

**Fisheries from the Bench or Business as Usual?
The National Marine Fisheries Service and Federal Courts since 2000**

Raz Barnea

A Thesis

**Submitted in Partial Fulfillment of the
Requirements for the degree of**

Masters in Marine Affairs

University of Washington

2014

Committee:

Dr. Nives Dolšak (Chair)

Dr. Ryan Kelly

Program Authorized to Offer Degree:

School of Marine and Environmental Affairs

College of the Environment

©Copyright 2014

Raz Barnea

University of Washington

Abstract

Fisheries from the Bench or Business as Usual?

The National Marine Fisheries Service and Federal Courts since 2000

Raz Barnea

Chair of the Supervisory Committee:

Dr. Nives Dolšak

School of Marine and Environmental Affairs

Around the turn of the 21st century, the National Marine Fisheries Service (NMFS) found itself embroiled in an unprecedented amount of litigation over its management of the nation's fisheries. Not only was NMFS finding itself in court more often, NMFS was losing in court more often than it was winning; the losses were often over procedural issues rather than substantive issues; and some people went so far as to say that the courts had taken over fisheries management from the agency. Fourteen years and one reauthorization of the Magnuson Stevens Act Fisheries Conservation and Management Act later, fisheries management in the U.S. is broadly considered successful. This paper assesses Magnuson Stevens Act litigation since 2000 using an empirical legal research method. The results of this analysis suggest that substantial revisions to the law coincide with subsequent spikes in litigation; that NMFS responded to internal procedural weaknesses with better administrative practices over time; and that NMFS improved its win-loss record over time. These findings collectively support the notion that litigation has played a role in shaping the MSA as we know it, and that substantial revisions to the law carry with them the risk of a new cycle of litigation.

Table of Contents

List of Figures.....	iv
Acknowledgments.....	vi
Introduction	1
Background	1
Overview of the Magnuson Stevens Act.....	6
Methods	8
Results:	13
Color and Language Conventions.....	13
Overall Trends in Volume of litigation and NMFS win-loss record	15
NMFS’s losses by substance or procedure.....	17
Overall volume of litigation and win-loss by plaintiff type	19
NMFS win-loss against plaintiff type by year.....	21
Discussion	21
Conclusion.....	27
Works Cited.....	29
Appendix.....	34
List of Cases	34

List of Figures

List of Acronyms	v
Figure 1: NMFS Win-Loss through 2001	2
Figure 2: Data Coding Scheme	12
Figure 3. NMFS Win-Loss record by absolute number and by percentage 2000-2014	14
Figure 4. NMFS Losses on substance, procedure, or both since 2000	16
Figure 5. NMFS Wins and losses by plaintiff type overall for all years 2000-Present	18
Figure 6. NMFS Wins and losses by plaintiff type over time.	20

List of Acronyms

ACL: Allowable Catch Limits

AFS: American Fisheries Society

EEZ: Exclusive Economic Zone

ESA: Endangered Species Act

FMC: Fishery Management Council

FMP: Fishery Management Plan

MMPA: Marine Mammal Protection Act

MSA: Magnuson Stevens Act

NAPA: National Academy of Public Administration

NEPA: National Environmental Policy Act

NMFS: National Marine Fisheries Service

NOAA: National Oceanic and Atmospheric Administration

RFA: Regulatory Flexibility Act

SFA: Sustainable Fisheries Act

SSC: Science and Statistical Committee

TAC: Total Allowable Catch

Acknowledgments

I would like to thank my committee first and foremost. Drs. Nives Dolšak (chair) and Ryan Kelly are owed an enormous debt of gratitude for encouraging me to pursue the question I found most interesting and for reminding me to only pursue one question at a time (the latter task was Herculean, really). Dr. Dave Fluharty provided invaluable consultation on what fisheries management and policy looks like from the council perspective. Penny Dalton provided an incomparable insider's perspective on what it was like to quite literally be in the middle of the legal maelstrom that piqued my interest in this topic in the first place. Beth Bryant gave valuable insight on the NMFS internal operations circa 2000 and also deserves recognition for teaching the first (and second) law class I ever took, sparking an interest that led me to law school. Suzanne Iudicello provided encouragement and ideas for analysis. Thanks are also owed to UW Gallagher Law research librarian Mary Whisner for patiently showing me how to use the databases that made this research possible. Mike Klaczynski helped immeasurably with the data visualizations. Brit Sojka and Drs. Sara Breslow, Karma Norman, Melissa Poe, Phil Levin, and the rest of the Social Wellbeing Indicators for Marine Management research group deserve acknowledgment for providing a constant reminder that the effects of law and policy can be measured (we think) on human wellbeing. Tiffany Dion, Megan Russell, Suanty Kaghan, and Dr. Tom Leschine were consistently welcoming when I took a study break by visiting their offices and interrupting whatever they were doing at the time. The School of Marine and Environmental Affairs has an incredibly tight knit, warm, and supportive student body and it is hard to imagine a more agreeable group of colleagues. But special thanks are owed to Jesse Harms, Laura Nelson, and Chelsea Kahn for their encouragement and solidarity during this process. My family, of course, deserve thanks as well for their love and support.

Introduction

Background

Nearly 38 years after the passage of what is now known as the Magnuson Stevens Fishery Management and Conservation Act (“the act” or “MSA”), conservation groups in the United States are raising the flag of victory over ending overfishing in American waters (The Ocean Conservancy, 2013). Of the hundreds of managed fisheries stocks in the United States, only 9% of assessed stocks are still subject to overfishing (NMFS, 2014). Fishing is more profitable than it has been in years, landings are higher than they have been in years, depleted stocks are largely on the mend (The Ocean Conservancy, 2013). The path to the present has not been without controversy: over the course of its thirty-eight year existence and through two reauthorizations, the MSA has been hotly contested in court.

In 2012, Conservation Law Foundation attorney Peter Shelley wrote an article in which he described the experience of going from suing the government for more conservation-minded fisheries policy to intervening on behalf of the National Marine Fisheries Service (NMFS) to help defend a NMFS-approved precautionary amendment to the New England groundfish fishery management plan—a plan sanguine Shelley characterized as possibly being “a turning point for both the fish and the fishermen of New England” (2012, p. 70). That Mr. Shelley would even consider the possibility that the MSA is meeting its conservation mandate supports the notion that things have changed since he first sued NMFS in 1991 (*Conservation Law Foundation of New England v. Mosbacher*, 1991). Case studies on the MSA are not uncommon, but it has been over a decade since public work has been done on the history of federal fisheries litigation viewed in aggregate.

A striking visual reference to understand the state NMFS found itself in at the turn of the 21st century is seen in figure 1.

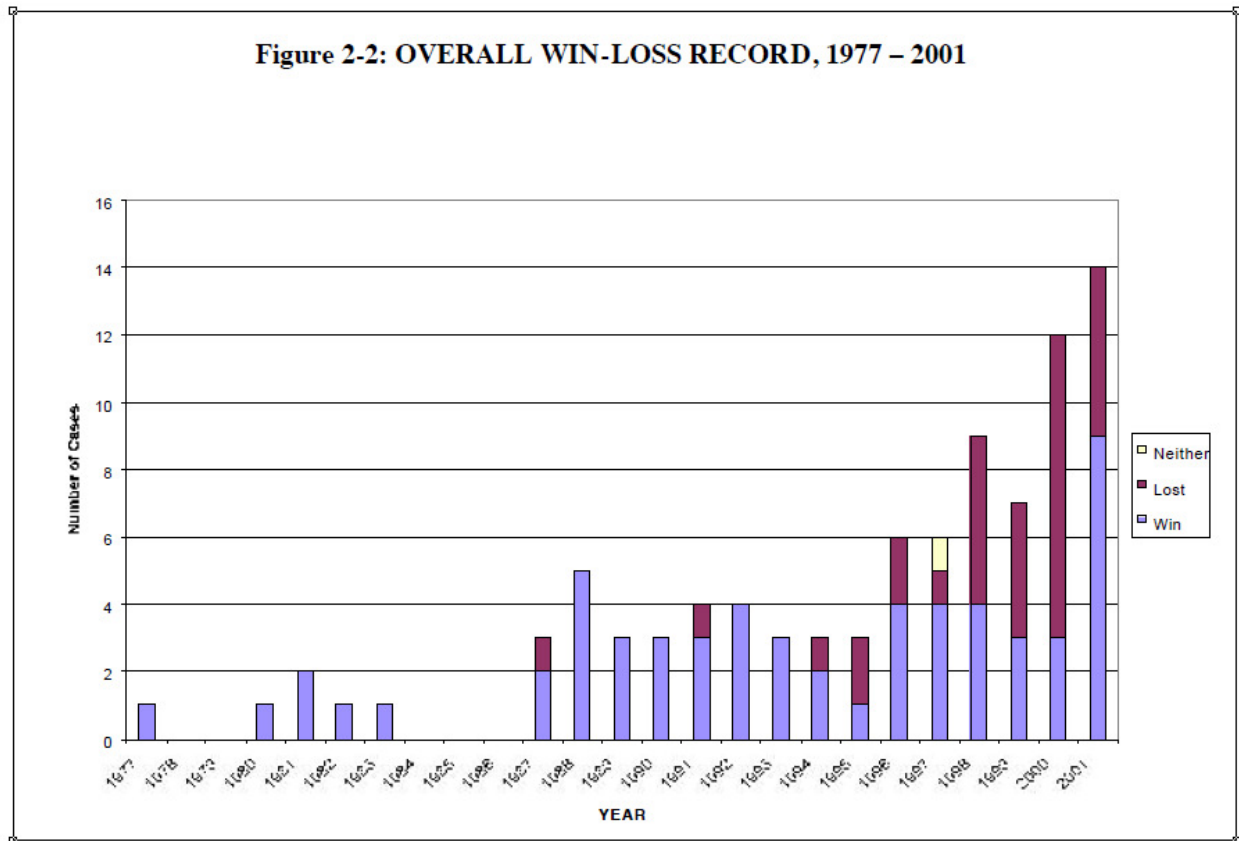


Figure 1: NMFS Win-Loss through 2001)

(Source: Gade et al. 2002)

For the first couple decades of its existence, the act saw very little court involvement in its interpretation. In 1996, the original act was amended with the Sustainable Fisheries Act and litigation over federal fisheries management soared to unprecedented levels. The new statutory requirements introduced in the 1996 reauthorization were a radical departure from the first two decades of the act (Layzer, 2006; Stanford, 2011). With statutory language amended to provide

actionable ways to ensure conservation considerations into the management of fisheries, the door for numerous successful challenges by conservation and numerous counter-challenges by fishing interests had opened (Fleming, Shelley, & Brooks, 2003). Litigation came from all sides-- conservation groups sued to compel the National Marine Fisheries Service (NMFS) to abide by the conservation terms mandated by the MSA; fishing interests sued to compel NMFS to balance these conservation mandates with due consideration for the well-being of fishing communities also stipulated by the act.

People took notice of what was happening. The chart on the previous page is taken from a 2002 report published by the National Academy of Public Administration (NAPA) entitled “Courts, Congress, and Constituencies: Managing Fisheries by Default” (Gade et al., 2002). This report attempted to answer two questions: Why was NMFS suddenly the subject of so many lawsuits; and (perhaps more importantly) given the highly deferential character of American courts when it comes to technical or scientific decision making (*Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 1984), why was NMFS losing so many lawsuits? The NAPA report was the most systematic attempt to describe what was happening and offer potential solutions to the problem, but the conversation over fisheries litigation was not limited to hired technocrats.

Academics, lawmakers, and fisheries managers all weighed in on the issue. In August 2001, the 131st annual meeting of the American Fisheries Society (AFS) devoted an entire panel discussion to the question of the costs and benefits of the role of litigation in fisheries management and conservation (Fitzgerald, 2001). And in 2002, the U.S. Senate held a hearing on fisheries management in which Senators from both sides of the aisle weighed in on the issues facing fisheries (*Oversight on Management Issues at the National Marine Fisheries Services* 2002). The dominant trope of this hearing, offered by Senator Kerry (D-MA) and echoed by Senators

Breaux (D-LA) and Snowe (R-ME) was that litigation undercut the mission of the National Marine Fisheries Service by diverting resources, distracting managers, and replacing agency and council judgment with that of the courts.

Was this hand wringing justified? Litigation is described by Birkland (2011) as a normal part of the policy process required to specify how the law applies to actual situations. Describing the process of establishing policy in administrative law generally, and environmental law specifically, Kubasek and Silverman (2014) explain that given vague or contradictory mandates, agencies must make a reasonable attempt to interpret congressional intent and draft rules accordingly, but that the frequent lack of statutory specificity necessarily opens this process up to court involvement. Arguing that plaintiffs in environmental litigation are typically motivated by either wanting to change agency action seen as too permissive or too restrictive, Kraft (2011) has shown that as the final word in interpretation of statutes, the courts have the power to compel agencies to carry out enforcement of environmental policies or restrict agency overreach. So litigation does not only clarify law, but can also allow stakeholders to exercise influence beyond notice and comment rulemaking.

Speaking on the nature of fisheries specifically, Shelley and other panelists in the 2001 AFS panel moved past descriptive characterizations of environmental litigation and offered a few normative assertions (Fitzgerald, 2001). Shelley opined that litigation was required to weave statutory conservation requirements mandated by congress into the regulatory fabric of the law created by agencies, but that once an agency had achieved some modicum of balance in accordance with the letter of the law, the litigation would subside (2001). Suzanne Iudicello and NOAA counsel Mariam McCall both pointed out that in addition to providing specificity in the law, a benefit to litigation is agency reform both to maximize the likelihood of prevailing in

court and to minimize the likelihood would-be plaintiffs would file a lawsuit in the first place. The research questions I ask here each assess whether the patterns of Federal fisheries rulings since 2000 support the positions offered by Shelley, Iudicello, and McCall.

The first research question is whether the turn-of-the-century spike was an unusual event. Was the rise in litigation starting in the late 90's a one-time event, the beginning of a lasting shift towards Federal Judiciary involvement in the NMFS's actions, or an example of a pulse of litigation that follows substantive amendments to a statute?

The second research question is whether the model of agency reform in response to court losses is reflected in the data. Did losses on strictly procedural grounds remain a constant proportion of total losses following the adoption of formalized procedural compliance measures by NMFS in 2000? Or has there been a sustained reduction in purely procedural losses during the study period, as the model espoused by Shelley, Iudicello and McCall predicted?

The third research question looks at the sponsors of litigation. The passage of the sustainable fisheries act in 1996 introduced conservation mandates providing justiciable fodder for environmental interests. But the Regulatory Flexibility Act becoming judicially reviewable in 1996 provided an avenue for small-business fishing interests to sue. Have decisions since 2000 been evenly divided between plaintiffs? Does NMFS have different win-loss records against challenges from different sorts of plaintiffs? Does this change over time?

This paper begins with a brief review of the of the act. I then describe methods employed in this research. Results follow, with both visual depictions of the data and brief analytical summaries of how these findings relate to the research questions. The discussion section begins with a very

brief review of the role litigation plays in the policy process and then transitions into a discussion of how litigation influenced the evolution of the MSA and NMFS.

The timing of this research is not coincidental. The MSA is up for reauthorization and in 2014 both the House and Senate are drafting bills to amend the law. I believe that major amendments to the law have the potential to invite new pulses in litigation if established precedent is supplanted by substantially different or ambiguous statutory language. The paper concludes with a plea to lawmakers to exercise caution when reauthorizing the MSA if prevention of another round of litigation is considered desirable. The position of advocating legislative caution is neither unique nor original (Bullard, 2013; McClenachan, 2014). But the methodology and results of this inquiry are unique and tell a story of growth and change in the management of the nation's living marine resources.

Overview of the Magnuson Stevens Act

Enacted in 1976, what is now known as the Magnuson Stevens Fishery Conservation and Management Act is the preeminent statute governing commercial and recreational fisheries in the federal waters of the United States (*Magnuson-Stevens Fishery Conservation Management Act As Amended Through January 12, 2007*). Although the Act is one of several statutes governing the conservation and exploitation of U.S. natural resources, the council system responsible for developing regional plans has no analogue elsewhere. Under the act, the nation's fisheries are divided into eight fishery management regions, each of whose fisheries are managed by a fishery management council (FMC or "council"). Specific membership distribution varies from council to council. Each council comprises a combination of government officials drawn from relevant agencies at different levels of government and up to seventeen at-large qualified members recruited from industry, academia, or conservation. The councils draft fishery management plans

(FMPs or “plans”) for the more than 500 stocks of fisheries in America’s Exclusive Economic Zone (EEZ).

In formulating plans, the councils are advised by a number of supporting organizations that parse the data and analyses generated by one of the six regional fisheries science centers operating under NOAA. Each council also has a science and statistical committee (SSC) charged to “Assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council’s development and amendment of any fishery management plan.”(*Magnuson-Stevens Fishery Conservation Management Act As Amended Through January 12, 2007*). The SSCs have functioned as the principle technical advisory body to the FMCs. Following the 2006 reauthorization their role has become much more central in setting Total Allowable Catch/Allowable Catch Limits (Baur, Eichenberg, & Sutton, 2007).

Under the act, the NOAA is to have a limited role in the formulation of specific management approaches to fish stocks. The councils drafts plans that are then submitted to NOAA for review to ensure compliance with the provisions of the act. The Secretary of Commerce can approve, reject, or partially approve the FMP. Furthermore, the Secretary must “fully approve an FMP or amendment unless it discovers a clear inconsistency with the MSA or other applicable law” (Matulich, Seamon, Roth, & Eppink, 2007). Because the Secretary of Commerce ultimately approves plans, NMFS is delegated responsibility for implementing the plans by enacting regulations to execute their requirements. Not having the privilege of rulemaking but rather occupying an advisory role, the councils themselves are immune to litigation.

Methods

The topic of fisheries litigation has an extremely sparse literature outside of the case studies found in law reviews of individual and highly influential cases. The wide-angle historical view taken by analyzing many cases required creatively blending methodologies from numerous disciplines. The findings of the NAPA report that provided the first comprehensive analysis of fisheries litigation is the starting point to my analysis of the record since then. The data for my analysis comes from the record of court decisions over federal fisheries management since 2000 and does not include suits settled out of court.¹

The NAPA report was published in 2002 and examines litigation from the establishment of NMFS through to 2001. This thesis is neither a criticism nor continuation of the NAPA report. Rather, the NAPA report piqued my interest in the topic of fisheries litigation analyzed in aggregate and provided some methodological beginnings for this work. The NAPA report broke down NMFS win-loss record by year, statute, and plaintiff type. However, based on suggestions for how the NAPA method could be improved upon to provide more descriptive results for the

¹ I chose 2000 as the starting date for my analysis to provide two years of overlap with the NAPA report before examining new data. This year was also chosen because it coincides with NMFS's adoption of an implementation plan in response to the "Kammer Report" released earlier that year. This independent review was commissioned in response to the struggles NMFS was having throughout the latter half of the 90's. The publication of this report and NMFS adoption of a plan to address the weaknesses contained therein provide a meaningful starting point for this analysis.

question I wished to ask, I departed from the NAPA methodology in a few critical areas discussed below.²

One-hundred and fifty-eight cases were compiled by running several successive searches in each of the three major legal databases.³ I made numerous passes through each of these databases in an attempt to provide as comprehensive a record as possible. In addition to searches for rulings pursuant to the MSA and litigation where NMFS was a named defendant, searches were also conducted for each Secretary of Commerce since 2000.

The NAPA report conducted its analysis by statute rather than by programmatic theme or agency mission. NMFS is obligated to manage marine fisheries but is also responsible for partial implementation of Endangered Species Act and Marine Mammal Protection Act.⁴ These two missions overlap sometimes, but not always. In many ways, these two missions are fundamentally different. Because the reauthorization of the MSA is the cause célèbre inspiring this research, I imposed a thematic division between fishing and non-fishing cases and focused only on the regulation of fishing activity rather than other NMFS missions. I divided the cases into two major groups “Fishing” and “Non Fishing”. The “fishing” category comprised all 87 cases where the MSA was contested, as well as a nine cases where the MSA itself was not being

² Suggestions for departures from the NAPA methodology were provided mostly by Mr. Sam Rauch, formerly of NOAA General Counsel.

³ Bloomberg Law, LexisAdvance, and WestlawNext collectively dominate the market for proprietary legal search tools. A written request for 14 years of records from the official NMFS litigation docket was met with silence from NOAA General Counsel for Fisheries and Protected Resources.

⁴ Fish and Wildlife Service is the other agency responsible for the ESA and MMPA.

contested but NMFS decisions governing the activity of fishing were claimed to be running afoul of other statutes (such as the National Environmental Policy Act or the Endangered Species Act). Cases that did not dispute NMFS regulation of fishing activity were counted as “non-fishing”. Examples of non-fishing cases are cases governing habitat considerations for anadromous fish and cases governing marine mammals where fishing was not an issue.⁵ These 62 non-fishing cases received no further analysis.

For the purposes of this thesis, all cases are treated as equivalent units of analysis. So it is important to acknowledge that while the overall numbers of successful court challenges may indicate that one group or one year has had disproportionately more impact on the case law of the MSA, without a means of evaluating relative influence of individual cases, this cannot be claimed with certainty. An assessment of relative influence could possibly be done with a look at subsequent case citations (Landes, Lessig, & Solimine, 1998). Adopting a more microscopic method, Macpherson and McCall have done a comparative assessment of the sort of relief offered to plaintiffs in MSA cases (Macpherson & McCall, 2003) and this could also provide a means of differentiating one decision from another. But these forms of analysis are outside the scope of this thesis.

The simplest analysis was NMFS total win/loss record since 2000. For this analysis, two of the NAPA coding rules were followed to the letter: If NMFS lost any point in the lawsuit, the suit

⁵ My favorite of these cases is *La Jolla Friends of the Seals v. Natl. Oceanic & Atmospheric Administration Natl. Marine Fisheries Service*. (403 Fed. Appx. 159). In this case a local conservation group sued NMFS over casual advice to city officials in La Jolla that suggested they were within their rights to pursue means of removing a herd of seals that had taken over a saltwater beachside children’s pool.

was counted as a loss; and in cases of appeal, the only decision that was counted was that from the highest court.⁶ Decisions regarding purely procedural matters such as change of venue or award of attorney's fees were considered "housekeeping" and did not form part of the record up for analysis. The NAPA breakdown of plaintiffs is one I followed closely. "States", "Environmentalists", and "Fishers", are three categories I used, but for the latter two I used the terms "conservation" and "industry" respectively. Rather than the catchall "other", I added the plaintiff types "recreational fisheries association" and "municipal utilities", to reflect the full range of interests who brought lawsuits during the period examined.

The NAPA report also examined the win-loss record statute by statute. Because plaintiffs frequently "threw the book" at NMFS, but prevailed on fewer than the total number of claims in the lawsuit, I coded for every statute at issue in every lawsuit, but I qualified NMFS losses according to the measures "substantive" and "procedural". Substantive losses are losses where an agency abided by rules of civil procedure in considering an action but still undertook an action the court found unreasonable according to the statute under which the action was taken. Procedural losses are losses where the agency was found to have some procedural violation in the course of an agency action, even if the courts found the action itself within the bounds of law (Daly, 2012). When NMFS lost on both substance and procedure, the record reflects this.

⁶ This actually changed the results of two years of overlap because 5 of the 26 cases that were part of the analysis for 2000-2001 had appellate decisions in later years.

Empirical legal research is a comparatively new discipline and little exists in the way of guidance.⁷ Following the advice of Epstein and Martin, I attempted to avoid data dimensions requiring much discretion on my part and I developed a coding scheme with exclusive categories which could be isolated for analysis (Epstein & Martin, 2010, Chapter 37).

Data Dimensions or Measures	Case Name	Year	Plaintiff Type	Win/Loss	Fishing Y/N	Substantive/ Procedural/ Both
Sample Entry	Blue Water Fisherman's Association v. Mineta 122 F. Supp.2d 150	2000	Commercial Fishers	Loss	Y	Substantive

Figure 2: Data Coding Scheme

All data were tabulated in a Microsoft excel spreadsheet. Analytics and visualizations were created using Tableau data analytics software. I was the sole coder.

⁷ The Journal of Empirical Legal Studies was founded one decade ago

Results:

Color and Language Conventions

All results are presented as visualizations made with Tableau software.

Two conventions are used throughout.

- 1) Where lighter and darker shades of the same hue are adjacent in the charts, the lighter shade represents decisions where NMFS lost the case.
- 2) The terms “win” and “loss” refer to the NMFS perspective. So “conservation loss” means that the conservation was the plaintiff and NMFS lost the lawsuit.

All Fishing Decisions Since 2000

ALL CASES
FISHING

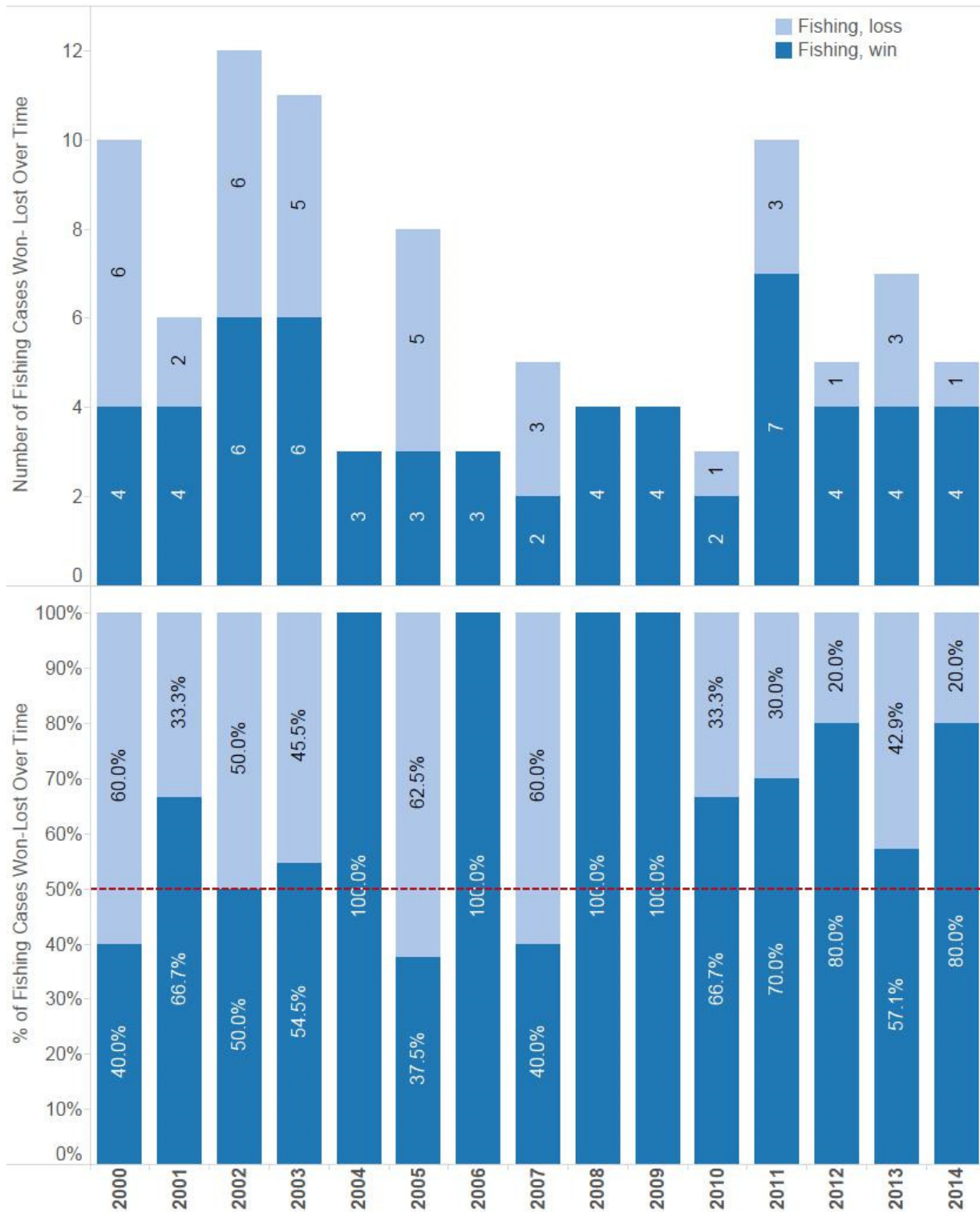


Figure 3. NMFS Win-Loss record by absolute number and by percentage 2000-2014

Overall Trends in Volume of litigation and NMFS win-loss record

Figure three addresses the first research question. Displaying both the volume of litigation and NMFS's win-loss record since 2000, it shows that litigation did diminish sometime in the middle of the decade. After peaking in 2002, fisheries litigation dropped slightly in 2003 before a precipitous drop in 2004 only to pick up again sharply four years after the passage of the 2007 reauthorization.. Cases did not reach double digits again until 2011, when 10 fishing cases were decided.

The turn of the century spike hit double digits in 2000, four years after reauthorization. Likewise, the 2011 spike hit double digits four years after reauthorization. However the similarities are imperfect. The years 2000-20003 saw three years with ten or more court rulings, whereas the spike in 2011 seems like a much more isolated event. Additionally, the years 2004-2011 had five of seven years with four or fewer rulings, whereas in the years following 2011, no year has had fewer than five rulings handed down.

The next chart looks presents only the losses (light blue) seen in the top chart above, but breaks them down by how NMFS lost the lawsuit. Were the losses on substantive grounds, procedural grounds, or both?

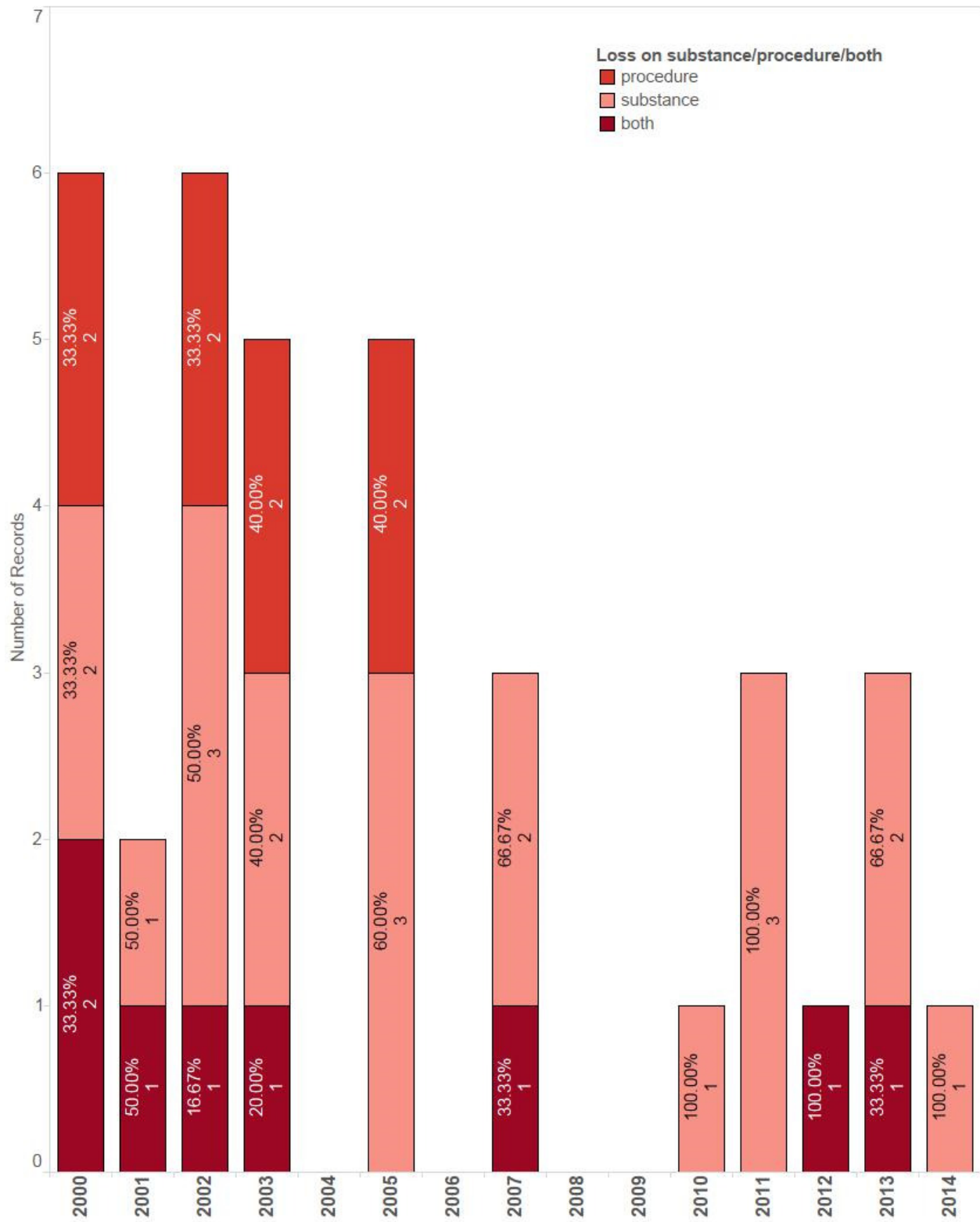


Figure 4. NMFS Losses on substance, procedure, or both since 2000

NMFS's losses by substance or procedure

Figure 4 shows how the nature of losses has changed over time. 2005 was the last year where NMFS lost on purely procedural grounds. As the federal agency tasked with implementing the MSA, The National Marine Fisheries Service (NMFS) has had to defend its management decisions and rulemaking processes to federal judges asked to interpret points of law pursuant to the implementation of the MSA. During the turn of the century spike, NMFS was frequently losing lawsuits on non-compliance with rule-making process rather than on the substance of the rules (Bryant, 2004; Gade et al., 2002). In response to these losses, NMFS ultimately formalized its mechanisms to comply with procedural requirements of administrative law (National Marine Fisheries Service, 2000). Answering the second research question, the lack of strictly procedural losses any time after 2005 lends support to the idea that NMFS's efforts to establish mechanistic processes for addressing procedural statutes like the RFA and NEPA were rewarded with fewer successful challenges hinging entirely on procedural failures within the agency. Since then, of the nine cases lost, only two have been lost both on substance and procedure.

The next two charts break down the sponsors of litigation. The first chart is a pie chart representing all fishing cases against NMFS and color-coded to indicate NMFS's win-loss record by plaintiff type. The bar chart on the page following the pie chart breaks these results down by year since 2000. Consistent with the color and language conventions, lighter shades indicate that NMFS lost the challenge, and "Conservation loss" means that the plaintiff was conservation, but it was NMFS that lost the lawsuit.

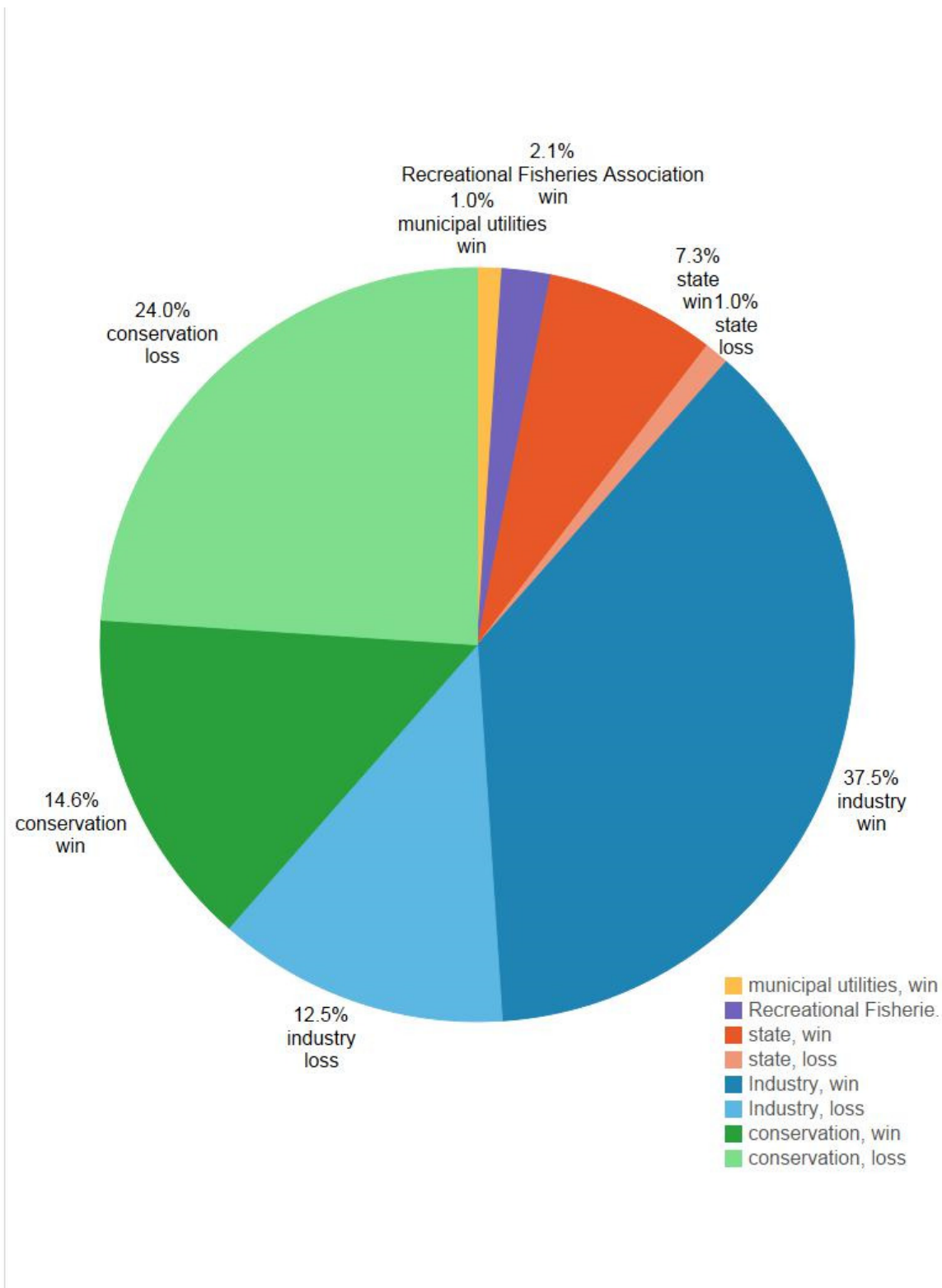


Figure 5. NMFS Wins and losses by plaintiff type overall for all years 2000-Present

Overall volume of litigation and win-loss by plaintiff type

Figure 5 provides an overview as to who has brought fishing lawsuits since 2000. Fully 50% of fishing cases were brought by industry, with 39% brought by conservation. However NMFS lost over half of the cases brought on by conservation and lost less than a third of the cases by industry. In absolute numbers, NMFS also lost nearly twice the number of conservation cases as industry cases, indicating that conservation challenges to MSA implementation were successful more often than fishing industry challenges. This chart does not speak to the overall impact of these challenges but does show which plaintiff type was more or less successful in challenging NMFS in court.

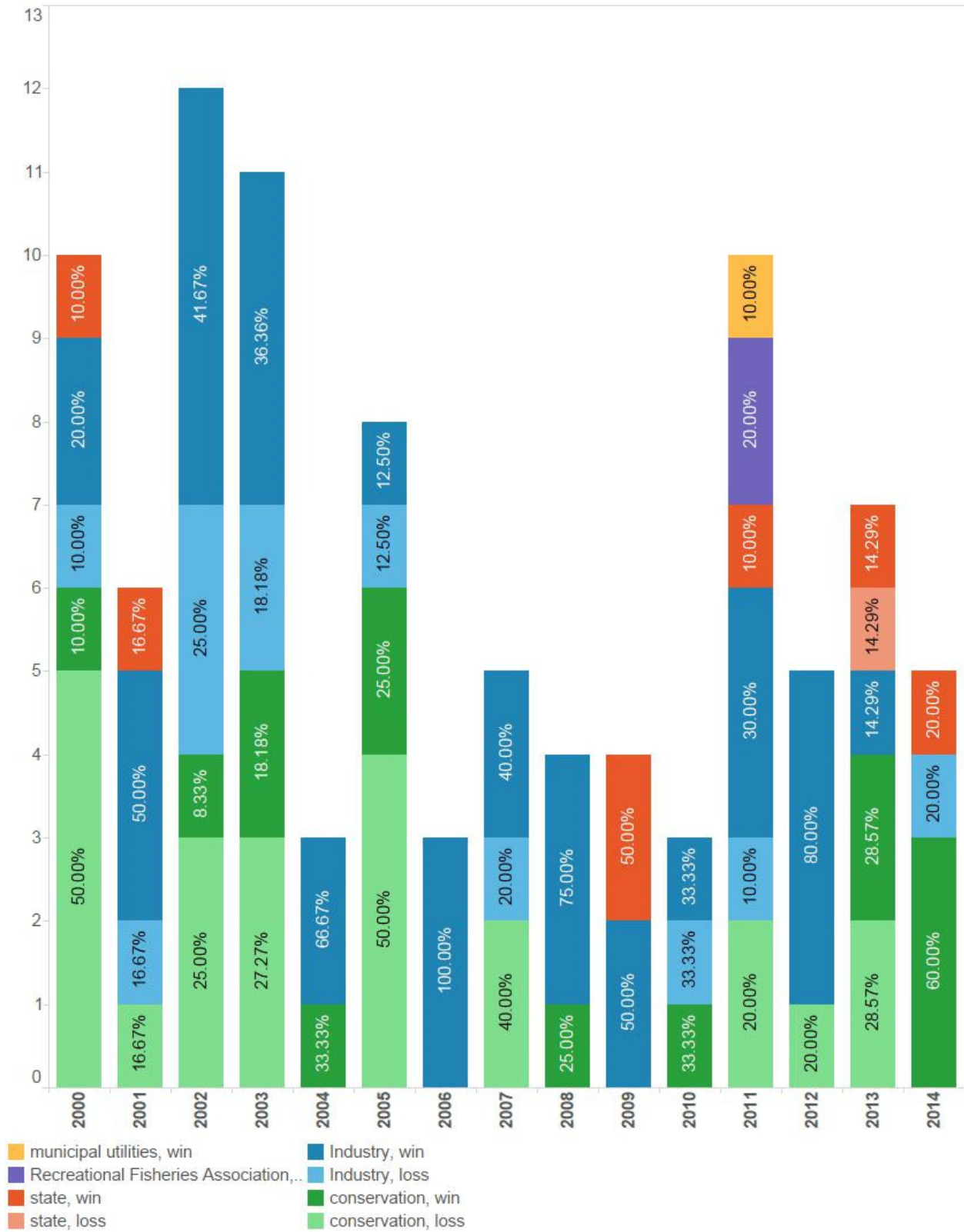


Figure 6. NMFS Wins and losses by plaintiff type over time.

NMFS win-loss against plaintiff type by year

Figure 6. Shows the win/loss record of NMFS against plaintiff types over time. A number of things are evident in this graphic: Not only has the volume of litigation generally subsided but the ability of particular types of plaintiffs to win in court has also diminished. NMFS lost 83% of challenges from conservation in 2000, 60% in 2003, 66% in 2005, but only 50% in 2013. In 2014, NMFS has thus far withstood all three conservation challenges. Fishing industry challenged NMFS in all years, but had more than one successful challenge only in 2002-2003, where they succeeded in 38% and 33% of cases respectively. NMFS prevailed on all conservation challenges in four years, but prevailed against all fishing industry challenges in six years.

Answering the third research question, the breakdown of wins and losses by plaintiff types shows that both sides have had some success in court. Although more cases overall were brought on by fisheries, the total number of wins and the ratio of wins to cases filed goes to conservation interests.

Discussion

Commenting on the rapid increase in litigation in the late 90's, a few attorneys familiar with natural resource litigation offered views that diverged from those found in the Senate Hearing (*Oversight on Management Issues at the National Marine Fisheries Services* 2002) and the NAPA report (Gade et al. 2002). These attorneys suggested not only that litigation was a normal part of the policy process, but also that a "pulse" of litigation is often required both to clarify the boundaries of vague or ambiguous statutes and balance the competing mandates calling for simultaneous conservation and exploitation of natural resources (Iudicello, 2001; McCall, 2001;

Shelley, 2001). Commenting on the 2007 reauthorization of the MSA, Gehan and Hallowell (2012) suggest that statutory changes result in a predictably cyclical uptick in litigation followed by a drop and stabilization to lower number as the terms of the law are applied to real cases. Taken as a whole, the data lend support to these assertions.

Figure 3 lends support to the view offered by Gehan and Hallowell (2012) that changes in the law lead to rises in litigation as the precise meaning behind the terms of the law are disputed in court. Answering the first question, figure 3 suggests that the first spike in litigation was unique in its duration and intensity, but that it could be an example of the pattern of a spike in litigation following any major revision to the law. However, it is important to remember that not all of the increase in litigation during the early spike can be squarely traced back to new provisions in the MSA (Gade et al., 2002). Although these are fishing cases, the amendment of the Regulatory Flexibility Act (RFA) to include the Small Business Regulatory Enforcement Fairness Act in 1996 allowed RFA compliance to be judicially reviewable. Since most business regulated under the MSA qualify for economic impact consideration under the RFA, NMFS was forced to integrate both the new provisions of the SFA and the newly justiciable RFA in the years following 1996 (Macpherson & McCall, 2003; *Oversight on management issues at the National Marine Fisheries Services [sic]*, 2002, n. Testimony of Penelope Dalton). RFA justiciability opened the door for an entirely new suite of procedural challenges from fishermen claiming NMFS failed to comply with the RFA. So while some similarity exists between the first spike and the most recent spike, a procedural requirements that was new to the agency in 1996 was no longer new in 2011.

Figure 4 addresses the second question and shows whether NMFS losses from 2000-2014 were due to procedural violations, substantive violations, or both. The data in figure 4 strongly suggest

that the formalized processes for complying with procedural mandates of law were successful in insulating NMFS from successful challenges on purely procedural grounds. NMFS formally committed itself to more standardized procedures for compliance in late 2000. Although NMFS continued to suffer purely procedural losses in 2002, 2003 and 2005, there have been no cases lost on purely procedural grounds since 2005.

Figures five and six show that conservation has been proportionally more successful in challenging NMFS, but that successful court challenges were not limited to conservation interests. That conservation plaintiffs won more cases overall suggest that the establishment of case law generally moved in the direction of conservation, but this is far from the rule. Fishing interests did consistently win cases throughout the time period. Also important is to acknowledge that while the overall numbers of successful court challenges may indicate that conservation has had disproportionately more effect on the case law of the MSA, without a means of evaluating relative influence of individual cases and then aggregating that data into groups of cases by plaintiff or legal objective, it cannot be claimed that conservation has had more impact on the law. They have just won more cases. An assessment of relative influence could possibly be done with a look at subsequent case citations (Landes et al., 1998) but this analysis is outside the scope of this thesis.

What figures 3-6 all suggest though is that the record as analyzed by these methods is broadly consistent with the concept offered by Shelley, McCall, and Iudicello of a management complex of a law and an agency both changing under the influence of legal challenge from stakeholder groups. The bar charts above all show meaningful changes in the number of cases decided, the ways in which the cases were lost, and who was challenging NMFS over time. Understanding the temporal flow of these changes requires looking at the evolution of the act.

During the first twenty years of its existence the law was ambiguous as to how NMFS was to manage “wise use” of natural resources. Absent a hierarchy of management priorities, competing mandates within the MSA allowed for sustained overfishing. In response to overfishing and a four year lobbying effort by the Marine Fish Conservation Network and other environmental NGOs, congress passed the Sustainable Fisheries Act (SFA) in 1996 and the provisions of this act dramatically altered ability to sue to enforce specific resource-management tasks of the MSA (Layzer, 2006). Central to the SFA’s implementation is the concept of maximum sustainable yield (MSY)—MSY defined a threshold point for determining whether or not a stock was overfished. With a new focus on conservation, the SFA introduced “1. The removal of discretion over the definition of overfishing⁸, and required the development of a plan for rebuilding of overfished stocks within a specified time period (usually 10 years)⁹; (2) new requirements to reduce bycatch and waste to the extent practicable; and (3) that FMPs be amended within 18 months with provisions for designating and protecting essential habitat for fisheries” (*Magnuson-Stevens Fishery Conservation Management Act As Amended Through January 12, 2007*).

However positive the terms quoted above seem, it took substantial litigation to parse out the precise meaning of the conservation provisions of this reauthorization. Fully four years after the reauthorization took effect, Chief Judge for the D.C. Circuit Court of Appeals Harry Edwards delivered one of the most stinging and celebrated opinions in the history of fisheries litigation.

⁸ Put otherwise, it defined overfishing and no longer allowed OY to trump MSY

⁹ Note that New England and some other councils delayed action on the FMPs until the year 10. This prompted Congress to both define overfishing and to force action *immediately* if a fishery is overfished or if overfishing is occurring.

Presented with an argument that the Secretary of Commerce was within his rights to approve an FMP for summer flounder that had an 18% likelihood of meeting conservation goals pursuant to the SFA, Judge Edwards caustically observed that

The disputed 1999 TAL(sic.) had at most an 18% likelihood of achieving the target F. Viewed differently, it had at least an 82% chance of resulting in an F greater than the target F. Only in Superman Comics' Bizarro world, where reality is turned upside down, could the Service reasonably conclude that a measure that is at least four times as likely to fail as to succeed offers a "fairly high level of confidence. (*Natural Resources Defense Council v. Daley*, 209 F.3d 747, 2000)

This case is mentioned because it underscores the point that although the 1996 act placed a new premium on conservation in fisheries management in the U.S., under the reauthorized law a conservation group alleged, and a Court of Appeals judge agreed with them, that the fisheries management complex in the United States remained capable of approving a substantive decision completely outside the bounds of the law. This ruling clarified the requirements NMFS.

Prior to the clarifications in the law provided by the 2007 reauthorization, the competing mandates between conservation requirements in the law and the levels of exploitation called for in individual plans sometimes put NMFS in the unenviable position of needing to reject a plan whose compliance with the act was marginal (McCall, 2001). While Matulich et al. (2007) are champions of council prerogatives, the councils and the council process have detractors. (Hanna, 2006; United States Commission on Ocean Policy, 2004). In 2003, The Pew Charitable Trusts funded a study into the council process that suggested widespread conflict of interest and an overall lack of accountability and disregard for technical advice (Eagle, Newkirk, & Thompson, 2003). This disregard for technical advice is evident in the case history of *NRDC v. Daley* (209 F.3d 747, 2000). NMFS's meek defense of approving an FMP with an 18% chance of meeting

conservation goals was that it was substantially better than the previous version of the FMP that had only 3% chance of meeting conservation goals as specified by the SSC.

But much has changed since Eagle's report. In 2007, the act was reauthorized yet again. This version maintained the definition of MSY but replaced "maximum sustainable yield" with "optimum yield". This move allowed for a further reduction in total allowable catch by defining optimization not only in terms of maximum harvestable biomass supported by the ecosystem over the long term (MSY) but rather as the harvest

Which will provide the greatest overall benefit to the Nation...prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and...in the case of an overfished fishery provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.*(Magnuson-Stevens Fishery Conservation Management Act As Amended Through January 12, 2007, 2007)*

Additionally, the 2007 reauthorization addressed the issue of overcapacity in the fishing fleet by promoting capacity reductions through limited access privilege programs, furnished a more protective management regime by mandating annual catch limits¹⁰ in management plans, shortening the amount of time allowed for phase in of measures to end overfishing and specifically requiring councils to follow the advice of the scientific advisors in setting ACLs (Dell' Apa et al., 2012). Under the 2006 reauthorization, science came to a position of preeminence in the setting of hard cap fishing limits in FMPs. Councils were no longer permitted to disregard the advice of the science and statistical committees in drafting FMPs and each FMP

¹⁰ An Annual Catch Limit is a hard ceiling on the amount of fish from a managed stock that can be caught in a given year.

had to specify a total allowable catch for each managed stock (Shelley, 2012). However, while the 2007 reauthorization presented clear improvements for the ecological health of fish stocks, it also contained provisions benefiting the fishing industry. The hard limit imposed on allowable catch was met in certain cases with a new flexibility in how that catch was acquired by catch share-holders if the fishery is managed under a catch-share system (Sullivan, 2014). On the West coast and Alaska, the market incentives, hard catch limits, and stringent bycatch provisions of 2007 have created conditions amenable to the emergence of fishing cooperatives whose success has been remarkable (De Alessi, Sullivan, & Hilborn, 2014).

Beyond the legislative history, the data presented in this thesis show that although the most substantial transformations of the act happened in revised legislation, the judiciary was involved as well as various stakeholders used the courts to clarify the terms of the law and to compel NMFS to act according to their interests. The evolution of the MSA and its implementing agency found expression not just in the halls of Congress or NMFS headquarters in Silver Spring, but also in federal courtrooms across the country.

Conclusion

Collectively, the data suggest that stakeholders in the fishery management process are willing to sue incorporate their interests and interpretations into the praxis of the law. They have done so throughout the past two decades. But challenges to the law have typically followed changes to the law. The first major change to the MSA in 1996 was followed by a sustained and intense period of litigation. The more modest and less ambiguous amendments to the law made in 2007 seem to have thus far avoided this fate--although 2011 was a very litigious year, and no year since 2011 has seen fewer than five cases, compared with the 71% of years 2003-2011 that had

fewer than five cases decided. Regardless, since the turn-of-the-century spike, the numbers are down substantially and NMFS's win record is much improved.

The same person who vociferously criticized the act's implementation is currently lauding the MSA both for its legal clarity and its adherence to its conservation mandate (Shelley, 2012). The act is also being celebrated for its success in rebuilding the nation's fish stocks and improving profitability for the fishing industry (Bullard, 2013; NMFS SOS 2014; The Ocean Conservancy, 2013). The law did not evolve independent of the stakeholders it serves. On the contrary, the history of fisheries management in the United States is a history of stakeholders exercising influence through the courts. Stakeholders required judicial intervention both to compel NMFS to abide by its mandates and to unambiguously and precisely define those mandates. But eighteen years after the first reauthorization and seven years after the second, the profitability and sustainability of fisheries coupled with the relatively low court-involvement in fisheries management suggest that the conflict has stabilized and the management complex is working for fishermen and conservation interests alike. The introduction of ambiguous language or regulatory flexibility that supplants current clarity and unequivocal hierarchies of management priorities invites the cycle of extensive litigation in search of statutory meaning to begin anew.

Works Cited

- Baur, D. C., Eichenberg, T., & Sutton, M. (2007). Domestic Fishery Management. In *Ocean and Coastal Law and Policy* (1st ed., pp. 275–301). Chicago, Illinois: American Bar Association.
- Birkland, T. A. (2011). *An Introduction to the Policy Process: Theories, concepts, and models of public policy making*. Armonk, New York: M.E. Sharpe.
- Bryant, B. C. (2004). Forensic Fisheries Science: Literature Review and Research Suggestions. *Marine Fisheries Review*, 66(1), 1–15.
- Bullard, J. K. Written Testimony by John K. Bullard, Northeast Regional Administrator for the National Marine Fisheries Service National Oceanic and Atmospheric Administration U.S. Department of Commerce (2013). Washington, D.C.: Government Printing Office.
- Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 837 467 U.S. (U.S, Supreme Court June 25, 1984).
- Conservation Law Foundation of New England v. Mosbacher, Not Reported in F. Supp. (United States District Court, District of Massachusetts August 28, 1991).
- Daly, P. (2012). *A theory of deference in administrative law: Basis, application, and scope*. Cambridge: Cambridge University Press.
- De Alessi, M., Sullivan, J. M., & Hilborn, R. (2014). The legal, regulatory, and institutional evolution of fishing cooperatives in Alaska and the West Coast of the United States. *Marine Policy*, 43, 217–225. doi:10.1016/j.marpol.2013.06.006

Dell’Apa, A., Schiavinato, L., & Rulifson, R. A. (2012). The Magnuson–Stevens act (1976) and its reauthorizations: Failure or success for the implementation of fishery sustainability and management in the US? *Marine Policy*, *36*(3), 673–680.

doi:10.1016/j.marpol.2011.11.002

Eagle, J., Newkirk, S., & Thompson, B. H. (2003). *Taking stock of the regional fishery management councils*. Washington, D.C.: Island Press.

Epstein, L., & Martin, A. D. (2010). Quantitative Approaches to Empirical Legal Research. In *The Oxford Handbook of Empirical Legal Research* (p. 1094). Oxford, England: Oxford University Press.

Fitzgerald, K. M. (2001). *Symposium on the Costs and Benefits of Litigation in Fishery Management* (Vol. 7). *Ocean and Coastal Law Journal*. Retrieved from http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/occoa7§ion=6

Fleming, R., Shelley, P., & Brooks, P. M. (2003). Twenty-Eight Years and Counting: Can the Magnuson-Stevens Act Deliver on Its Conservation Promise. *Vt. L. Rev.*, *28*, 579.

Gade, M. A., Garcia, T. D., Howes, J. B., Schad, T. M., & Shipman, S. (2002). *Courts, Congress, and Constituencies: Managing Fisheries By Default* (p. 185). National Academy for Public Administration.

Gehan, S. M., & Hallowell, M. (2012). Battle to Determine the Meaning of the Magnuson-Stevens Fisheries Conservation and Management Reauthorization Act of 2006: A Survey of Recent Judicial Decisions. *Ocean & Coastal LJ*, *18*, 1.

- Hanna, S. (2006). Will structural reform fix fishery management? Commission policy recommendations and the US regional fishery management council system. *Bulletin of Marine Science*, 78(3), 547–562.
- Iudicello, S. (2001). Where the Rubber Meets the Road: Stakeholders Are the Take Reduction Teams of the Marine Mammal Protection Act. *Ocean & Coastal LJ*, 7, 49.
- Kraft, M. E. (2011). *Environmental Policy and Politics* (5th ed.). Boston, MA: Longman.
- Kubasek, N., & Silverman, G. (2014). *Environmental Law* (8th ed.). Upper Saddle River, New Jersey: Pearson Education.
- Landes, W. M., Lessig, L., & Solimine, M. E. (1998). Judicial Influence: A Citation Analysis of Federal Courts of Appeals Judges. *The Journal of Legal Studies*, 27(2), 271.
doi:10.1086/468022
- Layzer, J. (2006). Fish stories: Science, advocacy, and policy change in New England Fishery Management. *Policy Studies Journal*, 34(1), 59–80.
- Macpherson, M., & McCall, M. (2003). Judicial Remedies in Fisheries Litigation: Pros, Cons, and Prestidigitation. *Ocean & Coastal LJ*, 9, 1.
- Magnuson-Stevens Fishery Conservation Management Act As Amended Through January 12, 2007, U.S.C. (2007).
- Matulich, S. C., Seamon, R. H., Roth, M., & Eppink, R. (2007). POLICY FORMULATION VERSUS POLICY IMPLEMENTATION UNDER THE MAGNUSON-STEVEN'S FISHERY CONSERVATION AND MANAGEMENT ACT: INSIGHT FROM THE

NORTH PACIFIC CRAB RATIONALIZATION. *Boston College Environmental Affairs Law Review*, 34(2). Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&profile=ehost&scope=site&authtype=crawler&jrnl=01907034&AN=25302513&h=DYEEkVDFjBokSSBQFBH6NFVqDmu4av5%2Fmmc9WAnEUwqjDs6a1B4dJktqscd00yn7NoEq03O8yAjMIUnPjfDWaA%3D%3D&crl=c>

McCall, M. (2001). View From Ground Zero: Government as Defendant, Courts as Fishery Managers, The. *Ocean & Coastal LJ*, 7, 35.

McClenachan, L. (2014, March 31). Congress shouldn't undermine conservation measures that can help rebuild New England Fisheries. *Bangor Daily News*. Bangor, Maine.

National Marine Fisheries Service. (2000). *Kammer Report Implementation Plan*. Silver Spring, MD: U.S. Department of Commerce, National Oceanic and Atmospheric Administration. National Marine Fisheries Service.

Natural Resources Defense Council v. Daley, 747 209F.3d. (Court of Appeals for the District of Columbia April 25, 2000).

NOAA Fisheries. (2014). Status of U.S. Fisheries. U.S. Department of Commerce. Retrieved from http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/

Oversight on management issues at the National Marine Fisheries Services [sic]: hearing before the Subcommittee on Oceans, Atmosphere, and Fisheries of the Committee on Commerce, Science, and Transportation of the Senate, 107th Congress Pub. L. No. 107-1132 (2002). Washington, D.C.: USGPO.

- Shelley, P. (2001). Ten Years after the Fall: Litigation and Groundfish Recovery in New England. *Ocean & Coastal LJ*, 7, 21.
- Shelley, P. (2012). Have the Managers Finally Gotten It Right: Federal Groundfish Management in New England. *Roger Williams UL Rev.*, 17, 21.
- Stanford, K. (2011). Need for Chevron Step Zero in Judicial Review of Interpretations Developed by Fishery Management Councils, The. *NYU Envtl. LJ*, 19, 380.
- Sullivan, J. M. (2014, April 25). *Rationalization, Coops and Risk Management*. Presented at the Bevan Symposium on Sustainable Fisheries, University of Washington.
- The Ocean Conservancy. (2013). *The Law That's Saving American Fisheries: The Magnuson-Stevens Fishery Conservation and Management Act*. The Ocean Conservancy.
- United States Commission on Ocean Policy. (2004). *An ocean blueprint for the 21st century: final report* (Vol. 5). US Commission on Ocean Policy.

Appendix

List of Cases

Year Case Citation

- 2000 Greenpeace v. National Marine Fisheries Service F.Supp.2d 1137
- 2000 A.M.L International v. Daley 107 F. Supp 2d 90
- 2000 American Oceans Campaign. V. Daley 183 F.. Supp.2d 1
- 2000 Blue Water Fisherman's Association v. Mineta 122 F. Supp.2d 150
- 2000 Greenpeace Foundation v. Daley F.Supp.2d 1110
- 2000 Connecticut v. Daley 204 F.3d 413
- 2000 Greenpeace v. National Marine Fisheries Service 106 F. Supp.2d 1066
- 2000 Prowler Partnership v. National Marine Fisheries Service 242 F.3d 383
- 2000 Greenpeace Foundation v. Mineta 122 F.Supp.2d 1123
- 2000 NRDC v. Daley 209 F.3d 747
- 2001 Conservation Law Foundation v. Evans 209 F. Supp.2d1
- 2001 Ace Lobster co. Inc. v. Evans 165 F.Supp.2d 148
- 2001 Hall v. Evans 2001 165 F.Supp.2d 114
- 2001 N.C. Fisheries Ass'n v. Evans, 172 F. Supp. 2d 792
- 2001 New York v. Evans 162 F. Supp. 2d 161
- 2001 Rec. Fishing Alliance v. Evans, 172 F. Supp. 2d 35
- 2002 Atl. Fish Spotters Ass'n v. Evans, 206 F. Supp. 2d 81
- 2002 Blue Water Fishermen's Ass'n v. Nat'l Marine Fisheries Serv., 226 F. Supp. 2d 330
- 2002 Campanale & Sons, Inc. v. Evans, 311 F.3d 109
- 2002 Conservation Law Found. v. Evans, 195 F. Supp. 2d 186
- 2002 Conti v. United States, 291 F.3d 1334
- 2002 Favretto v. Evans, 212 F. Supp. 2d 1136 (D. Alaska 2002),

2002 Greenpeace v. Nat'l Marine Fisheries Serv., 237 F. Supp. 2d 1181

2002 Loga v. Daley No. Civ.A.00-1722.

2002 Nat'l Coalition for Marine Conservation v. Evans, 231 F. Supp. 2d 119

2002 Pac. Marine Conservation Council v. Evans, 200 F. Supp. 2d 1194

2002 The Gulf of Me. Fishermen's Alliance v. Daley, 292 F.3d 84 (1st Cir. 2002)

2002 Wards Cove Packing Corp. v. Nat'l Marine Fisheries Serv., 307 F.3d 1214

2003 Delta Commercial Fisheries Association v. Gulf of Mexico Fisheries Management Council 364 F.3d 269

2003 Hadaja, Inc. v. Evans, 263 F. Supp. 2d 346 (D.R.I. 2003)

2003 Hawaii Longline Assn. v. Natl. Marine Fisheries Serv., 281 F. Supp. 2d 1, 57 ERC 1581

2003 Hulse v. Evans, 76 Fed. Appx. 219 (9th Cir. 2003)

2003 Little Bay Lobster Company v. Evans 352 F.3d 462

2003 National Audubon Society v. Evans No. Civ.A. 99-1707(RWR).

2003 NRDC v. Evans, 254 F. Supp. 2d 434

2003 NRDC v. Evans, 290 F. Supp. 2d 1051

2003 NRDC v. Evans, 316 F.3d 904

2003 Ocean Conservancy v. Evans, 260 F. Supp. 2d 1162

2003 Roche v. Evans, 249 F. Supp. 2d 47

2004 Churchman v. Evans No. C 02-1182 JL

2004 Conservation Law Foundation v. Evans 360 F.3d 21

2004 Midwater Trawlers Coop. v. DOC, 393 F.3d 994

2005 Coastal Conservation Assn. v. Gutierrez, No. Case Nos. 2:05-cv-400-FtM-

2005 Earth Island Inst. v. Evans, 136 Fed. Appx. 34

2005 Natural Res. Def. Council, Inc. v. Nat'l Marine Fisheries Serv., 421 F.3d 872

2005 Ocean Conservancy v. Guitierrez, 394 F. Supp. 2d 147

2005 Oceana, Inc. v. Evans, 384 F. Supp. 2d 203

2005 Oceana, Inc. v. Evans, No. 04-0811 (ESH), 2005 BL 88932

2005 Turtle Island Restoration Network v. U.S. Dep't of Commerce, 438 F.3d 937

2005 Yakutat, Inc. v. Gutierrez, 407 F.3d 1054 (9th Cir. 2005)

2006 Boatmen v. Gutierrez 429 F.Supp.2d 543

2006 Duckworth v. United States. No 05-145S.

2006 Oregon Trollers Association v. Gutierrez 452 F.3d 1104

2007 Coastal Conservation Assn. v. Gutierrez, 512 F. Supp. 2d 896 (S.D. Tex. 2007),

2007 Earth Island Inst. v. Hogarth, 484 F.3d 1123, 29 ITRD 1163, 64 ERC 1538

2007 Fishing Company of Alaska v. Gutierrez 510 F.3d 328

2007 Gulf Fishermen's Assn. v. Gutierrez, 484 F. Supp. 2d 1264 (M.D. Fla. 2007)

2007 North Carolina Fisheries Association et al. v. Gutierrez 518 F.Supp.2d 62

2008 Blue Ocean Institute et al. v. Gutierrez et al. 585 F.Supp.2d 36

2008 Midcoast Fishermen's Association v. Gutierrez 592 F.Supp.2d 40

2008 Southern Offshore Fishing Association v. Gutierrez, No. 807-CV-02346-EAK-TBM.

2008 Starbound, LLC v. Gutierrez, CASE NO. C07-0910-JCC., 2008 BL 79370

2009 Massachusetts ex rel. Division of Fisheries v. Gutierrez. 594 F.Supp.2d 127

2009 New York v. Locke, No. 08-CV-2503 (CPS) (RLM)., 2009 BL 93704

2009 Sea Hawk Seafoods, Inc. v. Locke, 568 F.3d 757 (9th Cir. 2009),

2009 Van Valin v. Locke 671 F.Supp.2d 1

2010 Duckworth v. United States, 705 F. Supp. 2d 30 (D.D.C. 2010)

2010 Gulf Restoration Network, Inc. v. Natl. Marine Fisheries, Serv., 730 F. Supp. 2d 157

2010 Western Sea Fishing co. v. Locke 722 F.Supp.2d 126

2011 City of New Bedford et al. V. Locke Civil Action No. 10-10789-RWZ.

2011 Coastal Conservation Association v. Locke Nos. 2:09-cv-641-FtM-29SPC, 2:10-cv-95-FtM-29SPC

2011 Gen. Category Scallop Fishermen v. Sec'y, U.S. Dept. of Commerce, 635 F.3d 106

2011 Martha's Vineyard/Dukes County Fishermen's association v. Locke 811 F.Supp.2d 302

2011 Oceana v. Locke 670 F.3d 1238

2011 Oceana v. Locke 831 F.Supp.2d 95

2011 Pacific Coast Federation Of Fishermen's Ass'n v. Locke No. C 10–04790 CRB

2011 Pacific Dawn LLC v. Bryson No. C10–4829 THE

2011 San Joaquin River Group Auth. v. Natl. Marine Fisheries Serv., 819 F. Supp. 2d 1077

2011 Wisner v. Locke, No. Case No.: 8:11-cv-1283-T-33AEP, 2011 BL 309586

2012 Flaherty et al. V Bryson 850 F.Supp.2d 38

2012 Lovgren v. Locke, 701 F.3d 5, 75 ERC 2180

2012 Pac. Coast Federation of Fishermen's Assns. v. Blank, 693 F.3d 1084, 75 ERC 2014

2012 Trident Seafoods Corporation et al. v BRYSON No. C12–134 MJP

2012 Turtle Island Restoration Network v. U.S. Dep't of Commerce, 672 F.3d 1160

2013 Alaska v. Lubchenco, 723 F.3d 1043, 77 ERC 1105 (9th Cir. 2013)

2013 Center for Biological Diversity v. Blank 933 F.Supp. 2d 125

2013 Ctr. for Biological Diversity v. Nat'l Marine Fisheries Serv., No. 12-1281

2013 Oceana v. Bryson 940 F.Supp.2d 1029

2013 Pacific Dawn llc v. Pritzker NO. C13–1419 TEH

2013 Texas v. Crabtree, 948 F. Supp. 2d 676 (S.D. Tex. 2013)

2013 Turtle Island Restoration Network v. DOC, No. 12-00594 SOM-RLP, 2013 BL 225688

2014 Conservation Law Found. v. Pritzker, Civil Action No. 13-820 (JEB), 2014 BL 92967

2014 Guindon v. Pritzker, No. 13-00988 (BJR), 2014 BL 82783 (D.D.C. Mar. 26, 2014)

2014 Massachusetts v. Pritzker, CIVIL ACTION NO. 13-11301-RGS, 2014 BL 100402

2014 Oceana v. Pritzker Civil Action No. 13–770 (JEB)

2014 Oceana v. Pritzker Civil Action No.: 11–1896 (RC)