

The Old Magnuson-Stevens Act and the Sea: How Fishery Management Plans Are Implemented and Enforced

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In 1976, Congress addressed overfishing and the impending collapse of economically vital fishing stocks with the Fishery Management and Conservation Act, which authorized the federal government to manage fisheries out to 200 miles from the shore. The act was amended twice to clarify terms, strengthen provisions, and emphasize rebuilding fisheries alongside conserving them. These acts collectively are known as the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The MSA authorizes the government to create regulations to manage fisheries and enforce violations of those regulations.

The National Marine Fisheries Service (NMFS) of the Department of Commerce issues regulations based on fishery management plans under the MSA. Regional councils, known as fishery management councils (FMCs), are also involved with managing fisheries. Eight regional councils advise the NMFS, create fishery management plans, and amend plans when needed. These councils are responsible for fisheries in federal waters seaward of their region. A fishery can refer to a species of fish, a type of fish, the type of equipment used to harvest the fish, or the geographical region of a species. For example, instead of a “red snapper” fishery, red snapper are managed with other reef fish in the Gulf of Mexico under the Gulf of Mexico Reef Fishery Management Plan, but in the Atlantic Ocean are managed under the South Atlantic Snapper-Grouper Fishery Management Plan.

The MSA in Action: How a Fishery Management Plan is Developed

Creating a fishery management plan (FMP) involves several steps. First, NMFS finds that a fishery is “overfished.” Overfished means a level of fishing mortality that jeopardizes the capacity of a fishery to “produce the maximum sustainable yield on a continuing basis.” Maximum sustainable yield

(MSY), is the largest long-term average that can be taken from a fishery under the current conditions. Current conditions include ecological conditions and the type of gear used for fishing that fishery.¹ MSY is based on the best scientific data available and updated to accurately reflect conditions.² For example, NMFS determined that Gulf of Mexico gray triggerfish were subject to overfishing because the total landings of the fish were greater than what could maintain a sustainable population, according to scientific research.³ When a fishery does not have enough fish within the population to reproduce and sustain an adequate population, then the consequences could be disastrous to the ecosystem. Fishery collapse would be devastating to the fishing industry as well. If overfishing depletes fisheries, then not enough fish will be left to support future harvests, endangering the livelihoods of fishermen.

Once a fishery is determined to be overfished, NMFS notifies the appropriate regional council that it has one year to create a fishery management plan (FMP) to reduce overfishing and rebuild the stock. Voting members on a fishery management council include: the regional NMFS Administrator, representatives from affected states’ marine management agencies, and qualified fishing industry, academic, and environmental representatives nominated by their states. The Council is advised on the best available data by a Scientific and Statistical Committee,⁴ as well as by nonvoting members from the Coast Guard, U.S. Fish and Wildlife Service, and the U.S. Department of State. The FMP must specify an amount of time required for rebuilding the fishery in the plan. This time period must be as short as possible to rebuild the fishery, and it cannot exceed ten years, except in cases of fish with longer life-cycles where a longer term may be allowed. For example, the most recent red snapper rebuild

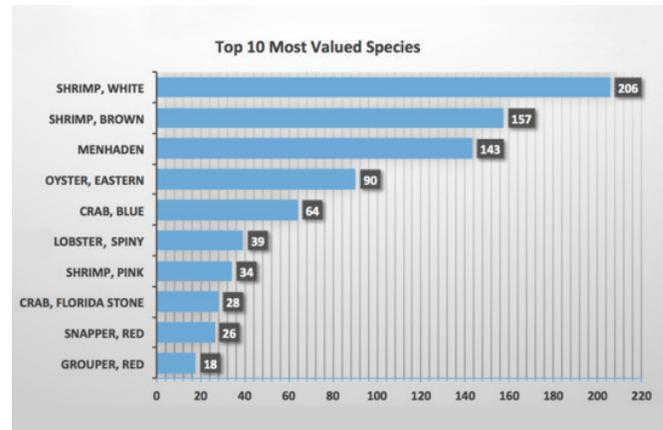
date was set at just under 32 years. These plans establish different management measures such as, the required annual limits on catches, gear restrictions, and fishing seasons.

An FMP is subject to a review under the National Environmental Policy Act, which includes seeking public input on draft and final reviews of the environmental impacts of the project. Once the Council has produced a final document, NMFS has 30 days to approve the FMP, in whole or in part. The plan must comply with the MSA and all other relevant laws.⁵

The Ten National Standards

FMPs are governed by the Ten National Standards, legally-enforceable factors that each plan must follow. They address scientific as well as socio-economic factors. The plan must:

1. Provide for the “optimum yield” for each fishery,
2. Be based on the best scientific information available,
3. Individual stocks of fish are to be managed as a single unit throughout their range, and interrelated stocks shall be managed in close coordination, to the extent practicable,
4. Not discriminate between members of different states. If allocation is necessary, then it must be fair and equitable, reasonably calculated to promote conservation, and carried out so that no one gets an excessive share,
5. To the extent practicable, consider the efficiency of the plan, but this calculation cannot be made on economic considerations alone,
6. Allow for variations and contingencies in the fisheries and catches,
7. Minimize costs and avoid unnecessary duplication where practicable,
8. Take into account the importance of fishery resources to communities by using the best available economic and social data to provide for sustained participation of these fishing communities and to the extent practicable minimize adverse economic impacts to these communities,
9. To extent practicable, minimize bycatch and minimize the mortality of unavoided bycatch, and
10. To extent practicable, promote safety of human life at sea.⁶



Source: Benedict C. Posadas, PhD,
Mississippi-Alabama Sea Grant Consortium

The “optimum yield” is slightly different from the maximum sustainable yield discussed previously. The maximum sustainable yield is concerned with quantifying the greatest amount of fish that can be taken in current conditions before it is overfished. The optimum yield is the number of landings that “will provide the greatest overall benefit to the Nation...”⁷ In other words, the optimum yield is the highest amount of fish that can be taken in order to benefit fishers and the communities that depend on the industry, while leaving in place the most ideal population in the ecosystem to allow fishing to continue at those levels into the future. The optimum yield may be lower than the maximum sustainable yield.

Another term of art in the national standards is “bycatch.” Bycatch are fish or other animals that are unintentionally captured by a fishery while catching the intended fish.⁸ For example, shrimp trawlers’ gear often catch juvenile red snapper, which are discarded by the shrimpers. Bycatch does not have to include undesired fish. Dolphins caught in tuna nets or albatross caught on squid long-lines are bycatch as well. Also, fish that are too juvenile or small to be kept are bycatch.

If an FMP does not adequately consider the National Standards, the plan must be rejected. If it complies and is approved by NMFS, then it is published in the Federal Register. There is a 60-day public comment period. The NMFS has 30 days from the end of the comment period to consider the comments, then approve, disapprove, or partially approve the plan. Once approved, the final plan is issued as federal regulations in Title 50 of the Code of Federal Regulations.⁹

Enforcement

The MSA is enforced by NMFS and the Coast Guard.¹⁰ All catches from managed fisheries must be reported in order to determine that the stock continues to be self-sustaining. This largely relies on self-reporting by vessels and anglers. Additionally, the government uses observers on vessels to record data and ensure compliance. Regulation and enforcement is still largely reliant on self-reporting, so false data could greatly harm the government’s ability to gather the most accurate data on which the FMPs rely.



Photograph courtesy of Gerald Carter.

Whenever a violation occurs, such as fishing out of season, catching too many fish, or misrepresenting the quantity of fish harvested, a civil penalty is assessed, which can be no greater than \$100,000 per violation. Each day of a continuing violation is considered a separate offense. When assessing the penalty amount, the NMFS considers the following: circumstances, gravity of the offense, degree of culpability, and history of prior offenses. A violator’s ability to pay may also be considered. A civil penalty can also lead to a revocation of an MSA permit to fish.¹¹ Furthermore, the MSA provides for criminal penalties. These penalties can be imposed for a variety of acts including: interfering with NMFS observers aboard vessels, interfering with Coast Guard enforcement, or for submitting false data to the government relevant to the MSA.¹²

Gulf Council Managed Fisheries

The Gulf of Mexico Fishery Management Council manages fisheries in federal waters of the Gulf of Mexico. The Gulf Council manages a number of fisheries, including different varieties of reef fish under the Gulf of Mexico Reef Fish Management Plan.

Types of Fish Managed	Species Within Management Plan
Coastal Migratory Pelagics	King mackerel, Spanish mackerel, Cobia
Red Drum	Red drum
Reef Fish: Snappers	Queen snapper, Mutton snapper, Blackfin snapper, Red snapper, Cubera snapper, Gray (mangrove) snapper, Lane snapper, Silk snapper, Yellowtail snapper, Wenchman, Vermillion snapper
Reef Fish: Groupers	Speckled hind, Goliath grouper, Red grouper, Yellowedge grouper, Warsaw grouper, gag, Scamp, Yellowfin grouper
Reef Fish: Tilefishes	Goldface tilefish, Blueline tilefish, Tilefish
Reef Fish: Jacks	Greater amberjack, Lesser amberjack, Almaco jack, Banded rudderfish
Reef Fish: Triggerfishes	Gray triggerfish
Reef Fish: Hogfish	Hogfish
Shrimp	Brown shrimp, White shrimp, Pink shrimp, Royal red shrimp
Spiny Lobster	Caribbean spiny lobster
Coral	Hydrozoa corals (stinging and hydrocorals), Hexacorals (stony and black corals); Over 140 species of coral are within this management plan.

In addition to the fisheries listed in the chart above, the Council also regulates aquaculture in federal waters.¹³

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Endnotes

- 16 U.S.C. § 1802(34).
- 50 C.F.R. § 600.310 (e)(1)(v)(A).
- 83 Fed. Reg. 9298 (March 5, 2018).
- 16 U.S.C. § 1852(g).
- 16 U.S.C. § 1854.
- 16 U.S.C. § 1851.
- 16 U.S.C. § 1802(33).
- 16 U.S.C. § 1802(2).
- 16 U.S.C. § 1854.
- 16 U.S.C. § 1861(a).
- 16 U.S.C. § 1858.
- 16 U.S.C. § 1859.
- Gulf of Mexico Fishery Management Council, *Implemented Fishery Management Plans*.