

CRS Report for Congress

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Social Aspects of Federal Fishery Management¹

Eugene H. Buck

Senior Analyst in Natural Resources Policy
Environment and Natural Resources Policy Division

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SUMMARY

The primary legislation governing Federal fishery management, the Magnuson Fishery Conservation and Management Act, contains references to the social aspects of Federal fishery policy. Many of the references have an historical basis resulting from the inherent social conditions and values associated with the fishing community. Other applicable laws, as well as Federal emergency and financial aid programs, contribute to an understanding of the overall Federal policy toward social issues as they relate to fishery management.

At issue is whether the Federal Government should examine its approach to the social aspects of fishery management. Because crucial decisions concerning the future of fishery management are on the horizon, a window of opportunity may exist for evaluation of the Federal role. Overfishing and/or overcapitalization may force fishery managers to adopt strategies (e.g., downsizing) that will have inevitable social repercussions. How social concerns are reflected in fishery legislation will influence how fishery management plans respond to overriding issues, such as resource conservation. A basic conflict may exist between the objectives of resource conservation and a manager's obligation to consider the social consequences of his/her actions.

This report examines historic and current references to the social aspects of fishery management as they appear in legislation, and discusses the importance of considering these issues. A discussion of possible alternative approaches, with regard to the role of the Federal Government, follows.

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INTRODUCTION

The Federal Government has been looking after the general welfare of U.S. fishermen for more than 200 years. At the Federal level, the Treaty of Paris in 1783, the Fishermen's Protective Act of 1954, the Fish and Wildlife Act of 1956, and most recently the Magnuson Fishery Conservation and Management Act (MFCMA) have all, to some degree, taken into account the significance of fishermen and the commercial fishing industry to society. This report examines how Federal fishery management programs address issues of social concern and how, through legislative and executive actions, the social and cultural values associated with the fishing community are accounted for.

Social aspects of fishery management do not fit neatly into any management category. Nevertheless, in discussing social aspects, it is useful to separate management issues according to conservation (how much fish?) and allocation (who gets the fish?).⁽²⁾ Social concerns often arise in connection with the allocation of marine resources. Most recently, social concerns have arisen when and where crises in stock abundance have reduced harvest.

Policymakers determine what weight, if any, should be placed on social criteria, and how those criteria are balanced against other relevant factors. Often, that determination is made with the help of a social impact assessment (SEA).

By *social impacts* we mean the consequences to human populations of any public or private actions that alter the ways in which people live, work, play, relate to one another, organize to meet their needs and generally cope as members of society. The term includes cultural impacts involving changes to the norms, values, and beliefs that guide and rationalize their cognition of themselves and their society. ⁽³⁾

Among the social criteria that directly affect the fishing community are: 1) preservation of traditional and cultural values, cultural diversity, community stability, and the livelihood of fishermen; 2) equity among user groups; 3) diversity among recreational and commercial users; and 4) the role of the fishing community in American culture and tradition.

There are several ways of looking at the Federal Government's role in fisheries. What is its current role, and has it been successful in achieving the social objectives as originally intended? Has there been sufficient, too much, or too little consideration of social factors in fishery management? Has attainment of social objectives been frustrated by need for greater attention to conservation of marine resources? Has conservation been compromised by excessive attention to social goals? Another approach might be to consider the potential consequences of precluding any references to social or cultural factors.

Looking toward the future in fishery management, will the Federal role, as it is now defined by law and regulation,

be adequate to respond to change as regional and State management authorities address such issues as overfishing, stock recovery, and ecosystem management? A review of the status of fish stocks in U.S. waters leads many to conclude that fishery management under the current system is, in many instances, in need of some regulatory overhaul. (4) For those fisheries that are presently overcapitalized and/or overfished, many of the actions proposed to resolve these concerns could have significant social and lifestyle repercussions in fishing communities. (5) Even in cases where resource depletion is not the primary issue, other management issues exist, such as overcapitalization, bycatch, and the potential need to control fishing effort. Structural changes in the industry to implement fishery management plans (e.g., limited entry, individual fishing quotas) are already affecting communities in several regions.

Upon closer examination of this topic, one finds conflicting objectives within the Federal fishery management system. The need to conserve fish stocks, or marine resources in general, is portrayed by some as conflicting directly with attempts to preserve and protect the livelihood of commercial and sport fishermen. Others reject the notion that there is any direct linkage between protecting the environment and job loss or argue that healthy ecosystems are necessary to sustain jobs over the long run. However, the limits to fishing industry growth came into focus long before the management process could react to control fishing effort.

The central issue considered in this report is to what extent Congress should determine the emphasis given to social and cultural concerns in Federal fishery policy. Many of the specific issues presented in this report are qualitative and value-oriented, and they are important to the fishing industry and to society. The report discusses how these same concerns historically have found their way into Federal fishery policy.

Considering the host of issues facing fishery managers today, Congress may wish to consider whether some adjustment of the Federal Government's social role, defined in legislation, might be appropriate. It may also be opportune to examine how the social aspects of Federal fishery management fit or balance with other Federal fishery objectives, such as economic efficiency, biological integrity, and resource preservation/restoration.

BACKGROUND

It is useful to recall some of the history of fishery policy, the perceptions of the fishing industry prior to passage of the Fishery Conservation and Management Act of 1976, and the subsequent expansion of the U.S. fishing fleet.

Pre-1976

In 1783, the Treaty of Paris:

contained provisions assuring the rights of U.S. fishermen to continue traditional fisheries off eastern Canada. Another treaty in 1818 also dealt with these fisheries, and a convention was concluded with Russia in 1824 that covered fishing in the Pacific and along the coast of Alaska. Various other treaties and agreements have been negotiated, to facilitate U.S. fisheries in other countries' or in international waters, and to protect U.S. fishermen from foreigners. Numerous laws, including the Fishermen's Protective Act of 1954 and the Fish and Wildlife Act of 1956, have restated the government's concern with fishermen's welfare and safety; some have provided for loans, grants, or other special economic considerations for U.S. fishermen. (6)

Although many of these laws and treaties had economic motives, harvesting of living marine resources was generally recognized for its "valuable contributions to the life of the Nation." (7) A social policy supporting the protection and

preservation of the fishing industry is implied in the historical record exhibited in these documents. (8)

Several factors contributed to the unique character of the fishing industry. The strategic significance of having a ready merchant fleet and a reserve of sailors was an early concern. Another important concern was promoting the economic viability of the U.S. fleet and its ability to harvest valuable marine food resources. The national importance of fishing varied through U.S. history, and the industry required periodic assistance from the Federal Government. Any connection between financial support of the U.S. fishing fleet and resource depletion as a result of fleet expansion was not readily apparent during this time. This pattern of providing assistance to hasten development of the commercial fishing industry continued through the 1980s when overfishing in several fisheries became readily evident.

The presence of massive foreign fishing fleets off U.S. coasts, beginning in the late 1950s and peaking in 1973, provided the Federal Government with further justification to assist the U.S. fleet. In the face of direct competition from government-subsidized and seemingly unregulated foreign fleets as well as with the threat of resource depletion (especially off the New England coast), Congress passed the Fishery Conservation and Management Act of 1976 (later renamed the Magnuson Fishery Conservation and Management Act).

Throughout this period, the image of the small-scale, independent American fisherman struggling to make a living from the sea did not change very much. Federal efforts to assist the fleet reflected a benign attempt to protect not only the domestic employment base and resource value of fishing, but also the social and cultural values of those who made their living from the sea.

Magnuson Fishery Conservation and Management Act

Social values are mentioned in the first section of the Magnuson Fishery Conservation and Management Act (MFCMA) where it provides that management plans shall "take into account the social and economic needs of the States," (10) and further that "Many coastal areas are dependent upon fishing and related activities." (11) Social factors are again mentioned in reference to the determination of "optimum yield." (12) A further discussion of relevant social factors is found in the *Code of Federal Regulations* (13) guidelines for interpreting the MFCMA national standards. (14) Examples of social factors mentioned in these guidelines include: recreational fishing, avoiding gear conflicts and resulting disputes, preserving a way of life for fishermen and their families, and local community dependence on a fishery. (15)

Under the MFCMA, eight Regional Councils were established to "prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area." (16) A fishery management plan or plan amendment is required to include a fishery impact statement which "shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on participants in the fisheries." (17) Upon submittal to the Secretary of Commerce, the plan or amendment is reviewed "to determine whether it is consistent with the national standards, the other provisions of this chapter, and any other applicable law." (18) Under this relationship, incorporation of social values into a management plan becomes the primary responsibility of the Regional Councils. Influence of social considerations on a management plan can be affected by: 1) a social impact assessment (SIA) (19) if one is prepared by the Regional Council; 2) public testimony; and 3) the character of individual Council membership. Appointment of "active participants (or their representatives) in the commercial and recreational fisheries" (20) by the Secretary is an important means of assuring that social considerations are represented in Regional Council decisions. In addition, several of the regional scientific and statistical committees include social scientists to represent these issues. Advisory committees also provide Councils with a broad range of representative

views.

Other Applicable Law

The MFCMA requires that fishery management plans also be consistent with other applicable law. To that end, the fishery management process reflects the approach mandated by these other laws.

One of the ways that social considerations are included in the management process is through public participation. Both the Administrative Procedure Act (21) and the National Environmental Policy Act of 1969 (NEPA) (22) call for public participation. The overall influence of NEPA is evident throughout the MFCMA.

NEPA's purpose is to insure that Federal officials weigh and give appropriate consideration in policy formulation, decision making, and administrative actions to environmental values and ecological, economic and social benefits and costs and that the public is provided adequate opportunity to review and comment on the impact of major Federal actions. (23)

Fulfilling NEPA requirements is documented through the environmental impact statements (EISs) or environmental assessments. Under these requirements, the National Marine Fisheries Service (NMFS) developed operating guidelines for SIAs which consider the impacts of government policy on human and natural environments. According to these guidelines, "Unquantified environmental amenities and values must be considered, and weighed, on a par with technical and economic considerations." (24) Among those amenities included in the SIA guidelines are: angler satisfaction, job satisfaction, independent lifestyle for commercial fishermen, and non-consumptive use. (25) However, there is little evidence that SIAs are regularly prepared and used by Councils.

In developing a fishery management plan, Regional Councils must also take into account the Regulatory Flexibility Act, passed in 1980. (26) This Act requires "a determination of whether a proposed rule is likely to have a significant economic impact on a substantial number of small entities." Since most fishing operations are considered small business entities, a regulatory flexibility analysis is usually required if there will be significant impact. If the impact is not significant, the Department of Commerce's General Counsel reports that finding to the Small Business Administration. The Small Business Act of 1953 has an important, underlying influence on social values incorporated into a management plan, especially where allocation schemes are considered.

It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise... (27)

Executive Order 12866, which replaced Executive Order 12291 in 1993, also influences the social aspects of fishery management. Executive Order 12866 requires agencies to assess the costs and benefits of regulatory alternatives. This assessment should include quantitative and "qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider." (28) Distributive impacts and equity are specified as factors to be considered.

Other Natural Resource Programs

It is difficult to find a close comparison to fishery management because of the unique characteristics of fishing. As an industry, fishing is one of the last viable commercial hunting and gathering ventures. It is also unique because, in

most cases, it allows access to the resource with comparatively few limitations on who can participate. Federal legislation regulating fishery management places more emphasis on social considerations than do many comparable renewable resource management laws. However, statutory emphasis may not correlate well with management practice among the renewable resources.

The National Forest Management Act of 1976 (NFMA), (29) like the MFCMA, concurred with NEPA in focusing attention on social and economic consequences of regulation. The U.S. Forest Service employs a relatively large staff of social scientists as part of interdisciplinary teams and has considerable experience with social impact analysis. (30) While the MFCMA includes direct references to various social values, the NFMA refers to economic and environmental aspects and only indirectly to social aspects through plans prepared in accordance with NEPA. (31) A major focus of forest management centers on the concept of "community stability," articulated most explicitly in the Sustained Yield Forest Management Act of 1944 (32) Timber managers also rely on the established practice of providing small business set-asides in the timber sale process to preserve the smaller, independent timber producers and their lifestyle.

The Federal Land Policy and Management Act of 1976 (FLPMA) (33) includes few references to social factors concerning lands administered by the Bureau of Land Management. Some accounting for social issues is mentioned in regard to bidding processes. Both FLPMA and NFMA call for public participation in the formulation of management plans and regulations, and public rangeland management calls for the creation of grazing advisory boards. It is interesting that in a draft EIS on *Rangeland Reform '94*, the Bureau of Land Management is considering the use of "multiple resource advisory councils." (34) These councils would include a balanced representation of interested parties similar to the MFCMA Regional Councils. Although only advisory in authority, this change is expected to increase public and competing industry influence.

Considerations given to the fishing industry in many ways resemble those shown to the interests of small farmers. The debate over small farming issues and the decline of the family farm raises many of the same qualitative social and cultural questions that are faced by fishery managers. These issues include the traditional and historic value of farming, the need to maintain rural community life, and support for those qualities and virtues that contribute to the social fabric of rural communities. An important difference between fishing and farming is the factor of property rights. The lack of private property rights for most fisheries adds another dimension to attempts by fishery managers to deal with social issues.

PRESENT SITUATION

Within the past year alone, Federal emergency financial aid has been provided for two major fisheries: New England groundfish and Pacific Northwest salmon. (35) While aid for collapsed fisheries indicates one social aspect of Federal fishery policy, this approach is clearly a management alternative of last resort, and many observers believe that the circumstances giving rise to the need for financial assistance can and should be prevented.

Given the number of direct and indirect legal references to social considerations, how are social concerns incorporated into fishery management plans? There are at least three means through which social issues directly influence management plans:

- 1) determination of optimum yield,
- 2) appointment of Regional Council members and the composition of advisory councils, and

3) harvest allocation among user groups.

(1) It is difficult to assess how social factors influence the calculation of optimum yield. However, it may be safe to assume that, unless there is a strong constituent influence over the Regional Council, most management plans tend to follow scientific recommendations from the Stock Assessment and Fishery Evaluation (SAFE) Report or Acceptable Biological Catch (ABC) data. The collapse of the New England groundfish fishery has been cited as a graphic example of a Regional Council allowing overfishing due to pressure from industry interests. Whether overfishing in New England resulted from a liberal interpretation of optimum yield or from inadequate regulatory or conservation measures is unclear, since they overlap in this case. (36) Perhaps, an underlying reason was that Council members were reluctant to disrupt peoples lives, by imposing reductions in allowable harvests.

(2) The MFCMA states that the Secretary, in appointing members to the Regional Councils, shall "ensure a fair and balanced apportionment, on a rotating basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." (37) The extent to which this balance influences the way Regional Councils decide issues that have direct social impacts should not be underestimated, especially those decisions involving harvest allocations. Composition of the Scientific and Statistical Committee (SSC) and of advisory panels also plays a role in consideration of social issues. The role of the SSC "in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information..." (38) does not require a representative from the social science field. However, in recent years, about half of the Regional Councils have included social scientists on these multi-disciplinary teams. A 1992 report on Regional Council appointments concludes that the Councils "as a whole were generally fair and balanced..." although "several areas could be strengthened in the future..." (39) Some specifically identified areas include the appointment of academic, consumer, and public interest representatives.

(3) Social values influence fishery management plans (FMPs) directly when the allocation of harvest rights is at issue. "Fishery management is essentially a series of allocations among present users, between present and future users, and between public and private interests." (40) This statement by NMFS addresses what is probably the single most difficult issue facing fishery managers today. In any discussion of the current problems facing Federal marine resource managers (*e.g.*, overfishing, resource depletion, overcapitalization, bycatch, habitat preservation), (41) the call for some form of an effort control system arises. While it is beyond the scope of this report to discuss the connection between access control and social issues, the fact that controlled access is given so much attention, as well as the approval of NMFS, gives validity to the assertion that allocation issues will continue to dominate management agendas. (42) The major groups that will be competing for access rights are recreational, commercial, and Tribal or Native American interests. State and community interests will also be a factor. Environmentalists also want fish for marine mammals (*e.g.*, closed areas along the Alaskan coast so that Stellar sea lions can feed). Conflicting interests within each group, particularly among commercial fisheries, will complicate the process. Some of the conflicting sectors within the industry include large/small operations, inshore/offshore fleets, different gear groups (*e.g.*, trawl, longline, seine, gillnet, pot/trap), recreational/commercial fishermen, and groups of different ethnic heritage. Within each of these sectors, opinions will be divided regarding what the qualifying criteria for allocation should be. Some have even advocated allocating space in the ocean (*e.g.*, recreational tuna fishermen versus commercial seiners and longliners).

Individual transferrable quota (ITQ) management programs for surf clam and ocean quahog fisheries in the Atlantic, and halibut and sablefish fisheries in Alaska illustrate different approaches to resolving the social issues associated with harvest allocation schemes. Under the halibut and sablefish ITQ system, currently being implemented in the North Pacific, considerable effort was exerted to maintain the historic diversity of vessel classes in the fishing fleet, to prevent absentee or foreign control of fishing rights, to preserve small dependent communities, and to set a

maximum allowable share of the total allocation. The ITQ program for halibut and sablefish commenced March 15, 1995. Under the surf clam and ocean quahog ITQ program, the first in the United States, far less stringent regulations regarding the ownership and transferability of quotas were instituted. The intended effect of reducing fishing effort and fleet size was accomplished for the surf clam industry (fleet size was reduced from 128 to 59 vessels between 1990 and 1992); however, processors, who own many of the vessels, control the majority of the quota. (43) The lack of detailed analysis of the possible social and economic impacts prior to ITQ implementation, including the fate of displaced captains and fishermen, is mentioned in recent mixed reviews of the surf clam and ocean quahog plan. (44)

Among Tribal or Native American interests, issues such as religious ceremony, subsistence fishing, treaty rights, and community dependence on fish resources are important. Treaty rights, such as were interpreted by the Boldt decision in Washington State, (45) involve Federal intervention but have generally been resolved as State-Tribal issues, while subsistence fishing has primarily been a State issue. In the North Pacific region, the allotment of 7.5 percent of the offshore Bering Sea pollock quota to a community development quota (CDQ) program signaled another new approach to the allocation debate. With strong State of Alaska backing, the CDQ program broke new ground, not only by singling out community and ostensibly Native interests (46) but also by allocating quota without regard to historic participation in the fishery.

Examination of current efforts to account for social concerns and control fishing effort shows a diversity of approaches. This same diversity is evident in foreign management systems. Fishery management of the Japanese coastal fisheries is highly socially motivated. Allocation decisions are made at the local-cooperative level based on territorial rights. (47) In contrast, New Zealand adopted an approach for inshore and offshore fisheries that allocated transferable harvest quotas to fishing companies. (48)

The broad range of objectives that need to be taken into account makes allocation issues politically sensitive and difficult. In light of this, how Federal fishery social policy is interpreted by the Regional Councils becomes important to anyone involved in the process. To get some perspective of what is at stake in monetary terms, the value of U.S. commercial landings the last two years averaged almost \$3.8 billion, (49) while the number of commercial fishermen may exceed 270,000. (50) The social content in the allocation issue alone is sufficient to justify a serious evaluation of the social implications of Federal fishery legislation.

DISCUSSION

Do Federal fishery managers need to provide more direction and leadership to regional fishery managers in regard to social issues? The nature of the relationship between Federal and regional management determines, to a large extent, the influence of the Federal Government on the process by which social issues are resolved. Arguments for or against a change of the Federal role can be examined from three different perspectives:

- (1) the Federal Government should take a more proactive role in dealing with social aspects;
- (2) regional managers should determine the appropriate response to local social issues; or
- (3) management of living marine resources should be based on biological conservation principles, with minimal modification by social factors.

There is a lot at stake. Policy and management decisions in the forthcoming years will, to a large extent, determine the future use of scarce marine resources. Beyond allocation and equity concerns, the character or fabric of fishing

communities will face a variety of stresses. These decisions will have a significant impact on all sectors of the fishing community. Many of the decisions will have permanent effects. Any disruption of individual/community relationships, the functionality of those relationships, and their cultural/historic significance will likely have both immediate and long-term, inter-generational impacts.

Proactive Federal Role

The argument for increased Federal influence over the resolution of social issues begins with recognition of Federal jurisdiction over the marine resources of the 200-mile Exclusive Economic Zone (EEZ) and Federal responsibility for the stewardship of these resources from the outer boundary of State waters to 200 miles offshore. The delegation of authority to Regional Councils to develop fishery management plans does not absolve the Federal Government from its responsibilities as steward of these resources. Under the MFCMA, the Federal Government considers and implements the advisory recommendations of the Regional Councils. Federal oversight should provide a balanced perspective on most issues.

Defining the correct amount of Federal influence is always controversial. The argument for an increased Federal role questions the appropriateness of allowing quasi-public Regional Councils the authority and power to make social value determinations that establish Federal natural resource policy. Political appointment of Regional Council members from industry, academia, and interest groups naturally carries with it a degree of political and specialized interests. So long as appointments are made to ensure a fair and balanced Regional Council system, one might conclude that there exists a certain collective wisdom in Council decisions. Nevertheless, without a check on Council authority and the balance given by the Federal perspective, public interest may not be sufficiently protected. For those who come out on the "losing" side of Regional Council decisions, the concept of a fair and balanced Council system is difficult to accept. Equity issues decided in favor of one group can often be couched in a rationale of conservation principles. The potential for abuse of authority is arguably present, particularly if a single group/party/agency ever becomes the sole arbiter of fishery policy.

One way that the Federal Government could take a more proactive approach might be to develop a clearly defined policy statement regarding the social aspects of fishery management -- one that goes beyond the "consideration" of social factors. (52) Current references to social factors are open to broad interpretation, and there is no clear objective for how these factors should be incorporated into a fishery management plan. The Federal role could be enlarged by articulating social guidelines. Such a policy might clarify why social factors need to be accounted for. Policy objectives could include reference to the unique nature of fishermen and fishing, and the joint partnership between the Federal trustees and participants. It could discuss the historic and cultural significance of fishing to the Nation, acknowledging the social structure that has evolved around the fishing industry and all fisheries in general. Such statements might help to clarify the influence of social factors on fishery policy. Such a policy statement could also help to place social factors in perspective, relative to biological and economic factors.

Regulations implementing NEPA require EISs to discuss effects of proposed actions on the human environment, (53) but how that requirement is implemented in fishery management plan preparation is not clear, even though this was required by the Fishery Conservation Amendments of 1990. (54) This concern is at the center of the argument for more Federal involvement, because it leaves open the possibility for management plans to only "consider" social factors. Vagueness, associated with phrases like "consider other factors," also appears in regulations regarding fishery management plans. (55) These factors are not *required* to be accounted for in the plan. one criticism of social impact assessments currently included in EISs is that they are incomplete studies and often only list potential impacts. (56) Just as biological assessments require research sampling cruises, so too social assessments require data collection in fishing communities. However, time, expertise, and financial considerations may prohibit Regional Councils from

conducting full impact assessments for each fishery. (57) Should fishery management plans be required to assure that social factors are not only considered, but also accounted for? By recording how social factors are considered in these decisions, the rationale behind each decision should become clearer. A proactive approach by the Federal Government could assist Regional Councils to come to terms with difficult and qualitative social policy decisions.

Stronger Regional Management (Co-Management)

Proponents of strong regional management argue that the MFCMA clearly states that Regional Councils are responsible for creating fishery management plans. Consideration of social factors is clearly part of preparing those plans. This argument reasons that *what is* at stake is not the issue, rather the issue *is who* decides social issues. Proponents of this view believe that the difficult, qualitative decisions that fishery managers need to make should be determined by those who are directly engaged in and accountable for the process of fishery management at the regional level. (58)

Those who favor regional decision-making argue that the role of the Secretary of Commerce is to evaluate whether a fishery management plan is sufficient in scope and substance, and consistent with the MFCMA's national standards and other applicable law. Advocates of a stronger regional role argue that this level of Federal involvement is sufficient. Provided that nominations of Regional Council members are made in accordance with provisions and requirements of the MFCMA such that the Secretary maintains a "fair and balanced membership," there is little to suggest that an increased Federal role would guarantee a higher standard of social accountability by Council members. In addition, the oath of office for Council members reinforces this responsibility -- "I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fishery resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources." (59) However, critics suggest that actions by some Councils have been less than adequate in maintaining an appropriate balance between exploitation and conservation, as attested by the number of overfished stocks.

Interests that support decentralization of fishery management decisions might suggest that there are two primary reasons why regional managers should decide the degree of influence allocated to social considerations in development of management plans. First, the level of understanding that is required to fully appreciate the impact of social change, as brought about through fishery management plans, is more likely to be found in managers who are closely associated with the fishing region. Second, accountability for changes in regional social policy should be at the level closest to where the effects are felt.

A manager needs to recognize and understand subtle differences as well as the full range of potential social impacts. Analysis of social impacts, whether through a formal SIA or a more general assessment, is a subjective process. Decisions are influenced through the *process* of considering social implications. It may be possible for managers to ignore obvious social implications and disregard important social values, but in general, the quality of Regional Council appointees, their direct association with the fishing community, and the balance of interests on Regional Councils have precluded this from happening. Inputs from public testimony, SIAs, social scientists, and advisory committees including the SSC as well as a detailed list of considerations and factors from regulations and guidelines make it difficult to imagine a management decision being rendered that does not account for this input. (60) Social value decisions are cumulative. They are based on large amounts of qualitative data and must attempt to balance the interests of all participants. In addition, managers must balance social impacts with multiple economic and biological objectives.

It is argued that, to be effective, Regional Councils must garner the support and respect of their constituents. This was

recognized in the drafting of the MFCMA. Much of that constituent support must come from those directly involved in the fisheries. Including those with a direct or vested interest in fisheries as Council members has been criticized, but it is that direct involvement that gains the support of constituents, when they perceive that Council members are representing their views. An innate understanding of the significance of social issues by fishermen helps qualify them to make such decisions. Fishermen also provide the practical experience to evaluate how theoretical proposals may affect the fishery. This direct linkage helps to assure accountability on social issues.

By holding Regional Councils accountable for regional issues, the players and public are closer to the action. (61) To many fisherman, regional decision-makers are better known quantities. Federal decisions, on the other hand, are often seen as isolated from direct accountability by a bureaucratic and spatial buffer. Proponents of a strong regional role argue that social value decisions need to be made in an atmosphere which maintains a close connection between those making the decision and those who feel its effects. If this connection is not maintained and social decisions that directly affect people come from outside the region, constituents can lose the sense of participation in or influence on the outcome of management. Respect for management authority on complex and sensitive social issues may eventually begin to erode. Without accountability, that sense of some degree of control over one's livelihood or interest in the future of the resource can be slowly lost. Social issues, it is argued, are generally local or regional concerns and should be resolved by those who understand these issues best. (62) Some who argue for a greater regional role seem to view Federal intervention in this area as amounting to social engineering that spawns disrespect for management.

Purely Conservation Standards

A different view of Federal fishery management would eliminate all references to social and other non-biological factors that are present in fishery law in favor of the overall objective of conserving living marine resources for future generations. (63) Proponents of this perspective argue that the true purpose of the MFCMA is conservation of our marine resources, and that consideration of socio-economic factors can interfere with the achievement of this objective. By considering only biological and ecological factors, the goal of providing the "greatest overall benefit to the Nation" (64) can be reached, according to this viewpoint.

Those opposing this view argue there are two main weaknesses to a purely conservation proposal, beside the political implications. First, the only section of the MFCMA that links social and biological factors is the definition of "optimum yield." All other references to social factors apply to some aspect of resource allocation. As discussed earlier, allocation issues are, by their nature, largely social. They believe that allocation decisions without any socio-economic guidelines would be a management nightmare and open to abuse. Additionally, allocation schemes can be management tools to promote conservation and, in those instances, allocation and conservation can complement each other. (65)

A similar approach, seeking to maintain the resource for future generations, was recommended by the 1986 NOAA Fishery Management Study (the Calio Report). (66) This "blue ribbon" panel recommended a separation of conservation and allocation issues. The study recommended that acceptable biological catch (ABC) determinations be made at the national level, while allocation determinations be kept at the Regional Council level. According to the Report, by setting an inviolable ABC limit on harvesting, the temptation to influence harvest levels using socio-economic factors would be eliminated.

A second cited weakness to focusing exclusively on conservation is that, even if all references to social considerations were removed from fishery legislation, NEPA and other laws require that social values be taken into consideration. This is especially true for natural resource management. (See earlier section entitled "Other Applicable

Law" beginning on page 6.)

A different single-focus approach might consider economic objectives as the primary guide to determining greatest overall benefits. With such a market-oriented approach, decisions regarding allocations might be simplified and quantifiable. Coupled with biological constraints, such an approach would "promote efficiency in the utilization of fishery resources," (67) but would likely encounter employment, community welfare, and other distributive questions.

CONCLUDING REMARKS

How one considers Federal-regional management issues may depend initially on one's individual beliefs in the role of the Federal Government. Advocates of a greater Federal role and those who prefer greater local control are bound together by common objectives. Both sides would agree that there is an urgent need to adopt measures that will control the overharvesting of marine resources and that those measures will extract some social costs. How those costs will be paid has yet to be determined. In areas such as New England, the social impact of reducing fishing effort may be severe. Efforts might be better directed towards finding ways to preserve the social fabric of fishing communities without total reliance on fishing. (68) For regions where less severe constraints on fishing effort are required, the distribution of fair and equitable harvesting rights is clearly an important social issue. Whether the Federal Government should take the lead in shaping that policy is open to question.

One can look at the present MFCMA management system and conclude that it is in harmony with representative government. Allowance for public participation, legislated Regional Council procedures, and a system of checks and balances between the regional and Federal authorities, together form a representative management system that functions well as a means of expressing the opinions and values of its constituency.

Conversely, one can take the view that the Regional Council process is not representative of the American public. It represents only the opinions of individual Council members, their home ports, and gear-related subgroups within the region with which they associate. Some critics question how well the present system has conserved fish stocks for future generations. In this case, the Federal Government may need to take a stronger role in protecting the views of the public and other participants in the process.

However one views these different perspectives of the Federal role, it is clear that in the United States we technically work through the social valuation process via the political system, (69) and the influence of the Federal Government on that process will continue to be a subject of contention among participants.

Endnotes

1. Peter W. Richardson, Master's degree candidate at the University of Washington, researched and prepared a draft of this report under the supervision of Eugene H. Buck, Senior Analyst in Natural Resources Policy.
2. The terms "conservation" and "allocation" tend to overlap in the field of fishery management. Often thought of as "biological" and "social," respectively, this simplistic breakdown is a useful way to conceptualize or categorize fishery management. However, the idea of conservation is itself a social objective: conservation ethics places a high social value on protecting our environment. In addition, conservation is often a rationale for adopting a specific allocation program. For example, the determination of total allowable catch (TAC) would fall under the category of conservation, whereas the distribution of that TAC among user groups would be considered "allocation." See *NOAA Fishery Management Study*, June 30, 1986; also Miller, M.L. and R.C. Francis. "Marine Fishery Management," in: *Fisheries*, [F.G. Johnson and R.R. Stickney, eds.] Kendall/Hunt Pub. Co., 1989. p. 212.

3. *Guidelines and Principles for Social Impact Assessment*. NOAA Technical Memorandum, NMFS-F/SPO-16. Washington, DC: May 1994. p.1.
4. Of stocks whose status has been determined by the National Marine Fisheries Service, 40 percent are overutilized and 43 percent are fully utilized. See: NMFS. *Our Living Oceans. Report on the Status of U.S. Living Marine Resources, 1993*. Washington, DC: December 1993, p.11
5. See: CRS Report No. 95-296 ENR. [Overcapitalization in the U.S. Commercial Fishing Industry](#). Washington, DC: Feb. 22, 1995. 19 p.
6. Wise, John P. *Federal Conservation and Management of Marine Fisheries in the United States*. Washington, DC: Center for Marine Conservation, 1991. p. 13.
7. 16 USC 742a.
8. Numerous other Treaties, Acts, Proclamations, Conventions, etc., including Thomas Jefferson's report to the House of Representatives in 1791, have been recorded, primarily with the intention of providing economic assistance to the industry or protecting of the rights of U.S. fishermen. Among the more notable are the Merchant Marine Act of 1936 (financial assistance), the Saltonstall-Kennedy Act of 1954 (research), the Commercial Fisheries Research and Development Act of 1964, the Bartlett Act of 1964, and Public Law 90-427 (prohibiting foreign fishing within the 12-mile limit).
9. In 1973, financial aid to certain "conditional" fisheries was restricted. Conditional fisheries, as determined by the director of NMFS, are fisheries in which further financial assistance would be inconsistent with the wise use of the resource. This restriction did not apply if a vessel was equipped for use in an underutilized fishery. However, no proof was required that a re-equipped vessel was actually fishing in an underutilized fishery, and thus some are alleged to have used this "loophole" to circumvent the program's intent. For specific regulations, consult 50 CFE 255.5.
10. 16 USC 1801(b)(5).
11. 16 USC 1801(a)(3).
12. 16 USC 1802(21)(B)
13. 50 CFR 602.
14. 16 USC 1851.
15. 50 CFR 602.11(f)(3)(ii)
16. 16 USC 1852(h)(1)
17. 16 USC 1853(a)(9).

18. 16 USC 1854(a)(1)(B).
19. Schmitten, Rolland A. *NMFS Policy on the Use of Social Impact Assessments in Fishery*
20. *Management Planning*. Memorandum for Regional and Science Directors, NMFS. Washington DC: Dec. 17, 1993. 2 p.
20. 16 USC 1852(b)(2)(a).
21. 5 USC 551-553
22. Pub. L. 91-190, 83 Stat. 852, 42 USC 4321-4347.
23. 50 CFR 604.4(c)
24. National Marine Fisheries Service. "Guidance for Social Impact Assessment." Appendix 2g of *Operational Guidelines, Fishery Management Plan Process*. Washington, DC: 1992. p. 4.
25. *Ibid.*
26. Pub. L. 96-354, 94 Stat. 1164; 5 USC 601-612.
27. 15 USC 631(a).
28. 58 *Federal Register* 51735, October 4, 1993.
29. Pub. L. 94-588, 90 Stat. 2949.
30. Miller, M.L., and Richard P. Gale. *Social Science in Natural Resource Management Systems*. Boulder, CO: Westview Press, 1987. p. 52.
31. 16 USC 1604(g)
32. 16 USA 583.
33. Pub. L. 94-579, 90 Stat. 2744, 43 USC 1701-1784.
34. Many earlier advisory councils were terminated during the Carter Administration to reduce industry influence over Federal land management.
35. The New England (groundfish) Emergency Assistance Plan provided \$30 million in FY1994 and a total of \$60 million thus far, while the Northwest (salmon) Emergency Assistance Plan has provided \$15.7 million. (59 *Federal Register* 51419, Ott. 11, 1994.)
36. The operational definition of optimum yield, "the amount of fish actually harvested by U.S. fishermen in accordance with the measures listed below" (*Interim Fishery Management Plan for Atlantic Groundfish, New*

England Fishery Management Council, 1981, p. i), has been criticized for the lack of control on the total amount of fish caught. A similar definition of optimum yield exists for certain Pacific coast salmon.

37. 16 USC 1852(b)(2)(B).

38. 16 USC 1852(g).

39. U.S. Dept. of Commerce. *Report on Appointments of Membership on Regional Fishery Management Councils in 1991 and 1992*. Report to Congress. p. 2.

40. 50 CFR 602, Appendix A, Subpart A. Guidelines to national standards.

41. See: CRS Report No. 95-296 ENR. *Overcapitalization in the U.S. Commercial Fishing Industry*. Washington, DC: Feb. 22, 1995. 19 p.

42. Hall, Douglas K., Asst. Secretary of Commerce for Oceans and Atmosphere. Testimony before the Senate Committee on Commerce, Science, and Transportation. Washington, DC: June 30, 1993. p. 8-9.

43. It should be noted, however, that this industry was strongly vertically integrated prior to implementation of the ITQ program.

44. McCay, Bonnie J., and Carolyn F. Creed. *Social Impacts of ITQs in the Sea Clam Fisheries*. Final report, New Jersey Sea Grant College Program, Project R/SE-5, Grant NA89AADSG057. Fort Hancock, NJ: New Jersey Marine Sciences Consortium, Feb. 1994. 86 p.

45. *United States v. Washington*, 384 F. Supp. 312, (W.D. Wash. 1974), *awed*, 520 F.2d 676 (9th Cir. 1976), *cert. denied*, 423 U.S. 1086 (1976). See also: CRS Report No. 81-204 GOV. *Indian Treaty Fishing Rights: Resource Issues, Legal Developments, Legislative Initiatives*. Washington, DC: Sept. 8, 1981. p. 13-21.

46. Actually, small, isolated, rural communities with few, if any, economic alternatives.

47. Asada, U., U. Hirasawa, and F. Nagasaki. *Fishery Management in Japan*. Rome, Italy: FAO Fisheries Technical Paper No. 238, 1983.

48. Clark, I., and A. J. Duncan. "New Zealand's Fisheries Management Policies Past, Present, and Future: The Implementation of an ITQ-Based System." In: *Fishery Access Control Programs Worldwide: Proceedings of the Workshop on Management Options for the North Pacific Longline Fisheries*. Fairbanks, AK: Alaska Sea Grant College Program, 1986. p. 107-140.

49. National Marine Fisheries Service. *Fisheries of the United States, 1993*. Washington, DC: Current Fishery Statistics No. 9300, May 1994. p. 13.

50. National Marine Fisheries Service. *Fisheries of the United States, 1989*. Washington, DC: Current fishery Statistics No. 8900, May 1990. p. 82.

51. Regional fishery management generally refers to the system of eight Regional Fishery Management Councils

established under the MFCMA, although alternative structure may be feasible. An example of State management of a fishery conducted mainly in the EEZ is the Alaskan crab fishery. Interjurisdictional management among coastal States is coordinated through such bodies as the Atlantic States Marine Fisheries Commission, Gulf States Marine Fisheries Commission, and Pacific States Marine Fisheries Commission.

52. Schmitt, Rolland A. *NMFS Policy on the Use of Social Impact Assessments in Fishery Management Planning*. Memorandum for Regional and Science Directors, NMFS. Washington, DC: Dec. 17, 1993. 2 p.

53. 40 *CFR* 1508.14

54. Section 109(a)(5), Pub. L. 101-627, 104 *Stat.* 4447.

55. 50 *CFR* 602.10(b) -- "Each *FMP*....*should* identify what the FMP is designed to accomplish, *i.e.*, the management objectives to be attained in regulating the fishery under consideration. In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities *should* be established among them." (Italics added)

56. One exception is the social impact assessment conducted for the Florida spiny lobster fishery, a full study based on the theories and methods of academic discipline.

57. NMFS employs only two anthropologists, and only a few of the Councils' Scientific and Statistical Committees include anthropology or sociology professionals.

58. Currently, the Secretary of Commerce manages the fisheries by publishing regulations and enforcing them; the Councils role is to recommend management measures to the Secretary.

59. 50 *CFR* 601 34

60. Others argue that, although social impact assessments and other inputs are available, this information is frequently ignored.

61. Others question how Regional Council members can be held accountable by a Council's constituents, since Council members are not elected.

62. However, some social issues are highly controversial within a region, and consensus on the best approach is not easily attained.

63. This statement recognizes that conservation is a socially determined goal. see footnote 2.

64. From the definition of "optimum yield" in 16 *USC* 1802(18).

65. Allocation mechanisms may determine the effectiveness of conservation goals.

66. U.S. Dept. of Commerce. *NOAA Fishery Management Study*. Washington, DC: June 30, 1986. p. 10.

67. 16 *USC* 1851(a)(5) is further qualified "that no such measure shall have economic allocation as its sole purpose."

68. This raises a host of questions related to regional economic planning and training -- How do you attract other industries to small, rural fishing communities? Who will hire fishermen with limited skills? What retraining programs might be most helpful to fishermen? What will increased tourism do to property values, (and thus property taxes) in small, rural fishing communities?

69. Orbach, Michael K. "The Human Dimension of Coastal and Marine Issues." *Coast and Sea*. Summer 1994. p.4.

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National Council for Science and the Environment

1725 K Street, Suite 212 - Washington, DC 20006

202-530-5810 - info@NCSEonline.org

