperscript{139} An additional fee of one percent of the value of fish authorized to be harvested each year would be charged to any holder who wished to permanently transfer his share to another person.\textsuperscript{140}

Again, similar to the Senate bill, the House bill directs the Secretary to issue regulations which establish requirements for creating an individual quota system.\textsuperscript{141} The regulations are to be developed in accordance with recommendations submitted by a special review panel established in the bill.\textsuperscript{142} The regulations must specify factors that must be considered by each Regional Fishery Management Council in determining whether a fishery should be managed under an individual quota system.\textsuperscript{143}

3. \textit{Council Reform}

The House bill differs from the Senate version in its attempt to reform the Council process. In the House version, the Secretary, in consultation with the Councils, and not later than one year after the date of enactment of the Fishery Conservation and Management Amendments of 1995, is directed to establish rules which prohibit an "affected individual" from voting on a matter in which the individual has an interest that would be significantly affected.\textsuperscript{144} The term "interest that would be significantly affected" is defined as "a personal financial interest which would be augmented by voting on the matter and which would only be shared by a minority of other persons within the same industry sector or gear group whose activity would be directly affected by a Council’s action."\textsuperscript{145} Voting members are asked to recuse themselves if they determine voting would violate the Secretary’s rules, or if the General Counsel of the National Oceanic and Atmospheric

\textsuperscript{138} Id. § 16(c).
\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} Id. § 16(d).
\textsuperscript{142} Id.
\textsuperscript{143} Id.
\textsuperscript{144} Id. § 8(i).
\textsuperscript{145} Id.
Administration (by the request of any council member) determines that voting by that member would violate the rules. 146

IV. CONCLUSION

It has been nearly 20 years since the Magnuson Act brought the fishery resources within 200 miles of all U.S. coasts under federal jurisdiction and established a new system of managing those resources through the Regional Fishery Management Councils. The United States has witnessed both notable successes and failures during those twenty years. Its major success has been eliminating foreign overfishing. Its major failure has been substituting U.S. overfishing in its place. Today the most pressing problems facing the management of U.S. fisheries are overfishing, inefficiencies and lack of public confidence in the decision-making of the Regional Councils due to conflicts of interest.

The current reauthorization process should be used to correct these problems. The Senate's Sustainable Fisheries Act and the House's Fishery Conservation and Management Amendments of 1995 would both strengthen the conservation and management provisions of the Act. Congress is fortunate that the bills are already very similar. They both address the problem of overfishing by defining it and requiring recovery programs be put in place once a fishery is determined to be overfished. Both bills adopt incentives to curb bycatch problems. Further, both bills adopt a vessel capacity reduction program and a limited access program. Finally, both bills reform the council decisionmaking process by requiring voting recusals from "interested" council members. Congress must now sit down and work toward integrating the bills to finalize the reauthorization process and to create a stronger Magnuson Act.

Catherine E. Decker

146. Id.