

THE MAGNUSON ACT AMENDMENTS AND THEIR IMPACT ON WESTERN PACIFIC FISHERIES

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BACKGROUND

The Sustainable Fisheries Act (Act) as introduced in the 104th Congress in 1995 and reported out of the Senate Commerce, Science, and Transportation Committee on March 28, 1996, undertakes for the first time a comprehensive revision of the twenty-year-old Magnuson Fishery Conservation and Management Act (FCMA). The original FCMA was unique in that it declared for the first time United States jurisdiction over the living resources of an Exclusive Economic Zone (EEZ) extending from 3 to 200 nautical miles off U.S. coasts. This unilateral extension of jurisdiction occurred some six years before EEZs were established as a customary norm in the 1982 United Nations Convention on the Law of the Sea. The central purpose of the FCMA was to develop and maximize domestic harvests of U.S. coastal stocks, which at that time were being heavily exploited by foreign fishing fleets. In contrast, the Sustainable Fisheries Act of 1996 recognizes that U.S. fish stocks are now in serious decline, not only because of over fishing and the over capitalization of domestic fleets, but also because of major losses of fish habitat, and the failure to take ecosystem interactions into consideration in fishery management plans.

The 1976 FCMA divided the U.S. EEZ into eight regions and provided for the appointment of eight Regional Fishery Management Councils to oversee the development and management of the fish stocks of their respective regions. The Western Pacific Council (WPC) was given authority over central and western Pacific stocks in the EEZs of the State of Hawaii and the U.S. insular areas of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and the non self-governing U.S. Pacific island possessions (Jarvis Island, Johnston Island, Howland and Baker Islands, Midway Island, Palmyra Atoll and Kingman Reef, and Wake Island), nearly 1.5 million square miles in area.

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The WPC is required to analyze biological, social, economic, and other factors affecting Pacific stocks and prepare Fishery Management Plans (FMPs) and rules for domestic and foreign fishing in the region. It is assisted in this effort by the National Marine Fisheries Service (NMFS) and the Western Pacific Information Network. Regulations are enforced jointly by NMFS, federally-deputized island agents, and the U.S. Coast Guard. In addition to implementing four FMPs on pelagics, crustaceans, bottomfish and seamount groundfish, and precious corals in the Hawaiian EEZ, the WPC represents its members in international discussions involving vessel monitoring, enforcement, and straddling and highly migratory fish stocks, over which the U.S. acknowledged management authority on January 1, 1992.

Pelagic fisheries constitute a major resource of the State of Hawaii, American Samoa, Guam, and the CNMI. Hawaii's large-scale commercial fishing vessels are generally less than 100 feet long and include tuna and swordfish longline vessels, distant water albacore trollers, and multipurpose vessels that fish for lobster and bottomfish (snappers, groupers, and jacks) in the Northwestern Hawaiian islands. Except for the albacore trollers most vessels do not operate outside the Hawaiian EEZ. The modernized domestic longline fleet is the largest commercial fishery in Hawaii. In 1994 the commercial fishery landed a total of 27.4 million pounds of fish and shellfish worth over \$61 million, of which 18.4 million pounds worth \$42.3 million was generated by the longliners. The recreational fishery landed another 10 million pounds. Hawaii also has a lucrative charter boat industry that in 1990 generated approximately \$30 million in direct and indirect revenues.

Foreign longline and baitboat fisheries have fished the central and western Pacific for decades. Prior to 1991, most longliners operating in the North Pacific transshipped their fish in Guam and bought food and fuel before returning to the fishing grounds. In 1991 the Federated States of Micronesia (FSM) changed its policy to require that fish caught in FSM waters had to be landed at their ports. Thereafter air transshipment operations began transporting sashimi grade tuna from FSM and Koror to Guam and Saipan and on to Japan. Premium fish such as bigeye tuna bound for Japan and Europe from other locations in the Pacific Basin are also transshipped by air through Guam; however except for jet fuel purchases and landing fees air transshipment generates very little revenue for Guam. The servicing of purse seiners, however, contributes a lot more. Although the number of port calls by seiners in 1994 was less than

one fifth the number by longliners, seiners spent from eight to twenty-five more.

In the late 1970s U.S. purse seiners began moving into the western Pacific and later offloading tuna at the canneries in American Samoa. In 1987 the U.S. concluded a multilateral fisheries treaty that allowed the U.S. tuna fleet to fish in the EEZs of 16 member nations of the Forum Fisheries Agency (FFA). In 1994, 225 purse seiners and 183 longliners made port calls in American Samoa. American Samoan tuna canneries, the islands' largest private industry, employ some 4000 workers who earned wages totaling approximately \$27 million in 1994. American Samoa receives additional revenue from port and custom charges, fuel taxes, services, and purchases. In 1993, 150,000 tons of tuna were unloaded into the canneries; another 15,000 tons were transshipped. However, development of canneries in Papua New Guinea (PNG), which is closer to prime tuna fishing areas, could negatively impact American Samoan canneries.

At Tinian in the CNMI the amount of tuna unloaded into reefer vessels dropped from a high of over 72,000 tons in 1991 to a low of 20,000 tons in 1994. This was due primarily to the highly competitive nature of the industry in the Pacific. In 1992 most of the Guam-based purse seiners that were offloading in Tinian were redeployed to PNG in search of a better deal; however, in 1994 a number of Taiwanese seiners began making port calls in Tinian. Transshipment from Tinian to Guam is also at a disadvantage due to the prohibition under the Jones Act against shipping from one U.S. port to another by foreign vessels or aircraft. CNMI has begun to air transship sashimi grade tuna directly from Saipan to foreign markets; however, total revenues from the air transshipment business are not large and Guam, with more regularly scheduled flights, is more competitive.

American Samoa, Guam, and the CNMI are the only island groups in the Pacific region that do not as yet have the right to sell foreign fishers harvest rights to tuna and other highly migratory species found in their EEZs. Domestic fees and revenues collected by federal agencies may be shared with the insular area governments; however, they are first paid to the U.S. treasury, and the amount charged has been limited to administrative costs. Over the years their leaders have repeatedly petitioned the federal government for changes in U.S. fisheries policies and for more management control over their insular stocks. During deliberations on the last FCMA reauthorization bill in 1990 Senators

Inouye, Kerry, and Stevens indicated support for future legislation that would amend the FCMA to better meet the needs of the insular areas. In January 1992 the federal government offered to allow federal fees and revenues generated from foreign tuna and other foreign commercial fishing in Guam's EEZ to be transferred to the government of Guam under the same statutory authority that allows other federal taxes and fees generated in Guam to be transferred to the local treasury.

American Samoa, Guam, and the CNMI have participated as sitting members of the WPC with observer status since the WPC was created. All send official representatives, although no one individual participates on a continuing basis. Their opinions are taken into account, but they do not vote. Because the CNMI has been reluctant to surrender sovereignty claims over its EEZ, which are still not fully resolved, its participation has not been continuous. However, in December 1992 the U.S. and the CNMI came to an agreement that allowed CNMI to participate in the management work of the Western Pacific Council without compromising CNMI's ownership claim to the fisheries resources of its EEZ. The parties also agreed to undertake cooperative fisheries enforcement in the EEZ surrounding CNMI and to study and recommend further amendments to the FCMA in the areas requested by CNMI.

THE JOINT WORKING GROUP

In 1993 a Joint Working Group was established by agreement between the Departments of Commerce and the Interior for purposes of reviewing Federal fisheries policies in the Pacific. The Group included representatives from Interior's Office of Territorial and International Affairs (OTIA), NMFS, WPC, American Samoa, Guam, and the CNMI. During 1994 and 1995 the Group addressed fisheries issues related to the implementation of the FCMA, including administrative and funding questions related to fisheries research and assessments, vessel documentation and crew citizenship, assistance required to support or offset the impacts of foreign investment in or use of land and water-based resources, training and crew certification programs, Saltonstall-Kennedy (S-K) funding priorities, and foreign fishing in U.S. waters. In April 1996, the Group submitted a draft report to the Governors, which included certain proposed amendments to the FCMA that have in large measure been incorporated into S.39:

1. Definitions. Subject areas are more broadly defined to include Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Palmyra Atoll, Kingman Reef, Midway Island, and Wake Island.
2. Pacific Fisheries Agreements. In addition to American Samoa, Guam, and the Northern Mariana Islands, the Secretary of State with the concurrence of the Secretary of Commerce and the WPRFMC may negotiate and enter into such agreements for the more broadly-defined Pacific Insular Areas.
3. Indigenous Fishing. Before an agreement is entered into, the Secretary of Commerce, an insular area Governor, and the WPRFMC must determine that the permitted activity will not adversely impact indigenous fishing.
4. Distribution of revenues. (a) In the case of American Samoa, Guam, and the Northern Mariana Islands, the amounts collected by the Secretary of Commerce are first deposited into the U.S. Treasury and then covered over to the appropriate island treasury; (b) In the case of the other Pacific Insular Areas, funds are deposited into a new Western Pacific Sustainable Fisheries Fund and made available to the WPRFMC by the Secretary for fisheries conservation and management purposes benefiting those and other areas subject to its jurisdiction; (c) The availability of such monies shall neither diminish other funding received by the Council nor be subject to appropriation or fiscal year limitation.
5. Allowable Uses of Funds. (a) Requires that prior to entering into an agreement, each respective insular area Governor prepare a 3-year priority plan for fisheries conservation and management projects; (b) Plans for other insular areas prepared by the WPRFMC; (c) Terms of agreements include on-board observers based in the western Pacific, annual determination of allowable harvest and fees, research plans, data collection and reporting systems, and monitoring and enforcement systems; (d) Defines fisheries conservation and management minimums for all areas for which 3-year

plans are developed; and (e) Defines other allowable uses for PFA-generated funds including grants to the University of Hawaii and community-based demonstration projects that foster and promote the management, conservation, and economic enhancement of indigenous, traditional fishery practices.

6. Length of PFAs. Three years; renewal subject to agreement with negotiated terms for compliance and preparation of new 3-year plans by insular area Governors and the WPRFMC for their respective areas as defined by this Act.

7. Western Pacific Community Development Program. Establishes a program for giving preferential access to fisheries to communities where a majority of the inhabitants are descended from the aboriginal peoples indigenous to the area and in which traditional fishing practices are or have been historically used for subsistence or commercial purposes.

8. Western Pacific Demonstration Projects. (a) Authorizes Secretary [of Commerce] and Secretary of the Interior to make direct grants to eligible communities to fund demonstration projects to foster and promote traditional indigenous fishing practices; (b) WPRFMC, in consultation with the Secretary, to establish an advisory panel and submit annual reports to Congress.

9. Appropriate Court of Jurisdiction. Allows cases involving violations occurring in CNMI waters to be heard before the U.S. District Court for the District of the Northern Mariana Islands.

THE SUSTAINABLE FISHERIES ACT

As reported out of the Senate Commerce, Science, and Transportation Committee on March 28, 1996, the Sustainable Fisheries Act (S. 39) contains much of what the Joint Working Group set out to accomplish and constitutes a major step in the evolution of the relationship between the U.S. Pacific insular areas and the U.S. federal government. The Act recognizes the importance of community-based fisheries management in order to achieve sustainable harvests and in particular the importance of preserving and drawing upon the traditional

knowledge of indigenous peoples. These provisions balance the heretofore dominant industrial model of fisheries development which the Sustainable Fisheries Act accommodates with the inclusion of quasi ownership approaches to harvesting and stock management. As fisheries in the central and western Pacific become increasingly regulated and access becomes more restricted under limited entry programs, the Act recognizes the importance of subsistence fishing to indigenous Pacific cultures and their right to a share of the fishery resources in the region. Fishing has historically been the major source of protein for Pacific island communities, and many Pacific islanders are still substantially dependent on fish harvests to meet social and economic needs. The Act specifies that resident and migratory stocks are to be explored, developed, conserved, and managed for the benefit of the indigenous peoples of the insular areas as well as for the benefit of the United States as a whole.

Pacific insular governments have requested a larger role in the future conservation and management of their fishery resources. In response to this request the Act requires the concurrence of the Governor of the applicable insular area before the U.S. may negotiate and enter into a Pacific Fishery Agreement (PFA) that authorizes foreign fishing within the EEZ adjacent to that area. The Governor is given the power to block a PFA if he determines that it will adversely affect the fishing activities of the indigenous peoples in his area. Prior to entering into a PFA a three year plan must be prepared detailing the management measures that are to be undertaken and the conservation goals that are to be accomplished with regard to the stocks that are to be fished. If the plan covers a fishery associated with American Samoa, Guam, or the CNMI, the appropriate Governor develops the plan in consultation with the WPF. PFAs are valid for no more than three years to allow for biological reassessment of the stock for which the permit was issued.

The Act specifies that amounts collected from a PFA for American Samoa, Guam, and the CNMI are returned to their respective treasuries to be used for the purposes described in the three year conservation plans after administrative and travel costs related to the PFAs have been paid. If there are monies left over after the conservation, management, and administrative costs have been met, the insular area governments may use them for other marine and coastal related uses. The determination as to whether the costs have been met is made by the Governor with the concurrence of the WPC. Monies from fines or penalties go to insular area treasuries after the costs of enforcement have

been paid. The governors may use these monies for purposes other than fisheries conservation and management.

Plans concerning PFAs permitting foreign fishing in the EEZs of the non self-governing areas are to be developed by the WPC in consultation with National Marine Fisheries Service. PFA funds are to be deposited in a Western Pacific Sustainable Fisheries Fund established for this purpose and are to be used to cover PFA costs and the implementation of the plans and thereafter, together with sums from any fines and penalties, for fisheries conservation and management in the State of Hawaii and the Western Pacific Region.

STATUS OF WESTERN PACIFIC FISHERIES AND DEVELOPMENT POTENTIAL

Clearly the most valuable stocks in the western Pacific are tuna and other highly migratory species. To date, only U.S. purse seiners harvest tuna in the insular areas. If there is a foreign longline fishery in the CNMI it operates illegally since no permits have been issued by the U.S. Guam has two or three longline vessels; American Samoa may have up to five. The approximate value of the 1994 U.S. purse seine tuna fishery landings and transshipments in the governing insular areas were as follows: American Samoa \$119,700,000; CNMI (Tinian) \$23,500,000; and Guam \$57,000. of which 76 percent of the total catch was skipjack (122,090 short tons) and 23 percent was yellowfin (36,950 short tons). The landed value of insular area stocks excluding tuna and other highly migratory species in 1994 were much smaller. In the CNMI the total local catch was 2956 metric tons valued at \$12,894,000. Of that the commercial catch was 131 metric tons valued at \$613,000 and the subsistence catch was 2825 metric tons valued at \$12,281,000. In Guam the total local catch was 591 metric tons valued at \$2,392,000. Of that the commercial catch was 118 metric tons valued at \$956,000 and the subsistence catch was 472 metric tons valued at \$1,936,000. In American Samoa the total local catch was 267 metric tons valued at \$993,000. Of that the commercial catch was 52 metric tons valued at \$179,000 and the subsistence catch was 215 metric tons valued at \$814,000.

Fisheries development in the Western Pacific insular areas does not look especially promising. Current cannery prices for skipjack are low, around \$600 a ton. The amount that can be charged for a foreign fishing license depends on the value of the resource. Currently the most valuable species in the area is bigeye tuna, which the Republic of the

Marshall Islands charges foreign fishing companies up to \$10,000 per vessel to fish. The FSM with its large tuna resources make the most off foreign fishing access agreements, approximately \$23 million a year. During El Nino years these tuna stocks move East into the U.S. EEZs around Howland and Baker Islands. Foreign fishing companies do not appear to be interested in Guam or the CNMI, but have apparently expressed some interest in developing a blue marlin fishery near Wake Island. As reported by WPC, the highly migratory Pacific blue marlin is a single stock and is harvested primarily by foreign distant water fisheries targeting tuna. Blue marlin was heavily overfished in the 1970s; however, in the 1980s longline fisheries shifted from targeting yellowfin to bigeye tuna and the bycatch of blue marlin declined. (Bigeye tuna swim deeper and blue marlin are therefore less likely to be harvested incidentally.) However, purse seine activity in the tropical western Pacific also increased in the 1980s and may have caused additional pressure on the blue marlin stock. Pacific wide, the total annual catch of blue marlin has increased in recent years. To date, very little resource survey and assessment work has been done by NMFS in the Pacific insular areas. Little is known about stocks of shark, squid, and bottomfish.

In 1989 world fish production reached an all time high of over 86 million tons; since that time production has declined. Catch data suggests that marine fish landings have apparently reached a plateau around which annual catches of different stocks may fluctuate. Fishermen that seek to increase their portion of the harvest or governments that seek to increase their revenues can now do so only at the expense of those already exploiting the resources. With a highly competitive market and pressure to decrease cannery costs, together with the liberalizing of world trade and tariff barriers, the insular governments that offer foreign fleets the most attractive license/tax/service package will be the ones that benefit from changes as a result of the Sustainable Fisheries Act in the short run.

In the long run, the insular areas would do well to develop and sustainably manage their own small-scale, fuel-efficient, multipurpose fleets. Potential revenue-generating areas in the future include supplying the growing demand by consumers in Asia, the U.S., and Europe for high quality fresh fish, which could utilize the worldwide seafood marketing services already established in Honolulu. There is also room for value-added fisheries development, which includes improved processing, marketing, and the utilization of by-catch and lower valued species. In

addition, the insular areas could benefit by providing reliable high quality ship servicing and repair. Development of deep sea recreational fisheries, with their many revenue-generating visitor-industry spinoffs, also has promise.

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