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## National Fishing Enhancement Act of 1984: New Federal Directions

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**G**OOD MORNING. My assignment this morning is to summarize pertinent sections of the National Fishing Enhancement Act (NFEA) of 1984 and to describe the impact of that act on federal activities relating to artificial reef development. Since time is short, let's get on with the job.

The federal government has been involved in reef development in various capacities over the past 70 years, although our involvement has been limited primarily to permitting and research. In the early 1970s, our interest expanded due to creation of the National Marine Fisheries Service (NMFS) and passage of the Magnuson Fisheries Conservation and Management Act, which made the Secretary of Commerce directly responsible for the management, conservation, and orderly development of marine fishery resources. NMFS acts as the management agency on behalf of the Secretary.

### Contributions to Fisheries

NMFS believes that artificial reefs can contribute to fisheries conservation and management goals in six important ways.

#### Maintaining, Restoring, and Enhancing Fishery Habitat

Artificial reefs can be used to expand critical habitat for habitat-limited fish such as snappers and groupers, as well as others dependent on coral reefs and bottom outcroppings. These artificial reefs therefore create shelter, spawning, nursery, and feeding areas for specific target species. A new emerging concept is to use artificial reefs to help mitigate habitat loss resulting from coastal development. However, this approach should be used only in appropriate in-kind mitigation situations.

#### Rebuilding Fish Stocks

Research has demonstrated that artificial reefs can increase carrying capacity and fish biomass in local areas. Moreover, the Japanese, who spend millions each year on artificial reef development, have demonstrated that reefs can be designed to enhance production of specific target species. Looking closer to home, reef fish stocks in the Gulf, which are currently considered to be overfished and stressed in many nearshore areas, may greatly benefit from artificial reef construction if combined with appropriate catch limitations (minimum size limits) or prohibitions (marine sanctuaries).

#### Increasing Food Production and Recreation Opportunities

By carefully analyzing the needs and fishing patterns of various user groups, artificial reefs can be built in a variety of locations and configurations to increase recreational and commercial fishing opportunities and catches. Construction of trolling alleys, fish aggregation systems, and benthic reefs can lead to increased catches, profits, and satisfaction for recreational and commercial users. As a commercial venture, use of artificial reefs in mariculture/aquaculture programs is an area that deserves additional attention.

#### Promoting Efficiency

Building artificial reefs offshore of fishing ports and urban areas can help reduce

costs of operation per trip for commercial and recreational fishermen. Increased operating cost is the single most important cause of business failure for commercial and recreational fishing businesses. Reduction of travel distance to fishing grounds can also provide an additional margin of safety for fishermen.

### **Reducing User Conflicts**

Artificial reefs can be built to provide fishing opportunities for all user groups and to spatially separate users, thereby reducing conflicts. However, proper siting of artificial reefs is essential to avoid creating additional user conflicts. Designation of special management zones around reefs has already been required to reduce gear conflicts in some states.

### **Developing Underutilized Species**

Estimates of underutilized marine fishery biomass in the South Atlantic, Gulf of Mexico, and Caribbean areas range from 5.2 to 10.3 billion pounds. Wherever the truth lies, it is clear that substantial opportunity exists for increased use of fishery resources for the benefit of recreational and commercial fishing industries and seafood consumers at large. Artificial reefs can be used to help fishermen selectively target species of interest, particularly pelagic species.

## **National Fishing Enhancement Act**

Clearly, properly designed, sited, and constructed artificial reefs can help resolve numerous problems confronting state and federal fishery managers. Unfortunately, past efforts have suffered from a lack of planning. I'm sure that all of us have heard of, or have been involved in, reef development projects that just didn't pan out the way they were intended. Materials that were improperly placed or were not suitable for site conditions have drifted off-site and, in some cases, washed ashore, or even worse, came ashore in the cod end of some angry fishermen's net. In some cases, reef materials have disappeared due to corrosion or subsidence.

The National Fishing Enhancement Act (NFEA) was implemented in October 1984 to help avoid these expensive mistakes and to encourage and require more responsible and effective artificial reef development efforts in the future. The act accomplished several important functions:

1) It established five national standards for reef construction and management (see section 203, NFEA). Section 203 of the Act states:

Based on the best scientific information available, artificial reefs in waters covered under this title shall be sited and constructed, and subsequently monitored and managed in a manner which will do the following:

- a) enhance fishery resources to the maximum extent practicable;
- b) facilitate access and utilization by United States recreational and commercial fishermen;
- c) minimize conflicts among competing uses of waters covered under this title and the resources in such waters;
- d) minimize environmental risks and risks to personal health and property; and
- e) be consistent with generally accepted principles of international law and shall not create any unreasonable obstruction to navigation.

2) It called for and precipitated development of a National Artificial Reef Plan (NARP) which was implemented in November 1985.

3) It clarified and beefed up federal permitting requirements for artificial reef construction by requiring the Secretary of the Army (Corps of Engineers) to

- consult and consider the views of appropriate federal, state, and local government agencies and other interests when issuing an artificial reef permit

- ensure that the proposed reef project is consistent with national standards and criteria
  - ensure that title to reef construction material and responsibility for reef maintenance are clear
  - ensure that the permit holder/applicant has the financial ability to assume any liability which may arise
  - consider the NARP and advise the Secretary of Commerce of any need to deviate from the plan.
- 4) It clarified and limited the liability of reef permit holders and donors of reef construction materials.
- 5) It established civil penalties of up to \$10,000 per violation of any provision of a reef permit.

### Future Still a Question

With that brief coverage of the Act, the key question remains: What does all that mumbo jumbo really mean for the future of artificial reef development in the U.S.?

First and foremost, I believe that the NFEA has helped usher in a new era of responsible, and enlightened reef development that expands beyond our historically myopic approach and pursues the full range of fishery benefits achievable through artificial reef construction.

Second, I believe the act has opened our eyes to the need for more comprehensive reef planning and management. While somewhat general in nature, the NARP encourages the development of more specific state and local artificial reef plans. A flurry of activity has already occurred. New Jersey, Puerto Rico, and Louisiana have developed and implemented plans, and a regional plan has been developed for the Northern Gulf covering offshore areas from Destin, FL, west to Louisiana. Exclusion mapping has been completed for the entire Gulf. Further, New York, Maryland, Washington, D.C., North Carolina, South Carolina, and many counties are developing plans.

Third, requiring reef permit applicants to demonstrate that they have the financial ability to assume any liability that may be associated with reef development will precipitate more responsible efforts and will tend to shift reef development activity from private interests to the government sector. Most government bodies have less exposure to liability due to sovereign immunity provisions of most state constitutions. Government should play more of a leadership role in the future.

Fourth, while no funds were appropriated by the act, pressure is mounting for government to be more actively involved in artificial reef research and development. Evidence of increased government interest and involvement exists.

Fifth, while untested by the courts, liability limitations imposed by the act should encourage greater private sector donations of reef construction material.

Last, representing the federal agency responsible for marine fisheries management and development, I can assure you the act has further piqued the interest of the National Marine Fisheries Service in using artificial reefs as a fishery management tool. We are already increasing our involvement in artificial reef research, planning, and management.

In summary, the National Fishing Enhancement Act is a significant new law that promises to substantially affect the nature of artificial reef development in the U.S. A new stage has been set upon which artificial reefs stand to play a more diverse and important role. Thank you for your kind attention.