



# Legal Framework for Federal Fisheries Management

Moir Kelly  
Fishery Policy Analyst  
NMFS Northeast Regional Office  
Gloucester, Massachusetts  
January 2014



©Sobriquet Magazine 2009

# The Legal Framework

## LAW

Magnuson–Stevens Fishery  
Conservation and Management Act

## PLAN

### Fishery Management Plan

e.g. Northeast Multispecies FMP, Northeast  
Skate FMP, etc

## REGULATIONS

### Code of Federal Regulations

50 CFR part 648

e.g. § 648.80(a)(9) Small Mesh  
Exemption Areas I & II

# Magnuson-Stevens Fishery Conservation and Management Act



- **1976: Magnuson Fishery Conservation and Management Act first enacted**
- **1996: Sustainable Fisheries Act**
- **2006: Magnuson-Stevens Reauthorization Act**
  - Established requirements for annual catch limits (ACLs) and accountability measures (AMs), with a firm deadline to end over-fishing by 2011.
  - Established a national registry for recreational fishermen.

# NMFS Responsibilities

- Legal responsibility for implementing MSA
  - NMFS is subject to law suits
    - We use the “Administrative Record” as the basis for decision-making, which includes everything in the public record, including written comments, Council minutes, etc.
    - The Admin Record is used in lawsuits to demonstrate how the Agency made it’s decision.
- Review, approve or disapprove FMPs
  - Can approve in whole or in part
- Implement and enforce regulations
- Administer supporting programs (data collection)
- Serve as the principal source of scientific information to support the process

# Magnuson-Stevens Act Details

- Required Provisions (**FMPs must...**)
- Discretionary Provisions (**FMPs may...**)
- **National Standards:** Ten standards against which FMPs and regulations must be evaluated.

# National Standards-Overview

- 10 National Standards address science, conservation, analysis, and industry.
- Not all equal – Appeals Court found that conservation (NS 1) has priority.
- Important distinction between **shall** and **shall, to extent practicable.**

*Note, the emphasis added to each NS below is mine.*



# National Standard 1



**NS 1**: Conservation and management measures **shall prevent overfishing, while achieving**, on a continuing basis, the **optimum yield** from each fishery for the United States fishing industry.

*We will be talking about NS 1 in greater detail shortly.*

# National Standards 2 & 3

- **NS 2:** FMPs **shall** be based on best scientific information **available**.
- **NS 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.



# National Standard 4

- **NS 4**: Conservation and management measures **shall not** discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be:
  - (A) fair and equitable to all such fishermen;
  - (B) reasonably calculated to promote conservation; and
  - (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

# National Standards 5, 6, & 7

- **NS 5**: Conservation and management measures **shall, where practicable**, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
- **NS 6**: Conservation and management measures **shall** take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.
- **NS 7**: Conservation and management measures **shall, where practicable**, minimize costs and avoid unnecessary duplication.

# National Standard 8

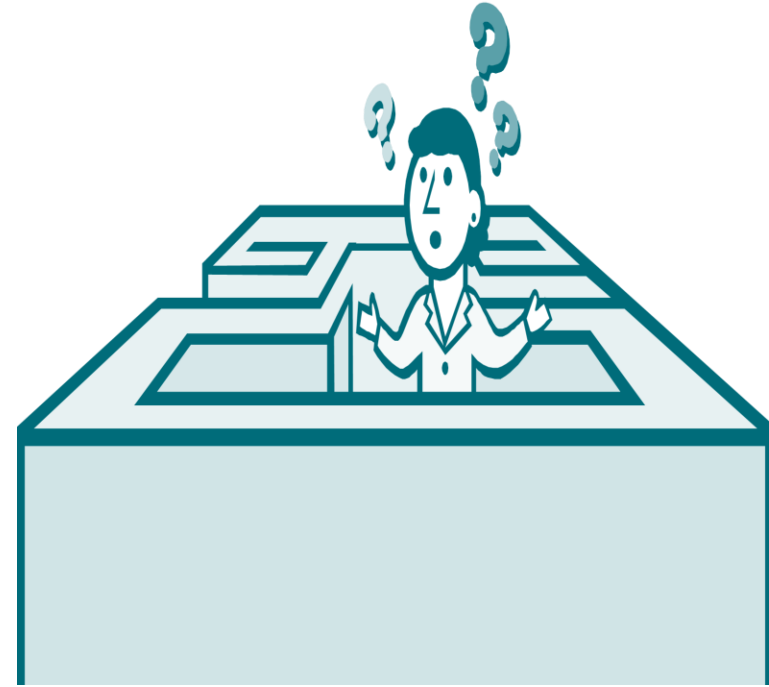
- **NS 8**: Conservation and management measures **shall, consistent with the conservation requirements of this Act** (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to:
  - (A) provide for the sustained participation of such communities, and
  - (B) **to the extent practicable**, minimize adverse economic impacts on such communities.

# National Standards 9 & 10

- **NS 9**: Conservation and management measures **shall, to the extent practicable**,
  - (A) minimize bycatch, and
  - (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.
- **NS 10**: Conservation and management measures **shall, to the extent practicable**, promote the safety of human life at sea.

# Why is the Legal Framework So Confusing?

- Many laws apply, not just the Magnuson-Stevens Act
  - Other important Conservation Laws
  - Procedural laws that apply to all rulemakings by Federal agencies
- Laws are overlapping, detailed, change over time, and are subject to interpretation



# Other Legal Requirements

## National Environmental Policy Act

- Requires consideration of alternatives and comparison of impacts on the affected human environment
- Established in 1969
- Basic national charter for protection of the environment
- Establishes national policy & set goals
- Applies only to Federal agencies

# Other Legal Requirements

**Marine Mammal  
Protection Act**

Information Quality Act

Administrative Procedure Act

**National Environmental Policy Act (NEPA)**

Executive Order 12688

**Regulatory Flexibility Act**

**Coastal Zone  
Management Act**

Endangered Species Act

**Paperwork Reduction Act**

Executive Order 13132

# Taken All Together...

- Compliance with the requirements of these laws is not optional.
- Even limited waivers of legal requirements (e.g., 30-day delay in effectiveness) can be difficult to obtain.
- Decision-makers must consider alternatives and their impacts.
- But actions with severe impacts can still be the result.



# Questions?

