

Suggested State Legislation for Effective Management of Marine Fisheries

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In 1972 the National Marine Fisheries Service embarked on a new initiative, the State-Federal Fisheries Management Program. The goal of the program is to bring about the rational management of domestic inter-jurisdictional fisheries through the development and implementation of comprehensive fisheries management plans so as to optimize social, recreational, and economic benefits on a sustainable basis. At present, management plans are being developed for seven fisheries under this program, including penaeid shrimps along the South Atlantic states and the menhaden in the Gulf of Mexico.

In general, it has been possible for the state administrators to agree on policies, standards, and regulation for a fishery. However, it has been difficult to obtain timely approval by the state legislative authorities of the agreed upon actions. This has proved to be a significant obstacle to the achievement of the management programs. Although there had been an awareness of the need for improvements in state legislation relative to management of marine fisheries, experience with the State-Federal Fisheries Management Program has resulted in a clearer recognition and definition of this need.

Another anticipated development, extension of U.S. fisheries jurisdiction to 200 miles from our coasts, will give the United States its first real opportunity to deal comprehensively with the management problems of its coastal fisheries. For the states to participate effectively in the management of these fisheries, they must have the capability to cooperate with the adjoining states and the federal government in the development and implementation of unified management plans. Otherwise, a single fish stock will either be subject to different and often conflicting management regimes in different jurisdictions, or the federal government may find it necessary to preempt the management authority for a stock to assure proper protection and use of the stock.

DEVELOPMENT OF MARINE FISHERIES MANAGEMENT ACT

In recognition of these needs, the National Marine Fisheries Service in June 1974 contracted with the Council of State Governments to produce suggested state legislation for effective management of marine fisheries. The Council set up an 11 member National Task Force, 6 state legislators and 5 state fisheries agency heads, to develop this legislation. I was retained by the Council of State Governments as the project director to assist with this work.

In the course of developing the suggested legislation, the staff of the Task Force examined the marine fisheries laws of the 24 coastal states, the 8 Great Lakes states, American Samoa, Guam, Puerto Rico and the Virgin Islands, and

conducted interviews with the heads of the state fisheries agencies and representatives of the recreational and commercial fishing and environmental groups in 21 states. During the period from September 1974 to May 1975, the Task Force met four times to discuss the various issues and drafts which led to the suggested legislation.

The suggested "Marine Fisheries Management Act" was presented at the National Conference on Effective Management of Marine Fisheries at Hyannis, Massachusetts, in June 1975. Copies of the suggested Act are currently available in two formats: as a separate brochure, and as a part of the Council of State Government's 1976 Suggested State Legislation, a copy of which is furnished to each state legislator in the 50 states. The National Task Force's final report, entitled "To Stem The Tide—Effective State Marine Fisheries Management," which contains the recommendations of the Task Force and the suggested Act, should be available from the Council of State Governments or the National Marine Fisheries Service by December 1, 1975.

RECOMMENDATIONS OF THE NATIONAL TASK FORCE

The National Task Force made three recommendations relating to the suggested Act: (1) Each coastal state fisheries agency should compare the statutory basis for its operation with the suggested Act and seek adoption of those sections or parts, modified to conform to the general construction of its statutes, that would improve its capabilities for marine fisheries management. (2) Each coastal state fisheries agency's attention is directed to the most important needs for modification of present statutes, as determined from an examination of existing state statutes and discussion of problem areas in fisheries management with state fishery heads, and to the sections of the suggested Act that address these needs. These needs include: adequate regulatory authority, adequate catch statistics, appropriate licensing of commercial and recreational fishing, intergovernmental cooperation, advisory input from resource users and interested citizens, and effective penalty and enforcement deterrents. (3) Since the basic provisions of the suggested "Marine Fisheries Management," although designed primarily for marine fisheries management, are equally applicable to the management of freshwater fisheries, the directors of inland fisheries agencies should seek the adoption of those parts of the Act that would improve their agencies' capabilities for fisheries management.

I would note that since September 1975 resolutions embodying these three recommendations have been adopted without dissent at annual meetings of the International Association of Game, Fish, and Conservation Commissioners, The American Fisheries Society, and the Atlantic States Marine Fisheries Commission.

The National Task Force also made seven other policy recommendations in their final report on issues not dealt with specifically in the legislation, which they felt were of prime importance to effective marine fisheries management.

DISCUSSION OF THE MARINE FISHERIES MANAGEMENT ACT

In developing the suggested legislation, the Task Force attempted to provide what they believed to be the basic ingredients of a Marine Fisheries Management

Act. They recognized that a state's marine fisheries statutes would include additional specific provisions relating to such items as prohibitions, license requirements, license fees and other special provisions. They hoped, however, that as is provided for in the suggested Act the regulations pertaining to the management of fish stocks would be promulgated through the regulatory authority of the agency, in order to provide the flexibility needed for prompt and effective responses to changing needs in management.

The Task Force reviewed the two basic forms of organization of state fisheries agencies, the commission and department forms, and included a discussion of both forms in its final report.

On the basis of interviews with 21 coastal and Great Lakes states, it was found that states which have a commission type of fisheries agency favored that form of organization, whereas states having a department type agency favored their form of organization. Apparently, the people in either type of organization were comfortable with the type with which they were familiar and skeptical of any major changes in basic organization. It was concluded that both types have their advantages and limitations and either type can operate effectively and efficiently. Hence, there is included in the suggested state legislation Alternative Sections 4, one establishing a commission type agency and one establishing a department type agency. All states currently have one of the two basic forms of organization, or a variation thereof. Recent history suggests that there probably will be few changes in the basic organization of state fisheries agencies.

With reference to operation of state fisheries agencies, a major problem faced by many agencies is that their management capabilities are severely constrained by the lack of adequate authority to regulate fisheries within the states' jurisdiction. A few state fisheries agencies have appropriate authority to regulate fisheries but in many states the fisheries agency's authority to regulate ranges from none to limited authority in a few defined situations. In the latter situation, management regulations are established by legislation. The delay and uncertainty of management by legislation prevents effective action since most state legislatures meet for only a few months a year and in some states only every other year. The problem is greatly increased when two or more states are involved in the management of a shared resource.

It was concluded that state marine fisheries agencies should have the authority to adopt, modify and repeal regulations pertaining to the management of marine fisheries resources. It is important also that the state fisheries agencies be given the authority to adopt emergency regulations to be effective on promulgation and to be subject to comment, objection and public hearing with a reasonable time following promulgation. Such emergency regulations may be needed to protect fish stocks for which a harvest quota has been established, to prevent serious depletion of certain stocks or to protect public health.

Sections 6,7, and 8 of the suggested legislation are designed to provide the state fishery agency with adequate authority to manage the fisheries and to take emergency action when needed to protect the public interest. These provisions will give a state the necessary flexibility to cooperate with adjoining states and the federal government in the management of shared resources and to respond

promptly and effectively to changing needs of management within the state. For those states whose fisheries agencies do not have adequate regulatory authority, these three sections are considered to be the most important in the suggested legislation.

In relation to regulations it should be noted that many of the coastal states have outmoded or inappropriate fisheries laws and regulations on their books. Each of these states should take appropriate action to repeal or modify any existing laws or regulations that do not fulfill a valid management purpose.

It is generally accepted that in order for the people of the U.S. to receive the maximum benefits from their valuable marine fisheries resources, these resources must be properly managed. To achieve such management of fish resources shared by several states or shared among several states and the federal government, each affected state must have the ability to participate effectively in the development and carrying out of the management plans. Section 9 of the suggested legislation makes it the responsibility of the state fisheries agency to cooperate with other states and the federal government to develop integrated management plans for shared fisheries resources. This section also provides for coordination between the fisheries agencies and other state agencies whose activities affect fish resources.

Section 10 empowers a state fishery agency to enter into reciprocal agreements with an adjoining state for joint management of fisheries in a boundary water. Specifically, it provides for adoption of unified regulations, reciprocity in licensing, and "hot pursuit" of violators of fisheries regulations.

Effective management requires information on the abundance, distribution, and condition of fish stocks and effects of various fishing levels and of environmental changes on stock abundance and distribution. Measurements of the amount of fish caught and the effort required to catch them are basic inputs in such stock assessments. At present only a few states are obtaining reliable information on their commercial fisheries catch and none are obtaining complete and timely data on their marine recreational catch. Section 11 provides the legal basis for obtaining catch statistics on commercial and recreational fisheries. It provides flexibility that will permit a state to cooperate with other states in obtaining integrated catch statistics on a regional or coastal basis.

In recognition of the growing interest in aquaculture and the need for careful regulation of aquacultural operations, the suggested legislation includes a section on aquaculture, Section 12, and a section on ocean ranching of anadromous fish, Section 13.

Section 2 of the Suggested Legislation, Findings, and Declaration of Purpose, sets forth the value to a state of its fisheries resources and the state's policy and objectives in relation to these resources. This is believed to be a good general statement of the objectives of fisheries management and one which is applicable to each of the coastal states.

The remaining sections of the suggested legislation treat definitions, duties of the commission or director, and enforcement, penalties and forfeitures. Two parts of Section 14 relating to enforcement should be noted. One, there is a provision for civil settlement of violations, which it is believed will permit

prompt and equitable prosecution of many violations. Two, authority is provided to revoke the licenses of a person who settles or is convicted of more than one violation in a 5-year period. Both of these are considered to be helpful enforcement tools.

The appendices to the legislation consist of suggested sections on controlled entry and quality assurance. Several states expressed an interest in these aspects of management and they are included for the information and possible use of the interested states.