

# Proposed Updates To Federal Fishing Law Target Wespac

The Western Pacific Fishery Management Council's lack of transparency and unabashed politicking has prompted an effort to curtail questionable behavior through legislation.

BY **NATHAN EAGLE** / NOVEMBER 10, 2021

John Gourley is worried.

The vice chair of the Western Pacific Regional Fishery Management Council flipped through a printed copy of the 189-page [Sustaining America's Fisheries for the Future Act](#) — the first major update to the nation's primary federal fisheries law in 15 years — at a recent meeting of the council and urged his fellow members to get up to speed on the proposed legislation.



## A Civil Beat Investigation

This Civil Beat special report documents the political activism of the Western Pacific Regional Fishery Management Council, a federal panel that sets fisheries policies that govern 1.5 million square miles of the Western Pacific Ocean. Federal law generally prohibits using taxpayer dollars to lobby on state and federal issues but Wespac has for decades pushed those rules to the limit, angering environmentalists and Native Hawaiians. Now, with climate change creating a new urgency, Congress may be about to crack down on Wespac.

---

**Part 1:** Records show how Wespac has used its political power to influence state and federal policy for the benefit of the fishing industry.

---

**Part 2:** Council leaders spent heavily to set up a traditional Hawaiian system of resource management even though it infringed on state jurisdiction.

---

**Part 3:** Fighting for the interests of the commercial tuna fleet, Wespac has pressured presidents and orchestrated public opposition to marine monuments.

---

**Part 4:** Who is Kitty Simonds? A profile of the council's longtime executive director.

---

**Part 5:** Wespac has long been controlled by fishing interests but this year was forced to accept a conservation-minded member.

---

**Part 6:** A reporting trip to Alaska reveals major differences between Wespac and other regional councils.

---

**Part 7:** A major update of the Magnuson-Stevens Act under consideration by Congress would prohibit lobbying by Wespac.

“There is a lot of stuff in this bill that will affect the way that we do business and the way we manage our fisheries,” he said. “And some of it may not be what you want.”

The bill was introduced in August by Democratic Congressmen Ed Case of Hawaii and Jared Huffman of California to reform the Magnuson-Stevens Fishery Conservation and Management Act, the 1976 landmark legislation that has guided federal fishing policy for nearly half a century. The congressmen are proposing significant changes to the law after they spent a year touring the country in 2019 and meeting with fishermen, environmentalists, community leaders and others about how best to protect the fisheries resource.

The bill's intent is primarily to ensure that the nation's eight fishery management councils are developing policies that adequately factor in the effects of climate change, and that the voices of the communities and industries most affected are heard in the process.



Wespac Vice Chair John Gourley is warning his fellow members about the proposed revamp of the Magnuson-Stevens Act.

But some sections specifically target Wespac, and they stem from concerns that go back decades. Case drafted an entire section on strengthening the public access process, improving transparency and identifying the need to increase representation of different viewpoints on the councils so they aren't weighted so heavily in favor of the fishing industry, much of that aimed at forcing Wespac to improve its practices.

Another section, which would only apply to Wespac, removes the council's control of the multimillion-dollar Sustainable Fisheries Fund, which Case has described as a secretive "slush fund" that Wespac uses to largely benefit Hawaii's longline tuna industry.

“The councils have basically been independent fiefdoms,” Case told Civil Beat, explaining that the [National Oceanic and Atmospheric Administration](#) has basically let Wespac run the show even though it’s technically an advisory body.

“One area that is weak in Magnuson is actual federal government oversight,” he said. “Wespac is too focused on the end result of extraction and not conservation and sustainability.”

Wespac and its longtime executive director, Kitty Simonds, declined requests for interviews for this story. Spokesperson Amy Vandehey said “department regulations place limits on our ability to comment on the MSA.” She did not say which department or respond when asked which regulations.

Updates to the MSA have been on the council’s public meeting agendas for months and at least six of its advisory groups have reviewed the proposed bill, where members have expressed concerns over any tightening of existing regulations or loss of control. In October, Wespac submitted 10 pages of comments on the bill to Case and Huffman.



Congressman Ed Case says the Magnuson-Stevens Act is weak on federal oversight of the regional councils.

Case acknowledged that the MSA's next update needs to serve all ocean users, and said he's working to ensure that happens.

"We don't want to amend the law too much to prevent other councils from doing their job well," he said, adding that some of the shortcomings he sees in Wespac, like transparency and accountability, aren't as much of an issue in other councils.

Rep. Don Young, a Republican from Alaska, told the leaders of the eight regional councils at their joint meeting in May that he and key GOP members in the Senate will block any amendments that would harm the fishing industry. He has introduced his own bill but it's not expected to be heard.

He said there are some who want to take the power to develop fisheries policies away from the councils and give it to the commerce secretary, which would be "a bad mistake."

"The reality is that it's worked," he said. "I don't like the idea of someone trying to undo it."

## **For The Nation's Benefit**

The debate over the past 40 years has centered on how the councils should balance and interpret the MSA's dual goals of preventing overfishing while achieving "optimum yield," one of the law's 10 broad national standards, according to Marian Macpherson, a management and program analyst for NOAA's National Marine Fisheries Service.

Optimum yield was defined as "the amount of fish which will provide the greatest overall benefit to the Nation." Basically, fishermen should be able to make money and provide food for people without crashing the fish stocks or making a species extinct.



U.S. Sens. Warren Magnuson and Ted Stevens wrote the nation's fisheries law in a way that assumed fishermen would struggle to deplete the resource, but that quickly turned out not to be the case.

The law was first written assuming the biggest concern would be not catching enough fish as opposed to catching too many, Macpherson said in a [2018 paper](#) for the Tulane Environmental Law Journal.

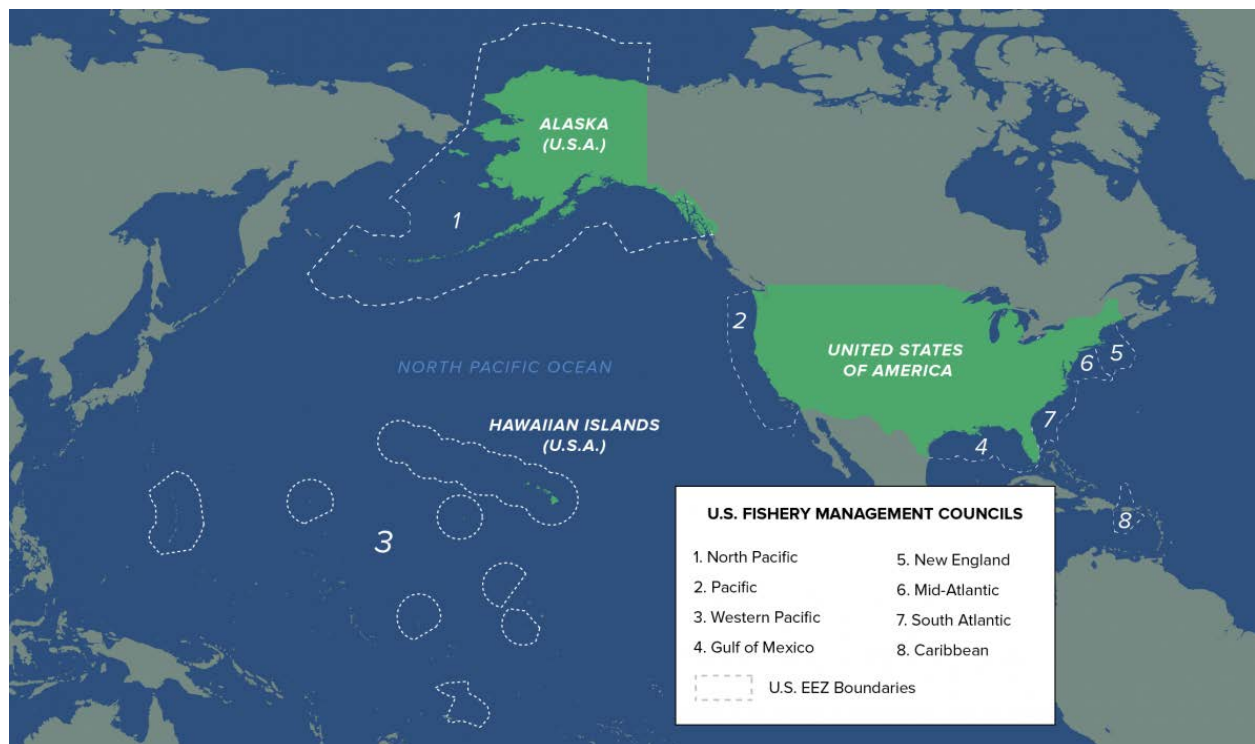
She referred a request for comment to a NOAA spokesperson, Kate Goggin, who refused to set up an interview with Macpherson or any [MSA](#) experts within the agency.

The councils initially let the pendulum swing fast and hard in the direction of commercial exploitation. Only when half the stocks were overfished did amendments come down to meaningfully shift management toward greater sustainability.

“Everyone thought the ocean is this massive place and it’s going to be able to keep regenerating,” said Rick Gaffney, a former Wespac member and longtime Big Island sports fisherman.

Wespac oversees the largest region of any council. It includes the federal waters — generally from 3 to 200 miles offshore — ringing the Hawaiian

Islands, Guam, American Samoa and the Northern Marianas, plus remote Pacific outposts such as Palmyra, Wake and Johnston.



The Magnuson-Stevens Act created eight councils to manage the fisheries within their region's exclusive economic zone boundaries.

Gaffney helped draft a comprehensive fisheries plan that served as a precursor to the MSA. He went to Washington, D.C., in the early 1970s with Charlie Yamamoto, a local commercial fisherman, to represent Pacific fishing interests.

The law, signed by President Gerald Ford in 1976, essentially pushed foreign fleets 200 miles offshore and established the eight regional fishery management councils to develop plans that promote sustainable fisheries. The councils were the first of their kind to manage natural resources in the U.S., each composed of roughly a dozen politically appointed members confirmed by the commerce secretary.

"In the long term, the Magnuson-Stevens Act has been good for America's economy," Gaffney said, explaining how it restored fishing opportunities back home while adding a measure of environmental protection.

## **“If they want to have sustainable fisheries, they’ll have to do more.” — Leon Panetta**

The law’s two major updates — in 1996 and 2006 — forced the councils to catch up with their conservation mandate. Congress forced the councils to prevent overfishing by identifying the status of stocks, setting catch limits and basing those decisions on the best available science. The next reauthorization is expected to continue that push toward a better equilibrium.

“The fishery management councils are about fish. They deal with fishermen and fishermen care about making a living,” Leon Panetta, the former secretary of defense, told Civil Beat. Panetta served in Congress from 1977 to 1993 and chaired the Pew Oceans Commission in the early 2000s, which produced a [166-page report](#) that shaped the MSA’s last substantial update.

“What I’m seeing, at least, is that fishermen themselves recognize that they can’t go do business as usual because of the threats that are out there for these fisheries,” he said, noting pollution, overfishing and the oceanic effects of a warming planet. “If they want to have sustainable fisheries, they’ll have to do more.”



Honolulu Harbor (ca. 1885).

## **Best Intentions**

The Magnuson-Stevens Act did not define overfishing initially. And when NOAA took that on in 1983, it did so in economic terms. Overfishing was occurring when it jeopardized the stock's ability to produce maximum economic value on a longterm basis.

As more stocks became overfished, it became clear that more needed to be done.

Macpherson, the NOAA analyst, said in her paper that the 1990s were a reckoning. The “greatest overall benefit to the Nation” was not just about money and protein anymore but also about protecting entire marine ecosystems.



A statue of the late U.S. Sen. Ted Stevens of Alaska welcomes visitors to the Anchorage airport. He was instrumental in developing the nation's primary law governing fisheries.

The Sustainable Fisheries Act, as the 1996 revision was called, honed in on preventing overfishing. That meant determining the status of stocks, removing the councils' discretion in dealing with overfishing and requiring status reports to Congress.

That update put a renewed focus on the rest of ocean life, too. Bycatch was added as one of the national standards, along with fishing vessel safety and the health of fishing communities. And fish habitat was established as a crucial part of fisheries management.

Although the requirements should have been obvious for effective fisheries management, it took significant pressure from environmental groups and the reality of diminishing catches before these changes happened.

"The fisheries world turned the lights on and faced the problem that stock statuses were not where they needed to be for many species," Macpherson said in her paper. "The struggle with how to respond, however, was just beginning."

Study after study recognized the need for more action on the conservation side. The Pew Oceans Commission report in 2003 sought a complete overhaul of how the U.S. managed its fisheries after finding that nearly a third of the 304 managed stocks were either overfished or experiencing overfishing.

Nature, a science journal, published a paper the same year showing that within 10 or 15 years, industrial fishermen can collapse a fishery to 10% of its previous state.



A 2003 study showing how fast industrial fishermen can collapse a stock helped spur Congress to add new safeguards to prevent overfishing.

Congress responded in 2006 with the MSA Reauthorization Act. It required the councils to set annual catch limits and base those decisions on their science advisory committees, which were tasked with determining how much of each species could be caught each year sustainably.

Rep. Frank Pallone, a New Jersey Democrat, said on the House floor when the bill passed that it was far from perfect. But he said the fact that he knew neither the fishing nor the environmental community were completely happy probably meant it was a very good bill.

“It is my fervent hope that this bill will bring some greater sense into a fisheries management system that to the average angler seems confusing at best and completely irrational at worst,” he said.

Prior to the vote, Rep. Nick Rahall told his colleagues on the House floor that the 2006 bill would not have been possible if Republican Sen. Ted Stevens of Alaska and Democratic Sen. Dan Inouye of Hawaii “had not extended an olive branch,” commending them for the work they put into the legislation.

The bipartisan bill, signed by President George W. Bush, set a firm deadline to end overfishing in America by 2011. It directed the regional councils to establish annual quotas in federally managed fisheries to end overfishing by 2010 for fish stocks currently undergoing overfishing and by 2011 for all other federally managed fish stocks, according to records from the Bush White House.

That didn’t happen. But stocks did improve under new management measures for dozens of species of fish.

Wespac heralded the removal of Pacific bigeye from the overfished list after a 2017 stock assessment. International quota limits had been curbed by the Western and Central Pacific Fisheries Commission.

But there has been cause for concern more recently for bigeye — the Hawaii commercial fishing industry’s most lucrative species by far — and other fish. The 2020 stock assessment for bigeye in the Western and Central Pacific found a downturn over the previous few years, saying fishing pressure is “persistent and meaningful” and there was a “substantial decline in bigeye abundance.”

In July, the environmental law firm Earthjustice highlighted how NOAA’s last annual report card detailing the health of U.S. fisheries showed an increase in the number of overfished stocks. Fish populations are too low to support sustainable fishing in 20% of known stocks while the number of rebuilt fisheries remained stagnant and eight previously rebuilt stocks have become overfished again.

Added to the list of overfished stocks under Wespac’s jurisdiction was the oceanic whitetip shark, silky shark and bottomfish in American Samoa and Guam.

## **A Changing Environment**

Now that the regional councils know more than ever about the stocks and what they should do to effectively manage them, climate change has increasingly complicated policymaking.

Shifting weather patterns and warmer, more acidic waters are moving fish stocks into new areas.

A 2019 study by scientists from the Pacific Islands Fisheries Science Center, the University of Hawaii and the University of Tasmania predicts the decline of catch in the Hawaii bigeye tuna fishery due to climate change.



Scientist Phoebe Woodworth-Jefcoats doesn't think the future of fishing has to be doom and gloom. Rather, her study shows local choices matter.

But the scientists stressed that their model shows how strategic management decisions can help the industry be more resilient.

"Rather than seeing the results as a doom-and-gloom future for the Hawaii fishery, I see them as encouraging. They show that local choices matter, that we can decide which future scenario we want to pursue," lead author Phoebe Woodworth-Jefcoats said in a NOAA article.

The Case-Huffman bill would force the regional councils to integrate climate change as a critical consideration in their management decisions.

Under their proposed update to the MSA, NOAA would have to conduct climate vulnerability assessments and the councils would have to plan for the increased resilience of stocks identified in those assessments.



Wespac member McGrew Rice, a Big Island charter boat captain, has said he does not believe in climate change.

Wespac has considered climate change for the past several years in its management. The 2020 annual stock assessment and fishery evaluation report, which is expected to sum up the best available science on the stocks, includes a chapter on indicators of climate and oceanic conditions in the Western Pacific.

But some Wespac members have aired their skepticism of climate science, and it has shaped some policy recommendations.

In 2016, Environment Hawaii reported on a meeting in which Gourley, the vice chair, complained when the council considered a motion to adopt a report that included a statement linking climate change to anthropogenic causes. Gourley said that made the council “an advocate” and curtailed discussion. He said it amounted to picking one side over the other. Even when Wespac’s own staff explained that 97% of the world’s scientists agree this is a settled matter, Wespac Executive Director Kitty Simonds stepped in and said that part should just be deleted.

Council member McGrew Rice, supporting Gourley, was more to the point: “I don’t believe in climate change.”

Treece, of Earthjustice, said the growing skepticism of science is a real challenge in fisheries management.

“There’s this sentiment that somehow you are disrespecting the authority, the lived experience, the knowledge of fishermen by insisting on these scientific measures,” she said.

It’s not a dynamic she’s seen in the management of other environmental issues, like water quality, where you just measure the level of contaminants and the findings are accepted. “In the fisheries world, it’s a much more fraught topic,” she said.

Eric Kingma, a Wespac staff member for 15 years before leaving in 2019 to lead the Hawaii Longline Association, said his time working for the council taught him about the politics, complexities and realities of fisheries management.



Eric Kingma, former Wespac staff member and current executive director of the Hawaii Longline Association, says the MSA could be reformed to make the management process more nimble.

The bottom-up nature of the regional council process generally works, he said, but the MSA could be changed to make it more nimble.

"It can take two to three years to get a regulation across, and sometimes the management need is already passed," Kingma said, noting the levels of bureaucracy involved.

He commended Case and Huffman on their nationwide listening tour to give people an opportunity to provide input on the bill. A release from Huffman says the congressmen heard from 80 different experts and stakeholders, in addition to dozens of public comments.

Molly Masterton, an oceans staff attorney with the Natural Resources Defense Council, said the next reauthorization of the Magnuson-Stevens Act provides a chance to build on past successes.

**“The arc of the law has been in the realization that we have to put conservation first and the science first and that can be balanced with the needs of the communities.” — Molly Masterton, Natural Resources Defense Council**

“The arc of the law has been in the realization that we have to put conservation first and the science first and that can be balanced with the needs of the communities,” she said. “Particularly in the face of climate change, now is not the time to take the foot off the gas.”

Lobbying rules bar Wespac from advocating for or against pending legislation, which includes this MSA bill. But the council can provide technical and factual information if its input is requested by Congress, which it was.

In a letter to Case and Huffman, Simonds and council leaders are careful to state up front: “The comments herewith focus on the impacts of the proposed legislation, and are not intended to express support or opposition to any element of the bill.”

But the lobbying rules didn’t stop council members from speaking up publicly about their opposition to the proposed legislation. In September, at a council meeting, Manny Duenas, a former Wespac chair who rejoined the council for another term this year, said he is “hoping this legislation doesn’t go through.”

Gourley urged his colleagues to “pay attention” to the bill and its effects, noting the way it would change the council’s oversight of the fund.

“They’re taking something that is fairly simple and making it more complex than it needs to be,” he said.

## **Commercial, Recreational, Other?**

The Case-Huffman bill also takes up longstanding concerns over the composition of the councils themselves, and the possibility of legislating a better balance between commercial interests and everyone else.

One reform is aimed at Wespac, which has worked around Hawaii's governor to ensure certain members stay on the council.



The Case-Huffman bill would require geographic representation for appointments to Wespac.

When Rice, a longtime Hawaii island charter boat captain, wasn't on Gov. David Ige's list of nominees to serve on the council in 2020, his name was put forward instead by the governor of the Northern Marianas. And the commerce secretary went on to select him for another term. He's not the first person to be nominated by a territorial government despite living and fishing in Hawaii.

The legislation responds to this issue with the addition of a single line to the MSA: "In appointing at-large members to the Western Pacific Fishery Management Council, the Secretary shall ensure geographic representation across all constituent states of the Council."

Tom Okey, a researcher at the University of British Columbia, did [a study](#) that found 49% of all the eight regional council members appointed between 1990 and 2001 represented commercial fishing interests. About 33% represented recreational fishing interests, with scientists and a handful of environmentalists making up the remaining 18% of the seats.

Those figures haven't changed much today. Of the 72 nominated seats across the eight regions, 55 were categorized as fishing, with 33 of those commercial in 2020.

Wespac's makeup of mostly minority men and women from the country's most diverse region stands in contrast to the other regional councils, which are composed almost entirely of white men.

Currently, NOAA categorizes council members as having one of three backgrounds: commercial, recreational and "other."

Of the eight appointed members on Wespac, four were commercial, two were recreational and two were other in 2020 and 2019, according to NOAA's latest report.

But the categorizations can be deceiving. Last year, the council's chair, Archie Soliai, was categorized as other even though he was the government relations manager for the Starkist tuna cannery in American Samoa. This year, Matt Ramsey is considered an other member, and he's Conservation International's Hawaii program director.

Kingma, the [Hawaii Longline Association](#) director, said he isn't necessarily opposed to having certain seats on the council be required to represent certain groups, whether that's commercial and recreational fishing or environmental and science interests.

**“On balance you want knowledgeable people who are willing to spend the time it takes to be a dedicated council member.” — Eric Kingma, Hawaii Longline Association**

“On balance you want knowledgeable people who are willing to spend the time it takes to be a dedicated council member,” he said. “I’m less interested in categories and more interested in the quality of the council member.”

That view is shared by many in the conservation community, which they suspect is likely why the Case-Huffman bill does not call for a sweeping reform in how the councils are constituted despite the idea being floated for years.

Kingma is hopeful any MSA legislation considered in the coming year can still attract the bipartisan support it's historically enjoyed. The law is important to so many people whether it's for the economy, environment, food self-sufficiency, culture or recreation, he said.

"The Magnuson-Stevens Act has allowed the U.S. to be a global leader in managing fisheries," Kingma said. "As we go into this reauthorization, largely the framework is sound. But there could be some tweaks."