



AN EXCERPT
FROM
NORTH
AMERICAN
WILDLIFE
POLICY AND
LAW | PART 4

THE NEED FOR WILDLIFE CONSERVATION AND POLICY Conclusion

It should be clear that if we wish to continue to enjoy wildlife in the United States, we need laws, rules, regulations, and policies to ensure the future of wild species. These range from hunting and fishing regulations, to a variety of levels of protection for habitat and scenic space, to assurance of funding for the land and species we protect.

The three examples provided over the past few excerpts demonstrate a range of policy considerations—from specific habitat set aside for wildlife, as in the National Wildlife Refuge System, to the Weeks Act, which provides funding and protection of a general forest ecosystem, primarily for the assurance of future timber availability but additionally providing wildlife habitat, to a dynamic set of adaptive management regulations to ensure the sustainability of a commercial and recreational fishery, all under the Magnuson-Stevens Act (see side bar opposite). To many, the United States has provided a model for the world in wildlife sustainability and protection of wild and scenic places. Two of North America's premier and most experienced biologists, Valerius Geist and Ian McTaggart-Cowan (1995:95) have stated, "Whatever its shortcomings, North America's system of

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wildlife conservation is the 20th century's greatest environmental success story."

You will read in other chapters of *North American Wildlife Policy and Law*, there are a myriad of other wildlife laws and policies, and, like the three discussed above, many of them are controversial. The question has always been: how much land and resources need to be preserved and to what extent, and should the federal government, as opposed to local governments, be engaged in the business of preservation at all? Grossman and Bryner (2012:3) posed the issue thus: ". . . public lands policy clashes with the individualism and libertarian values Americans hold dear. The idea of preserving public lands for the needs of future generations is a tenuous one in American public philosophy and its commitment to the pursuits of self interest."

In the decades from the 1970s through the 1990s western ranchers fought to gain control of public lands through efforts known as the Sagebrush Rebellion, the Wise Use Movement, and the County

Supremacy movement. These efforts sometimes became violent with threats against federal officials and damage to public lands. It didn't help that the Federal Bureau of Investigation reported that between 1996 and 2002 ecoterrorism groups that were opposed to commercial use of public lands, such as the Animal Liberation Front, Earth First! and the Environmental Liberation Front, instigated over 600 criminal acts, resulting in \$43 million in damage. Some among the public equated all environmental activists with ecoterrorists or at least irresponsible "tree huggers." In 2005 the United State Supreme Court, in the case of *Kelo v. City of New London*, gave states and other government agencies the right to seize private land for any reason. Thus the principle of eminent domain could be used not just for buying land from unwilling sellers for highways or even

public parks, but for shopping malls that might provide jobs and tax revenues for the city and state (Grossman and Bryner 2012). Naturally this fueled the antigovernment, antifederal land fever even more.

Nonetheless, recent presidents have used their authority to set aside additional lands and waters for protection. In 1996 President Clinton used the Antiquities Act of 1906 to preserve 768,903 ha (1.9 million ac) of the Grand Staircase-Escalante National Monument in Utah. In 2001 President Bush protected 517,998 km² (200,000 mi²) of the Pacific Ocean as the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments as preserves for seabirds, ocean fishes, and underwater corals. In 2009 President Barack Obama wanted to set aside more lands than his own party would approve, but he still managed to set aside 809,371

OPPOSITE: Senators Warren G. Magnuson of Washington and Ted Stevens of Alaska designed the Act to conserve a sustainable fishery based on scientific management with a regional public-private collaboration.

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The Magnuson-Stevens Act

A former shrimp boat captain once compared the ocean and the battles over its fisheries to the range wars of the Wild West (Gary Graham,

personal communication). The situation has also been similar to “the tragedy of the commons” whereby in the British Isles, on land owned by a community in common, it was once to the advantage of each shepherd to graze as many sheep or cattle on the land for as long as possible, or else other herders would harvest the “free” grass with their livestock instead (Hardin 1968).

Ocean fish were and mostly still are a shared and unregulated resource, so they are there for the taking by anyone. Like the western range wars, there have been wars over fisheries. Commercial fishing is a highly competitive, expensive, lucrative, and dangerous undertaking, and despite warnings by scientists, many of our ocean fish stocks have declined (Kurlansky 1997). As a result, countries have tried to gain at least some control over the fisheries in their nearby waters. The Magnuson-Stevens Fishery Conservation and Management Act of 1976 did just that for the United States.

Prior to 1976 there was little or no federal management of marine fisheries. States managed in-shore waters in bays and estuaries and generally out to three miles offshore, and the federal government supported a patchwork of international treaties with authority only to 12 miles off our coasts. The original impetus for the Magnuson Act was to extend federal control of United States fisheries and to eliminate foreign competition out to 200 miles. Authority to enforce the law was given to the National Marine Fisheries Service (NMFS), which is within the National Oceanic and Atmospheric Administration (NOAA) under the Department of Commerce. But the law was more comprehensive than that.

Senators Warren G. Magnuson of Washington and Ted Stevens of Alaska designed the Act to conserve a sustainable fishery based on scientific management with a regional public-private collaboration. Its goals were to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood. Eight Regional Fishery Management Councils were created, consisting of federal and state officials and industry representatives. The Regional Councils develop Fishery Management Plans (FMPs), which are reviewed and approved by the secretary of commerce. The Magnuson Act allows foreign fishing in the zone under Governing International Fishing Agreements (GIFAs) and vessel permits. The Act also allows the secretary of commerce to preempt state laws (United States Fish and Wildlife Service 2013).

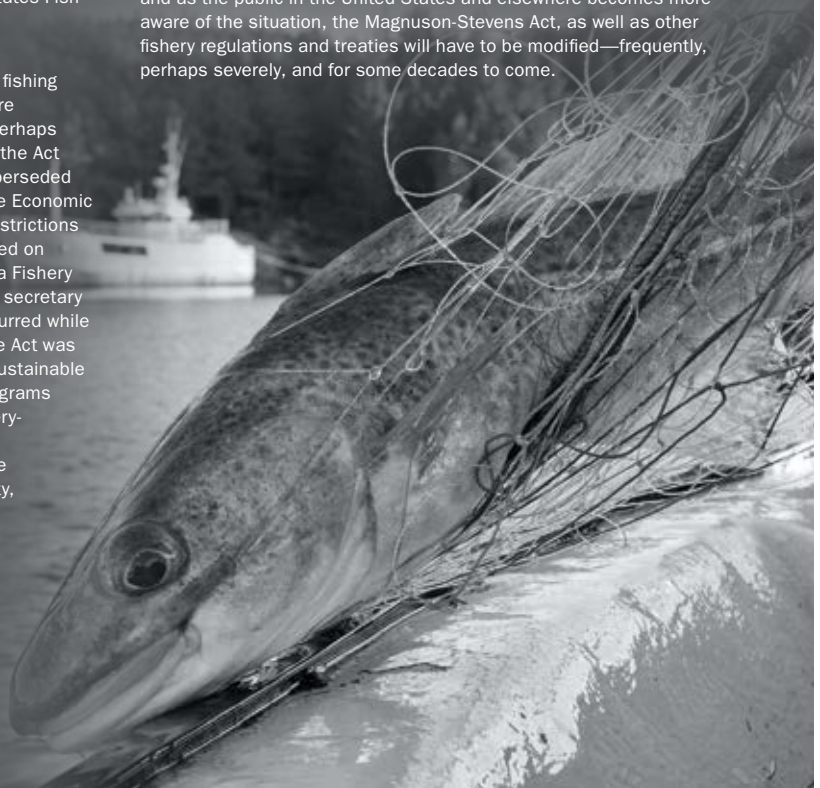
Unfortunately, the Magnuson Act was ineffective. By the 1980s American fishing fleets, equipped with advanced fishing technologies, overran the inadequate regulatory structure authorized by the Act. Many fisheries were overfished, perhaps most notably the New England ground fish fishery. Thus the Act has been amended numerous times. In 1983 it was superseded by President Ronald Reagan through his extension of the Economic Enterprise Zone to 200 miles offshore. In 1990 more restrictions on drift nets were added. In 1992 an amendment focused on restoration of the New England fishery and established a Fishery Reinvestment Program for that region, thus allowing the secretary of commerce to reimburse states for their expenses incurred while enforcing the ground fish management plan. In 1996 the Act was substantially amended by what became known as the Sustainable Fisheries Act. It required the Fisheries Management Programs to include participation in the Regional Councils by fishery-dependent communities and to minimize the adverse economic impacts on those communities, expressed the need to minimize by-catch and concomitant fish mortality, required the secretary of commerce to identify overfished species and take action to rebuild those stocks on a 10-year timeline, established a fishing capacity reduction program, required a new focus on habitat, and mandated research on fishery management and conservation, the economic-social characteristics of the fisheries, and the incidental harvest of marine species (NOAA 2016). The Act was reauthorized by President George W. Bush in 2006.

Overfishing by the nation’s commercial fleet continued, as did conflicts between commercial and recreational fishers. In 2007, under the leadership of Senator Ted Stevens of Alaska, Congress gave NOAA and the Regional Councils new mandates, authority, and tools to achieve the goals of sustainable fisheries. These included requirements for annual catch limits and accountability measures to prevent, respond to, and end overfishing. When annual catch limits are exceeded, subsequent limits are lessened by the councils. Councils are also required to have Scientific and Statistical Committees to review stock assessments by the NMFS and a Marine Recreational Information System. The new mandates focused on “catch share” programs rather than the previous “days at sea” programs. Catch share programs were one of many strategies to limit and distribute the catch. The term generally describes a number of programs that secure a share of the fish to individual fishers, cooperatives, or fishing communities for their exclusive use. But these programs are not required and are not used by all councils. Catch shares are intended to ensure limits are not exceeded, reduce costs and market gluts, extend fishing seasons, reduce by-catch, and improve safety. The first catch share program was implemented in 1990, before the 2007 law, in the Mid-Atlantic surf clam (*Spisula solidissima*) and quahog (*Merccenaria mercenaria*) fisheries (NOAA 2007).

According to NOAA (2011), many stocks are still overfished but are rebuilding, such as summer flounder (*Paralichthys dentatus*), monkfish (*Lophius americanus*), scallops, ling cod (*Ophiodon elongatus*), sablefish (*Anoplopoma fimbria*), North Atlantic swordfish (*Xiphias gladius*), vermillion snapper (*Rhomboplites aurubens*), and gag grouper (*Mycteroperca microlepis*). In 2011 catch limits on 12 of the 20 New England ground fish stocks were increased. Nonetheless, many ocean fisheries are threatened due to overfishing by domestic as well as foreign vessels and due to pollution or loss of habitat in in-shore bays and estuaries, where breeding occurs for many fish species.

Climate change is a major area of research. As our oceans become warmer and more acidified, and as coral reefs become bleached and die, fish numbers and their habits change. Migration routes and timing change, as do spawning locations and timing. Severe weather events are becoming more dramatic and unpredictable, impacting the fishery, the shorelines, and fishing communities. In some cases, invasive species have taken their toll. And among these pressures the world demand for protein from the ocean continues to increase.

As a result, the Magnuson-Stevens Act, though generally successful, is a work in progress. As these pressures on our fisheries mount and as the public in the United States and elsewhere becomes more aware of the situation, the Magnuson-Stevens Act, as well as other fishery regulations and treaties will have to be modified—frequently, perhaps severely, and for some decades to come.



“Whatever its shortcomings,
North America’s system
of wildlife conservation is
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— *Valerius Geist and
Ian McTaggart-Cowan*



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ha (2 million ac) of wilderness in nine states through the Omnibus Public Land Management Act of 2009.

In recent years, however, land conflicts have become even more contentious. In 2014 Cliven Bundy, a rancher in Nevada, was told his cattle would be confiscated because he had not paid his grazing fees on leased BLM lands since 1993. Armed antigovernment militiamen protected Bundy in what became known as the “Bundy Standoff.” After two weeks the BLM decided to back off to deescalate the situation. In 2016 Bundy and his sons Ammon and Ryan, along with other armed protesters, occupied the Malheur National Wildlife Refuge in Harney County, Oregon, for 40 days. They claimed that the federal government had no right to ownership of the land. The

incident ended with 27 arrests, with one occupier being killed and one wounded. Bundy was indicted for 16 federal felonies on 17 February 2016 along with his sons. On 8 January 2018, a U.S. District Judge dismissed with prejudice the criminal charges against Bundy and his sons regarding the standoff.

So the debate over how much of our plant and animal biodiversity should be protected and by whom will continue. Some say we have done enough; others feel we have not protected nearly enough. Organizations such as the Nature Conservancy, once interested in protecting only North American lands, now look internationally because protection of wildlife and wildlife habitats is a global issue. As climate change impacts our fish, wildlife, and

vegetation distribution, a new national gap analysis may be needed, as habitat locations and species needs change. In his recent book, *Half-Earth: Our Planet's Fight for Life*, E. O. Wilson (2016) suggests we need to protect half of the habitat on earth to prevent loss of animal and plant species. Is that enough, or is it too much? What should we do? ■

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