REWRITING THE MAGNUSON STEVENS ACT
SUMMARY

There is widespread agreement that the current fisheries management system is underperforming and needs improvement. The opportunity to fix what is broken and improve what has not worked well should not be missed. To do this, the National Standards that form the backbone of the MSA should be rewritten and new measures to improve the efficiency of U.S. fisheries management should be implemented. Mere reauthorization without thoughtful changes will fail to achieve balance in fisheries management and will endanger the sustainment of our Nation's fisheries resources. Thoughtful change requires that the MSA be rewritten.

The MSA is presently implemented via 10 National Standards, of which four are key: National Standard 1 (prevent overfishing while attaining optimum yield); National Standard 2 (use the best science available); National Standard 8 (economic and social impacts on fishing communities must be considered); and National Standard 10 (maintain safety at sea). The intent of Congress in writing the Act was to have a balanced approach to the ten National Standards utilizing the "best science available." In contrast, in recent years the approach to fisheries management has been an unbalanced focus on National Standard 1(the prevention of overfishing) and non-attainment of National Standard 2 (the use of the best available science) in the sense that the governing fishery management councils are not presented with a full range of scientific or technical options and interpretations.

Highlights of the rewritten MSA provisions proposed by CSF are as follows:

One goal of fisheries management is changed from

> *Conservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery . . .*

to

> *Conservation and management measures shall maximize yield (or some economic function of yield) subject to the constraint of keeping fishing mortality at or below a level specified by the Council.*

This new emphasis has the triple effect of eliminating major short-falls in current implementation, such as, ignoring economic and social impacts, focusing on the impractical and scientifically specious term "overfishing," and restricting the Councils to formulaic regulations that limit their flexibility in dealing with on-the-ground fisheries management decisions.

The number of National Standards is compressed from ten to five, with each new National Standard addressing components of fisheries management in a logical framework and narrowing the opportunity for components of the National Standards to be ignored.

All National Standards are specified to be of equal importance. This ensures that no one National Standard or set of National Standards will be ignored in future implementation of the MSA.

Safety at sea is made more prominent by including this provision with maximizing yield and considering social and economic impacts in the new National Standard 1.

The proposed rewritten National Standard 2 will materially increase force and effect through requirements that expose the Councils to multiple interpretations of stock assessments and broaden participation in fisheries management decisions to ensure the "best available scientific information" has been utilized.

Further improvements to the management process by NOAA and the Science and Statistical Committees (SSC) that underpin the Councils include: 1) clearly defining the Agency's role in fisheries management; 2) establishing clear performance measures for the Agency and SSC that promote timely scientific and technical results; 3) establishing oversight committees to ensure accountability, efficiency and compliance; 4) amending the arbitrary ten year stock rebuilding time frame to reflect biological realities and mirror the tenets of the rewritten National Standards [note, there is no explicit overfishing in the rewrite, so alternative approaches to rebuilding need to be considered]; 5) increasing cooperative research and analysis; 6) creating scientific working groups and National Institutes to create institutional changes in the checks and balances of scientific review; and 7) establishing formal accountability mechanisms for determining whether an implemented management plan is consistent with Congressional intent.

Cooperation between all stakeholders--the fishing industry, regulators, the public, and environmental groups--must occur in order to improve fisheries management law. We must find a way forward and collaborate. The end result of the current MSA and fisheries management system is a seriously under-performing management system. Our management system cannot continue to under-perform, the adverse consequences to our Nation's fishing resources and industry are too severe and likely permanent.

THE NATIONAL STANDARDS AS REWRITTEN BY CSF

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following equally paramount national standards for fishery conservation and management:

> **(1) Conservation and management measures shall, promote the safety of human life at sea. Conservation and management measures shall maximize yield (or some economic function of yield) subject to the constraint of keeping fishing mortality at or below a level specified by the**

Council. Conservation and management measures shall, take into account and balance the importance of fishery resources to fishing communities with fishing mortality goals, by utilizing economic and social data that meet the requirements of National Standard (2), in order to (A) provide for the sustained vitality of such communities, and (B) minimize adverse economic impacts on such communities.

(2) Conservation and management measures shall be based upon the best scientific information available. The best available science shall be derived by a collaborative effort of government, educational institutions, and private and non-profit scientists coordinated by NMFS and NMFS's regional SSCs. The best scientific information available shall be determined by the Council after a comprehensive review of multiple analyses and the pros and cons of each analysis, as presented by the SSC in conjunction with other fisheries scientists. Advanced technological mechanisms shall be utilized in every instance to gather and analyze samples and data.

(3) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. An individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. Conservation and management measures shall, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, account for and allow the bycatch to enter the marketplace.

(4) Conservation and management measures shall minimize costs and avoid unnecessary duplication. Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation and maximize yield as specified in National Standard 1; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

To read Rothschild's entire keynote address, please visit the Center for Sustainable Fisheries Publication Page at www.centerforsustainablefisheries.org.