

The Atlantic States Marine Fisheries Commission: Time To Learn From the Past



“Those who cannot remember the past are condemned to repeat it.” George Santayana’s words have been repeated so often that they’ve become a cliché.

Yet, repeated or not, they’re undoubtedly true. But when it comes to fisheries matters, merely remembering the past isn’t enough; in order to prevent making the same mistakes over and over again, fisheries managers must not only remember the past, but also learn from it.

Today, we can look to the federal fisheries management system with pride, and rightly call the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens), which governs all fishing in federal waters, as the most effective, and most comprehensive, fishery management law in the world. Yet things were not always that way.

When Magnuson-Stevens’ forerunner, the Fishery Conservation and Management Act of 1976 (1976 Act), was signed into law, Congress’ primary intent was to force most foreign vessels to fish 200 miles or more from the United States’ shores, so that domestic fish stocks were not threatened by foreign fleets. Protecting such stocks from the United States’ fishermen was, at best, a secondary consideration.

The 1976 Act established the regional fishery management council system, creating eight such councils that were, and still are, peopled largely by representatives of the fishing industry. The councils were charged with conserving and managing the nation’s living marine resources, but during the two decades that followed the passage of the 1976 Act, they spent most of the time protecting the fishermen’s interests, and not those of the fish.

The 1976 Act required that stocks be managed for “optimum yield,” which it defined, in part, as “the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.” The “as modified” language in that definition sounded a death knell for the health of many fish stocks, as councils routinely established optimum yields that began with maximum sustainable yield (MSY)—the most fish that could be removed from the stock without causing long-term harm—and then “modified” that figure upwards due to the most basic economic factor of all: Fishermen wanted to maximize profits in the short term.

A 1995 article, “Twilight of the Cod,” which appeared in *Discover* magazine, described how that worked out in New England, which once hosted some of the most productive fisheries in the world.

“During the 1980s the New England [Fishery Management] council proved itself unwilling to control fishing. Indeed, one of its early actions, in 1982, was to eliminate catch quotas. Its goal, it said, was a simpler system that allowed the fishery to operate in response to its own internal forces. As the decade progressed, the fishery did just that—and as [National Marine Fisheries Service] scientists warned of declining stocks of cod, haddock, and yellowtail flounder, the council dithered.”

As a result, stocks of most New England groundfish quickly

declined. Some collapsed. Many have yet to recover.

It was clear that the fishermen and fishing industry representatives on the regional fishery management councils were unwilling to regulate themselves and, given the choice, would always opt for maximizing their income in the short term, rather than assuring the long-term sustainability of the nation’s fish stocks. In response, Congress amended the 1976 Act by passing the Sustainable Fisheries Act of 1996 (SFA). The result created a Magnuson-Stevens that was very similar to the law that exists today.

The old definition of “optimum yield” was changed under the SFA, to read “the maximum sustainable yield from such fishery, as reduced by any relevant economic, social, or ecological factor.” Optimum yield could no longer be set above MSY; the prospect of greater economic gain could no longer be used to justify overfishing any fish stock.

Under the SFA, overfishing wasn’t tolerated at all. And for the first time, regional fishery management councils were required to rebuild overfished stocks within a ten-year period if it was biologically possible to do so, unless such stock was subject to an international fisheries agreement that established a different rebuilding timeline. Fishery management measures had to be based on the best scientific information available.

If the National Marine Fisheries Service (NMFS) failed to uphold the standards that the SFA established for federal fisheries managers, its decisions could be challenged in federal court. That’s exactly what happened after NMFS ratified a Mid-Atlantic Fishery Management Council amendment to the summer flounder management plan that was unlikely to prevent overfishing. The Natural Resources Defense Council sought judicial review of the amendment and, in the landmark decision [Natural Resources Defense Council v. Daley](#), a federal appellate court established the principal that any federal fishery management action must have at least a 50 percent probability of achieving its goals. Any management action that fell short of that standard was deemed to be legally flawed.

New management actions that met the court’s standard were put into place, and fish stocks began to increase, but overfishing still plagued many others. In response, [Magnuson-Stevens was amended again in 2006](#). The new amendment required regional fishery management councils to establish annual catch limits for all managed stocks, required such councils to hold fishermen accountable when they exceeded such limits, and prohibited the councils from setting catch limits higher than the “allowable biological catch” for each stock established by the scientists on the councils’ Scientific and Statistical Committees.

As a result of the SFA and the 2006 amendments to Magnuson-Stevens, federal fisheries managers have had substantial success in rebuilding fish stocks. [46 once-overfished stocks have been fully rebuilt](#), while many others are no longer overfished, and well on their way to recovery. Only [28 out of 321 stocks](#)—just 9 percent—are experiencing overfishing.

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