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FISHERY MANAGEMENT AND THE GENERAL WELFARE: IMPLICATIONS OF THE NEW STRUCTURE

Giulio Pontecorvo*

People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. *But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies much less to render them necessary.*¹

Introduction

This article is an effort to assess one aspect of the Fishery Conservation and Management Act of 1976:² the structure and the composition of membership of Regional Fishery Management Councils.³ In Part I, the article briefly reviews the conservation and management problems facing United States fisheries. It also considers the objectives of the Act and the relationship of these objectives to the economic criteria normally employed for the assessment of the impact of legislation on the general welfare.⁴

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1. ADAM SMITH, *THE WEALTH OF NATIONS* 128 (Cannan ed. 1937) (emphasis added).

2. Pub. L. No. 94-265, 90 Stat. 331 (1976) (codified at 16 U.S.C. §§ 1801-1882 (West Supp. 1977)) [hereinafter cited as FCMA].

3. One of the stated purposes of the Act is: "to establish Regional Fishery Management Councils . . . (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States." FCMA § 2(b)(5), 16 U.S.C.A. § 1801(b)(5) (West Supp. 1977). The Act also provides that "[e]ach Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority." *Id.* § 302(a), 16 U.S.C.A. § 1852(a).

4. The general welfare is a complex notion involving many aspects of human life. However, by restricting the term to material well-being as a first approximation, we may say that if, *ceteris paribus*, an action increases the gross national product, it improves the general welfare.

This discussion involves three criteria for evaluation of the administrative structure created by the Act. First, is it likely that the Regional Councils can cope with the bioeconomic complexities of fisheries management? Second, will the Councils, given their present structure and the composition of their membership, focus on the decisions necessary for promoting the general welfare? Third, will the Councils emphasize the development of the most efficient form of industrial organization in our fisheries? It is hoped that the criteria utilized herein may be used in later studies to measure the results of fisheries management under the Act.

In Part II, the article analyzes the organizational structure and membership composition of the individual Regional Councils. In the final Part some tentative conclusions will be drawn about the implications of the structure and its composition for conservation and management, as well as the potential differential impact of the legislation on producers and consumers.

I. CONSERVATION AND MANAGEMENT PROBLEMS

A. *Fishery Management*

It is difficult to overemphasize the complexities of the fisheries management problem. In many industries success requires the coordination of production, financing, and marketing. However, in addition to the peculiar difficulties inherent in the management of a common property resource,⁵ fisheries management involves additional supply conditions which are uncertain and only partially understood.

1. *Biology*

Consider first a static system involving a single species of food fish, for example, halibut. It is possible for biologists to derive a production function (yield curve) for this species. This curve will indicate the maximum sustainable yield and also the level of output that will maxi-

5. A common property natural resource is one which "can be used simultaneously by more than one individual or economic unit. No single user has exclusive rights to the resource nor can he prevent others from sharing in its exploitation. An increase in the number of users affects each user's enjoyment of the resource." F. CHRISTY & A. SCOTT, *THE COMMON WEALTH IN OCEAN FISHERIES* 7 (1965).

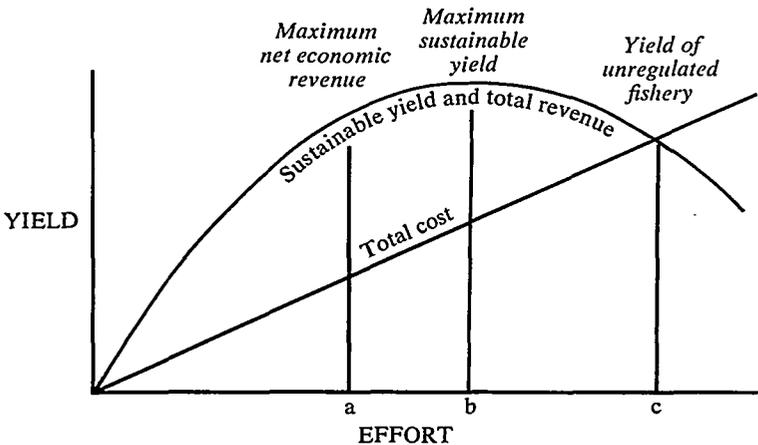
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mize the economic yield from the resource.⁶ The latter will be less than the former, so the goal of resource conservation is met by both the biological maximum and economic optimum.

In this simple model, two important issues are involved: first, the reliability of the biological measurements (more precisely, the magnitude of the standard errors associated with the yield function, and the width of the range between the high and low estimates of sustainable yield), and second, the stability of the yield function, that is, the effect of changing conditions in the ocean upon the function. These variables combine to dictate the degree to which both the industry and the fishery manager may rely on biological forecasting for planning purposes. Yield functions amenable to reasonably accurate forecasting exist in a very limited number of fisheries; that is, there is often insufficient biological knowledge, even in the simplest cases, to properly manage fisheries.

Next, consider the degree of difficulty inherent in managing a multi-species fishery, even under the assumption of static equilibrium. The

6. Thus, one may predict the level of yield (output) for a given level of effort (input). Such a production function is generally defined as roughly parabolic, a fishery being an exhaustible resource.



Maximum sustainable yield is defined at the level of effort (point b) producing the largest harvest possible without diminishing the stock of the fishery over time, thus permitting perpetual self-renewal by the fishery. Maximum economic yield is defined at the level of effort (point a) where the difference between yield and cost is greatest, *i.e.*, where the slope of the production function equals the slope of the cost curve. Point c illustrates the level of effort and resulting yield in an unregulated fishery at its equilibrium—that is, where total costs equal total revenue, *See text accompanying note 10 infra.*

biologist must estimate the sustainable yield from the biomass,⁷ but this is not simply a matter of adding the yield possibilities of each individual species. Rather, because the species compete for space and food, as well as prey on each other, the available yield from the biomass is constrained by the interaction of its elements. This interaction may result in situations where, for example, if more of Species A is caught, less of Species B and more of Species C will be available. Unfortunately, there are very few models conceptually capable of dealing with such complex interactions.

When we take the biomass concept, relax the static assumption and move to a dynamic system, new analytical problems emerge. At any point in time, in any region of the ocean, there is a particular biomass established by the interaction of natural forces (the nature of the food supply, available ocean space, temperature, natural mortality, etc.) and the historical operation of the fishery. Thus, in a dynamic situation where the structure of the biomass (*i.e.*, its composition by species) is subject to change, one must ask, what is the best biomass?⁸

Presently the ability to conceptualize the necessary analytical system exceeds the ability to make it operational. Thus, the task of management must be approached only in stages by the accumulation of biological and economic analyses. The question here is whether the Regional Council structure created by the Act helps establish the necessary conditions for sound management.

2. *Economics and politics*

The analytic complexity of supply is compounded by the fact that a fishery is a common property resource.⁹ One function of the owner-

7. Biomass refers to all species taken collectively, or alternatively to the aggregate generation of fish protein.

8. In these circumstances, the definition of "best" becomes an economic definition — that biomass is "best" which will provide the largest discounted net yield (the present value of the price of output less the cost of capture by species). However, the current biomass which has evolved with the fishery is separated in time from the future "best" biomass. Therefore, in analyzing the fishery, or developing a bioeconomic control model, it is necessary to select various rates of discount appropriate to the several species in the biomass. These rates of discount then become part of our analytical system, and the decision to select particular rates affects the selection of the "best" biomass. Because the present value of income generated in the near future is greater than that of income generated in the distant future, the system will tend to move toward a biomass with larger near-time payouts.

9. See note 5 *supra*.

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ship of property is to permit the most efficient organization of production. In a competitive economic system this means maximum output at lowest cost. Lowest cost involves the most efficient combination of labor and capital that the entrepreneur can achieve.

Under common property conditions, the constraint on usage imposed by the ownership of the resource disappears. Producers continue to enter the industry as long as it is profitable—until total cost equals total revenue. Therefore, fisheries tend to be characterized by increasing amounts of capital and labor competitively pursuing an ever-dwindling supply of fish.¹⁰ In these circumstances, the managers of the fisheries, appointed primarily because the shrinking supply of fish revealed the conservation problem, are pressured on the one hand by the need to conserve fish and on the other by the excess labor and capital employed in the fisheries. Under these pressures, a management policy which protects employment by a reduction in the efficiency of the capital and labor employed in the fisheries is responsive to both pressures, but unfortunately is inconsistent with the maximization of the general welfare.¹¹

This analysis suggests the major thrust and unstated objective of some of the prior regulation of fisheries in the United States: a combination of regulatory measures which would have helped conserve fish and protect the employment of primary producers, the fishermen. It is to this historical emphasis on the conditions of production and the welfare of the producers in United States fisheries that we must return when we examine the Regional Councils.¹²

Finally, it is important to reassert the complexity of the bioeconomic conditions which need to be understood for sound fisheries management. These conditions transcend any particular approach to management and conservation. Their degree of difficulty and the cost of the investment in both natural and social science research needed to un-

10. See note 6 *supra*. An analogy would suggest that if farmland were held in the form of common property, an increase in the returns from farming (prices of agriculture commodities rising) would cause an increase in the number of farmers using the existing supply of farmland. More precisely, given an inelastic supply function, a positive income elasticity of demand, rising real income, and common property, market price tends to depart from the price that would produce an economic optimum.

11. See note 4 *supra*. Here, general welfare may be deemed best served by maximum output at the lowest cost.

12. See Part II *infra*.

derstand them are root causes of the historically weak performance of United States fisheries management.¹³

B. *Criteria for Evaluation of Performance*

1. *General welfare*

The justification for a private system of production, in contrast to public or private monopoly, rests on the assumption that producers will compete through efficient markets. As economic theory developed, the precise conditions for maximization of the general welfare were refined and given more rigorous definition. It is not necessary here to review the extensive literature on the capacity of the system to achieve the condition of so-called "Pareto" optimality.¹⁴ Whatever definition of an economic optimum is utilized in either a private or socialized system, however, it focuses on the level of material well-being of the average citizen.

Whether by planning or by competition in the marketplace, the desired result is to maximize the level of real income of all members of the society, and ensuring that any change to better the condition of one individual, or set of individuals, does not harm others. Therefore, welfare criteria involve analysis of whether the legislation directed toward conservation of fish and improvement in our fishing industry leaves anyone (consumers, for example) worse off than before.

2. *Industrial organization*

A cause for the enactment of the Fishery Conservation and Management Act was the impact on the fish stocks off the United States coasts caused by the capital intensive fishing technology employed by foreign nationals.¹⁵ The technology and fishing methods employed by others are, with some exceptions, different from those used by Amer-

13. J. L. McHugh, *Living Resources of the U.S. Continental Shelf* (to be published by the American Association for the Advancement of Science in Proceedings on the Continental Shelf).

14. An allocation of resources is Pareto-optimal if no alternative allocation exists which would make at least one individual better off without making any individual worse off.

15. See Magnuson, *The Fishery Conservation and Management Act of 1976: First Step Toward Improved Management of Marine Fisheries*, 52 WASH. L. REV. 427 (1977).

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ican fishing fleets.¹⁶ Historically, the United States has allowed market forces, together with such parameters as economies of scale (constrained by antitrust statutes), to select the number and size distribution of firms in an industry. In other words, the market has tended to dictate the form of industrial organization.

Another criterion for evaluating the new legislation thus involves its implications for the structural organization of our fisheries. Will the Act tend to favor one type of structure over another? Or, will the Act be neutral towards structure? The answers to such inquiries rest primarily on the functioning processes of the Regional Management Councils.

II. STRUCTURE AND COMPOSITION OF THE REGIONAL MANAGEMENT COUNCILS

A. *The Regional Council Mechanism*

The Act places the responsibility of preparing, monitoring and revising fishery management plans with eight Regional Councils.¹⁷ Each Council is of a set size. Voting membership consists of one representative of each constituent state appointed by the governor,¹⁸ the regional director of the National Marine Fisheries Service,¹⁹ and “qualified individuals” appointed by the Secretary of Commerce.²⁰ Table One indicates the composition of the Regional Councils.²¹

B. *Interstate Implications of the Regional Council Structure*

An initial question raised by the Council structure turns on the exclusion of most non-coastal states from the fishery management deci-

16. For example, United States fishing vessels tend to be smaller than those of other nations, and they often limit themselves to exploiting a specific number of stocks. One may regard these differences as variations in the possible organization of fishing fleets—one a large-scale, capital-intensive fleet, the other smaller and more labor oriented.

17. FCMA § 302(a), 16 U.S.C.A. § 1852(a) (West Supp. 1977).

18. *Id.* § 302(b)(1)(A), 16 U.S.C.A. § 1852(b)(1)(A).

19. *Id.* § 302(b)(1)(B), 16 U.S.C.A. § 1852(b)(1)(B).

20. The Act defines a “qualified individual” as one “who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.” *Id.* § 302(b)(1)(C), 16 U.S.C.A. § 1852(b)(1)(C).

21. *See id.* § 302(a), 16 U.S.C.A. § 1852(a).

TABLE ONE
REGIONAL FISHERY MANAGEMENT COUNCILS

1. *New England Council*: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut.
17 Voting members
11 Appointed [by the Secretary of Commerce pursuant to section 302(b)(1)(c)] (4 from Mass., 3 from R.I., 2 from Me., 1 each from Conn. and N.H.)
2. *Mid-Atlantic Council*: New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia.
19 Voting members
12 Appointed (3 each from N.Y. & N.J., 2 each from Md. and Va., 1 each from Del. and Pa.)
3. *South Atlantic Council*: North Carolina, South Carolina, Georgia, Florida.
13 Voting members
8 Appointed (2 from each state)
4. *Caribbean Council*: Virgin Islands, Puerto Rico.
7 Voting members
4 Appointed (2 from each)
5. *Gulf Council*: Texas, Louisiana, Mississippi, Alabama, Florida.
17 Voting members
11 Appointed (3 from Texas, 2 from each of the other states)
6. *Pacific Council*: California, Washington, Oregon, Idaho.
13 Voting members
8 Appointed (3 from Cal., 2 each from Wash. and Ore., 1 from Idaho)
7. *North Pacific Council*: Alaska, Washington, Oregon.
11 Voting members
7 Appointed (5 from Alas., 2 from Wash., none from Ore.)
8. *Western Pacific Council*: Hawaii, American Samoa, Guam.
11 Voting members
7 Appointed (4 from Hawaii, 2 from American Samoa, 1 from Guam)

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sion-making process. As Table One indicates, twenty-five states and four nonstate political subdivisions of the United States are represented in the Councils. This means that twenty-five states do not participate in fisheries management planning. Although the economic and political implications of this exclusion are not clear, interstate income differentials could be created if the regionalization of management authority was used to: (1) seek protection from foreign competition through tariffs, quotas and other restrictions on imports (which would tend to increase the price of fish to all consumers and thus could be important to the residents and industries of non-coastal states if they depend heavily on imports of frozen fish, fish meal for animal feed, etc.); (2) seek federal funds raised by general taxation for subsidization of the industry; (3) reduce the efficiency of fishing effort (increase the costs of catching fish) in order to solve local employment problems and to maintain the status quo in the structure of the regional industry; or (4) reduce catch quotas and thereby limit supply and raise prices.

C. Structure of the Regional Councils: Interstate Relationships Among Represented States

The sixty-eight members of the Regional Councils appointed by the Secretary of Commerce have created an imbalance in representation by member states. Alaska, which by virtue of its small population should be regarded as primarily a producer of fish, has the largest representation. Of the sixty-eight members, Alaska has five, or 7.1% of the total. Massachusetts and Hawaii follow in percentage representation, both states having four members on one Council, or 5.9% of the total. The states of Washington and Florida also have four appointed members, but they are split between two Councils, so that Washington's and Florida's representation per Council is only 2.9%, less than half of Alaska's.

If one examines representation on a Council-by-Council basis, wide discrepancies in the level of representation of several states appear. Table Two suggests that the New England Council could be dominated by a coalition of Massachusetts and Rhode Island.²² A similar

22. This presupposes that those members appointed by state governors would side with their state in coalition efforts. It should be noted that a quorum on a Council consists of a majority of the voting members. All decisions by a Council are by majority vote of the voting members present and voting. FCMA § 302(e)(1), 16 U.S.C.A. § 1852(e)(1) (West Supp. 1977).

TABLE TWO²³
DISTRIBUTION OF STATE REPRESENTATION

Council	No. of Members	Appointed Representation of Largest Member		Appointed Representation of Two Largest Members	
			(Per Cent)		(Per Cent)
New England	11	Massachusetts (4)	36%	Mass. (4) + R.I. (3)	64%
Mid-Atlantic	12	N.Y. or N.J. (3)	25%	N.Y. (3) + N.J. (3)	50%
South Atlantic	8	All states equal (2)	25%	Any two states (4)	50%
Caribbean	4	Both territories equal (2)	50%	Both members (4)	100%
Gulf	11	Texas (3)	27%	Texas (3) + other (2)	45%
Pacific	8	California (3)	38%	Cal. + either Ore. (2) or Wash. (2)	63%
North Pacific	7	Alaska (5)	71%	Alas. (5) + Wash. (2)	100%
Western Pacific	7	Hawaii (4)	57%	Hawaii (4) + Am. Samoa (2)	86%

situation exists on the Pacific Council where California and either Washington or Oregon have approximately two-thirds of the appointees. However, California's position is potentially balanced by the combined position of Oregon and Washington.

The greatest imbalance in state representation is on the North Pacific Council where Alaska has 71% of the appointed representation.²⁴ This is a greater proportion than that held by the two leading states on any other Council. Therefore, in both a de jure and a de facto sense, Alaska is in control of the North Pacific Council. The significance of this control is made more apparent when one realizes that roughly 40% (by weight) of the fish caught off United States shores come from the waters off Alaska.²⁵

In analyzing the structure of these Councils, it is logical to assume that the fishery officer appointed by the governor is primarily con-

23. The source of these figures is section 302(a), 16 U.S.C.A. § 1852(a). The number of members refers only to those persons appointed by the Secretary of Commerce.

24. The North Pacific Council has 11 voting members. Alaska has six, five appointed by the Secretary of Commerce and one by the governor. Washington has three, two appointed by the Secretary and one by the governor. Oregon has only one, appointed by the governor. The addition of the National Marine Fisheries Service Regional Director makes 11.

25. The total catch off United States shores in 1973 was 11.8 billion pounds. Magnuson. *The Fishery Conservation and Management Act of 1976: First Step Toward Improved Management of Marine Fisheries*, 52 WASH. L. REV. 427, 431 (1977). At this time, approximately 4.5 billion pounds came from waters off Alaska. ALASKA COMMISSION ON THE CONFERENCE OF THE LAW OF THE SEA, THE ALASKA POSITION ON INTERNATIONAL FISHERIES MANAGEMENT 3 (1977).

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cerned with state problems. The set of state problems includes the condition of the resource, and the welfare of the fishermen and the industry within a state. Further, the generation of income by fishermen and the level of unemployment in the industry is of particular importance to a state's political leaders. Because the primary interests and concerns of the states are reasonably apparent, each state's input to the eight Councils may be regarded as roughly similar on many issues. All states will have a similar set of immediate concerns and will act to protect their legitimate interests.

One substantial question raised by the composition of the Councils is whether the federal appointees will identify with state as well as personal interests. To the extent that state and personal interests coincide, they may create, particularly in the North Pacific Council, a state rather than a regional bias. In other Councils where no single state is dominant, there remains the possibility of coalitions among states. These coalitions may create particular advantages for one state's fishermen in the regulations proposed to implement a fishery management plan. Areas subject to coalition agreement might include seasonal opening or closing dates, geographical specification, and most importantly, the kind of "windows" that may be opened to foreign fleets.

What appears to be of consequence in this structure is that the combination of the governors' representatives plus the appointments by the Secretary of Commerce will function in an economic and political environment that will have a bias towards shortrun protection for state interests and local producers. The trade-offs are likely to be between states for different types of shortrun advantages. There does not seem to be any element in this state level mechanism which will force consideration of the general welfare or longrun bioeconomic policy objectives.

D. Membership on the Regional Councils

Any discussion of the membership of the Councils must be tempered by a clear recognition that the motivation and behavior of individuals is not solely a function of their occupation. Moreover, the available data concerning Council members does not permit identification of individuals as belonging solely in one category.

Despite these caveats, one can use as an operating hypothesis the notion that certain kinds of structures tend to yield certain kinds of

results. Furthermore, evidence of the nature of the Councils' membership is so strong that, even though one may legitimately question certain categorizations, the general thrust of the implications of the current membership remains undisturbed.²⁶

TABLE THREE²⁷
CATEGORIZATION OF FEDERAL APPOINTEES

Council	Appointed by Secretary of Commerce	Industry Representation	General Representation		Consumer Representation	
			Percentage	Percentage		
New England	11	10	91%	1	9%	0
Mid-Atlantic	12	8	67%	4	33%	0
South Atlantic	8	6	75%	2	25%	0
Caribbean	4	3	75%	1	25%	0
Gulf	11	11	100%	0	0	0
Pacific	8	5	63%	3	37%	0
North Pacific	7	6	86%	1	14%	0
West Pacific	7	5	71%	2	29%	0
	68	54	79%	14	21%	0

Table Three illustrates the overemphasis of producer interests apparent upon analyzing the collective membership of the Councils in terms of three categories: industry (including recreational fishing interests), general (including academics, scientists, environmentalists, state legislators, etc.), and consumer. Upon refinement of this categorization by separating industry into commercial interests (producers, boat owners, processors, etc.) and recreational interests,²⁸ one finds:

26. For a discussion of the possible effect of Council membership on judicial challenges to fishery management regulations, see Comment, *Judicial Review of Fishery Management Regulations under the Fishery Conservation and Management Act of 1976*, 52 WASH. L. REV. 599, 618-623 (1977).

27. The information in this table is compiled from two sources: Nat'l Marine Fisheries Service, Nat'l Oceanic and Atmospheric Adm'n. U.S. Dep't of Commerce, *Regional Fishery Management Councils Membership* (November 1, 1976); and *MARINE FISH MANAGEMENT*, Aug. 1976, at 2.

28. One commentator has noted: "It is not logical to treat marine commercial and sport fisheries as if they were separate and unrelated. For one thing, they often are harvesting the same resource. For another, many sport fishermen sell a part or all of their catch." J. L. McHugh, *supra* note 13.

TABLE FOUR²⁹

<i>Category</i>	<i>Number</i>	<i>Percent of Total</i>
Industry	54	79%
Commercial	(39)	(57%)
Recreational	(15)	(22%)
General	14	21%
Consumer	0	0
	68	100%

The data indicates that two sets of fishing interests, commercial and recreational fishermen, dominate the Councils. Indeed, this is precisely what the definition of “qualified individual” in the law would lead one to expect.³⁰ Beyond commercial and recreational interests, there is only token representation of certain other groups. There are nine individuals (13%) who may be classified as either scientists, academics, or both. This latter group is important because one of the criteria for evaluating both the Councils and their capacity to develop sound management plans rests on the ability of the Council members to recognize and cope with the technical aspects of fisheries management, discussed in Part I above.³¹ Also, given the importance of economic and social factors in fisheries management,³² it is interesting that only two of these nine individuals are social scientists.³³

Looking beyond the Councils in the aggregate, one finds somewhat different patterns of management. The Mid-Atlantic and the Pacific Councils appear to have a better balance of interests than the others, while the Gulf, New England and North Pacific have the highest degree of imbalance among interests. In no instance, however, is there any discernible consumer representation on the Councils and in all cases industry representation dominates.

29. See note 27 *supra*.

30. See note 20 *supra*.

31. See generally Alverson, *The Role of Conservation and Fishery Science under the Fishery Conservation and Management Act of 1976*, 52 WASH. L. REV. 723 (1977).

32. The management goal of optimum yield is defined as “maximum sustainable yield, . . . as modified by any relevant economic, social, or ecological factor.” FCMA § 3(18), 16 U.S.C.A. § 1802(18) (West Supp. 1977).

33. No skill qualification beyond the one indicated above for “qualified individual” is required, either individually or collectively, for membership on a Council. *Id.* § 302(b)(1)(C), 16 U.S.C.A. § 1852(b)(1)(C).

Identification of a more appropriate composition of interest groups within a Council may be of secondary importance, however, to recognition of certain issues and problems regarding the Act's attempt to regionalize fisheries management. Those appraising the Council structure and membership should note the following factors.

First, there is a wide range of issues and problems which are purely local in nature. The long history of regulation of the Alaska salmon fishery from Washington, D.C., and of the resentment it created in Alaska provides an excellent example of why many of the details of regulation should be decided locally.³⁴ It is often not clear where local issues stop and national ones begin, but it is necessary to attempt to arrive at a reasonable division of authority.

Second, there is a substantial difference between allowing local or regional bodies to make decisions about local services and allowing such bodies to make decisions affecting production for national and international markets. Communities should be allowed to make decisions regarding the amount and kind of local services and the system by which they are delivered to the citizens. But there is a distinction to be drawn between local education, welfare policies, etc., and the establishment of a production system for an industry which sells its output nationally.

Third, regional bodies which act to regulate an industry that is both directly and indirectly involved in international commerce may, by having different local needs and attitudes, create difficulties in establishing a consistent foreign policy.

Fourth and most important, in the United States the general welfare is measured in terms of national well-being. No regional or local body, no matter how constructed or how constituted, is likely to move effectively and efficiently to enhance the general welfare. It seems clear, as Adam Smith so perceptively stated,³⁵ that Councils composed of local producers will act in their own interest. It should be equally clear that, while Councils composed solely of consumers or environmentalists might provide different production decisions, these decisions would also in all probability be keyed to local preferences. It is

34. See J. CRUTCHFIELD & G. PONTECORVO, *THE PACIFIC SALMON FISHERIES: A STUDY OF IRRATIONAL CONSERVATION* (1969); R. COOLEY, *POLITICS AND CONSERVATION: THE DECLINE OF THE ALASKA SALMON* (1963).

35. See text accompanying note 1 *supra*.

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necessary to sort out local and national needs, reserving for the federal government those decisions required to enhance the general welfare.

III. TENTATIVE CONCLUSIONS

If we distinguish what we currently know—the structure and membership—from what we can only anticipate—the operational aspects of the system—we may draw some tentative hypotheses about the future results which may be expected. First, there does not appear to be sufficient scientific expertise on the Councils in either the natural or social sciences to permit the Councils to accommodate easily the complexities of the management task that confronts them.

Second, it seems likely that the Act does not favor the general welfare. The general welfare is expressed in terms of the largest output for the lowest price, constrained by the need for conservation. It seems less likely that the management of fisheries will move toward this goal than towards traditional and wasteful approaches of excessive employment and/or producer protection and subsidization. The focus in the legislation and in the Councils is on the producer, his needs, and his interests. Producers dominate the Councils, and in one important instance, the producers in one state dominate the region. Furthermore, there is little, if any consumer representation to balance the emphasis on employment and producer protection.

Third, the structure of representation by state and individuals on the Councils suggests that they will tend to support the status quo in their approach to management. This implies resistance to those technical developments and market forces which would tend to bring about substantive change both in the number and size of firms in the industry and in reductions in the cost of production.

These tentative hypotheses, which can be tested only by observation of performance, yield one final conclusion. Central to the difficulties that surround the legislation is the multiplicity of motives and objectives that led to its enactment. The Act is not limited to being a vehicle for the improvement of fisheries management by the United States. In addition to attempting to move on that difficult task, it also attempts to include protection for the welfare of the existing industry. The Act was intended to protect United States interests from unregulated de-

predation of our resources by other nations.³⁶ Unfortunately, it appears to have been constructed and effectuated in a way that is likely to be detrimental to the general welfare and of doubtful value in advancing fisheries management.

36. See Magnuson, *The Fishery Conservation and Management Act of 1976: First Step Toward Improved Management of Marine Fisheries*, 52 WASH. L. REV. 427 (1977).