Presentation to the Marine Protected Areas Federal Advisory Committee
By Dan Furlong, Executive Director Mid-Atlantic Fishery Management Council
February 15, 2005
President William J. Clinton

Executive Order 13158

May 26, 2000
What’s an Executive Order?
An Executive Order is “A rule or order having the force of law, issued by the President”
Paul Begalia, a Clinton Political Strategist saw executive orders this way:
His Royal Highness
King George III
Practiced such a philosophy
Upstart
American Colonists
Revolted
Executive Order 13158
Defined MPAs
As
“Any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein”
Executive Order 13158

- Established this Advisory Committee
- Established a website
- Established a MPA Center
- Established consultation requirement with RFMC to promote coordination of actions to establish and manage MPAs
- Did not create any new authorities
- Did not appropriate any funding
“Consultation Requirement . . .”
Brings us to
Today’s Agenda Item
Fishery Management Councils’
MPA – Related Activities
The MAFMC Has None
And Why Do We Have None?
Semantics
Regional Fishery Management Councils were created in 1976 by PL94-265 “Fisheries Conservation and Management Act”
Now known as the Magnuson-Stevens Fishery Conservation and Management Act. It was most recently amended by the Sustainable Fisheries Act of 1996 PL104-297.
Dilemma
Of
Chicken and Egg
Semantics
EFH . . . MPA
Sustainable Fisheries Act

- Made one EFH finding
- Articulated one EFH purpose
- Defined EFH
- Added one FMP required item
- Directed the Secretary to:
  - Establish guidelines to assist Councils
  - Consult with fishery participants
  - Review DOC programs
  - Coordinate with other Federal agencies
- Directed all Federal agencies to consult with Secretary of Commerce
- Gave Councils license to comment about EFH issues
- Directed the Secretary to initiate and maintain fishery research to:
  - Support . . . Identification of EFH
  - Minimize through conservation engineering . . . Adverse effects on EFH
Section 2.
Findings, Purposes, and Policy
(a) Findings. --
   (6)“... To facilitate long-term protection of essential fish habitats...”
(b) Purposes. --
   (7)“ to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.”
Section 3. Definitions

“(10) The term ‘essential fish habitat’ means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”
(a) Required Provisions. - -

(7) “describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305 (b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.”
Councils Are Charged to do Seven Things
List of Seven Charges

- Prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments.
- Prepare comments on any application for foreign fishing.
- Conduct public hearings for the development of fishery management plans and amendments.
- Submit to the Secretary such periodic reports as the Council deems appropriate.
- Review and revise the assessments and specifications.
- Comment and recommend to the Secretary and any Federal or State agency on any activity that may affect the habitat, including essential fish habitat.
- Conduct any other activities which are required.
Governed By
10 National Standards
National Standards

Any fishery management plan prepared, and any regulation promulgated to implement such plan, shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.
National Standards

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), 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.

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.
In Developing FMPs
There are 14 Mandatory Considerations
And 12 Discretionary Considerations
Title III, Section 303.
Contents of Fishery Management Plans

(a) Required Provisions.

(7) “describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305 (b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.”
January 17, 2002 Final Rule on Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH)

“To Revise the Regulations Implementing the EFH Provisions of the Magnuson-Stevens Act”
Subpart J – Essential Fish Habitat

Guidelines for Councils and the Secretary to use in Adding Required EFH Provisions to an FMP

(1) Description and Identification of EFH

(2) Fishing Activities that may Adversely Affect EFH

(6) Conservation and Enhancement
Bureaucratic Add-ons:

(3) Non-Magnuson-Stevens Act Fishing Activities that may Adversely Affect EFH

(4) Non-Fishing Related Activities that may Adversely Affect EFH

(5) Cumulative Impacts Analysis

(7) Prey Species

(8) Identification of Habitat Areas of Particular Concern

(9) Research and Information Needs

(10) Review and Revision of EFH Components of FMPs
Subpart K – EFH Coordination, Consultation, and Recommendations

Procedures to Address Coordination, Consultation, and Recommendations Required by Magnuson-Stevens Act
Prior and Current Opportunities for NMFS Comments:

- Sec 10 Rivers and Harbor Act (1899)
- Sec 662 F&W Coordination Act (1934)
- Sec 404 Federal Water Pollution Control Act* (1972)
- Sec 307 CZM Act (1972)
- Sec 302 FCM Act (1976)
- Sec 108/110 SFA Act (1996)
- Sec 305(b) M-S Act (1996)

*1977 Amendment changed name to Clean Water Act
Mid-Atlantic States
## Mid-Atlantic Council
### Jurisdictional Perspective

<table>
<thead>
<tr>
<th>State</th>
<th>Coast</th>
<th>Shore</th>
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<tbody>
<tr>
<td>NY</td>
<td>125</td>
<td>2,625</td>
</tr>
<tr>
<td>NJ</td>
<td>130</td>
<td>1,792</td>
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<tr>
<td>PA</td>
<td>---</td>
<td>57</td>
</tr>
<tr>
<td>DE</td>
<td>30</td>
<td>381</td>
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<tr>
<td>MD</td>
<td>30</td>
<td>3,190</td>
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<tr>
<td>VA</td>
<td>110</td>
<td>3,315</td>
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<td>NC</td>
<td>300</td>
<td>3,375</td>
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<tr>
<td></td>
<td>725</td>
<td>14,735</td>
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</table>

Source: DOC, NOAA, NOS
Mid-Atlantic Council
Jurisdictional Perspective

- Fishery conservation zone established through passage of FCMA (1976) … (seaward of states’ territorial seas to 200 nm)
- EEZ was established by Presidential Proclamation in 1983
- Given 725 miles of Mid-Atlantic coastline and 197 miles of EEZ, there are, at most, approximately 140,000 square miles of ocean bottom in the Council’s jurisdiction
Mid-Atlantic Council
Jurisdictional Perspective

Of the approximate 140,000 sq miles of EEZ, bottom types are estimated as follows:

<table>
<thead>
<tr>
<th>Bottom Type</th>
<th>%</th>
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<tbody>
<tr>
<td>Sand</td>
<td>95</td>
</tr>
<tr>
<td>Mud</td>
<td>4</td>
</tr>
<tr>
<td>Rock</td>
<td>1</td>
</tr>
<tr>
<td>Coral</td>
<td>0</td>
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</tbody>
</table>
Mid-Atlantic Council
Jurisdictional Perspective

• Bottom tending gear physical impacts on sand, mud, clay are:
  - minimal
  - temporary

Source: Workshop on the effects of fishing gear on marine habitats off northeastern US (Oct ’01)

• In effect for 99% of our Council’s jurisdiction there are NO adverse physical impacts on ocean bottom
## Mid-Atlantic Landings

<table>
<thead>
<tr>
<th>SPECIES</th>
<th>GEAR TYPE</th>
<th>%-AGE LANDINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surfclams</td>
<td>Clam dredge</td>
<td>100%</td>
</tr>
<tr>
<td>Ocean Quahogs</td>
<td>Clam dredge</td>
<td>100%</td>
</tr>
<tr>
<td>Tilefish</td>
<td>Long line</td>
<td>95%</td>
</tr>
<tr>
<td></td>
<td>Trawl</td>
<td>5%</td>
</tr>
<tr>
<td>Squid</td>
<td>Bottom trawl</td>
<td>100%</td>
</tr>
<tr>
<td>Mackerel</td>
<td>Mid-water trawl</td>
<td>85%</td>
</tr>
<tr>
<td></td>
<td>Bottom trawl</td>
<td>15%</td>
</tr>
<tr>
<td>Butterfish</td>
<td>Bottom trawl</td>
<td>100%</td>
</tr>
<tr>
<td>Summer Flounder</td>
<td>Bottom trawl</td>
<td>95%</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>5%</td>
</tr>
<tr>
<td>Scup</td>
<td>Bottom trawl</td>
<td>75%</td>
</tr>
<tr>
<td></td>
<td>Floating traps</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>Hook &amp; Line</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>10%</td>
</tr>
<tr>
<td>Black Sea Bass</td>
<td>Pots/Traps</td>
<td>45%</td>
</tr>
<tr>
<td></td>
<td>Bottom trawl</td>
<td>40%</td>
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<tr>
<td></td>
<td>Hook &amp; Line</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>5%</td>
</tr>
<tr>
<td>Bluefish</td>
<td>Gill net</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td>Bottom trawl</td>
<td>20%</td>
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<tr>
<td></td>
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<td>5%</td>
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<tr>
<td></td>
<td>Other</td>
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</tr>
<tr>
<td>Dogfish</td>
<td>Gill net</td>
<td>75%</td>
</tr>
<tr>
<td></td>
<td>Bottom trawl</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>Hook &amp; Line</td>
<td>10%</td>
</tr>
</tbody>
</table>
MPAs in MAFMC Geographic Area

- Monitor National Marine Sanctuary (3.14 square miles)
- EFH – All FMPs
- HAPC – Tilefish
- Horseshoe Crab Reserve
- Time and area closures – quota managed
- Gear restricted areas – scup and butterfish
- Closures – Oceanographer and Lydonia Canyons for Monkfish