

PROCEEDINGS OF THE SEVENTH NMFS NATIONAL STOCK ASSESSMENT WORKSHOP

(Re)building Sustainable Fisheries and Marine Ecosystems

hosted by the Southwest Fisheries Science Center
Santa Cruz Laboratory
Santa Cruz, CA
December 11-13, 2001

edited by Pamela M. Mace



U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

NOAA Technical Memorandum NMFS-F/SPO-62
November 2003

Suggested citation:

Mace, P.M. (ed.) 2003. Proceedings of the Seventh NMFS National Stock Assessment Workshop: Rebuilding Sustainable Fisheries and Marine Ecosystems. NOAA Technical Memorandum NMFS-F/SPO-62, 45 p.

A copy of this report may be obtained from:

NMFS Office of Science and Technology
1315 East-West Highway, Room 12524
Silver Spring, MD 20910

Or on the Internet at:

<http://www.st.nmfs.gov/st2/index.html>

A Comparison Between the Requirements of ESA and MSFCMA for Overfished Stocks

Alec D. MacCall
NOAA, NMFS
Southwest Fisheries Science Center
Santa Cruz Laboratory
110 Shaffer Road
Santa Cruz, CA 95060
Tel. 831-420-3950
Alec.MacCall@noaa.gov

During the last 25 years, the Endangered Species Act (ESA) has been a tool for increasing the abundance of depleted fish stocks. During that period, very few marine fish were petitioned for listing as “threatened” or “endangered” under the ESA. The Sustainable Fisheries Act (SFA), which is the part of the most recent reauthorization of the Magnuson-Stevens Fishery Management and Conservation Act (MSFCMA), introduced a somewhat parallel requirement to rebuild overfished stocks. The following comparison of the requirements and implementation of these two acts provides some insight into their utility and potential effectiveness under various circumstances.

The SFA requires a more quantitative and explicit treatment of what constitutes an overfished stock (e.g., when abundance falls below one-half the abundance providing maximum sustainable yield, B_{MSY}), whereas ESA listings are based on probabilities of extinction at some future time (neither the length of time, critical probability level, or abundance corresponding to extinction are explicitly defined by the ESA, and in recent salmon listing determinations, these factors were addressed by preponderance of expert opinion; a.k.a. a vote). Both Acts are similar in that a formal process for increasing stock abundance (“Rebuilding Plans” under the SFA, and “Recovery Plans” under the ESA) is required for subject stocks. Again, the SFA is more quantitative and explicit, requiring that stocks be rebuilt to a specific level (B_{MSY}) within ten years (if that is not possible, the NMFS National Standard Guidelines specify a time not to exceed the minimum time under no fishing plus one generation time). The ESA does not explicitly specify time limits or conditions for recovery, and time to recovery is rarely treated explicitly in ESA Recovery Plans. Rebuilding Plans and associated fishery management under the SFA are subject to a variety of regulatory reviews including the National Environmental Policy Act and the Regulatory Flexibility Act, whereas the regulatory review of ESA Recovery Plans appears to be minimal. On the other hand, the ESA mandates coordination with other governmental actions and policies, but the SFA provides relatively little ability to influence governmental policy other than through fishery management. The ESA also provides a means for regulation of international trade (through CITES), whereas the SFA provides little or no control either over U.S. fleets operating in foreign waters or transboundary shipments of subject species.

If stock depletion and remedial actions are primarily associated with fishing activity in U.S. waters, the SFA provides the stronger basis for rebuilding stock abundance. If remediation requires actions other than domestic fishery management (e.g., habitat conservation), the ESA provides the stronger authority.