

**THE SOUTH ATLANTIC FISHERY MANAGEMENT
COUNCIL: POLICY AND MANAGEMENT ISSUES
RELATED TO THE POTENTIAL 1996 AMENDMENTS
TO THE MAGNUSON FISHERIES CONSERVATION
AND MANAGEMENT ACT**

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I. INTRODUCTION

This Article has three objectives: (1) to summarize the characteristics of marine fisheries and their management in the South Atlantic region of the United States; (2) to summarize the critical issues in the fisheries management structure and process in the region; and (3) to discuss the relationship of these issues to the potential 1996 amendments to the Magnuson Fisheries Conservation and Management Act (FCMA). Since the amendments to both the House and Senate versions are currently changing, reference will be made only to general categories of issues in the reauthorization process, rather than to specific sections or wording in current versions of the amendments.

II. THE SOUTH ATLANTIC REGION

The South Atlantic region of the U.S. extends from the Virginia-North Carolina border to the tip of South Florida. The landward portion of this region is characterized by extensive low-lying coastal plains and significant riverine and estuarine systems. The region contains many large rural areas of low population density and few urban centers. Fishing, farming and timber have traditionally comprised the economic base of this region, but are increasingly being replaced by leisure, tourism and retirement industries. The seaward portion of the region is characterized by shallow continental shelf areas that vary from a few miles to over one hundred miles in width, and by the presence of the Gulf Stream, a prominent feature, which affects fisheries as well as all marine resources of the region.

The region has a transitional climate and oceanography in that it is significantly influenced by both the North and South Atlantic environmental systems. The traditionally exploited fisheries in the region include anadromous fisheries such as herring, shad and striped bass; significantly estuarine-dependent fisheries such as flounder, croaker, spot, spotted and gray trout, red drum, shrimp, blue crab, oysters, clams, and scallops; coastal migratory pelagics such as king and Spanish mackerel, amberjack, and dolphin; reef fish such as snapper and grouper; and large migratory pelagics such as marlin, sailfish, tuna, swordfish and sharks. For many of these species, the recreational catch is equal to or greater than the commercial catch. Many highly migratory fishermen in this area travel from New England to the Gulf of Mexico and further in their annual round of fishing (Johnson and Orbach, 1990). On the other hand,

there are also large numbers of extremely immobile, small scale fishers such as hand shellfish harvesters who are highly dependent on local resources.

III. THE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

The South Atlantic Fishery Management Council (SAFMC) is based in Charleston, South Carolina, and works with the National Marine Fisheries Service (NMFS), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of Commerce through the St. Petersburg, Florida, Regional Office and Southeast Fisheries Science Center in Miami, Florida. The SAFMC has participated as the lead or joint Council in the development of Fishery Management Plans (FMP) for ten fisheries: Coastal Migratory Pelagics (joint with the Gulf of Mexico Council); Corals and Coral Reefs (joint with the Gulf of Mexico Council); Golden Crab; Atlantic Billfishes (joint with the New England, Mid-Atlantic, Gulf of Mexico and Caribbean Councils); Atlantic Coast Red Drum; South Atlantic Shrimp; South Atlantic Snapper-Grouper; Atlantic Swordfish (joint with the New England, Mid-Atlantic, Gulf of Mexico and Caribbean Councils); Spiny Lobster (joint with the Gulf of Mexico Council); and Wreckfish (NOAA, 1993; Mahood, 1996). The SAFMC has been one of the most progressive Councils in that it was one of the first to recognize habitat as a critical issue in marine fisheries and one of the first to incorporate new management approaches into its FMPs (total single user group allocations (Billfish); individual transferable quotas (ITQs) based directly on landings (Wreckfish); required dealer registration (Wreckfish); percentage income dependence for the acquisition of commercial licenses (Coastal Migratory Pelagics)). The SAFMC was also one of the first Councils to become broadly interdisciplinary, incorporating both the natural and social sciences in their Scientific and Statistical Committee, advisory groups, and Council staff.

IV. CRITICAL MARINE FISHERIES ISSUES IN THE SOUTH ATLANTIC

In identifying the critical marine fishery issues for the South Atlantic, we will focus on those which relate to the current discussion of potential FCMA amendments during 1996 in both the House and Senate.

A. Basic Management Challenges

1. Adequate Science, Data, and Information

In part because many of the fisheries with which it has to deal are highly migratory in nature, and in part because of the large and physically dispersed number of fish landing and fishery access points in the region, the SAFMC has been critically aware of the weaknesses in fishery data and information. The SAFMC has also been aware of an inability to analyze and synthesize this data to yield meaningful, valid conclusions concerning the desired parameters of management (Maximum and Optimum Yields, Total Allowable Catches, and size limits). In fact, some advisory groups of the SAFMC have suggested that there will never be enough data and information to yield sufficient conclusions in these areas for some fisheries. These groups also suggest that there are management approaches that may not require such data and information (e.g., Marine Fishery Reserves; see PDT, 1990) which should be considered in place of traditional management measures. There is considerable debate as to whether such approaches require this data and information, but the point is that the SAFMC is critically aware of this question.

2. Structuring the Management Process

The SAFMC has faced a number of fishery issues where constituent and public involvement have been critical, but obtaining current, representative, constructive input to the management process has apparently become difficult. The SAFMC has an advisory structure involving plan development teams, fishery advisory panels, assessment teams, and special ad hoc committees, similar to the other Councils. This advisory structure, however, is sometimes insufficient to obtain the required input or involvement from the requisite constituencies or publics (Maiolo et al., 1992). Included in this category is the problem of over-representation, under-representation or undue representation of certain interests in the process, generally referred to under the label "conflict of interest." This point is addressed below.

B. The Bycatch Issue

The South Atlantic and Gulf of Mexico Councils are squarely in the middle of the bycatch issue primarily through their responsibilities for

the shrimp trawl fishery, which is documented as having a bycatch mortality at least equal in poundage to the shrimp landings themselves. The nature of this issue varies somewhat between the Gulf and South Atlantic regions. However, the basic dimensions of the problem are similar and are inextricably related to the threatened and endangered species issue because of problems in the shrimp trawl fishery and the problem of sea turtles, which is discussed below (NOAA, 1993).

C. Threatened and Endangered Species

Although various threatened and endangered species are involved in a number of different fisheries in the region, by far the most prominent issue involves threatened and endangered species of sea turtles. The now-prevalent requirement for Trawl Efficiency Devices (so-called TEDs; first coined as “turtle excluder devices”) has been an extremely controversial issue, leading to port blockades, citizen demonstrations, and direct congressional action. It is notable that the regulatory requirement for TEDs was issued directly by NMFS, not through the Councils (NOAA, 1993).

D. Habitat and Water Quality

As with all of the other Councils, the lack of authority for fishery management agencies over habitat and water quality has been a principal issue for the SAFMC. This issue has been particularly important for the SAFMC because of the high proportion of estuarine-dependent marine fish species in the region and the high susceptibility of estuarine areas to degradation from both water-based and land-based human behaviors (APES, 1995). Although the SAFMC can, and has, implemented regulations on fisher behavior when such behavior may be detrimental to fishery habitat (*e.g.*, the SAFMC ban on bottom trawling in the snapper-grouper fishery (SAFMC, 1983), there exists no direct authority over other human behaviors which affect habitat or water quality. Since most of these other behaviors occur on land or in state waters, this is also a dimension of the basic federalism discussion between the states and the federal government.

E. Public Trust Issues

1. Controlled Access

Controlled access, or limited entry, is a relatively new and controversial subject in marine fisheries in the United States (CMC, 1993). One of the SAFMC's current FMPs (Wreckfish) relies on Individual Transferable Quotas (ITQs), a controlled access management system, as a central feature of its management approach. Another FMP (Golden Crab) was designed to convert to an ITQ-type system in the near future, and two other fisheries (snowy grouper and golden tilefish) are currently being considered for controlled access systems. The SAFMC was an early innovator with the subject of controlled access and limited entry, and there is a great deal of concern over proposed FCMA amendments in this area.

2. Cost Recovery and Economic Rent

As with all other Councils, NMFS/NOAA policy, and its management structure in general, there have never been enough resources to fully address the scientific and management needs of FCMA implementation to the full letter of that legislation. A significant issue in this discussion is the inability of the Councils and NMFS/NOAA to recover more than a narrowly defined "administrative fee" from users of the fishery resource. True administrative cost recovery and any discussion of recovery of "economic rents" from private, for-profit use of public trust fishery resources has not been possible under the current FCMA structure and current administrative policy interpretation.

F. Policy and Management Structure

The Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) was passed in 1993. Under this Act the Atlantic States Marine Fisheries Commission (ASMFC), an interstate and state-federal compact among all of the Atlantic coast states from Maine to Florida (and one of three such Commissions in the U.S., the other two being the Pacific States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission, neither of which have the authority and responsibility described here) was given partial authority for the management of all interstate fishery resources from the headwaters of the coastal states to the 200-mile Exclusive Economic Zone jurisdiction. The

ASMFC is thus charged with developing management plans for all interstate fisheries except those which have approved Council FMPs under the FCMA. If the ASMFC finds that any state is out of compliance with their plans, they may recommend action to the Secretary of Commerce who, along with the Secretary of Interior, may declare moratoria for the subject fisheries in the out-of-compliance states.

As desirable as it might have been for specific fishery management purposes (the principle of this ACFCMA was originally embodied in the “Stripped Bass Act” of 1986, which gave the ASMFC similar authority, but only over stripped bass), the result of this ACFCMA is a somewhat Byzantine policy and management structure wherein the states have principal control over inland fisheries and coastal waters within three miles. The ASMFC has theoretical authority over all interstate fishery resources from the headwaters to 200 miles offshore, and the Councils/NMFS/NOAA have authority over fisheries which occur “predominately” from three to 200 miles offshore with specific preemption authority over state management in certain circumstances. This situation of overlapping jurisdictions, authorities, and responsibilities creates a significant potential for conflict, competition, and inefficiency in the marine fisheries policy, management structure, and process for the Atlantic coast as a whole, and for the SAFMC in particular.

V. THE CURRENT FCMA REAUTHORIZATION DISCUSSION

Currently proposed amendments to the FCMA that have the potential to affect the South Atlantic region fall into several categories. These categories will be addressed with respect to their importance for the South Atlantic region.

A. *Habitat and Bycatch*

We lump habitat and bycatch together because the form of the proposed changes in the FCMA with respect to these two subjects is similar. They both encourage the Councils to address habitat and bycatch issues, without recommending specific actions or standards and without giving the Council or NMFS/NOAA new authority in this area. Since the SAFMC has already taken specific action with respect to habitat and bycatch, the proposed amendments will not have substantial impact except to further legitimate steps already taken by the SAFMC. There is

some concern that proposed amendments may actually inhibit current SAFMC efforts to reduce bycatch in the South Atlantic shrimp fishery (Pautzke, 1995).

B. Council Structure

It is proposed that North Carolina, which under the current FCMA sits only on the SAFMC, be given a seat on the Mid-Atlantic Council (MAFMC). Besides some marginal shift in the influence of North Carolina and the SAFMC on the MAFMC and the Atlantic coast Council system, this proposal would reflect the same principles of shared fishery responsibility inherent in relationships such as the current dual Council members of Florida in the Southeast and Washington in the Northwest. The proposal is supported by both the SAFMC and the Council Chairmen (Waugh, 1995; Pautzke, 1995).

C. Broadened Council Member Definition

Expanded definitional requirements have been proposed for Council membership. One example is to require further specification of "marine conservation advocacy" in the FCMA language. Since the SAFMC has generally had a diverse and progressive membership in the past, this change should not affect Council membership significantly, although it may actually restrict the ability of the state governors and NMFS/NOAA to nominate and select a diversity of Council members (Pautzke, 1995).

D. Conflict of Interest

The proposed conflict of interest provisions are of concern because of their procedural requirements, not because of their substantive provisions. If the changes require that the NOAA Office of General Counsel make specific decisions during the Council meetings concerning conflict of interest questions, the Council decision-making process would be dependent on the ability of the General Counsel representatives at each Council meeting to make timely, specific decisions under somewhat vague guidelines (Shipman, 1995).

E. Limited Entry and Controlled Access Systems

The current proposed changes in the ability of the Councils to consider, implement, or amend limited entry, particularly in ITQ systems, would severely restrict the ability of the SAFMC and other Councils to develop new appropriate management systems and to implement currently-approved systems. These changes would affect the SAFMC's Wreckfish FMPs that are currently in place, the newly-approved Golden Crab FMP for which controlled access was envisioned for consideration, and the snowy grouper and golden tilefish fisheries, for which access limitations are under discussion (Waugh, 1995).

F. Optimum Yield

The proposed changes in the definition of optimum yield, including references to dependent local fleets and communities, would not substantially affect the SAFMC FMPs. None of their FMPs currently employ those fleet and community concepts. The factors involved in the definitional changes could be applied to management even under the current FCMA language.

VI. SUMMARY AND CONCLUSION

The currently proposed changes to the FCMA which would most significantly affect the SAFMC are those changes associated with controlled access and with the administrative aspects of the conflict of interest provisions. Perhaps more important for the SAFMC are those subjects which are not currently proposed for amendment in 1996. These subjects include administrative cost recovery and economic rent, the overall structure of marine fisheries management and policy on the Atlantic coast, the availability of adequate scientific data and information, and the structure of the constituent and public involvement in the management process. From this author's point of view, the current amendments are being driven as much by concerns from particular regions (Alaska—limited entry, ITQs, and CDQs) and current fluctuations in national politics (partisan shifts; downsizing) as they are by a careful, broad perspective on the overall challenges of marine fisheries policy in the United States. Perhaps a broader, more objective perspective will develop in subsequent FCMA reauthorizations.

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