

Stephanie Otts:

Good afternoon, everyone. Thank you so much for joining us for our first of our 2023 webinar series. My name is Stephanie Otts. I'm the director of the National Sea Grant Law Center and thanks for joining us. And so, today we are sharing the results of a research project that we finished up at the end of last year. So today's presentation will be, I'll be giving it along with one of our Ocean and Coastal Law Fellows, Samantha Hamilton.

So, just a few housekeeping notes. We do have everyone on mute right now to cut down on background noise. Please feel free to use the chat box at any time if you have questions. If you have technical issues, I'm not sure if we can help, but you may private chat with Lauren Freeman, who is our new project coordinator here at the National Sea Grant Law Center. And there will be plenty of time for Q & A at the end of the webinar, but we will also try to answer questions as we go along. So please use the chat at any time.

I also wanted to let everyone know that the webinar is being recorded and we will post it to our website as soon as we can after the webinar. It usually takes a couple days to get the transcripts and captions and everything finalized, but be on the lookout for that.

So, for those of you in the audience who might be new that might not know much about us, the National Sea Grant Law Center was founded in 2002. We are housed at the University of Mississippi School of Law and our mission is to conduct legal research, education, and outreach for the wider Sea Grant network of 34 Sea Grant programs and the variety of their stakeholders. And so, if you are interested in our work and what else we do and have going on, I encourage you to visit our website and also to follow us on social media.

Also, just before we got started, this was a good opportunity. I wanted to share that the National Sea Grant Law Center currently has an open call for grant proposals. They're not related to fisheries, it's related to coastal resilience, but some of the participants on the webinar might be interested. So, we are accepting proposals to conduct research on the effectiveness of coastal adaptation laws and policies. There's still plenty of time. The letters of intent are not due until March and then full proposals are due in April with a July start date. So, I've included the link there to the funding opportunity page, but all you have to do is go to the National Sea Grant Law Center's webpage, click on the funding tab and that will take you to the request for proposals that has a lot more details about that competition.

But now I want to get to what everyone was here for today, which was the presentation on the Nimbleness of Federal Fisheries Decision -Making. So, a little bit about the project background. So, back in 2021, the Nature Conservancy approached the National Sea Grant Loss Center requesting a legal analysis of what they termed, "nimbleness of federal fisheries decision-making."

This analysis was just a small part of a much larger project that the Nature Conservancy was working with partners on to do scenario planning for climate change impacts related to fisheries. And so they had some funding available for us to do this research. When we initially were talking to the Nature Conservancy about the project, there was a perception that the law was constraining fishery management councils from acting in a timely manner. So, for example, in a recent Government Accountability Office report, there was a quote from the report that said, "Most councils and two stakeholders said that the existing fishery management structure is inadequately flexible to respond to climate related changes in fisheries."

So, our research was to look and see if that's true. Is there constraints on the councils and the National Marine Fisheries Service in doing this research? So, the National Secret Law Center conducted research looking at the statutory and regulatory provisions of the Magnuson-Stevens Act to see what, if any, barriers the Act places on council decision-making. We also looked at the interplay of the Magnuson-

Stevens Act with other environmental statutes such as the Endangered Species Act or the National Environmental Policy Act, which often come up in these type of conversations around decision-making timelines. And we also constructed timelines of select council actions to see how long it was taking to implement these decisions. And so the goal of our research was just to dig in a little more to see how long is it taking councils to make decisions.

So, just stepping back a little bit to highlight a little bit of the environmental context for this research. So, climate change is obviously significantly impacting marine fisheries around the globe as well as the individuals and communities that depend on those. And so this is just a sampling of headlines that talk about some of those changes in distribution and abundance of species that can affect where and when fishers fish and what they catch. So to account for these climate changes, obviously, fishery managers need to integrate nimbleness or flexibility, adaptability into both short and long-term decision-making for their processes so that they can be more responsive in their management regimes. And one of the key questions in any of these type of conversations is whether the existing legal framework governing those decision-making processes allows them to do so, right? Is the legal framework providing enough provisions that allow you to adapt and change to those changing conditions?

So, just a quick background, again, if people are not as familiar with the fishery management regime on the federal level. And so, with the passage of the Magnuson-Stevens Act, Congress established eight regional fishery management councils and created a unique co-management regime whereby the councils are empowered to develop fishery management plans and make management recommendations to the National Marine Fisheries Service. And then, National Marine Fisheries Service is responsible for reviewing and implementing those plans in accordance with the Magnuson-Stevens Act directives.

It's important to keep in mind that the councils are structured similarly, but their day-to-day operations, meeting processes, and kind of culture are different. And so, there is variation among the councils in how they operate.

And, just in case you were curious, here are the regions that are covered by those eight fishery management councils. And so, obviously, they're kind of scattered around the country and each have a variety of states that they are kind of working with and obviously fisheries under their management.

A couple other things to keep in mind before we dig into our research findings. And so, as I mentioned, the National Sea Grant Law Center's research was limited to examining the statutory and regulatory text of the Magnuson-Stevens Act and reviewing select council actions that we found in the Federal Register. While we did some expert interviews to make sure that we were looking at the right things and considering all of the different issues, we were not studying the culture or the processes of individual councils or the context surrounding the actions that we're going to be talking about.

So, in many cases, there are very legitimate reasons for the speed of the decision-making process. And so, we're not looking at the motivations or the reasons for why a particular action might be taking the length of time that we'll be highlighting. Oh, and I also wanted to say, and we'll say this again, fisheries management is complex. Federal law mandates and encourages public participation in the process, and there are a lot of issues that need to be considered and addressed. And so, fundamentally, fisheries management is not really something that can happen really quickly. There's a lot of things that need to be taken into consideration when any fisheries manager is making decisions.

The other things to keep in mind are that NOAA, the National Oceanic and Atmospheric Administration, which is the agency that houses the National Marine Fisheries Service, gets sued a lot and litigation can impact processes and decision making within individual councils.

The majority of lawsuits are actually brought by fishers or industry groups under the Magnuson-Stevens Act provisions. So, they're challenging quotas, maybe reporting requirements, gear restriction, but that's most of the lawsuits. But the lawsuits that get the most attention are usually those by environmental groups, and the environmental groups are often suing under other statutes. So they're suing under the Endangered Species Act or under NEPA for challenging environmental reviews, not necessarily litigating specifics of the Magnuson-Stevens Act provisions themselves. But those differences and the lawsuits that are happening, there may be some lawsuits outcomes that only impact one council and that will affect the way that they analyze their risk with respect to litigation versus another council on the other side of the country. So, the litigation frequency and experience can be different for different councils leading to different risk analyses about the level of procedure or environmental review that might be needed in particular cases.

And then, finally, the average length of time to get a new regulation through the federal rulemaking process is usually cited to be about two years. And back in 1993, there was a study of the agencies that used the regulatory process the most frequently, and that study found that NOAA finalizes the rules the fastest.

And so, I think that's an important context that may not be well known that, even that many years ago, NOAA was kind of known for finalizing their rules. And, as you'll see in the results of our study, it's consistent with that finding and the kind of average time to get regulations through the process.

All right. Well, so with that background, we want to get a little bit into the legal framework and starting with the Magnuson-Stevens Act. So crucially, the Magnuson-Stevens Act does not mandate a rigid decision-making process. So, the Magnuson-Stevens Act does not set forth a very detailed, rigid process that the fishery management councils have to follow.

There are, of course, a lot of substantive provisions regarding the contents of Fishery Management Plans that the councils have to include and provide a lot of information and details on. And there are a few procedural requirements to ensure adequate public notice and opportunity for comment. But the councils have a lot of flexibility in how they design their own decision-making processes to adhere to those substantive requirements.

So, only in the Magnuson-Stevens Act there's actually only procedures talked about in two places. So Congress has only set forth timelines in the Magnuson-Stevens Act for two things: for Fishery Management Plans and their amendments, and then, for the proposed regulations that the National Marine Fisheries Service will issue to implement the council actions. So, once a council develops a Fishery Management Plan, it's to submit it to the National Marine Fisheries Service for review.

The National Marine Fisheries Service, under the provisions of the Magnuson-Stevens Act, must immediately begin review which Congress has defined as five days.

Public notice must be provided for a 60-day comment period. And then, the National Marine Fisheries Service has 30 days after the end of the public comment period to approve the Fishery Management Plan.

Now, if the National Marine Fisheries Service doesn't take any action, the Fishery Management Plan or amendment takes effect as submitted.

But for the purposes of this timeline discussion, let's assume that NIMS has received the review, it's gone out for a 60-day public comment period, they've approved it, they have 30 days to take action related to that approval. If you track that procedural requirements there, the approval process for a Fishery Management Plan or major amendment to a plan takes a minimum of three months, right? So right there, you have three months that is involved in that process for those that public comment and review process.

So to give legal effect to a council action follow agency approval, the Secretary of Commerce, NMFS, through NOAA Promulgates regulations to implement that Fishery Management Plan, amendment or action. So, National Marine Fisheries Service reviews the proposed regulations submitted by the council to determine whether they're consistent with the Fishery Management Plan, amendment, the Magnuson-Stevens Act, other laws, right? And, if the National Marine Fisheries Service determines that the proposed regulations are consistent, they must publish the proposed regulations in the Federal Register for a public comment period of 15 to 60 days. And then the final regulations are to be published in the Federal Register within 30 days of the end of the comment period.

So again, just looking at the Magnuson-Stevens Act requirements, the National Marine Fisheries Service Regulations can be issued in as little as 45 days, right? 15-day public comment, and then you get them out within 30 days of that, the end of that public comment.

Now, there's a couple other statutes though that can impact the decision-making process that we need to be aware of, and one is the Administrative Procedure Act. So the Administrative Procedure Act sets forth the general procedures for agency rulemaking. And this is, so technically, it's informal rulemaking, but we all refer to it as notice and comment rulemaking. These are the vast majority of actions that you'll see where a regulation goes out for public comment, and then the agency looks at those comments and issues the final regulation. So when issuing rules, the Administrative Procedure Act requires the agency to publish notice of a proposed rule in the Federal Register at least 30 days before the rule takes effect. The agencies must then provide interested parties with an opportunity to participate in the rulemaking through the submission of written comments on that proposed rule. Note, and I found this interesting when we were doing the project, the Administrative Procedure Act does not set a minimum time for the public comment period.

So, the Administrative Procedure Act is silent on that. But remember, the Magnuson-Stevens Act requires a 60-day public comment period for Fishery Management Plans and amendments and allows a range of 15 to 60 days for proposed regulations.

Another element of the Administrative Procedure Act that we will come back to is that notice and comment procedures are not required under the Administrative Procedure Act if an agency, for good cause, finds that notice and public procedure thereon are impracticable unnecessary or contrary to the public interest.

So this is known as the good cause exception. So agencies can waive those full notice and comment procedures for a good cause. Emergency actions are a classic example of when an agency can waive these notice and comment procedures because, obviously, there's some emergency public health threat environmental threat that requires action to be taken quickly, and so they can waive the notice and comment procedures in those situations.

The National Marine Fisheries Service also frequently invokes the good cause exception when taking actions authorized under existing Fishery Management Plans and their implementing regulations. We'll come back to this but, basically, the National Marine Fisheries Service is saying if it's something that's happening under an existing Fishery Management Plan, that plan has already been subject to public notice and comment and people have already had the chance to engage on that. So we don't need another full notice and comment procedure for that particular action.

And then, real quickly, we wanted to talk about the National Environmental Policy Act or NEPA in compliance. This was not the direct scope of this project. So a full analysis of NEPA was not the point of our research. And so, as I mentioned at the beginning, we were really looking at the Magnuson-Stevens Act, and is there anything in the Magnuson-Stevens Act that is constraining decision-making?

Now, NEPA and NEPA compliance is obviously integral to taking action on fishery management decisions, but we did not have the time during our research project to really do a full analysis of NEPA compliance. But NEPA is a procedural statute established to declare a national policy of preventing damage to the environment. The key thing to know for people who aren't familiar is that NEPA requires that all major federal actions significantly affecting the quality of the human environment include a detailed statement of those impacts. That's become known as an environmental impact statement.

So Fishery Management Plan and major amendments to those plans are major federal actions that must comply with NEPA procedures, right? And so, let's say you were doing a completely new Fishery Management Plan from scratch. That is a major federal action and might likely require an environmental impact statement. But that's not the only way you can comply with NEPA. So agencies actually have three different options to comply with NEPA. So, if the agency knows that their action is going to have significant effects on the quality of the human environment, then they have to do an environmental impact statement. If they're not sure that the action is going to have those type of effects, they may first prepare an environmental assessment, or EA, to determine whether there will be significant impacts.

There's not much difference anymore, I think, in the workload associated with an environmental assessment and the environmental impact statement. Back in the '70s when Congress enacted NEPA, I think there was kind of a difference in what the level of analysis that would occur between those two actions. But today, due to years and years of litigation, environmental assessments are very lengthy documents that look at everything they possibly can related to the federal action under consideration. But, if at the end of the environmental assessment process, the agency determines that there will not be significant impacts, they can issue what is known as a FONSI, a finding of no significant impact, and they can move ahead with their decision without preparing an environmental impact statement. And so, an example of when fishery management councils use the environmental assessments are often with amendments to Fishery Management Plans. So, they're only changing a component of the plan, or maybe they have a framework in place that guides their decision-making and they're just making adjustments to that framework.

And then, finally, the third way that agencies can comply with NEPA is by using categorical exclusions. These are known as CEs. In some circumstances, you don't need to do either an environmental assessment or an EIS. NEPA regulations published by the Council on Environmental Quality permit agencies to pre-identify classes of actions that are determined to not have a significant effect on the environment. NOAA has identified several categorical exclusions that relate to fisheries actions. So, for instance, there is a categorical exclusion for technical corrections to fishery management actions or regulations as long as it doesn't result in a substantial change in like fishing location, effort, authorized gear types, harvest levels. So, if it's just, again, technical corrections, you can use these categorical exclusions. But categorical exclusions cannot be used if there's extraordinary circumstances. So, for instance, potential impact on endangered species or other protected species, you can't use these, right? You'd have to go through a more robust environmental review process.

The last thing I wanted to mention about NEPA is that agencies often roll the analysis required under other laws such as consultation requirements under the Endangered Species Act or the Marine Mammal Protection Act into the NEPA processes. And this makes sense, right? For efficiency's sake, if you're already doing environmental reviews and environmental reviews are required under other laws, you might as well do them all at the same time.

And when those concurrent analyses occur, then something like an additional endangered species analysis may not delay the decision-making process as much as they would if they were completely separate, right, and one was happening not at the same time, obviously.

But this process can be impacted if the agency maybe is using a categorical exclusion. So, in some of our interviews we did hear that some councils are trying to use categorical exclusions more often in their processes, but they have to give consideration for what that might mean to environmental analyses required under other laws if it's all kind of tied up and rolled up together. So, it just takes some thinking about how you can do that and stay in compliance with all of the different federal laws.

All right, so with that very lengthy background, we are finally getting to where we started to look at, well, what existing nimbleness is in the Magnuson-Stevens Act and the council processes now? How are the councils taking action and making decisions, and is that happening in a way that's responsive to changing conditions? So, once a Fishery Management Plan is in place, the councils and the National Marine Fisheries Service have to continue to monitor the fishery and adjust those plans and management regimes to make sure the stock does not become overfished. And, in 2006, Congress amended the Magnuson-Stevens Act to require, among other things, that councils include in the Fishery Management Plans, a mechanism for specifying annual catch limits in the Fishery Management Plan itself and the implementing regulations or annual specifications to, again, ensure that overfishing does not occur. And so, those annual catch limits and associated accountability measures can be adopted as either amendments to a Fishery Management Plan or as part of a framework process. And, hold that thought, we'll come back to the framework process in a minute.

But, starting with the least nimble action, which is an amendment to a Fishery Management Plan. So major changes to the conservation and management measures set forth in a Fishery Management Plan do require amendments, and amendments are adopted in the same way as the original Fishery Management Plan. And so, councils give varying time estimates for the amendment process, but it's usually a couple of years. So, amendments are heavy lifts and they take a long time, and they also have the 60-day public comment period that I mentioned at the beginning.

However, councils already have authority and are already exercising authority to build into their Fishery Management Plans mechanisms that anticipate that some changes in how the fishery is managed may be needed depending on what conditions look like in the future. Some of those mechanisms include the accountability measures that I mentioned, and those can be implemented by the National Marine Fisheries Service upon public notice without a full rulemaking process.

So we, in our report, refer to those as notice actions that we're referring to an action taken by the National Marine Fisheries Service to give effect to a built-in response within a Fishery Management Plan or something that's already set forth in a regulation. So, for instance, if the fishery exceeds their annual catch limit, the regulation will usually say the fishery needs to be closed at that point. And so, the National Marine Fisheries Service will provide notice in the Federal Register that the limit has been exceeded and the fishery is closed, right? There's no public comment period. There's no kind of rulemaking process associated with that. They're just doing it.

Additionally, the National Marine Fisheries Service can take emergency action either independently or at the request of a council to modify a Fishery Management Plan if an unanticipated event occurs. And so, emergency action is authorized by the Magnuson-Stevens Act if the National Marine Fisheries Service or a council determines that an emergency exists or that interim measures are needed to reduce overfishing for any fishery. And so, we saw a lot of emergency actions in the COVID pandemic because of those changing conditions.

And, just briefly, I wanted to touch in a little more detail about this frameworking. And so in some cases, councils can engage in a form of adaptive management through a process known as frameworking. And so, the National Marine Fisheries Service defines frameworking as establishing in a Fishery Management Plan or amendment or the regulations themselves, a mechanism for implementing recurrent, routine, or foreseeable actions in an expedited manner. Once a council has developed and put a framework in place

through the adoption and implementation of a Fishery Management Plan or amendment, the framework measures can be adjusted through the framework process without the need to further amend the Fishery Management Plan and go through that whole two, three-year process that the amendments take. So framework adjustments are often implemented faster than a Fishery Management Plan amendment.

So, with that, I'm now going to turn it over to Samantha, who is actually going to walk through our summaries of what we discovered when we started looking at the Federal Register and specific council actions over the last couple of years.

Samantha Hamilton:

Is it not wanting to move forward?

Stephanie Otts:

Oh, nope. Okay. Sorry, Samantha. I couldn't hear you. I got you.

Samantha Hamilton:

Thank you. Sorry about that. So hey, everyone. I'm Samantha Hamilton. Like Stephanie mentioned, I'm a Law Fellow here. And so, the table that you're seeing in front of you summarizes 10 council actions that we studied during our research that we think reflect some of the trends that we noticed across council actions. So, the goal with this table was just to highlight some of those nimbleness measures that Stephanie touched on a little bit ago and show how they kind of played out in practice. But the table isn't meant to be a comprehensive list of council actions by any means. So, in the table, we have emergency actions, framework adjustments, and then amendments from five of the eight councils.

Now, we didn't include notice actions, which was the fourth nimbleness measure that Stephanie mentioned because, like she said, notice actions don't really have a timeline. Once that triggering event occurs, the notice action is published without needing to follow the rulemaking process, so it would make sense to put it in the table.

And, as you can see, the actions are organized by length of time in days from the date that the action was initiated to the date when NMFS published the final rule in the Federal Register.

Now, additionally, we included the corresponding NEPA actions that went along with the council actions under Magnuson just to show some of the overlap between the MSA and NEPA. And you'll see that some of the boxes under the NEPA column have an asterisk, and those were actions where there was no explicit reference to the NEPA action that was used, but the action under Magnuson was consistent with the categorical exclusion. So, we just put that there.

And, while we did include the associated NEPA action in the table, as Stephanie has mentioned, and I'm going to say it again, our research was focused on the Magnuson procedures, not the NEPA procedures. So, we didn't examine the NEPA analyses. That column is really just there to help provide insight into the timelines that we were looking at. And generally speaking, the emergency actions take the least amount of time, and the amendments take the most amount of time, which Stephanie already explained. And then, finally, you can see it at the timeline ranges from as little as 41 days all the way up to 2,146, which is nearly six years. And so, in the next couple slides, I'll just highlight some of these actions in a little bit more detail.

Okay, so, these are the emergency actions. So, I've just pulled those out of the table and put them in so we could look at the trends together. So, as I mentioned, in the previous slide, the emergency actions are designed to, and they do tend to take less time than the other measures that the council used. And

again, that makes sense because they're designed to respond to emergencies. Now, first, I just want to note how fast those first two examples are. Again, we were approached for this project because there's a belief that actions under Magnuson are inefficient and take a lot of time, and that's just not the case here. And when councils do use emergency actions, they can often get things done pretty quickly and pretty efficiently. But, of course, there are exceptions, and we included those too. So, those two bottom actions still took less than a year to complete so still pretty quick, but they just took a little bit longer than the first two.

So, you can see that the third action, which took 265 days required an environmental assessment and then a FONSI under NEPA. And so, had the council been able to use a categorical exclusion, it's likely that the emergency action could have gotten finalized sooner just because there wouldn't have been that additional requirement. And, again, like we've both mentioned, the scope of our project didn't encompass NEPA, and so we didn't evaluate whether an EA was appropriate and we're not challenging that it was needed. All we're saying is that it takes time to complete those. And so it makes sense that this particular action took a little bit longer than the first two examples. And really the point of that is just to show that even when actions under Magnuson are taking a little longer, it might not be because of Magnuson itself.

And so, the final action, which took 270 days, was also a little bit of an outlier. The council completed a supplemental information report in order to determine whether a full EA or EIS was needed. A supplemental information report is usually created when a proposed action is being altered or if new information arises, it has to be incorporated. And so it'll help the agency determine based on that new info, whether an EA or an EIS is necessary.

And so, in this case, the council basically did this report just to determine that it didn't need to do another report. And so, again, while we didn't study the NEPA rationale, it's just another example of where uncertainty, I guess, regarding the proper NEPA analysis, might have held up the timeline instead of Magnuson. And so, Stephanie, if you could go to the next slide.

So, finally, we have the FMP amendments together just to highlight that their timelines can also vary pretty significantly, and that makes sense. It can happen because of the different natures of the amendments, the impacts that each amendment will have, and then even the different risk analyses that the different councils have to consider when they're trying to take action. Again, they get sued a lot, and so that's going to impact how they make their decisions. And so, you can see with that first amendment, a CE was used as this amendment didn't really have a significant environmental impact to where an EA or an EIS would be needed. And so, for actions like this one, the timeline can be pretty short. It can be pretty close to what was spelled out in the Magnuson provisions. And then, the second amendment takes a little bit longer.

It's just a little over two years from start to finish. And yes, that's longer, but it still tracks with what Stephanie mentioned earlier, which is that the average length of time to get a regulation through the rulemaking process is about two years. So this is just a little bit over two years. So even with this taking the two years, we're not really seeing Magnuson holding up the rulemaking process beyond what's standard across the agencies. And so, then we have the last amendment. And so, this one took a little bit under six years start to finish, and that's obviously much longer than average. This amendment, in particular, proposed a major change to New England's Herring Fishery Management Plan, and there were numerous conditions and considerations that had to be taken into account, and then some issues that had to be worked out before they could publish the finalized version.

So, just in general, councils have to respond to changing conditions that occur while amendments are being drafted. So, it's not uncommon for some delays to occur while that happens. And with larger actions, especially with amendments in particular, if they're controversial or if they're getting a lot of

comments and public feedback, the councils might even decide just to table the amendment until a later meeting just to work on it later.

And, because councils only have two meetings a year, if an amendment is pushed back, that automatically adds six months to that timeline before it can be completed. And some councils might be a little bit more flexible than others, and they might try to revise the amendment in the interim between those meetings but, again, it just depends on the individual council's procedures. And then, lastly, I just wanted to restate that the table was just meant to list certain examples so that we could highlight those outliers. And the trends that we saw in our research. It was not meant to be exhaustive, and we purposely included those outliers, again, just so we could highlight how Magnuson was or was not impacting the timelines the way that we - in our research. So, with that, I will turn it back to Stephanie.

Stephanie Otts:

Yeah, thanks, Samantha. And thanks. I saw a question in the chat. So, the question in the chat is, "For this study, when did the time clock begin, upon council approval or initial consideration or receipt by National Marine Fisheries Service?" So, we started the clock when we found approval of the action by council in the council minutes. And so, that is a good point in that some of these actions, the councils were likely working on them before for some of these, but our law student went back to try to find when the action was first talked about by the council, and then when they approved the action and then we started the clock. It was not started when it was received by the National Marine Fisheries Service. And so we were trying to figure out the timeline from when the council finally decided this was the action they wanted to take, how long it then took to get through the process with that. So thanks for the question.

So, we're just wrapping up here. So, if you have questions, you can start to put them in the chats, but just wanted to share some concluding thoughts from our research and some key takeaways.

And so, as we mentioned in the beginning, the Magnuson-Stevens Act itself does not mandate a rigid decision-making process with the exception of the 60-day public comment period for Fishery Management Plan and amendments. Our research founder, we feel that our research found that councils and the National Marine Fisheries Service can implement decisions quickly when the desired actions are planned for. So, when they're using those framework processes or planning ahead for what they might see coming down the line and in emergency situations.

However, scientific uncertainty, fisheries complexity, protected species interactions, public controversy and litigation risks can all affect those timelines. So, it's easy to say, "Hey, they can move quickly when they plan for the desired action."

But if you don't know what the desired action needs to be because you don't have all of the scientific information that you need to know what might happen in five years? So, we do have to be conscious of the fact that they don't have complete universe of information that they might need to do that. So, fishery management is a complex process that's heavily reliant on scientific data. Emerging knowledge about the impacts of climate change on fisheries has to be integrated into stock assessment models and management frameworks. And so, while councils can build some nimbleness into their Fishery Management Plans by authorizing the National Marine Fisheries Service to make in-season adjustment, it still takes time to understand and respond to emerging environmental conditions.

And then, further, the nature of the action itself can affect nimbleness. So, again, simple non-controversial actions may affect nimbleness. I mean, those can go through quickly. If it's not controversial, if it's a simple change, we're not going to see problems with that. But, actions that are affecting important ecosystems or protected species are just going to require more NEPA analysis and

endangered species analysis and are likely to elicit greater public input at both the council level and the National Marine Fisheries Service when they're proposing their regulations. These actions may also present a greater risk of litigation. You're going to need a more detailed scientific record and more thorough response to public comments, both of which take time. And so, for instance, if you have a fishery that's interacting with right whales, unfortunately, that decision-making process is just going to take longer than a fishery that doesn't interact with any species of concern.

So, there are other reasons outside of Magnuson that decisions might be taking longer. So, I did see a question pop up in the chat about Magnuson provisions, so about other procedures, and they had a specific question about catch share programs. We did not look at the procedural requirements for creating a brand-new catch share program. So, there are different procedural requirements for that or for determining an individual fishery quota. But since we really wanted to get a sense of just, on a day-to-day basis, what does the landscape of federal fishery management look like, we wanted to stick with the more traditional Fishery Management Plans, amendments, and adjustments to those existing plans.

And then, finally, while working on this report, the National Sea Grant Law Center did have a few thoughts about where there might be opportunities to reform. But note, however, that our research shows that the councils and the National Marine Fisheries Service are implementing decisions rather quickly. So they're already moving. I mean, we were kind of surprised, as Samantha said, even amendments, there's examples of them taking less than two years, and the fact that they got an emergency action in place within 41 days is amazing. So, none of these recommendations on this slide would likely have a significant impact on those timelines that we presented, but there are things to consider that might reduce the workload for the councils or clear up some of the uncertainty related to the NEPA analysis. So, it is possible to amend the Magnuson-Stevens Act to shorten the public comment period for the Fishery Management Plans and amendments.

For instance, maybe it could be 30 days instead of 60 days. But, given the length of Fishery Management Plans, level of detail, number of amendments that come out over the course of year, a 60-day comment period is really not that unreasonable, right? That's a lot to wade through for people and organizations to provide comment on. So, it might likely be difficult for interested parties to comment adequately if there was only a 30-day public comment period. The other thing is based on a word search of framework adjustment in the Federal Register. The New England Fishery Management Council appears to adopt framework adjustments more frequently than other councils. And so, while many councils adopt framework amendments and refer to framework actions, it's not clear that they are implementing the same processes as the New England Council or that their decision-making timelines are shortened because of that. So, additional guidance from the National Marine Fisheries Service regarding best management practices for framework measures could be helpful to the councils as they're kind of moving into this new regime.

The other thing is National Marine Fisheries Service may wish to consider developing a categorical exclusion for framework measures to help clarify the NEPA process for that. We did find some examples where councils have used categorical exclusions for framework adjustments. And so maybe that's something that could be more widely used throughout the councils.

And then, finally, this is more outside the box and who knows whether it would stand up to legal scrutiny, but emergency actions are generally taken for immediate fisheries crisis, something happening right now. But climate change is a bit of an emergency. And what if some climate change impacts were considered an emergency? Would a broader interpretation of emergency give the councils and the National Marine Fisheries Service a little more flexibility? Maybe, maybe not. They may have what they need without trying to stretch something like that, but it is something to consider.

So with that, I'm going to just go to the next slide. I do see there's questions coming in from the chat box, which I'm going to start to look at. But, before we do that, I wanted to mention that our full report is available on our website. Samantha just dropped the link to the project page into the chat box, and so you can go and download the report. Samantha showed a condensed version of the tables on the slides. The table in the report has specific information about which actions we were looking at for that table. So, let me scroll back up.

Okay, so someone mentioned that including emergency rule timelines really isn't day-to-day procedure because NOAA - they're rarely used in only in circumstances that meet the agency's criteria. That is true. NOAA has provisions that restrict the use of emergency action in particular cases. The other thing, the comment noted is that they may only be in place for six months. That's right. The emergency rules can only be in place in six months, and they are only to be used- If a council is recommending emergency action, then the council needs to be taking action to develop an amendment or other council action, permanent action, to then be able to lift that emergency rule. Yeah, thanks for the comment. Yeah, it might not be a legitimate thing to consider with respect to climate impacts, but it kind of came up in some of our discussions with that.

Someone said, "Can we find more detail on the feedback that spurred this research?" So, at the beginning I mentioned that we were approached by the Nature Conservancy and they requested an analysis of the nimbleness of fishery management decisions. Yeah, so we created this project based on the funding that we received from the Nature Conservancy. And, as we've mentioned a couple times, there appears to be a perception it was captured in a General Accountability Office report that the councils don't have the kind of nimbleness they need to take action so that's what we were researching on.

So, someone in the comments said, "Stakeholders often complain about the slow response to changes in the environment, for example, but it's more related to the speed with which issues are brought up for council for discussion in the council process." So, as we mentioned, the council meeting processes are different, and there's some variety in there, and, as Samantha mentioned, councils can table discussions for later meetings. They are only meeting twice a year. And so, yes, if somebody feels there's a pressing issue and the decision may feel slow because the council hasn't taken it up yet, or maybe they've wanted to wait until the next meeting and so there is a lot of culture and process issues on the individual council level that are influencing the decision-making process that, again, are not required or being mandated by law in the Magnuson-Stevens Act.

Yeah. Okay. So, someone said, "Towards the beginning you noted that most lawsuits come from fishermen or fisher groups and not as much from environmental groups. Do we have numbers on that based on exact stats or more of an obvious perception?" So, there are exact numbers on that. We relied on an article that was written by a law professor, or two law professors, that they analyzed fisheries, litigation and court cases, I think, from the passage of the Magnuson-Stevens Act until when the article was published. And so, there is exact numbers. That report is cited in our report that you can access on our website. So, if you're interested in those statistics or that analysis, you can get to it through our report.

Okay. All right. Well, so yeah, that's been a lot of information and we are very close to time. So yeah, if you have one last questions. Yeah. So, we did make the distinction, so it was two distinctions to make. So, in that analysis, the law professors found that more lawsuits were filed by the fishing industry or individual fishermen than environmental groups. But it was not that far away from like 50/50, it was like 60/40 or 55/45. But then, the other distinction is, that the lawsuits brought by the fishing industry are based on the Magnuson-Stevens Act provisions themselves, whereas the environmental groups are

more often suing to try to ensure compliance with other environmental laws, so NEPA or the Endangered Species Act.

Yes. So the other question is, "Did we look into all nimbleness of ability to account for new research findings and wonder if the noted perceptions of limited nimbleness are more tied to the stock assessment process?" Yes, that is a great question. We did not look at the council's ability to account for new research findings, for instance, through the committee process. I think you are spot on with that's where the perception, I think there are more challenges with integrating the new information into the stock assessment process and getting your desired management actions figured out than in the actual legal process to implement those decisions, if that makes sense.

Okay. Well, great. Well, I'm conscious of time, so I want to thank everyone so much for joining us for our first webinar of the year. Stay tuned for the announcements about our webinar series as we continue throughout the year. We will be posting the recording on our website as soon as we can get it available. And the best way to stay tuned for future announcements from the Law Center is to follow us on social media. So thanks, everyone. Have a great afternoon.