



Methods of Analysis: December 2015

Governance Indicators: **Litigation**

Has litigation affected the structure of the program?

This indicator shows number of court cases challenging the implementation of catch share programs.

The aim of the analysis was to identify how litigation against NOAA Fisheries affected catch share programs specific to the Northeast and West Coast groundfish fisheries. Using the Westlaw case database, we identified more than 250 cases with search terms ‘NOAA Fisheries’, ‘National Marine Fisheries Service’, and names of Secretaries of Commerce from 2002 through 2014. We then eliminated fee cases, enforcement cases, and supporting agency cases where NMFS was not the action agency, but was a “supporting” agency because it had developed a biological opinion. The date of cases was sorted as of the decision date. Each case was counted only once, excluding multiple follow-on decisions related to the same matter. Sorting resulted in 68 cases relevant to the analysis. For the win/loss data, if a case was mooted because NMFS withdrew the challenged action, that case was counted as a NMFS loss. If a case was mooted because a management measure was superseded, the case counted as a NMFS loss. Legal authority identified for each case was selected on the basis of the decision, regardless of the number of different bases for statutory challenges. Plaintiffs were categorized under fishing industry, environmental non-government organizations, states and other, such as non-fishing businesses or community associations.

Additional data to extend the analysis outside the project baseline were drawn from text analysis of agency and congressional sources, including the 2002 report from the National Academy of Public Administration, *Courts, Congress, and Constituencies: Managing by Default*, and from cases related to earlier catch share programs. To bridge from the NAPA data to cases collected for the project, we included additional cases drawn from our research in the years 1990 to 2001 to provide a more complete understanding of early litigation over catch share issues, resulting in 148 total cases in the analysis. Both the MECS analysis and the NAPA analysis examined the legal basis of the case record. The two methods differed in that the NAPA report counted each law raised as a claim in the cases, and did not identify catch share cases among all MSA cases. In contrast, as noted above, our methodology counted only the law upon which the case was decided. Therefore,

if a case was decided on MSA, even if NEPA or ESA or APA claims were raised, they are not analyzed separately. If a case was decided on a catch share claim, such as initial allocation or qualifying catch history, we counted it one time as a catch share case. If a challenge to a measure in a fishery was decided on an MSA claim, it is counted as such, even if the case relates to a fishery with a catch share program. Because of this significant difference in approach, the chart for basis of the litigation shows the extended baseline separately.

Data Analysis

WestlawNext online legal research database. Subscription required for access:
<http://legalsolutions.thomsonreuters.com/law-products/westlaw-legal-research/>

Text Analysis

Congressional Record website for access to floor statements, committee hearings, witness statements, hearing records.

National Academy of Public Administration. 2002. Courts, Congress and Constituents. Report to Congress and National Marine Fisheries Service.

List of Cases Included in Analysis

(Cases in **bold** were analyzed in NAPA report; all other cases analyzed by MECS)

1990

***National Fisheries Institute v. Mosbacher* [732 F. Supp. 210]**

***Southeastern Fisheries Association v. Mosbacher* [42 F. Supp. 692]**

***Stinson Canning Co. v. Mosbacher* [731 F. Supp. 32]**

1991

Conservation Law Foundation Inc. v. Mosbacher, No. 91-11759, [1991 WL 501640,] (D. Mass. Aug. 28, 1991).

***C&W Fish Company v. Fox* [289 U.S. App. DC 323]**

***Southeastern Fisheries Association v. Mosbacher* [773 F. Supp. 435]**

Sea Watch International v. Mosbacher [762 F. Supp. 370]

***Washington Crab Producers v. Mosbacher* [924 F. 2d 1438]**

1992

Conservation Law Foundation of New England v. Mosbacher, 966 F.2d 39, 45 (1st Cir. 1992)

NW Environmental Defense Center v. Brennan [958 F. 2d 930]

United Boatmen of NJ v. Mosbacher [1992 LEXIS 664]

Coastal Conservation Association v. Mosbacher [1992 LEXIS 576]

1993

Conservation Law Foundation v. Franklin, 989 F.2d 54, 56-57 (1st Cir. 1993).

Center for Marine Conservation v. Brown [1993 U.S. Dist. LEXIS 3801]

Greenpeace Action v. Franklin [982 F. 2d 1342]

Northwest Resource Information Center v. NMFS [1993 U.S. Dist. LEXIS 19549]

1994

Alcoa v. NMFS [1994 U.S. Dist. LEXIS 21612]

Associated Fisheries of Maine, No. 94-cv-00089 (DBH), (D. Maine, Oct. 7, 1994)

Idaho Department of Fish and Game v. NMFS [850 F. Supp. 886]

Organized Fishermen of Florida v. Franklin [846 F. Supp. 1569]

1995

Idaho Rivers United v. NMFS [1995 U.S. Dist. LEXIS 22084]

J. H. Miles & Company v. Brown, 910 F. Supp. 1138 (E.D. Va. 1995)

Parravano v. Babbitt [70 F. 3d 539]

1996

Alliance Against IFQs v. Brown, 84 F.3d 343 (9th Cir. 1996).

Associated Fisheries of Maine v. Brown, No. 94-cv-00089 (DBH), (D. Maine, June 28, 1996)

Center for Marine Conservation v. Brown [917 F. Supp. 1128]

Fishermen's Dock Cooperative v. Brown [U.S. App. LEXIS 1567]

NC Fisheries Association v. Brown [917 F. Supp. 1108]

Ramsey v. Kantor [96 F. 3d 434]

***Trawler Diane Marie v. Kantor* [1996 U.S. App. LEXIS 18120]**

1997

Associated Fisheries of ME v. Daley, 127 F.3d, (1st Cir. 1997).

***F/V Robert Michael v. Kantor* [961 F. Supp. 11]**

***NC Fisheries Association v. Daley* [16 F. Supp. 2d 647]**

***Norbird Fisheries v. NMFS* [112 F. 3d 414]**

***Texas Shrimp Association v. Daley* [1997 U.S. Dist. LEXIS 17875]**

***Wright v. NMFS* [112 F. 3d 518]**

1998

***Cape Cod Community Hook Fisherman's Association v. Daley* [30 F. Supp. 2d 111]**

Foss v. NMFS, 161 F. 3d 584 (9th Cir. 1998)

***MA Audubon Society v. Daley* [31 F. Supp. 2d 189]**

***MA Division of Marine Fisheries v. Daley* [10 F. Supp. 2d 74]**

***NC Fisheries Association v. Daley* [27 F. Supp. 2d 650]**

Native Village of Eyak v. NMFS, 154 F. 3d 1090 (9th Cir. 1998)

***Oregon Natural Resources Council v. Daley* [6 F. Supp. 2d 1139]**

***Smee v. NMFS* [1998 LEXIS 18754]**

***Southern Offshore Fishing Association v. Daley* [995 F. Supp. 1411]**

1999

***American Rivers v. NMFS* [1999 U.S. APP. LEXIS 3860]**

Dell v. DOC, [1999 WL 604217] *2 (9th Cir. 1999)

***Greenpeace v. NMFS* [55 F. Supp. 2d 1248]**

***Southern Offshore Fishing Association v. Daley* [55 F. Supp. 2d 1336]**

Washington v. Daley, 173 F. 3d 1158 (9th Cir. 1999).

***Parker v. NMFS* [1999 LEXIS 4732]**

***Commonwealth of Massachusetts v. Daley* [1999 U.S. App. LEXIS 2878]**

2000

***American Oceans Campaign v. Daley* [2000 LEXIS 15991]**

***AML Intl. v. Daley* [107 F. Supp. 2d 90]**

***Blue Water Fishermen's Association v. Mineta* [122 F. Supp. 2d 150]**

***Brower v. Daley* [2000 U.S. Dist. LEXIS 4624]**

***Connecticut v. Daley* [204 F. 3d 413]**

***Federation of Fly Fishers v. Daley* [2000 U.S. Dist. LEXIS 20450]**

***Greenpeace v. Mineta* [122 F. Supp. 2d 150]**

***Greenpeace v. NMFS* [106 F. Sup. 2d 1066]**

***Greenpeace v. NMFS* [80 F. Supp. 2d 1137]**

***Metcalf v. Daley* [2000 U.S. LEXIS 12837]**

***NRDC v. Daley* [2000 U.S. App. LEXIS 7602]**

***Prowler Partnership v. NMFS* [242 F. 3d 383]**

2001

***Conservation Law Foundation v. Evans*, 209 F. Supp. 2d 1, 6 (D. D.C. 2001).**

***Conservation Law Foundation v. Evans* [131 F. Supp. 2d 19]**

***Center for Biological Diversity v. NMFS* [2001 U.S. Dist. LEXIS 20862]**

***Cook Inlet Beluga Whale v. Daley* [156 F. Supp. 2d 16]**

***Defenders of Wildlife v. Hogarth* [177 F. Supp. 2d 20862]**

***Hall v. Evans* [2001 LEXIS 6038]**

***Humane Society v. Clinton* [236 F. 3d 1320]**

***NC Fisheries Association v. Evans* [172 F. Supp. 2d 792]**

***New York v. Evans* [162 F. Supp. 2d 161]**

***NRDC v. Evans*, 168 F. Supp. 2d 1149 (N.D.Cal. 2001)**

Pacific Coast Federation of Fishermen's Associations v. NMFS [2001 U.S. App. LEXIS 19742]

Recreational Fishing Alliance v. Evans [2001 LEXIS 15048]

U.S. v. Washington, 143 F. Supp. 2d 1218, 1222 (W.D. Wash. 2001).

2002

Midwater Trawlers Co-operative v. Department of Commerce, United States Court of Appeals, Ninth Circuit, 5-Mar-02, 282 F.3d 710, [2002 WL 338406, 00-35717, 00-35853]

Blue Water Fishermen's Ass'n v. National Marine Fisheries Service, United States District Court, D. Massachusetts, 30-Sep-02, 226 F.Supp.2d 330, [2002 WL 31259801, 00-12313-NG]

Wards Cove Packing Corp. v. National Marine Fisheries Service, United States Court of Appeals, Ninth Circuit, 15-Oct-02, 307 F.3d 1214, [2002 WL 31301738, 01-35309]

Conservation Law Foundation v. U.S. Dept. of Commerce, United States District Court, D. Massachusetts, 31-Oct-02, 229 F.Supp.2d 29, [2002 WL 31433707, CIV.A.01CV10927RGS]

Greenpeace, American Oceans Campaign v. National Marine Fisheries Service, United States District Court, W.D. Washington, at Seattle, 18-Dec-02, 237 F.Supp.2d 1181, [2002 WL 31898069, C98-492Z]

Anderson v. Evans, United States Court of Appeals, Ninth Circuit, 20-Dec-02, 314 F.3d 1006, [2002 WL 31856697, 02-35761]

2003

Natural Resources Defense Council v. Evans, United States District Court, N.D. California, 13-Jan-03, 316 F.3d 904, [C 01-0421JL]

Natural Resources Defense Council v. Evans, United States District Court, S.D. New York, 31-Mar-03, 254 F.Supp.2d 434, [2003 WL 1702008, 01 CIV. 9453 (RMB)]

Maine v Norton, United States District Court, D. Maine, 24-Apr-03, 257 F.Supp.2d 357, [2003 WL 1955541, CIV. 00-250-BC]

Defenders of Wildlife v. Hogarth, United States Court of Appeals, Federal Circuit, 4-Jun-03, 330 F.3d 1358, [03-915]

Turtle Island Restoration Network v. National Marine Fisheries Service, United States Court of Appeals, Ninth Circuit, 21-Aug-03, 340 F.3d 969, [2003 WL 21982908, 02-15027]

Hulse v. Evans, United States Court of Appeals, Ninth Circuit, 30-Sep-03, 76 Fed. Appx. 219, [2003 WL 22244939, 02-35324]

Hawaii Longline Ass' v. National Marine Fisheries Service, United States District Court, District of Columbia, 6-Oct-03, 288 F.Supp.2d 7, [2003 WL 22433320, CIV.01-0765 (CKK)]

2004

Alsea Valley Alliance v. Department of Commerce, United States Court of Appeals, Ninth Circuit, 24-Feb-04, 358 F.3d 1181, [2004 WL 343587, 01-36071, 01-36154]

Alaska Trojan Partnership v. Evans, United States District Court, D. Alaska, 27-Jul-04, Not Reported in F.Supp.2d, [2004 WL 1945320, J04-0003 CV (RRB)]

Oceana, Inc. v. Evans, United States District Court, D. Massachusetts, 30-Jul-04, Not Reported in F.Supp.2d [2004 WL 1730340, CIV.A.03-10570-GAO]

Association of California Water Agencies v. Evans, United States Court of Appeals, Ninth Circuit, 24-Sep-04, 386 F.3d 879 [2004 WL 2126299, 03-15380]

Midwater Trawlers Cooperative v. Department of Commerce, United States Court of Appeals, Ninth Circuit, 28-Dec-04, 393 F.3d 994 [2004 WL 2985248, 03-35398]

2005

Yakutat, Inc. v. Gutierrez, United States Court of Appeals, Ninth Circuit, 18-May-05, 407 F.3d 1054 [2005 WL 1163259, 03-35400]

Center for Biological Diversity v. Evans, United States District Court, N.D. California, 14-Jun-05, Not Reported in F.Supp.2d [2005 WL 1514102, C 04-04496 WHA]

Natural Resources Defense Council, Inc. v. National Marine Fisheries Service, United States Court of Appeals, Ninth Circuit, 24-Aug-05, 421 F.3d 872 [2005 WL 2029863, 03-16842]

Coastal Conservation Ass'n v. Gutierrez, United States District Court, M.D. Florida, Fort Myers Division, 31-Oct-05, Not Reported [2005 WL 2850325, 2:05-CV-400-FTM29DNF, 2:05-CV-419-FTM29DNF]

2006

Ocean Conservancy v. National Marine Fisheries Service, United States District Court, D. Hawai'i, 21-Feb-06, 416 F.Supp.2d 972 [2006 WL 417433, CV.NO.02-00393 ACK/L]

Turtle Island Restoration Network v. U.S. Dept. of Commerce, United States Court of Appeals, Ninth Circuit, 21-Feb-06, 438 F.3d 937 [2006 WL 389624, 05-15035]

Oregon Trollers Ass'n v. Gutierrez, United States Court of Appeals, Ninth Circuit, 6-Jul-06, 452 F.3d 1104 [2006 WL 1843408, 05-35970]

Pancratz v. Restricted Access Management Div., United States Court of Appeals, Ninth Circuit, 22-Aug-06, 198 Fed. Appx. 603 [2006 WL 2460721, 05-35722]

Bender v. Gutierrez, United States District Court, E.D. Virginia, Norfolk Division, 19-Sep-06, Not Reported in F.Supp.2d [2006 WL 4877550, 2:03CV519, 2:04CV300]

Washington State Farm Bureau v. National Marine Fisheries Service, United States District Court, W.D. Washington, at Seattle, 20-Dec-06, Slip Copy [2006 WL 4914810, C06-388Z]

2007

Trans World Marine, Inc. v. Hogarth, United States Court of Appeals, Ninth Circuit, 26-Jan-07, 220 Fed. Appx. 477 [2007 WL 295457, 04-56811]

Atlantic Capes Fisheries, Inc. v. Gutierrez, United States District Court, E.D. North Carolina, Northern Division, 21-Feb-07, 474 F.Supp.2d 768 [2007 WL 534056, 2:06 CV 24 BO, 2:05 CV 10 BO]

Earth Island Institute v. Hogarth, United States Court of Appeals, Ninth Circuit, 27-Apr-07, 494 F.3d 757 [2007 Daily Journal D.A.R. 10,736, 04-17018]

The Ocean Conservancy v. Gutierrez, United States District Court, District of Columbia, 1-Jun-07, 488 F.3d 1020 [2005 WL 2508538, CIV.A. 04-1155 (RIL)]

Trout Unlimited v. Lohn, United States District Court, W.D. Washington, at Seattle, 13-Jun-07, Not Reported in F.Supp.2d [2007 WL 1730090, C05-1128C]

Trout Unlimited v. Lohn, United States District Court, D. Oregon, 13-Jul-07, 645 F.Supp.2d 929 [2007 WL 2973568, CIV. 06-1493-ST]

Center For Diversity v. Lohn, United States Court of Appeals, Ninth Circuit, 27-Dec-07, 511 F.3d 960 [2007 WL 4532197, 05-35638]

2008

Starbound, LLC v. Gutierrez, United States District Court, W.D. Washington, at Seattle., 15-Apr-08, Not Reported in F.Supp.2d [2008 WL 1752219, C07-0910-JCC]

Gulf Fishermen's Ass'n v. Gutierrez, United States Court of Appeals, Eleventh Circuit, 13-Jun-08, 529 F.3d 1321 [2008 WL 2388258, 07-12903]

Van Valin v. Gutierrez, United States District Court, District of Columbia, 20-Jun-08, Not Reported in F.Supp.2d [2008 WL 7759964, CIV.A.1:08-CV-941]

Salmon Spawning & Recovery Alliance v. Gutierrez, United States Court of Appeals, Ninth Circuit, 8-Oct-08, 545 F.3d 1220 [2008 WL 4490533, 06-35979]

Blue Ocean Institute v. Locke, United States Court of Appeals, District of Columbia Circuit, 12-Nov-08, 585 F.Supp.2d 36 [06-01869]

2009

Alsea Valley Alliance v. Lautenbacher, United States Court of Appeals, Ninth Circuit, 16-Mar-09, 319 Fed. Appx. 588 [2009 WL 690078, 07-35824]

Trout Unlimited v. Lohn, United States Court of Appeals, Ninth Circuit, 16-Mar-09, 559 F.3d 946 [2009 WL 650534, 07-35623, 07-35750]

State of New York v. Locke, United States District Court, E.D. New York, 30-Apr-09, Not Reported in F.Supp.2d [2009 WL 1194085, 08CV2503(CPS)(RLM)]

Sea Hawk Seafoods, Inc. v. Locke, United States Court of Appeals, Ninth Circuit, 17-Jun-09, 568 F.3d 757 [2009 WL 1676658, 07-35754]

2010

New York v. Atlantic States Marine Fisheries Commission, United States District Court, E.D. New York, 29-Jun-10, 609 F.3d 524 [08CV2503CPSRLM]

Gulf Restoration Network, Inc. v. National Marine Fisheries Service, United States District Court, District of Columbia, 12-Aug-10, 730 F.Supp.2d 157 [2010 WL 3184327, CIV.A. 09-1884 GK, CIV.A. 09-1883 GK]

Modesto Irrigation Dist. v. Gutierrez, United States Court of Appeals, Ninth Circuit, 20-Aug-10, 619 F.3d 1024 [2010 WL 3274499, 09-15214]

2011

General Category Scallop Fishermen v. Secretary, U.S. Dept. of Commerce, United States Court of Appeals, Third Circuit, 16-Mar-11, 635 F.3d 106 [2011 WL 891686, 10-2341]

Hui Malama I Kohola v. National Marine Fisheries Service, United States Court of Appeals, Ninth Circuit, 22-Jun-11, 439 Fed. Appx. 618 [2011 WL 2470383, 09-17545]

Fishing Rights Alliance, Inc. v. National Marine Fisheries Service, United States District Court, M.D. Florida, Tampa Division, 15-Jul-11, Not Reported in F.Supp.2d [2011 WL 3897891, 8:09-CV-00916-T-30, 8:09-CV-01544-T-30, 8:09-CV-02265-T-30]

Coastal Conservation Ass'n v. Blank, United States District Court, M.D. Florida, Fort Myers Division, 29-Sep-11, Not Reported in F.Supp.2d [2011 WL 4530544, 2:09-CV-641-FTM-29, 2:10-CV-95-FTM-29SPC]

McCarty v. NOAA Fisheries Service, United States District Court, W.D. Washington, at Seattle, 30-Sep-11, Not Reported in F.Supp.2d [2011 WL 4571893, C11-1393]

San Joaquin River Group Authority v. National Marine Fisheries Service, United States District Court, E.D. California, 30-Sep-11, 819 F.Supp.2d 1077 [2011 WL 4591071, 1:11-CV-00725 OWW]

Wisner v. Locke, United States District Court, M.D. Florida, Tampa Division, 2-Dec-11, Not Reported in F.Supp.2d [2011 WL 6019933, 8:11-CV-1283-T-33AEP]

Oceana v. Locke, United States District Court, District of Columbia, 20-Dec-11, 831 F. Supp. 2d95 [2011 WL 6357795, CIV.A. 10-744 JEB]

Pacific Dawn v. Bryson, N.D. Cal, 22-Dec-11, Not Reported in F.Supp.2d [C10-4829, 2011 WL 6748501, C13-1419 THE]

2012

Pacific Dawn v. Bryson II, N.D. Cal, 21-Feb-12, Not Reported in F.Supp.2d [C10-4829, 2012 WL 554950]

Recreational Fishing Alliance, Inc. v. National Marine Fisheries Service, United States District Court, M.D. Florida, Tampa Division, 24-Feb-12, Not Reported in F.Supp.2d [2012 WL 868880, 8:11-CV-00705-T-30]

Turtle Island Restoration Network v. U.S. Dept. of Commerce, United States Court of Appeals, Ninth Circuit, 14-Mar-12, 672 F.3d 1160 [12 Cal. Daily Op. Serv. 3012, 11-15783]

Proie v. National Marine Fisheries Service, United States District Court, W.D. Washington, at Tacoma, 1-May-12, Not Reported in F.Supp.2d [2012 WL 1536756, C11-5955BHS]

Pacific Coast Federation of Fishermen's Associations v. Blank, United States Court of Appeals, Ninth Circuit, 10-Sep-12, 693 F.3d 1084 [2012 WL 3892940, 11-17108]

Lovgren (Newton) v. Locke, United States Court of Appeals, First Circuit, 28-Nov-12, 701 F.3d 5 [2012 WL 5952880, 11-1952, 11-2001, 11-1964, 11-1987]

2013

Texas v. Crabtree, United States District Court, S.D. Texas, Brownsville Division, 31-May-13, 948 F.Supp.2d 676, 2013 WL 2407674, 1:13-CV-70

Alaska v. Lubchenko, United States Court of Appeals, Ninth Circuit., 23-Jul-13, 723 F.3d 1043, 2013 WL 3802414, 12-35201, 12-35203, 12-35204

Turtle Island Restoration Network v. U.S. Dept. of Commerce, United States District Court, D. Hawai'i, 23-Aug-13, Not Reported in F.Supp.2d [2013 WL 4511314, CIV. 12-00594 SOM]

Public Employees for Environmental Responsibility v. U.S. Dept. of Commerce, United States District Court, District of Columbia, 11-Sep-13, 968 F.Supp.2d 88 [2013 WL 4830966, CIV.A. 12-1293 ABJ]

Center for Biological Diversity v. National Marine Fisheries Service, United States District Court, D. Puerto Rico, 30-Sep-13, 977 F.Supp.2d 55 [2013 WL 5615059, CIV. 12-1281 SEC]

Oceana, Inc. v. Pritzker, United States District Court, District of Columbia, 28-Oct-13, --- F.Supp.2d--- [2013 WL 5801755, CV 13-770 (JEB)]

Pacific Dawn, LLC v. Pritzker, United States District Court, N.D. California, 5-Dec-13, Not Reported in F.Supp.2d [2013 WL 6354421, C13-1419 THE]

2014

Oceana v. Pritzker, United States District Court, District of Columbia, 18-Feb-14, [2014 WL 6165992, CV 13-770 (JEB)]

Guindon v. Pritzker, United States District Court, District of Columbia, 26-Mar-14, 31 F.Supp.3d 169 [2014 WL 1274076, CV 13-00988(BJR)]

CLF v Pritzker, United States District Court, District of Columbia, 4-Apr-14, No. 13- 821 [2014 WL 1338596 , F.Supp 2d, CV 13-821 (JEB)]

CLF v Pritzker, United States District Court, District of Columbia, 4-Apr-14, F.Supp 2d [2014 WL 1338284CV 13-820 (JEB)]

Commonwealth of Mass. V. Pritzker, United States District Court, D. Massachusetts, 8-Apr-14, 10 F. Supp.3d 208 [2014 WL 1364907, CIV.A. 13-11301-RGS]

Kahea v. National Marine Fisheries Service, United States District Court, D. Hawai'i, 24-Jul-14, Not Reported in F.Supp.2d [2014 WL 3726122, CIV. 11-00474 SOM]

Alaska Oil and Gas Ass'n v. Pritzker, United States District Court, D. Alaska, 25-Jul-14, Not Reported in F.Supp.2d [2014 WL 3726121, 4:13-CV-00018-RRB, 4:13-CV-00021-RRB, 4:13-CV-00022-RRB]

Natural Resources Defense Council v. National Marine Fisheries Service, United States District Court, District of Columbia, 10/14/14, --- F.Supp.3d ---- [2014 WL 5148407, 12-CV-0938 (KBJ)]