

Before the U.S. Department of Commerce
National Oceanic and Atmospheric Administration
("NOAA")

WASHINGTON, D.C.

Proposed Information Collection)	
Social Science Data)	FR Doc. 02-9350
For Alaska)	67 FR 18865
Fisheries)	

*To the Secretary of Commerce
c/o Madeleine Clayton, Departmental Paperwork Clearance Officer
Department of Commerce, Room 6086
14th and Constitution Avenues, N.W.
Washington, D.C. 20230*

Filed via electronic mail: [MClayton@doc.gov]

Comments of Public Employees for Environmental Responsibility
("PEER")

Daniel P. Meyer
Public Employees for Environmental Responsibility (PEER)
2001 S Street, N.W. — Suite 570
Washington, D.C. 20009

Tele: (202) 265.7337
E/ml: dmeyer@peer.org

Its General Counsel and Attorney
District of Columbia Bar No. 455369

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In response to Department of Commerce *Notice* issued April 17, 2002, Public Employees for Environmental Responsibility ("PEER"), by and through counsel, respectfully comments on the use of social science for American fisheries management. The following comments are submitted in order to encourage consideration of the potential benefits and perils of collecting and using social science data in the assessment of fisheries management alternatives. A clear definition of the role that social science should play in the development of conservation strategies will facilitate development of collection strategies that produce the necessary data and minimize the burden of collection.

The National Marine Fisheries Service (NMFS) will employ social scientists and contractors to collect social science data for selected Alaska fisheries. This data will be collected through interviews and possibly through surveys. Data will be used to analyze the social aspects of fisheries and fisheries management. PEER has reviewed the *Notice* (I.D. 041202A) and *Request for Comments Concerning Proposed Information Collection for Social Data for Alaska Fisheries*. Federal Register Doc. 02-9350. Comments were invited pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506 (c)(2)(A)).

I. Introduction

A. Potential Benefits and Potential Perils of Social Science Data

The use of social science data in fisheries management could allow for improved management, but the data could alternatively result in implementation of less favorable environmental alternatives. The data could be used to identify management alternatives that allow for optimal yield from fish stocks, while also minimizing adverse socio-economic impacts. However, data collected from interviews and surveys is likely to represent the short-term goals of respondents. Assessment based on such data could result in disproportionate consideration of short-term benefits and insufficient consideration of long-term costs. Disproportionate consideration of short-term impacts will tend to favor management alternatives that allow for over fishing. These provide the greatest short-term socio-economic benefit, but with significant long-term negative impacts created as payment for the short term satisfaction.

B. The Recommended Role of Social Science

The need to manage fish stocks as scarce resources is becoming increasingly apparent as several commercial fisheries have already collapsed.¹ Management of scarce resources involves two key determinations: (1) how much to take and (2) who gets what is taken.² Study of specie population biology should provide the basis for determining how much to take, but the determination of how the allowable catch should be distributed is a question for social science. Using population biology to determine total allowable catch ensures that harvest will not exceed regenerative capacity, thus allowing for sustainable use of fish stocks over time.

To summarize this very important point: social science can only be acceptably deployed after environmental science has determined the acceptable level of fishing activity which can be safely permitted; it can only safely be utilized in seriatum, not in parallel, with environmental science.

Under the Fishery Conservation and Management Act (FCMA), management councils set fishing quotas. See 16 U.S.C.A. § 1851, Congressional Findings (a)(3) (West Group 2002). In response to political pressure, councils consistently set quotas in excess of sustainable levels. This is not a unique phenomena, but one that has ancient precedents. When a sovereign can not regulate a resource itself, it will often call on those closest to the resource ? in this case the fishing industry ? to self-regulate the resource. This same practice has led the Federal Communications Commission (FCC) to delegate National Environmental Policy Act (“NEPA”) and National Historic Preservation Act (“NHPA”) compliance to corporations lacking the incentive or skill to conduct cultural or historic resources review and analysis. “Self-regulation” is usually a sign that while the

¹ Alison Rieser, *Prescriptions for the Commons: Environmental Scholarship and the Fishing Quotas Debate*, 23 HARV. ENVTL. L. REV. 393, 393-4 (1999).

² Guido Calabresi and Philip Bobbit, TRAGIC CHOICES 18-9 (1978).

Legislative Branch has the will to pass a law, the Executive Branch enabling that law lacks the resources to enforce it. In the vernacular, this is “letting the fox into the hen house.”

The consideration of social science data in setting of quotas would likely create additional pressure to set quotas in excess of sustainable levels. One barrier to economic efficiency is the tendency to favor options that have relatively more perceived benefits and unperceived costs.³ For this reason ? for example ? cheap, low quality yet high maintenance goods tend to have a competitive advantage. The cost which would warn off the prudent consumer is unseen at the time of purchase. Alternatively, a system using environmental science for fisheries management would accommodate analysis of long term costs. Using population biology to determine total allowable catch ensures conservation. In addition, consideration of future needs of fishery dependent communities and the related long-term socio-economic costs of over fishing could counter the tendency to favor management alternatives that have short-term benefits coupled with more significant long-term costs.

Though the total allowable catch should be determined based on population biology conducted under environmental protocols, the allocation of fishing rights ? or the initial determination of “who gets what” ? should include consideration of social science data. Again, deployment of social science in seriatum will not compromise the environmental laws; but deploying it parallel to environmental assessment and review will undermine the law.

Under the FCMA, conservation and optimal yield must be the primary considerations in fisheries management, but conservation strategies must minimize adverse economic impacts on fishing communities. See 16 U.S.C. § 1851(a)(5), (8) (West Group 2002). Distributional equity minimizes adverse economic impacts by

ensuring that unfavorable impacts do not disproportionately fall on communities that rely on fishing, and within communities, adverse impacts are not disproportionately borne by low-power groups who are already disadvantaged. Social science data should primarily be used to identify fishing dependent communities and low-power groups who may be disproportionately effected by fisheries management, and to determine how to best mitigate such impacts, while ensuring conservation for optimal yield over time.

The National Environmental Policy Act (NEPA) and FCMA only require *ex-ante* consideration of impacts, but sustainable use, which allows for optimal yield over time, requires *ex-ante* consideration of biological and social science data, coupled with continuous monitoring and mitigation of impacts.⁴ Sustainable use may not be supported by social impact assessment limited to *ex-ante* consideration of information collected through interviews and surveys. As already discussed, the use of such data could result in disproportionate consideration of short-term impacts and insufficient consideration of long-term impacts. In addition, *ex-ante* consideration alone does not permit for subsequent identification and mitigation of unexpected unfavorable impacts. Collection of social science data should be one aspect of an on-going program that periodically monitors the impacts of fisheries management, and management strategies should be flexible enough to allow for subsequent changes to mitigate unexpected unfavorable impacts.

³ Bailey Kuklin, *The Gaps Between the Fingers of the Invisible Hand*, 58 BROOK. L. REV. 835, 843-4 (1992).

⁴ Edward Elgar, *Sustainable Development and Integrated Appraisal in a Developing World* 81-5 (2000).

II. Fisheries Management

A. *Basic Theories and Alternative Strategies*

Harvest of the ocean's living elements has long been an interest of legal scholars. The resulting social and economic theories have had a significant impact on fisheries management. Open access to common property creates an incentive for individuals to remove resources at an inefficient rate, a phenomena term "the tragedy of the commons."⁵ Each individual knows that another individual may remove the resource if it is left behind, so there is no incentive to conserve even though the resource may be more valuable if removed at a more gradual rate over time. As the resource becomes scarce, harvesting effort is increased through investment in time and equipment, until there is no return on investment. Over fishing reduces the economic value of the fish removed, while also reducing potential for future harvest.

A full half century ago, H. Scott Gordon proposed a property rights solution to the problem of over fishing, which allows for market force incentives to conserve resources.⁶ In the case of transferable quotas, market forces also control the distribution of fishing rights. But as of yet, social sciences have not been sufficiently integrated in fisheries management, resulting in inequitable distribution of fishing rights.

The primary fisheries management strategies used to regulate Alaskan fisheries are (1) license limitation, (2) individual transferable quotas (ITQs), and (3) community development quotas (CDQs). Under the license limitation approach, a limited number of individuals are allowed to fish, but there is no limit to the amount that an individual license holder may catch. License limitation therefore does not solve the problem of "the

⁵ See Generally Garret Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968) (discussing how individual rational choices in open access results in collective irrationality).

⁶ H. Scott Gordon, *The Economic Theory of a Common-Property Resource: The Fishery*, 62 J. POL. ECON. 124 (1954).

tragedy of the commons,” as each license holder has an incentive to catch as much as possible. Otherwise, another license holder will likely harvest any fish stock left behind. Alternative management strategies involve setting of total allowable catch. ITQs are transferable rights to a percentage of the total allowable catch. Each participant’s share of the total allowable catch depends on the number of shares of ITQs possessed. Much is at stake in the initial granting of ITQs because a substantial windfall accompanies the grant. In addition, ITQs may effect the structure of an industry in ways that disproportionately effect women and natives.⁷ CDQs are allocated to fishing-dependant communities. CDQs may allow for more equitable distribution of allowable catch, and may permit communities can take on ecological approach to conservation.⁸

There is a tremendous need for social science data to facilitate in the assessment of the distributional equity of fisheries management alternatives. Data collected through interviews and surveys should not, however, be used in setting the total allowable catch. Such determinations should be based primarily on biological studies of species population dynamics.

⁷ Seth Macinko, *Public or Private?: United States Commercial Fisheries Management and the Public Trust Doctrine, Reciprocal Challenge*, NAT. RESOURCES J., WILDLIFE LAW AND POLICY ISSUE, 923-925 (1993).

⁸ Alison Rieser, *Prescriptions for the Commons: Environmental Scholarship and the Fishing Quotas Debate*, 23 HARV. ENVTL. L. REV. 393, 417-20 (1999).

II. Comments

A. *Whether the proposed collection of information is necessary for the proper performance of the agency (NMFS), including whether the information will have practical utility:*

1. **The proposed collection could facilitate in the implementation of new fisheries management strategies by enabling agencies to meet statutory procedural requirements.**

Consideration of social impact is required under NEPA and FCMA. NEPA implicitly requires *ex-ante* consideration of social impacts for certain federal actions. The NEPA requirement is essentially procedural. FCMA, reauthorized and amended in 1996 by the Sustainable Fisheries Act, explicitly requires that the NMFS consider socio-economic impacts on fishing communities when allocating fishery resources. If a court finds that the NMFS has failed to sufficiently consider socio-economic under NEPA, or failed to consider and implement conservation strategies that minimize economic impact under FMCA, a court may enjoin the management action.

(a) **NEPA Procedural Requirements**

NEPA requires that federal agencies prepare an environmental impact statement (EIS) prior to undertaking any major federal action “significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(c). NEPA also requires that federal agencies use a “systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences.” See NEPA, Section 102(2)(A). In Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 767 (1983), the Supreme Court held that an EIS must consider effects on the physical environment, and health

effects that have a reasonably close causal connection to the change in the physical environment (later termed secondary effects). Metropolitan Edison can be interpreted as a requirement that an EIS also consider secondary socio-economic effects.⁹

According to regulations promulgated under NEPA by the Council on Environmental Quality (CEQ), social or economic impacts alone do not require the preparation of an EIS, but when such impacts are interrelated with natural or physical environmental effects requiring an EIS, the EIS must discuss them. 40 C.F.R. § 1508.14. However, NEPA's requirements are essentially procedural. NEPA only requires that the federal agency take a hard look at environmental impacts. See *Kleppe v. Sierra Club* 427 U.S. 390, 410 (1976). Once such impacts have been considered, the agency has the discretion to base its decision on other considerations. See, e.g. *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 228 (1980) (holding that once an agency has made a decision subject to the NEPA procedure, the court's role is limited to ensuring that the agency has considered environmental consequences).

(b) **FCMA Procedural and Substantive Requirements**

In contrast to NEPA, FCMA has substantive bite, as it requires consideration *and implementation* of conservation alternatives that have a minimum economic impact on fishing communities. The relevant part of the act reads “conservation and management measures shall. . . take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.” 16 U.S.C. § 1851(a)(8).

⁹ Stephen M. Johnson, *NEPA and SEPA's in the Quest for Environmental Justice*, 30 LOYOLA OF LOS ANGELES L. REV. 565, 581 (1997).

In addition, the FCMA ? as amended by the SFA ? requires that conservation and management measures “prevent over fishing while achieving, on a continuing basis, the optimum yield from each fishery” 16 U.S.C. § 1851(a)(1), and “where practicable, consider efficiency in the utilization of fishery resources; except that no measure shall have economic allocation as its sole purpose” 16 U.S.C. § 1851(a)(5). Because optimal yield and sustained participation of communities are required, the consideration of socio-economic impacts are not to be weighed against the need to conserve. Rather, socio-economic impacts must be considered in choosing between equally effective conservation measures that have different socio-economic impacts. See A.M.L. Int’l v. Daley, 107 F. Supp. 2d 90 (D. Mass. 2000) (finding that closure of dogfish fishery was better than allowing collapse of the industry); Cf. N.C. Fisheries Ass’n, Inc. v. Daley, 27 F. Supp. 2d 650 (E.D. Va. 1998) (setting aside quotas because the Council failed to consider small North Carolina communities, and instead considered only the socio-economic impact on the state).

(c) **Meeting Procedural Requirements**

Social science data could facilitate in both determining and considering secondary socio-economic effects under NEPA. However, in order to meet the FCMA conservation requirement, the use of social science data should be guarded and delimited. Using population biology to determine total allowable catch is consistent with the conservation and optimal yield requirements of FCMA. Sustained community participation and minimization of economic impacts on fishing communities can best be achieved through integration of social sciences in order to determine how the biologically determined total allowable catch should be distributed.

2. The proposed collection could facilitate in the consideration of distributional equity.

FCMA requires that economic impacts on fishing communities be minimized. Community welfare is best supported by distributional equity in allocation of fishing resources. In 1994, President Clinton issued an executive order that entitled federal agencies to consider environmental justice.¹⁰ Environmental justice is defined by the Environmental Protection Agency as “the fair treatment and meaningful involvement of people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹¹ Environmental justice, or distributional equity within the development of environmental policies, requires rejection of management methods that disproportionately place unfavorable impacts on low power groups. The proposed social data collection should produce data that is useful for identifying low power groups likely to be disproportionately effected by different fisheries management alternatives.

3. The data might be useful for planning for sustainable use.

FCMA requires that management allow for sustained participation of fishing communities. In order to be utilized in sustainable use management, the data must be useful for assessing long-term community impacts of management alternatives. Interviews and surveys are likely to represent only the short-term goals of respondents. Social impact of alternative management strategies should include consideration of historical use of fish stocks and plan for future use. In addition, collection methods should be designed so as to produce data that is useful in assessing both long-term and short-term impacts of alternative management strategies. In addition, interviews and surveys should be supplemented with data collected from records indicating historical use

¹⁰ See Executive Order No. 12,898; 42 U.S.C. § 4243 (1994)

¹¹ U.S. Envntl. Protection Agency (visited June, 2002) at <http://es.epa.gov/oeca/main/ej>

of fish stocks. Sustainable use planning may also require on-going collection of information, in order to identify and mitigate unexpected unfavorable impacts.

(a) **The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information:**

The agency's estimate for the proposed collection is reasonable. In order to enhance the quality, utility, and clarity of the information to be collected, however, the burden of collection might have to be increased. Alternatively, it may be possible to reduce the burden of collection. The data should primarily be used to assess community impacts of management alternatives and identify low power groups likely to be disproportionately effected by unfavorable impacts. This purpose might be sufficiently served by a reduced number of interviews and surveys. The data should also be used in the development of sustainable use fisheries management. Sustainable use requires *ex-ante* assessment of anticipated impacts, monitoring of actual impacts, and mitigation of unfavorable impacts. Sustainable use management will require additional collection of information in the future, but the burden of such collection need not be considered now.

(b) **Ways to enhance the quality, utility, and clarity of the information to be collected:**

Recommendations for sociocultural data collection and analysis in fishery administration have been prepared by the International Center for Marine Resource Development (ICMRD).¹² The recommendations of the ICMRD concerning the type of data that should be collected and concerning data collection methods are relevant. These recommendations should be considered in the development of the data collection scheme. For example, the purpose of the collection should be clearly defined, and key informants who can provide general information should be identified and utilized.¹³ Attitudinal is

¹² See generally, A Guide for the Small-Scale Fishery Administrator: Information from the Harvest Sector.

¹³ Id. at 91-2

difficult to obtain and analyze, so this type of data should not be collected unless there is a specific need to do so.¹⁴ Surveys and interviews will tend to reflect only short-term goals of respondents. Therefore, the proposed collection should not constitute the sole source of data used for social impact assessment of fisheries and fishery management. Information should also be collected from written records indicating the nature of the historical dependency of specific communities on specific fish stocks. In addition, interview questions and surveys should be designed so as to ensure utility of collected data in assessing the long-term needs of communities.

(c) **Ways to minimize the burden of the collection of information on the respondents, including through the use of automated collection techniques or other forms of information technology.**

Clearly defining the role that social science data will play in fisheries management would reduce the burden of collection by excluding collection of data that would not serve the defined function. The role of social science data should be general assessment of significant secondary socio-economic impacts of alternative management strategies, identification of short-term and long-term needs of fishing dependent communities, and identification of low-power groups likely to bear a disproportionate impact of various management strategies. These purposes do not require attitudinal data, and they could be served through identification of key informants for in depth interview, supplemented with more general surveys.

¹⁴

Id.

III. Conclusion

Fish stocks must be managed as scarce resources. Management of scarce resources involves two key determinations: (1) how much to take and (2) who gets what is taken. In the case of fisheries management, the determination of how much to take is best answered by population biology. The determination of how to equitably allocate rights to harvest the total allowable catch requires integration of social sciences data. Data collected from surveys and interviews is likely to represent short-term goals of respondents. Consideration of long-term needs of fishing dependent communities and long-term impacts of fisheries management alternatives could help counter the tendency to favor alternatives that provide for the greatest short-term benefits through over-fishing, which has significant long-term negative socio-economic impact.

Very respectfully,

Dan Meyer

Daniel P. Meyer, General Counsel
Public Employees for Environmental Responsibility
2001 S Street, N.W. – Suite 570
Washington, D.C. 20009

D.C. Bar No. 455369

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Chuck Sultzman, PEER Senior Scientist
and Marine Biologist

Naomi A. Lundberg, PEER Environmental Law Clerk '02
Georgetown University Law Center '04