

Interstate Marine Compact Commissions Role in Fisheries Management

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For those who may be uninformed about the relations and structure of the interstate marine fisheries compact commissions, let me provide a brief background. There are three interstate marine compacts granted the consent and approval of Congress: the Atlantic States Marine Fisheries Commission (ASMFC) with 15 member States; the Gulf States Marine Fisheries Commission (GSMFC) with 5 member States; and the Pacific Marine Fisheries Commission (PMFC) also with 5 member States. ASMFC was the first to be created in 1942 and the others soon followed (ASMFC is now in its 34th year). Each state within a commission is represented by three delegates or commissioners: a state fisheries director, a member of the state's legislative body, and an appointee of the Governor. (Florida, incidentally, is a member of both Gulf and Atlantic Commissions.) All three commissions have advisory bodies although their composition varies. The federal fisheries agency, presently the National Marine Fisheries Service, is designated as the primary research agency of the Gulf and Atlantic Commissions but is not so named in the Pacific compact.

What is the purpose and the function of the Commissions? The purpose of the Atlantic States Marine Fisheries compact is to provide the better utilization of the fisheries of the Atlantic seaboard and it shall do this, reads the compact, by development of joint programs for the promotion and protection of these fisheries and the prevention of physical waste from any source. The other compacts have similarly worded prefaces. But the commissions are not granted any regulatory or management authority to achieve this, with one exception that I will refer to a bit later, and so must act as agencies of inquiry, of debate, and of recommendation — these latter to the several legislatures, to the governors, to the state administrative and management agencies, and presumably also to the federal fisheries agencies and the Congress. Essentially this is how the commissions have operated until now — with individual embellishment, of course, over the years, providing both services and support to member states as regional needs and changing times have dictated.

In 1950 Congress granted an amendment to ASMFC which provided that any two or more consenting states could designate the Commission as a joint regulatory agency with respect to specific fisheries in which such states have a common interest. This is an interesting concept for interstate management of shared fisheries resources (because some states do not even have the constitutional authority to make interstate agreements for fisheries) but unfortunately until very, very recently these provisions were never invoked. And perhaps now it is too late. Almost positively, this regulatory function so long neglected, so badly needed, will be preempted through federal legislation that is before the Congress today.

Since the Commissions were not granted any powers to make or enforce regulations, except in the special case made above, which incidentally, requires individual state ratification (only 9 of 15 have done so in ASMFC in the past 25 years), what could have been the Commissions' role all these years? It seems to me essentially to recommend, to the several states involved with any species of fish, regulations appropriate to the protection and optimum utilization of such species for simultaneous legislative or administrative enactment. In this idealized concept, the compacts afford a method for a constructive joint approach to common problems of management that the states operating individually cannot solve. Additionally, in two of three instances, and for practical purposes, today, in all three cases, the compacts recognize the federal interests by providing for federal agency participation and mutual support. Nevertheless, the compacts preserve states' responsibilities by requiring the Commissions to report their recommendations to the several states affected by any problems for final action by them. Finally, I believe the compact commissions were designed as practical institutions in that they create no super government agency but utilize existing state and federal agencies in a *common* effort to solve problems that are unsolvable otherwise. That they have been unable to resolve many of these problems stems from political and human frailty — one cannot fault the compacts.

More recently the interstate compact commissions have supported a new initiative of the National Marine Fisheries Service (NMFS) called the State-Federal Fisheries Management Program (SFFMP). The Commissions play a supportive role in communications, planning, coordination, and administration of the SFFMP, under which fisheries management plans are being prepared for important target species on each of the coasts. These include northern shrimp in the Gulf of Maine, southern shrimp off the south Atlantic states, the surf clam and northern lobster of the north and middle Atlantic areas, menhaden in the Gulf of Mexico, Dungeness crab and other selected species off the Pacific coast.

ASMFC has gone one step further with the Gulf of Maine shrimp. By combining the management planning of the SFFMP with the provisions of Amendment No. 1 to our Compact, it has organized a Northern Shrimp Section which promulgates regulations for this fishery. Three states, Maine, New Hampshire, and Massachusetts, share this fishery. Much of the fishery is conducted beyond the territorial sea of the individual states, in fact, outside the U.S. contiguous fishery zone. Based on studies of a state-federal scientific team and policy decisions of a state-federal subcommittee of the Northeast Marine Fisheries Council (a regional council composed of 11 state administrators and the NMFS regional director), the Northern Shrimp Section promulgates regulations which are then adopted by ASMFC. To date these regulations include an optimum mesh size to conserve the small androgynous male shrimp and a closed season to help control annual landings which are above maximum sustainable yield (MSY). This is a cooperative effort involving the Commission as a regulatory (management) institution, state and federal administrators, and scientists providing financial and technical input, while the states practice cooperative reciprocal enforcement. I believe this system could be a practical solution to regional fisheries management for a considerable number of inshore and estuarine-oriented species and should

be more universally applied. As I stated above, it probably has developed too late in the scheme of things to be considered further. Unless, perhaps, we can adapt it to fisheries that are predominantly inside the 3-mile limit but passing through invisible state boundaries.

We have now before us the era of fisheries management under extended jurisdiction. Both House and Senate versions of bills currently before Congress provide for regional management councils that will develop management plans for stocks of fish throughout their range. The House version, Marine Fisheries Conservation Act of 1975, (HR 200), even has preemptive language that would enforce regulations within the territorial sea which up to now have been the prerogative of the individual states. Interestingly, the House bill takes cognizance of the interstate commissions and includes the executive director for the geographical area as a Council member. The Senate bill, Magnuson Fisheries Management and Conservation Act, (S 961), has no provision for marine fisheries commission input *per se* but its accompanying report suggests that the commissions will provide staff support to the regional management councils.

And what about the individual States? ASMFC passed a resolution as early as 1969 favoring extended fisheries jurisdiction. When the original Studds-Magnuson bills, which provided for interim extended fisheries jurisdiction but with no management provisions, were introduced in the 93rd Congress the ASMFC states voted 14 to 1 (Florida dissenting) in favor, but that was 2 years ago. These same states respond somewhat differently today. They have reservations. Now that the bills before Congress have management titles, and especially certain provisions of HR 200, the states are seeking amendments or at least trying to affect what comes out of congressional conference that will favor states' rights and states' needs. The states are opposed to the ultimate powers vested in the decisions of the Secretary of Commerce and most emphatically perturbed over potential preemption of fisheries within the territorial sea. They are dismayed by the large council structure that includes user-group participation. They feel that federal licensing will deprive them of funds upon which they depend to support their own fisheries research and management programs. On the other hand, the states are in favor of regional councils with strong management responsibilities and powers but only if the state directors are included as members. They recognize that, on the key issue of initiative and authority for the councils, S 961 accords them a stronger role than HR 200, but S 961 does not specifically guarantee their membership on the Council; the amended version of HR 200, as passed by the House, now does. They are pleased with the language of S 961 which specifies that the Secretary of Commerce *shall* review management regulations recommended by the councils (as well as accepting their management plans) and the Secretary *shall* adopt such regulations (when consistent with national standards) for the management of the fishery involved. They are displeased with this as part of HR 200 which is weak in regard to the above, granting the Secretary powers without "due process."

Finally, what might be a role for the interstate marine fisheries commissions in the new era of fisheries management under extended jurisdiction? Let me quote to you from a letter to Senate Commerce Committee Chairman Warren Magnuson by John Harville, Executive Director of the PMFC. "With respect to

designation of an appropriate role in this new management regime for the present interstate marine fisheries commissions, I believe this should take the form of staff support for the Regional Councils, after the pattern already in effect with respect to NMFS' State/Federal Fisheries Management Program. . . . I urge that the legislation . . . specify that kind of relationship and thus recognize past achievements of the marine interstate fisheries commissions in communications, planning, and coordination of State-Federal interactions, and Commission capabilities to apply existing experience and institutional machinery to facilitation of the new Regional Council management functions."

Dr. Harville goes on to say, "I think it important that the Congress be on record in calling for this kind of adaptive evolution of the interstate marine fisheries commissions. The Congress created those Commissions in the late '40s to assist the States to work more effectively together on shared fisheries problems. The quarter-century since that creation has expanded both State and National needs, and our institutions should evolve accordingly."

I am in accord with that view. While providing staff support to the councils, the Commissions must not be absorbed into the new councils. The Commissions would continue to provide the states with a communicating mechanism with one another and with the legislative and executive branches of the federal government. The interstate compacts should retain their identities as state-funded and state-governed entities for continuation of their many present services to the states, to the Commission associates and their regional constituencies and to the nation, aside from any role in fisheries management.

If regional management is truly upon us, there are only the three alternative roles for the Commissions: (1) they might be abolished as no longer needed; (2) they might disappear into the council structure; (3) or they should, as I believe, be continued for all the other services provided to their member states while developing through contract staff support a relationship to the councils similar to that performed within the State/Federal Fisheries Management Program. This latter role should be the rational choice.