FEDERAL FISHERIES MANAGEMENT

A Guidebook to the
Magnuson Fishery Conservation
and Management Act

1985 Revised Edition

Jon Jacobson, Daniel Conner,
and Robert Tozer
Editors

Ocean and Coastal Law Center
University of Oregon Law School
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Jon Jacobson is Professor of Law at the University of Oregon and Co-Director of the Ocean and Coastal Law Center. Daniel Conner and Robert Tozer are research assistants for the Ocean and Coastal Law Center.

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Preface to Revised Edition

Such is the pace of federal fisheries law that the original edition of the Guidebook was outdated even as it was being published. This revised edition incorporates the 1983 amendments to the Fishery Conservation and Management Act, together with regulations in effect as of mid-1984. Its loose-leaf format will permit convenient and inexpensive updating of Guidebook material.

The scope of the revised edition has been expanded somewhat to include recent developments in federal law that are peripheral yet possibly of great importance to future implementation of the FCMA. Most importantly, these include the interlock between the FCMA and the Coastal Zone Management Act, how each of these Acts bears upon CZMA "federal consistency" provisions, and also the possible effect on the FCMA of the Supreme Court's ruling on the unconstitutionality of the "legislative veto."

Another new feature of this edition is its "pan-Pacific" emphasis, with coverage expanded to include fisheries in the vast portion of the Pacific governed by the Western Pacific Fishery Management Council. Also new is a table of operational or proposed fishery management plans for the jurisdictional areas of the three Pacific Councils.

Special acknowledgements for this revision are due to Willy Weigand and Mike Pugh for their research assistance, and also to Helen Newman and Nancy Farmer for patiently retyping the manuscript.

Jon Jacobson
Daniel Conner
Robert Tozer

January 1, 1985
The Magnuson Fishery Conservation and Management Act of 1976 (FCMA) has turned out to be one of the most controversial and confusing pieces of federal legislation in recent memory. The controversy is inevitable, but in this Guidebook we try to do something about the confusion.

We hope that this book will communicate effectively to a broad range of readers, but especially to those who are most affected by the workings of the bureaucratic machine created by the provisions of the FCMA. In drafting the various chapters, the authors tried to keep two hypothetical readers in mind. One is a commercial fisherman, a person whose livelihood is directly regulated by the FCMA. The main text of each chapter was written with this reader in mind. The other hypothetical reader is a lawyer with no special training in fisheries law but who may be confronted with fishery management problems in serving his or her clients. The notes at the end of the book contain citations to authorities and occasional further explanation and are written for this reader. Of course, our limitation of the list of supposed readers to two was a drafting device only; our ultimate goal is to provide useful information and analysis to seafood processors, fishery managers, legislators, the interested public, and all sorts of people who are neither fishermen nor lawyers.

All readers should note that the Guidebook might well be termed a "Northwest Edition" -- two of our chapters are concerned with the organizations and activities of the two regional fishery management Councils governing the waters off the Pacific Coast and off Alaska, without similar treatment of any of the other six regional Councils. We make no excuse for this other than the good one that our expertise is limited to these areas. We encourage and invite institutions in other parts of the country to add chapters on the Councils in their regions and to make any appropriate use of the more general chapters in our book.
Finally, we would like to make some well-deserved acknowledgments. The following people have made substantial contributions to the writing of the book and can be considered its true authors: Donald Hornstein, Meg Reeves, Steve Balagna, Glen Thompson and Ken Schoolcraft. We also thank Marilynn Howard for her typing and patience, and Charlie Jackson for assisting in the publication details and providing the artwork on the cover and in the text.

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Jon Jacobson  
Kevin Davis  

September 1, 1982
FOREWORD

The locating, catching, and consuming of marine fish has been of importance to people of the world for countless centuries. Early settlers of what is now the United States relied on fish for sustenance and trade, and Americans have cared about maintenance of the stocks ever since. Fish are now a worldwide commodity, and who does what to them when, where, and for how much influences all of us.

There have been agreements and disagreements over fisheries jurisdiction around the world for a very long time, some being resolved at the negotiation table, some in the courts, while others remain unresolved. But that is not too surprising considering the many different values associated with controlling the harvest and eventual use of the more than 70 million metric tons of fish produced annually in the world today. Some nations receive value from catching, processing, and consuming the product. Others control such activities off their respective coasts although not actively participating in one or more of them. Recognizing different national needs, many mutually beneficial arrangements for resource use have been implemented successfully all over the world.

After World War II the United States became much more actively involved in national and international fisheries matters. A few highly respected United States fishery scientists with great skills in negotiation and persuasion and personal characteristics of leadership, determination, imagination, and initiative had an amazing influence on the trend of fisheries development and management around the world. The most active and best known includes Wib Chapman, Don McKernan, and Benny Schaefer. Those three, with the able assistance of many others, including leaders from within the fishing industry, plowed new ground in fisheries jurisdiction. More international fisheries commissions were formed, many bilateral agreements were developed with measured success, and the efforts culminated in the passage
of the Magnuson Fishery Conservation and Management Act of 1976 (FCMA). There was an inherent feeling of caring about how fish and fishermen were considered, treated, and controlled. Unified control and management became necessary with the future of many fish populations in the balance. Several stocks were being depleted, and more appeared destined for similar treatment. The need was too great and too pressing to ignore any longer.

The final stages in the development and initial implementation of the Act were exciting times for all who were involved. The openness of the discussions at the national and international levels was mutually beneficial and productive. The many views of domestic and foreign interests that were sought, received, and included helped immeasurably. Such communication, cooperation, and flexibility established a pattern to follow.

The FCMA is clearly the most significant fisheries legislation in the history of our country. Irrespective of the size of fleets, number of fishermen, or quantity of catch, with enactment of the FCMA the United States became the world leader in firmly establishing a sound foundation for rational marine fisheries management. Supporters and detractors watched with interest and skepticism, waiting for hesitant implementation, unjustified treatment, international legal challenges, or major foreign national non-compliance. Considering the scope, significance, and precedent-setting aspects of the Act, implementation was remarkably smooth.

The FCMA was and still is a remarkable piece of legislation. For a law so comprehensive, its initial version had surprisingly few shortcomings, considering the varied and at times conflicting positions and goals of the state and federal governments, commercial and recreational fishermen, and other components of the domestic industry.

The law can justifiably be described as bold, assertive, imaginative, unique, pioneering, and self-serving. There was both strong support and vigorous opposition at home and abroad at all levels of industry and government, including Presidential opposition right up to and through passage and initial implementation. The story is a remarkable example of American ingenuity, determination, and intestinal fortitude. Where else can relatively few determined individuals take on the Administration, international protocol, and the prevailing international fisheries views, and through a unilateral declaration create a management system that works, is respected, is followed, and is adopted in principle by most of the other leading fishing nations of the world? Like so many other events in United States history, people fought for what they believed in and, when necessary, compromised their own needs to accommodate the requirements of others from within the United States and around the world.

Several key concepts provide for and permit the success achieved to date. The priorities are resource first, domestic
fishermen second, and other nationals third. Use of the best available scientific data is mandatory. For the first time, social, economic, and ecological factors are required to be considered along with biological information. The Act addresses the varying needs of all domestic fishermen and gives a significant role to the interested public. Other nations have a meaningful role. Treating others as you want to be treated has been a well-accepted philosophy in some circles for over two thousand years and has been built into the management process from the beginning. No one is excluded from participating unless there are resource shortages. National standards for management are established. Consideration of the needs of others and flexibility are built into implementation. Serious punitive measures are included only for significant violations, not just to antagonize domestic and foreign participants. During the FCMA development stages, many felt that elimination or management was necessary only for foreign fleets, and that the domestic fishermen should be left alone. Congress, however, wisely extended coverage to all users of the resource, but with options to treat them differently based on factual and policy determinations under broad general guidelines reflecting the nation's overall interest. Experience has demonstrated the wisdom of that critical decision. More fishery management plans now govern domestic than foreign fishing.

Implementation has not progressed without difficulties, bitter controversies, failures, successes, and changes in the law itself, as well as changes in approaches to regulation and in the regulations themselves. Nobody said or thought it would be easy, and it hasn't been. Some changes were made in administrative provisions of the Act by Congressional amendment after initial passage, but before implementation, to permit orderly transition from a relatively loose system to an iron-clad one that applies to domestic and foreign fishermen operating on two million square miles of the oceans. Requirements regarding the payment of fees, the issuance of permits, and the posting of permits were waived to assure timely implementation on March 1, 1977. The very quick action by the Congress on these specific details was in itself an impressive demonstration of what can be done in an emergency when those involved are convinced of the need for action and care enough to accomplish it.

Good as the law is, there is no certainty that it will continue to be a success. It must do the job both for the resources and for the people. There will always be valid complaints about various provisions in the law, in its resultant administrative regulations, or in its implementation. But these should not become deterrents to future refinement. The FCMA is becoming a way of life, and a better one than existed without it. It should not be taken for granted or assumed that it automatically will continue to be successful. It requires constant interest, dedication, and involvement by the Council members, staffs, and the affected public, and each should serve as a check on the interests of the other. The fisheries world is watching, partici-
pating, and judging. It is vital to present and future genera-
tions that the verdict be favorable and supportive. I am con-
vinced it will be.

I believe the future for the Magnuson Fishery Conservation
and Management Act will be positive and encouraging. Problems
will continue to arise, as they do with any far-reaching program
involving so many conflicting philosophies, needs, and desires.
After extensive experience, debate, and soul-searching, changes
will be made in this constitution for managing fish, just as
changes were made in the Constitution for governing people
adopted 200 years before. There is too much to lose to revert to
pre-FCMA approaches. Continuation on the present course will be
a smoother and more productive approach than any other. The
resources and the users both deserve our collective best efforts
to assure that the Act continues to work. And it will work,
notwithstanding continuing objections to parts of it, because the
participants will want it to.

Robert W. Schoning
Former Director
National Marine Fisheries Service
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