

# MAGNUSON-STEVENSONS ACT REAUTHORIZATION TASK FORCE

## Task Force Recommendations

### Summary

The Magnuson-Stevens Act Reauthorization Task Force was created in April 2001, and reviewed more than 60 proposed amendments to the Act during five conference calls in May and June. Proposals came from two sources: last year's recommendations from a similar working group and suggestions offered this year by NOAA General Counsels for Fisheries, and Enforcement and Litigation, and NMFS headquarters and field offices. The Task Force has thus far agreed to 26 of these proposals. Six other proposals have been placed in a second category because they either need more staff work or are new proposals that the Task Force has not yet formally reviewed. In addition, nine other proposals that deal with (1) rights-based management systems (IFQs, CDQs, and cooperatives), (2) disaster relief, (3) the central lien registry, and (4) 10-year rebuilding schedules have not been written up as formal proposals, usually because they involve complicated and/or contentious issue, and may require guidance from the agency's leadership.

In brief, the Task Force accepted 26 proposals; is finalizing another six proposals; and has placed nine others in a special category that require more study and perhaps guidance from the agency's leadership. More than a dozen other proposed Magnuson-Stevens Act amendments were rejected by the Task Force.

### Proposals accepted by the Task Force

The most "substantive" proposals that the Task Force agreed to address the following broad themes: (1) FMP review and comment procedures, (2) Council operations, (3) statutory definitions of "overfishing" and "overfished", (4) fisheries law enforcement, and (5) the collection and use of economic and social data and confidential information. However, a number of the 25 proposals that the Task Force agreed to may be treated as essentially technical changes, and a few addressed regional issues.

This outcome reflects the view of most Task Force members that, at the present time, it is unnecessary and impractical to propose fundamental changes in the Magnuson-Stevens Act. Notably, the Task Force recommended relatively few proposals that would significantly modify the major 1996 Sustainable Fisheries Act amendments (the revised definitions and new national standards, stock rebuilding; the IFQ moratorium; essential fish habitat; and bycatch reduction). Rather, most members of the Task Force agreed that the Magnuson-Stevens Act does not require fundamental changes, but that the 1996 Act can be strengthened and, so to speak, made to work better.

This document lists the 26 Magnuson-Stevens Act reauthorization proposals that the NMFS Task Force has thus far approved, with a statement of the problem and a proposed solution for each. Obviously, it is likely that the Task Force will make additional proposals in the future.

**NOAA/NMFS MAGNUSON-STEVENS ACT REAUTHORIZATION TASK FORCE**

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## **A. MSA REAUTHORIZATION PROPOSALS AGREED TO BY THE TASK FORCE**

### **Review and Approval of FMP/Amendments and Regulations**

#### **1. Issue: Recouple the FMP/amendment and regulatory processes**

Submitted by: NMFS MSA Reauthorization task force in 2000

**Problem:** We have encountered serious problems since the 1996 amendments to Section 304 and 305 that essentially decoupled review and implementation processes for FMPs/amendments and their implementing regulations. The most troublesome of these problems is that the decision to approve/disapprove the FMP/amendment may have to be made before the comment period on the regulation ends. This prevents agency consideration of what could be critical public comment.

**Proposed solution:** Amend the act to require a parallel process for review of FMPs/amendments and their implementing regulations.

Section 304 of the Act should be amended as follows:

(a) in paragraph (1) by -  
adding after "Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment," the words "and any proposed implementing regulations prepared under Section 303(c)(1)".

(b) in paragraph (1)(A) by -  
replacing existing paragraph to read "immediately make a preliminary evaluation of the management plan or amendment for purposes of deciding whether it is consistent with the national standards and sufficient in scope and substance to warrant review under this subsection and - (i) if that decision is affirmative, implement subparagraphs (B), (C), and (D) with respect to the plan or amendment, or (ii) if that decision is negative - (I) disapprove the plan or amendment, and (II) notify the Council, in writing, of the disapproval and of those matters specified in subsection (a)(3)(A), (B), and (C) as they relate to the plan or amendment;"

(c) in paragraph (1)(A) by-  
renumbering existing paragraph (A) to (B).

(d) in paragraph (1)(B) by-  
renumbering existing paragraph (B) to (C) and revising to read "by the 15<sup>th</sup> day following transmittal of the plan and proposed implementing regulations, publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views or comments

of interested persons on the plan or amendment may be submitted to the Secretary during the 50-day period beginning on the date the notice is published; and also publish in the Federal Register any proposed implementing regulations that are consistent with the fishery management plan or amendment, this Act, and any other applicable law, for a comment period of 50 days. The Secretary may make such technical changes to the Council's proposed regulations as may be necessary for clarity, with an explanation of those changes."

(e) in paragraph (b)(1) by-  
changing the citation "section 303(c)" to "section 303(c)(2)."

(f) in paragraph (b)(1)(A) by-  
replacing the words before ... "publish such regulations in the Federal Register" with the words "If the Secretary determines that the regulations are consistent, the Secretary shall, within 15 days of transmittal,"

(g) in paragraph (b)(1)(B) by-  
replacing the words before "notify the Council" with the words "If the Secretary determines that regulations are not consistent, the Secretary shall, within 15 days of transmittal,"

(h) in paragraph (b)(3) by-  
adding after "paragraph (1)(A)" the words "and within 45 days after the end of the comment period under subsection (a)(91)(C)."

## **2. Issue: Tighten the language for preliminary Secretarial review of FMPs and amendments**

Submitted by: Office of Habitat Conservation

**Problem:** The draft Administration bill attached to Bruce Morehead's 4/21/00 memo includes language to provide for a preliminary Secretarial review of an FMP or amendment. Under Section 4(c), the language for amending Section 304(1)(A) of the Act would have the Secretary review the FMP or amendment "for purposes of deciding if it is consistent with national standards and sufficient in scope and substance to warrant review under this subsection." Construed narrowly, this preliminary review might not allow for a prompt disapproval if the FMP or amendment is inconsistent with another part of the Act, e.g., Section 303(a) or other applicable law, e.g., NEPA.

**Proposed solution:** After the words "national standards" add the following language: "the other provisions of this Act, and other applicable law."

## **3. Issue: Amend the comment period on framework regulations**

Submitted by: Office of General Counsel for Fisheries

**Problem:** Section 304(b)(1)(A), read together with Section 303(c), can be interpreted to require

a comment period for all regulations implementing an FMP, even those promulgated under a framework provision allowing issuance without notice-and-comment rulemaking. Many FMPs contain frameworks that substitute notice and public input at the Council level for notice-and-comment through the Federal Register process for certain limited actions. A good portion of our fishery management actions have been done through these framework actions for almost two decades. We believe it was not Congress' intention, when it revised the procedural sections in 1996, to eliminate these framework actions (see Guide to the SFA, p. 30).

**Proposed solution:** Amend Section 304(b) to add a subparagraph (4) to read:

(4) Upon transmittal by the Council to the Secretary of actions prepared under framework provisions of fishery management plans, the Secretary shall follow the procedures of those framework provisions to publish promptly actions that are consistent with the plan, this Act, and other applicable law.

Notes: The amendatory language uses the language "actions" to avoid confusion with "regulations" treated earlier in Section 304. There is precedent for this usage in the judicial review section, 305(f).

This amendment could be a stand-alone proposal, or could be folded into last year's proposed revision of Section 304 to re-couple the amendment and regulatory processes.

**4. Issue: Modify Section 305(c) on emergency actions to make them applicable, as required, for one calendar year**

Submitted by: Northeast Region

**Problem:** The current language in section 305(c) allows an emergency or interim action to be effective for 180 days, with the possibility of extension for an additional 180-day period. While this is usually adequate either to address a short-term problem or to allow development of an FMP or FMP amendment to address the issue in a more permanent way, there are circumstances in which this timing is problematic. Specifically, when there is no FMP in place and the emergency or interim action is implementing a new management regime, the fact that the two sequential 180-day periods fall short of a full calendar year means that quota management and data collection can be compromised. For example, the 2000-2001 specifications for the spiny dogfish fishery were put in place by Secretarial emergency rule. However, the FMP sets specifications on the basis of a calendar year. The consequence was that the fishery was unregulated for several days at the end of April 2001, before the new specifications took effect on May 1. A similar problem could arise with the red crab fishery in 2001-2002.

**Proposed solution:** Section 305(c)(3)(B) should be amended to allow the total period of effectiveness for an emergency or interim action to be one full calendar year (instead of one 180-day period with the possibility of a second 180-day extension).

The relevant parts of an amended Section 305(c)(3)(B) would read:

(B) shall (referring to an emergency regulation), ... remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for an additional period of not more than ~~180~~ 186 days ...

### **Council Operations**

#### **5. Issue: Facilitate notifications of Council meetings**

**Problem:** Councils are required under Section 302(i)(2)(C) and (i)(3)(B) to spend considerable sums to publish meeting notices in local newspapers in major and/or affected fishing ports in the region, although e-mails, PSAs and notices included in marine weather forecasts are less expensive and more effective in reaching target audiences.

**Proposed solution:** Eliminate the requirement in these Sections to publish notices of public meetings in newspapers. Accordingly, Section 302(i)(2)(C) would be amended by replacing the phrase "... and such notice may be given by such other means as will result in wide publicity" with "... and such notice will be given by any means that will result in wide publicity." Section 302(i)(3)(B) would be amended by inserting after the words "... shall notify local newspapers" the phrase "... or through any means that will result in wide publicity".

### **Magnuson-Stevens Act Definitions**

#### **6. Issue: Modify the definitions of "Overfishing" and "Overfished"**

Submitted by: Office of Science and Technology

**Problem:** Currently, the terms "overfishing" and "overfished" are defined as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

This definition works for "overfishing" but not for "overfished". In essence, Congress has taken a verb and an adjective and defined them both to be the same thing. And, by doing so, they preclude making the useful distinction between the "act of overfishing" (fishing mortality too high) and the "state of being overfished" (stock size too low). It is possible to have an overfished stock but no current overfishing (e.g. for a stock previously depleted by overfishing but now protected), or to have overfishing on a healthy stock (fishing mortality too high but favorable environmental conditions have kept the stock at high abundance – for now....). Of course, the worst combination is overfishing on an already overfished stock.

**Proposed solution:** The NMFS Guidelines to National Standard 1 point out that despite Definition #29, the Magnuson-Stevens Act uses the terms in the two senses outlined above. Thus, the NS1 Guidelines use the above definition for "overfishing", but use the term

“overfished” to refer to a depleted stock status. Therefore F/ST suggests retaining the above definition for “overfishing” and adding a new definition for “overfished”, as follows:

“The term “overfishing” means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

(29B) The term “overfished” is used to describe a stock or stock complex whose size is below the natural range of fluctuation associated with the production of maximum sustainable yield.

### **Fisheries Law Enforcement**

#### **7. Issue: Amend the authority for investigatory subpoenas**

Submitted by: Office of General Counsel for Enforcement and Litigation

**Problem:** Currently, the Magnuson-Stevens Act authorizes the Secretary to issue subpoenas only for the purposes of conducting a civil penalty hearing, in Section 308(f). The MSFCMA, as well as every other statute enforced by NOAA other than the Northern Pacific Halibut Act (NPHA), does not contemplate the issuance of subpoenas for the purpose of conducting an investigation initiated under the authority granted in Section 311.

The fact that subpoenas can only be granted for the purpose of conducting a hearing, as under the MSFCMA, can lead to problems during the investigation of alleged violations. This is because the Agency is limited in its ability to fully investigate alleged violations prior to issuance of a Notice of Violation and Assessment (NOVA) and the request from a Respondent for an administrative hearing. It is only after a hearing request has been made by a Respondent that the Agency has the ability to subpoena information it was unable to obtain voluntarily during the course of the initial investigation.

The lack of investigatory subpoena authority is detrimental to both the Agency and Respondents. In some cases, the information sought by way of a subpoena issued following a Respondent’s hearing request may have exculpatory value that would directly effect the Agency’s decision to issue a NOVA or assess a penalty. In other cases, the information sought may strengthen the Agency’s allegations, show aggravating circumstances, or give rise to other violations. In both cases, the problem would be remedied if the Secretary had the authority to issue subpoenas during the course of an investigation.

A short, non-exhaustive, list of information that may be sought by way of an investigatory subpoena includes: landing and receipt/payment records maintained by fish dealers, brokers and settlement houses; business records; bank/financial records; phone records; and records maintained by fishing supply companies on purchases made for particular vessels.

**Proposed solution:** GCEL and OLE are recommending that Section 308(f) be amended to include the availability of investigatory subpoenas under all marine resource laws enforced by

the Secretary. The following text includes the existing language of Section 308(f), and the suggested language to effect the recommended change (redacted language is struck through, suggested language is bold and italicized):

(f) SUBPOENAS.-- For the purposes of conducting any *investigation or* hearing under this section *Act or of any other marine resource law enforced by the Secretary*, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned *for the purposes of conducting any hearing* shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**8. Issue: Amend the authority for forfeiture of catch when written warnings are issued**  
Submitted by: Office of General Counsel for Enforcement and Litigation

**Problem:** Currently, the MSFCMA does not authorize the forfeiture of illegal catch when the agency chooses to handle the violation by a written warning rather than a summary settlement or NOVA.

**Proposed solution:** GCEL and OLE are recommending that the ban on forfeiture for written warning level violations be amended to allow for the forfeiture of contraband fish as follows:

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by Section 307, ~~other than any act for which the issuance of a citation under the Section 311(e) is sufficient sanction~~ shall be subject to forfeiture to the United States, except that no fishing vessel shall be subject to forfeiture as a result of any act for which issuance of a citation under Section 311(c) is sufficient sanction \* ... .

Section 310(a)

\*The MSFCMA, and agency practice, interprets written warnings as being "citations".

**9. Issue: Prevent a transfer of a permit from extinguishing a permit sanction**  
Submitted by: Office of General Counsel for Enforcement and Litigation



**Problem:** Currently, the Magnuson-Stevens Act provides that transfer of ownership of a vessel, by sale or otherwise, does not extinguish permit sanctions that are in effect or pending at the time ownership is transferred. Many permits that are issued by the Agency, however, are not issued to vessels, but rather to persons. For example, in the Alaska groundfish fishery, permits are based on a person's historical catch data and are issued to the person, rather than a vessel.

**Proposed solution:** Amend Section 308(g)(3) to prevent transfer of any permit, or interest therein, to extinguish any existing or pending permit sanction. It is suggested that the following underlined language amend the first sentence of Section 308(g)(3):

“Transfer of ownership of a vessel, of a permit, or any interest in a permit, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel or of a permit, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel or permit at the time of the transfer.”

**10. Issue: Increase civil penalties and criminal fines**

Submitted by: Office of General Counsel for Enforcement and Litigation

**Problem:** Civil penalty amounts are too low to be an effective deterrent, and violators consider even the maximum civil penalty an acceptable cost of doing business.

**Proposed solution:** Increase civil penalties in Section 308 from \$100,000 to \$200,000.

Criminal fines should be increased proportionally, and Section 309(b) amended, as follows:

Any offense described in subsection (a)(1) is punishable by a fine of not more than ~~\$100,000~~ \$200,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any observer described in section 307(1)(L) or any officer authorized to enforce the provisions of this Act (as provided in section 311), or places any such observer or officer in fear of imminent bodily injury; the offense is punishable by a fine of not more than ~~\$200,000~~ \$400,000, or imprisonment for not more than 10 years or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than ~~\$200,000~~ \$400,000.

**11. Issue: Increase through amendment the maximum penalty**

Submitted by: Office of General Counsel for Enforcement and Litigation

**Problem:** This is a technical amendment that would make the Magnuson-Stevens Act consistent with current law and enforcement practice. Pursuant to the Civil Monetary Penalty

Inflations Adjustments of 2000 (65 F.R. 65260 (11/01/00)), the maximum civil penalty for the Magnuson-Stevens Act was increased to \$120,000/day. Therefore, Section 308(a) should be amended to reflect the increase in maximum civil penalty from \$100,000 to of \$120,000, unless the Magnuson-Stevens Act is amended to include even higher civil penalties.

**Proposed solution:** The maximum civil penalty in Section 308(a) should be increased from \$100,000 to \$120,000.

**12. Issue: Promote Federal-State partnerships in fisheries law enforcement**

Submitted by: Office of General Counsel for Enforcement and Litigation

**Problem:** Recently, Congress appropriated monies for the Secretary to enter into enforcement agreements with States to further the enforcement of Federal and State fisheries laws by the States. Congress's desire to increase the role of States in fisheries enforcement is greatly hindered, however, by the provisions of the Magnuson-Stevens Act that prohibit State employees from gaining access to and disclosing information submitted to the Secretary in compliance with the Magnuson-Stevens Act for any purpose, including enforcement of State fisheries laws. This concern is heightened if monies continue to be appropriated for cooperative enforcement agreements. Continued appropriations are supported by the Fisheries Management Councils.

**Proposed solution:** Efforts should be made to remove any barriers that may hinder existing and future cooperative enforcement efforts with the States by amending Section 402(b)(B) as follows:

(b) Confidentiality of Information

(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except –

(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

(B) with respect to States that have entered into a fisheries enforcement agreement with the Secretary, to State employees who are responsible for fishery management plan monitoring;

(C) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person, provided that this subsection shall not apply to State employees responsible for fishery management plan monitoring as provided in section 402(b)(1)(B);

Renumber Section 402(b)(1)(C),(D), and (E) to Section 402(b)(1)(D),(E), and (F), respectively.

**13. Issue: Amend the Northern Pacific Halibut Act to provide for permit sanctions**

Submitted by: Office of General Counsel for Enforcement and Litigation

**Problem:** Presently, since sablefish fishing is regulated under the Magnuson-Stevens Act and halibut fishing is regulated under the NPHA, there is a grave disparity between treatment of similarly situated violators under the IFQ regulations. Specifically, an IFQ sablefish fisherman committing a serious violation of the IFQ regulations could be assessed a civil penalty of up to \$120,000, and his IFQ permit(s) could also be sanctioned. The identical violation involving halibut under the same IFQ regulations is limited to a monetary penalty of \$25,000. There is also no explicit permit sanction authority in the NPHA that would allow modification or revocation of the fisherman's IFQ permit under the NPHA. This amendment would provide for similar treatment of similarly situated violators and would clarify that the NPHA also authorizes the Agency to sanction IFQ halibut permits.

**Proposed solution:** Amend provisions of the NPHA by means of the MSFCMA reauthorization. Below is draft language for amending the NPHA. These amendments are necessary in order to provide consistent enforcement sanctions between sablefish and halibut fishermen in the Alaska IFQ fisheries.

**Amend 16 U.S.C. § 773f(a) of the NPHA to read:**

Civil Penalties and Permit Sanctions

(a) Liability; continuing violations; notice; determination of amount; other sanctions

Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of Title 5, to have committed an act prohibited by section 773e of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed ~~\$25,000~~ \$120,000\* for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation violator, the degree of culpability, and any history of prior offenses, ~~ability to pay~~, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay. Provided, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

**Add to 16 U.S.C. § 773f of the NPHA a new subsection: \*\***

(e) Permit Sanctions

(1) In any case in which (A) a vessel has been used in the commission of any act prohibited under section 773e, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of

section 773e, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, the Secretary may --

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

(ii) suspend or modify such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to any foreign fishing vessel, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account --

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, of a permit, or any interest in a permit, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel or of a permit, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel or permit at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty, criminal fine or any amount in settlement of a civil forfeiture, the Secretary shall reinstate the permit upon payment of the penalty, fine or settlement amount and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed either in conjunction with a civil penalty proceeding under this section or otherwise.

(6) For the purposes of this section, the term "permit" means, without limitation, any license, certificate, approval, registration, charter, membership, exemption or other form of permission issued by the Commission or the Secretary, and includes any quota share or other transferable quota issued by the Secretary.

\* Civil penalties under the NPHA should be the same as those under the MSFCMA. This proposed increase reflects the current maximum civil penalty under the MSFCMA. If civil penalties are increased under the MSFCMA, that increase should be adopted in these NPHA amendments.

\*\* Section 308(g) of the Magnuson Act (16 U.S.C. § 1858(g)) has been used as the model for this proposed language. Departures from the model are indicated by underlining. Similar amendments to the Magnuson Act permit sanction provision Section 308(g) would provide identical sanction options for the fixed gear IFQ program. The provision relating to sanction for non-payment of observer service fees has not been included because authority for observer coverage does not presently arise under the NPHA.

### **Social and Economic Data**

#### **14. Issue: Amend Section 303(b) to enable NMFS to obtain economic data from processors**

Submitted by: Office of Science and Technology

**Problem:** Section 303(b) DISCRETIONARY PROVISIONS. Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may-- ...

(7) - require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery; ...

This provision prevents the agency from obtaining needed economic data from processors, a key body of information to understand the economics of federally managed fisheries. The ability of NMFS to accurately predict the impact of proposed fishery management regulations would be improved while continuing to protect confidential data under existing provisions of the law. In addition, it would eliminate the appearance of a contradiction in the law requiring economic analysis without allowing the collection of necessary data. The explicit inclusion of economic and socio-cultural data in the definition of "best scientific information" in National Standard 2 will improve the information available to fishery managers upon which they can base their decisions and set policies concerning the nation's living marine resources. Removing language such as "(other than economic information)" in the MSFCMA will also strengthen the ability of the NMFS to collect data from processors and harvesters of fishery resources.

**Proposed solution:** Section 303(b) Discretionary Provisions should be amended.. Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(7) - require fish processors who first receive fish that are subject to the plan to submit data (~~other than economic data~~) which are necessary for the conservation and management of the fishery;

**15. Issue: Improve the agency's ability to collect social and economic data**

Submitted by: Office of Science and Technology

**Problem:** NMFS and the Councils are increasingly required under the Magnuson-Stevens Act and other laws to conduct regulatory assessments that evaluate the social and economic impacts of management measures. However, these social and economic assessments require considerable data, and the Magnuson-Stevens Act should be amended to require/authorize the collection of this data.

**Proposed solution:** A two-part proposal was developed in consultations among S&T, SF, and GCF. The first element would amend section 303(a) - - required provisions of FMPs - - and the second would give the Secretary the authority, in an amended section 402, to establish such a data collection program.

Amend Sections 303 and 402 as follows:

Section 303(a)(5) -

specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged, time of fishing, number of hauls, harvest and processing revenues by species, production costs, capital expenditures and other fishing or processing expenses, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

402(a)(2) Secretarial Determinations. -

If the Secretary determines that additional information is necessary and appropriate for developing, implementing, revising or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may implement an information collection or observer program requiring submission of such data for the fishery.

**Confidential Information**

**16. Issue: Modify Section 402(a) to enable the Councils to obtain proprietary and confidential information**

Submitted by: Office of Science and Technology

**Problem:** The MSA, in Section 402(a), currently exempts proprietary or confidential commercial or financial information on fishing and processing operations from the universe of information that the Councils may request that the Secretary collect. However, the Councils and NMFS need such information to adequately carry out the analyses and regulatory assessments required in the development of FMPs and amendments.

Section 402, INFORMATION COLLECTION, currently states that:

“(a) COUNCIL REQUESTS.– If a Council determines that additional information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) ... the types of information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) ...”

**Proposed solution:** Section 402, INFORMATION COLLECTION, should be amended as follows:

“(a) COUNCIL REQUESTS.– If a Council determines that additional information (~~other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations~~) ... the types of information (~~other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations~~) ...”

**17. Issue: Amend the agency’s use of confidential information in limited entry determinations**

Submitted by: Office of General Counsel for Fisheries

**Problem:** Much of the information required by regulation to be submitted in support of applications for limited entry permits qualify as confidential under section 402(b)(1). Although a recent amendment provides an exception for “... information ... used to verify catch under an individual fishing quota program,” the exception is too limited in several ways. First, it applies only to IFQ programs and not to other limited entry programs. Second, it is limited to information relating to catch. Typically, these programs also require ownership history and the possible existence of either written or oral leases. Some programs provide “hardship exemptions” as well. Determination of all these qualifications for limited entry permits or quota shares requires the submission of confidential business and financial information by the applicant, and agency review of such information.

When an applicant refuses to voluntarily waive confidentiality rights, difficulties arise. One situation is where two competing applicants apply for the same permit/quota share. NMFS must determine each of the applicants’s eligibility, then grant the contested permit or share to one while denying the other’s application. If the confidential information on which the agency based its determination is controlled by the successful applicant, procedural due process requires that the unsuccessful applicant be given notice of the decision and a meaningful opportunity to respond. If the successful applicant won’t waive the privilege, NMFS cannot meet its obligations to the unsuccessful applicant.

Even where there is no competition for a permit or quota share, an applicant may appeal NMFS’ denial of the application in whole or in part. Judicial review of the agency action is done by

review of the administrative record, which is open to the public. The agency has to choose between filing an administrative record containing information protected under section 402(b)(10), refusing to divulge the basis for its action to the District Court, or making determinations without reference to the confidential information.

**Proposed solution:** Add a new paragraph (G) to section 402(b)(1) to read as follows:

(G) when such information is required by the National Marine Fisheries Service for any determination under a limited entry program.

### **Fish Habitat**

#### **18. Protection of Fish Habitat**

Submitted by: MSA 2000 Reauthorization Task Force

**Problem:** NMFS and the Councils need more clearly defined authorities to regulate the actions of commercial and recreational vessels, including anchoring, that adversely affect coral reef habitats or other habitats sensitive to disturbance.

**Proposed solution:** Amend Section 303 of the Magnuson-Stevens Act by adding a new paragraph (b)(13) that reads:

“designate zones encompassing specific coral reef habitats or other habitats sensitive to disturbance and restrict actions of any vessel or motorized watercraft that would adversely affect fishery resources in those zones.”

### **International Fisheries**

#### **19. Issue: Amend the Magnuson-Stevens Act to accommodate US-Canadian reciprocal albacore tuna fisheries in each other's zones**

Submitted by: Office of General Counsel for Fisheries

**Problem:** Under the 1981 Treaty with Canada on Pacific Coast Albacore Tuna Vessels, Canadian vessels fish for tuna in the EEZ of the United States and U.S. vessels fish for tuna in the EEZ of Canada. When the United States entered into this treaty, highly migratory species, including tuna, were excluded from the definition of “fish” in the FCMA. Therefore, in 1981 fishing for tuna by Canadian vessels in the EEZ of the United States was not considered “fishing” at all and was not subject to the Act. When the Magnuson Act was amended in 1990, effective 1992, to include tuna as “fish”, fishing by Canadian vessels under this Treaty was apparently overlooked. We do not believe Congress intended to abrogate the 1981 Treaty. Based on discussions with staff of the Bureau of Oceans and Environmental and Scientific Affairs, Department of State, that Department concurs with this position.



A related problem is that there is no statutory authority under which a Federal agency can manage Canadian vessels fishing in U.S. waters, or U.S. vessels fishing in Canadian waters, under the Treaty.

**Proposed solution:** Amend the chapeau of section 201(b) to read as follows:

(b) Foreign fishing described in subsection (a) may be conducted pursuant to the 1981 treat with Canada on Pacific Coast Albacore Tuna vessels, as amended; or pursuant to any other international fishery agreement (subject to the provisions of section 202 (b) or (c)), if such an agreement ...

Propose a stand-alone provision to read as follows:

The Secretary of Commerce may promulgate regulations necessary to discharge the obligations of the United States under the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges. The proposed rulemaking and public participation requirements of section 553 of title 5, the United States Code, shall not apply to regulations promulgated under this section. The Paperwork Reduction Act, chapter 35 of title 44, United States Code, shall not apply to collection of information or record keeping requirements established by regulations promulgated under this section.

Note: The Administrative Procedures Act and Paperwork Reduction Act exemptions are needed to facilitate the United States' carrying out its obligations under the Treaty.

**20. Issue: Amend the requirement for 100 percent observer coverage of foreign vessels operating under Pacific Insular Area fishery agreements**

Submitted by: Office of General Counsel for Fisheries

**Problem:** The current language in section 201(h) appears to require 100 percent coverage for any foreign vessel fishing under a Pacific Insular Area fishery agreement, which is a level of coverage more than is necessary for scientists and managers to adequately monitor harvests and bycatch, or for law enforcement officers to monitor for enforcement purposes. Since the FCMA was passed in 1976, automated vessel monitoring systems (VMS) have become a valuable tool that can complement an observer program. VMS systems are particularly useful for enforcement purposes. Concerns have been expressed that some foreign nations are not interested in commencing negotiations for a PIAFA if their fleets must commit to 100 percent observer coverage. That level of coverage would significantly increase costs to the industry, which costs are passed on to the insular area governments in reduced revenues from the agreements.

**Proposed solution:** Revise section 201(h)(2)(B) to read as follows:

(B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program, or other monitoring program, that the Secretary determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement.

Revise section 204(e)(2)(F) to read as follows:

(F) shall require the foreign fishing nation and its fishing vessels to comply with the requirements for paragraphs (1), (2), (3) and (4)(A) of section 201(c) and section 201(d) and section 201(h):

Revise section 204(e)(4)(A)(i) to read as follows;

(i) ~~establishment of Pacific Insular Area observer programs, or other monitoring programs, that are adequate to monitor the harvest, bycatch, and compliance with the laws of the United States by foreign fishing vessels that would fish under Pacific Insular Area fishery agreements.~~

Note: Deletion of the reference to section 201(h) in section 204(e)(2)(F) is a technical change consistent with the amendment to section 201(h)(2)(B). Deletion of “establishment of” in section 204(e)(4)(A)(i) clarifies that the observer/monitoring programs do not need to be established before a Marine Conservation Plan (MCP) is approved. Most if not all of these island governments need an approved MCP to funnel money toward the projects they are planning. They expect that some of that money, in turn, can assist in the establishment of an observer or other monitoring/VMS program.

### **Maritime Boundaries**

#### **21. Issue: Clarify the inner boundary of the EEZ**

Submitted by: Office of General Counsel for Fisheries

Problem: Recent disputes between the Department of the Interior and the Department of Commerce have highlighted the ambiguity inherent in the definition of “exclusive economic zone” in section 3(11). The definition states that, for purposes of the Magnuson-Stevens Act, “the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.” What does that mean for commonwealths, territories, and possessions of the United States? The legislative history of the 1976 Act and the 1986 Act incorporating the Presidential proclamation of the EEZ are discussed in a memorandum by the Congressional Research Service (March 31, 2000). The memo concludes that there are two plausible interpretations of the inner boundary of the EEZ for entities other than States of the Union: the

boundaries of those entities (which the author describes as “generally lines close around the islands and their immediate reef areas”), or the outer boundary of the territorial sea.

There is at least one other plausible interpretation. The 1976 Act established a fishery conservation zone “contiguous to the territorial sea of the United States” and set the inner boundary at the seaward boundary of each of the coastal States (section 3(8) and 101 of Public Law 94-265). The legislative history explained that the term “seaward boundary” had the same meaning as in the Submerged Lands Act of 1953, recognizing Florida’s and Texas’ boundaries of nine nautical miles in the Gulf of Mexico. The definition of “State” included entities other than the States of the Union, and used the term consistently in the 1976 Act, so the intent of the original drafters appeared to be that the inner boundary of the FCZ was the boundary of the entity (e.g., nine nautical miles for Puerto Rico; three nautical miles for American Samoa, the Virgin Islands, and Guam). NOAA implemented the Act in keeping with that intent, giving more weight to the inner boundary definition than to the descriptive reference to the territorial sea. Of course, in 1976, most “States” has seaward boundaries that coincided with the outer limit of the territorial sea, which at that time was three nautical miles.

The Proclamation declaring the EEZ in 1983 specified that it did not change existing U.S. policies concerning fisheries. The 1986 Act’s definition, while changing the name of the zone from FCZ to EEZ, retained the original language defining the inner boundary (“a line coterminous with the seaward boundary of each of the coastal States”). NOAA continued to implement that Act as it had done since 1976, recognizing the ability of the inhabited entities with functioning governments to manage adjacent marine fisheries, just as the States of the Union do. For other possessions and territories, NOAA has always considered the EEZ to encompass all marine waters within 200 nautical miles of those entities, to ensure that the Secretary of Commerce and the relevant Councils have authority to manage marine fisheries to the shore. This view is not necessarily shared by everyone outside of NOAA.

**Proposed solution:** Amend section 3(11) to read as follows:

(11) The term “exclusive economic zone” means the zone established by proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with each of the several coastal States. For the Commonwealth of Puerto Rico, the inner boundary is nine nautical miles from the baseline. For American Samoa, the Virgin Islands, Guam, and the Commonwealth of the Northern Marianas, the inner boundary is three nautical miles from the baseline. For all other possessions and territories of the United States, the inner boundary is the baseline.

Note: This amendment could be described as “technical”, in that it simply codifies more than 20 years of agency practice. Unless the new leadership at Interior takes a different view than the former of its prerogatives to manage fisheries in waters adjacent to territories and possessions, the proposal is guaranteed to exacerbate interagency jurisdictional disputes. The Western Pacific

council would support the proposal, but would want a boundary more inclusive than the baseline, in order to claim authority over the large lagoon at Palmyra.

Note also that this amendment is related to last year's proposal to give the Caribbean Council authority over Navassa Island. Without this clarification, there would be uncertainty as to where the EEZ begins around that uninhabited island (baseline, some other close-in line, or at the edge of the territorial sea, or at least three and probably 12 miles seaward of the island).

### **Limited Entry**

#### **22. Issue: Amend the statute of limitations for limited entry determinations**

Submitted by: Alaska Region

**Problem:** Section 305(f) requires that challenges to actions taken by the Secretary under regulations implementing a fishery management plan be filed within 30 days. NOAA has consistently taken the position that this limitation does not apply to agency determinations (such as eligibility for limited entry permits) because the section refers to actions "published in the Federal Register." We don't publish such determinations, nor should we. Therefore, the general six-year Federal statute of limitations applies (28 U.S.C. 2401(a)).

The problem this presents is that a successful applicant receives a limited entry permit or quota share that is not only valuable, but generally transferable. A losing applicant for the same permit or share has up to six years in which to initiate judicial review. If the plaintiff finally prevails in District Court, the agency will be ordered to issue a permit or quota share to the litigant. But we probably wouldn't be able to revoke the permit/quota share of the previously successful applicant because of intervening transfers to bona fide purchasers for value during the many years that may have elapsed between the original determination and the judicial order. Two permits or quota shares would have to be issued, resulting in the dilution in value of all other permits/quota shares held by other participants in the fishery. This has happened once already, in a case involving a quota share valued at more than \$500,000.

**Proposed solution:** Amend section 305(f) to read as follows:

(1) regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register or becomes final agency action, as applicable, except that -

(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited

to actions that establish the date of closure of a fishery to commercial or recreational fishing, or agency determinations of eligibility under a limited entry program.

(3)

\* \* \* \*

(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulation or agency determination that is the subject of the petition.

Note: This solution is preferable to making nontransferable the permit/quota share issued to any applicant in situations where there are competing applicants, since many years could elapse before the successful applicant would be able to transfer his property. Under the proposed solution, NMFS would make all the contested permits/quota shares nontransferable for 30 days after final agency action. If there is no appeal, the permit or share would become transferable. If there is an appeal, the permit or share would remain nontransferable for the duration of the litigation.

### Observers

#### **23. Issue: Modify Section 313 and 403 provisions that deal with funding for observers**

Submitted by: Office of Science and Technology

**Problem:** Currently, Section 313 authorizes the preparation of a fisheries research plan that requires the stationing of observers on fishing vessels in the North Pacific and the establishment of a system of fees to pay for the costs of implementing the plan.

Although this provision has been in the Magnuson-Stevens Act since 1991, its full implementation has been stalled. The North Pacific Fishery Management Council approved a system which NMFS then implemented, only to later have that system be rescinded by the Council, forcing NMFS to refund the fees that were collected. The set percentage fee arrangement was the main point of contention with the program on the part of the large vessel and processing plant sectors of the fishery. Basing the fee assessment on a percentage of the retained harvest seemed a reasonable approach, as this corresponds to a proportional measurement of the industry's use of a public resource. However, in practice, this method of fee assessment created significant cost distribution and equity issues.

This system also does not address the need to develop a system for funding observer programs nation-wide.

**Proposed solution:** Strike the section that provides authorization for a North Pacific Research Plan to be developed, and add a new section that would provide broad discretion to all Fishery Management Councils, or the Secretary, to develop monitoring plans and establish funding mechanisms that would cover the cost of the monitoring plans. The language presented here was

developed by consensus by the National Observer Program Advisory Team, comprised of representatives from each region and each headquarters office, in consultation with GCF.

*Strike* subsection (a) through (e) of section 313. NORTH PACIFIC FISHERIES CONSERVATION.

*Add* to Section 403. OBSERVERS.

“(d) OBSERVER MONITORING PLANS.—Each Council may prepare, in consultation with the Secretary, or the Secretary may prepare, a fisheries monitoring plan for all fisheries managed under statutes administered by the Department of Commerce, that—

(1) requires one or more observers to be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species managed under statutes administered by the Department of Commerce, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries managed under statutes administered by the Department of Commerce, according to the guidelines for placement of observers developed under this section or section 303(b)(8),

(2) is reasonably calculated to—

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be consistent with applicable provisions of law; and

(C) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(3) establishes funding mechanisms that would cover the cost of a monitoring plan. Councils, and the Secretary, are given broad discretion in developing such funding mechanisms that may include, but not be limited to, a system of fees or other cost recovery mechanisms to pay for the costs of implementing, evaluating, and administering such plans. The monitoring plans shall—

(A) provide that funds collected will be deposited in the Fishery Observer Fund established in subsection 403(e);

(B) provide that funds collected be used only for the monitoring plan from which the funds were collected, except for monies deposited in the Fund designated under the monitoring plans for support of national or multi-region observer program activities; and,

(C) exclude contractual agreements made directly between fishing vessels or fish processors and any non-government observer provider companies. Fishery management plans or regulations that allow for direct contractual agreements between fishing vessels or fish processors and any non-government observer provider companies must have a plan approved or regulations proposed for restructuring these agreements according to the requirements in this section by (insert date 3 years from enactment of this section).

(e) FISHERY OBSERVER FUND.--There is established in the Treasury a Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of subsection 403(d), subject to the restrictions in that subsection. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund, including interest, that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) CONTRIBUTIONS.-- For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, contributions, and bequests. Funds collected under this subsection will be deposited in the Fishery Observer Fund established in section 403(e).

### Maine Pocket Waters

**24. Issue: Fix the mistaken SFA coordinates for Maine pocket waters, thereby solving various legal and enforcement problems.**

Submitted by: Northeast Region

**Problem:** The SFA amended the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) to include a provision to exempt Maine commercial lobster fishing permit holders from Federal permitting requirements in certain areas designated as Federal waters and referred to as the Maine pocket waters. The SFA incorrectly identified the coordinates of these areas. This mistake has been carried forward into ACFCMA and its implementing regulations. As currently written, the coordinates specify a large area of the Atlantic ocean and delineate a line that cuts across land. Some Maine lobstermen are uncertain of where they may legally fish without a Federal permit; others may be taking advantage of the confusion over the coordinates by fishing illegally in Federal waters that were not intended to be part of the Maine pocket waters. There has been at least one occasion in which an enforcement agent cited a fisherman for fishing in Federal waters near the Maine pocket waters without a Federal permit, yet the court dismissed the enforcement action because of the mistakes in the coordinates.

Section 808 of ACFCMA (16 USC 5107a) currently reads as follows:

(1) west of Monhegan Island in the area located north of the line 43 degrees 42' 08" N, 69 degrees 34' 18" W and 43 degrees 42' 15" N, 69 degrees 19' 18" W;

(2) east of Monhegan Island in the area located west of the line 43 degrees 44' 00" N, 69 degrees 15' 05" W and 43 degrees 48' 10" N, 69 degrees 08' 01" W;

(3) south of Vinalhaven in the area located west of the line 43 degrees 52' 21" N, 68 degrees 39' 54" W and 43 degrees 48' 10" N, 69 degrees 08' 01" W; and

(4) south of Bois Bubert Island in the area located north of the line 44 degrees 19' 15" N, 67 degrees 49' 30" W and 44 degrees 23' 45" N, 67 degrees 40' 33" W.

**Proposed Solution:** Amend § 808(a) by revising (a)(3), redesignating (a)(4) as (a)(5), and adding a new (a)(4) as follows:

(3) southeast of Metinic Island in the area located north of the line 43 degrees 48' 10" N, 69 degrees 08' 01" W and 43 degrees 43' 56.9" N, 68 degrees 51' 46.5" W;

(4) south of Vinalhaven in the area located west of the line 43 degrees 52' 10.5" N, 68 degrees 40' 12.2" W and 43 degrees 57' 49.5" N, 68 degrees 33' 20.4" N; and

(5) south of Bois Bubert Island in the area located north of the line 44 degrees 19' 15" N, 67 degrees 49' 30" W and 44 degrees 23' 45" N, 67 degrees 40' 33" W.

**End Result:** § 808(a) should contain the follow set of coordinates:

(1) west of Monhegan Island in the area located north of the line 43 degrees 42' 08" N, 69 degrees 34' 18" W and 43 degrees 42' 15" N, 69 degrees 19' 18" W;

(2) east of Monhegan Island in the area located west of the line 43 degrees 44' 00" N, 69 degrees 15' 05" W and 43 degrees 48' 10" N, 69 degrees 08' 01" W;

(3) southeast of Metinic Island in the area located north of the line 43 degrees 48' 10" N, 69 degrees 08' 01" W and 43 degrees 43' 56.9" N, 68 degrees 51' 46.5" W;

(4) south of Vinalhaven in the area located west of the line 43 degrees 52' 10.5" N, 68 degrees 40' 12.2" W and 43 degrees 57' 49.5" N, 68 degrees 33' 20.4" N; and

(5) south of Bois Bubert Island in the area located north of the line 44 degrees 19' 15" N, 67 degrees 49' 30" W and 44 degrees 23' 45" N, 67 degrees 40' 33" W.

**Note:** A proposal to fix the coordinates was included in the 1999 submission of M-S Act reauthorization proposals.

### **Caribbean Council Jurisdiction**



**25. Issue: Expand the jurisdiction of the Caribbean Council to include Navassa Island**  
Submitted by: NMFS 2000 MSA Reauthorization Task Force

**Problem:** The Caribbean Council's current jurisdiction is limited to EEZ waters around Puerto Rico and the U.S. Virgin Islands, preventing it from managing fisheries off Navassa Island and other U.S. territories in the Caribbean Sea. This oversight hinders the Council's ability to deal effectively with the conservation of coral reefs, reef fish, queen conch, and spiny lobster in waters around Navassa Island.

**Proposed solution:** Expand the jurisdiction of the Caribbean Islands by inserting in Section 302(a)(1)(D) after the phrase "... seaward of such States ..." the words "and of the commonwealths, territories, and possessions of the United States in the Caribbean Sea" to Section 302(a)(1)(D).

**Western Pacific Demonstration Projects**

**26. Issue: Amend provisions that apply to grants for Western Pacific demonstration projects**  
Submitted by: Office of General Counsel for Fisheries

**Problem:** The Secretaries of Commerce and the Interior are authorized to give grant money to communities of indigenous persons for fishery demonstration projects (section 305 note). The Western Pacific Council and the Secretary of Commerce may establish a community development program to provide fisheries access to indigenous communities, presumably by means of fishery management regulations (section 305(i)(2)). By codifying these two programs separately and using different terminology, the Sustainable Fisheries Act clearly distinguished the demonstration grant authority from the community development program authority. The only link between the two appears in the definition of "western Pacific community," which is defined for the grant-based demonstration projects by a cross-reference to the eligibility standards used in the community development program. At the end of those standards is paragraph (v), which requires that communities participating in a development program "develop and submit a Community development Plan to the Western Pacific Council and to the Secretary."

The existing cross-reference to the section 302(i)(2)(B), including subparagraph (b)(v), forces grant applicants to prove eligibility as a "community" for purposes of the grant program by submitting a "community development plan" to the Secretary and the Council. A development plan is logically relevant to a community development program, but not necessarily relevant to a demonstration project grant. Aside from paragraph (a), the other paragraphs of section 305(i)(2)(B), that is paragraphs (i)(2)(B)(i) through (iv), are more logically relevant to generic eligibility as a "community" that could be used for both a regulatory development program and a grant-based demonstration project.

**Proposed solution:** The proposed revision would remove a hurdle to grant applicants that appears to have been designed for the community development programs, not the grant-based demonstration projects. Revise paragraph (6) of SFA section 111(b) to read:

(b) For purposes of this subsection, “western Pacific community” shall mean a community eligible to participate under section 305(i)(2)(B)(i) through (iv) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by this Act.

**Testimony of**

**Dr. William T. Hogarth  
Assistant Administrator for Fisheries, NOAA**

**before the**

**Subcommittee on Oceans, Atmosphere and Fisheries  
Commerce, Science, and Transportation Committee**

**U.S. Senate**

**Washington, D.C.  
May 9, 2002**

Good morning Mr. Chairman and Members of the Committee:

I am Dr. William T. Hogarth, Assistant Administrator for Fisheries, NOAA. I want to thank you for the opportunity to discuss living marine resources management issues at NOAA Fisheries. In this testimony, I would like to focus on actions the Agency is undertaking to address the challenges facing us today, as well as outline some of the major issues that need to be addressed..  
**THE CHALLENGE OF MARINE RESOURCE MANAGEMENT**

NOAA Fisheries has responsibility for the oversight of living marine resources and their habitat through a number of statutes including the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Sustainable Fisheries Act (SFA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). Resulting conservation responsibilities include fisheries, protected marine species and essential fish habitat.

Since 1976, NOAA Fisheries' mission has changed dramatically from promoting fishing in the U.S. exclusive economic zone (EEZ) to placing greater emphasis on sustainability of fishery and marine resource considerations and particularly, taking into account specific economic, social, environmental, and community issues. The SFA, which passed in 1996, included new mandates from Congress that represent fundamental changes to fishery management. As a result, a marked increase in regulatory activity has occurred. All the environmental implications of our management operations have to be assessed and accounted for under the terms of the National Environmental Policy Act (NEPA), as well as numerous other statutes and executive orders influencing how we go about developing and implementing regulations. According to a recent study, NOAA Fisheries, which is a relatively small federal agency, is the fourth largest source of government regulatory actions. Not surprisingly, regulatory action generates controversy. Regulations issued by NOAA Fisheries affect not just marine resources

but also the people, businesses, and communities associated with these resources. Impacts on fishing communities under such a scenario are unavoidable; the monumental challenge is to keep adverse impacts to a minimum while meeting the legal requirements of current laws.

Currently, there are 104 open lawsuits against the agency. These cases pending against NOAA Fisheries can be broken into the following categories: 37 dealing with Magnuson-Stevens Act and/or SFA claims; 34 ESA claims; and 25 other cases relating to a variety of issues. The legal challenges are distributed roughly equally between commercial, recreational, and environmental constituents. Notably, there have been three cases of great significance to fisheries management that did not involve a single Magnuson-Stevens Act or SFA challenge, but resulted in the injunction of major Federal fisheries. These cases involved the intersection of the ESA, NEPA, and Magnuson-Stevens Act processes.

As you can see, the regulatory process is complex, requiring extensive analyses and documentation of our mandates. Overall, the multiple mandates have become unwieldy, have subjected the agency to litigation, have converged processes that are difficult to reconcile, and are not responsive to the current state of fisheries and related resources. The timelines and requirements for public process, including NEPA, create a cyclical environment in which the baselines and documents cannot catch up with the actions. The statutes' current structure was not designed to work with Magnuson-Stevens Act timelines. Some have even said, done correctly, fishery management plans actually serve the same purpose.

## **RESPONDING TO THE CHALLENGES**

Several internal reviews have been done, we know what the problems are and what the potential solutions are. In partnership with the Councils, we are focused on ensuring full implementation of the SFA (prevent overfishing, restore overfished stocks), reducing fishing capacity, and implementing measures to monitor and reduce bycatch, and protect essential fish habitats. In order to meet these goals, we will need substantial changes to the fisheries management status quo, and ensure the use of the broadest possible range of measures, including marine protected areas (MPAs), individual fishing quotas (IFQs), and ecosystem management. Scientific data and analyses are necessary to provide sound advice for management decisions.

NOAA Fisheries has embarked on several initiatives to begin solving these large and difficult problems, thus serving our resources and constituents better. These include the Regulatory Streamlining Project (RSP), the SFA Five-Year Review, a study of overcapacity and buybacks, implementing budgetary recommendations from the Kammer and (interim) NAPA reviews, a review of fisheries science, and modernization initiative.

### ***The Management Process: RSP***

NOAA Fisheries has undertaken a major regulatory streamlining project with the goal to improve the efficiency and effectiveness of regulatory operations and decrease NOAA Fisheries' vulnerability to litigation. The RSP initiative highlights the application of NEPA as a critical component of the regulatory process. NEPA provides an analytical framework or umbrella that

can be used to address the requirements of many other statutes and ensure environmental compliance, consistent with all of the agency's mandates.

The primary mechanisms NOAA Fisheries will use to improve the fishery management process through the RSP are based both on past recommendations and new initiatives. These include:

- "Front-loading" the NEPA process through the active participation of all regional, science center, and Council staff in key responsibilities at the early stages of fishery management action development. Operational guidelines will be revised accordingly;
- Hiring environmental policy coordinators to ensure national and regional consistency, facilitate front-loading of the NEPA process, provide advice on integrating statutes, coordinate national and regional NEPA training programs, and remain current on national policy issues related to environmental compliance;
- Improving the administrative process by delegating signature authority, where appropriate, from headquarters to the Regional Administrators for certain activities under the ESA and eliminating headquarters review of routine actions under the Magnuson-Stevens Act. This may involve some workforce reorganization/prioritization;
- Improving the fishery management process in cooperation with NOAA Fisheries partners such as through electronic rulemaking and electronic permit application;

The goal is to provide better analyses and regulatory documents that form the basis of our management decisions. In short, within the next few years, NOAA Fisheries should have significantly fewer litigation losses on process issues and have better relationships and service to our constituents, and more effective conservation and management of the Nation's living marine resources overall.

#### *Management Standards and Guidance: SFA Review*

Working with our Council partners, NOAA Fisheries has made considerable progress in implementing the requirements of the SFA. Nevertheless, more work needs to be done in order to fully achieve its goals. Less than a month ago, I instructed our Office of Sustainable Fisheries to lead a review of SFA implementation. The review will be conducted in cooperation with all of our regions, science centers, headquarters offices, NOAA General Counsel, and the Councils. This is an important step in identifying priority tasks over the next year. The SFA Review will include the following:

- NOAA Fisheries and the Councils will identify SFA requirements that are not yet completed, and establish a strategy and timeline to complete the work;

- Implementation of National Standards (NS) 1 and 2 and National Standard Guidelines (NSGs) on overfishing and rebuilding are being reviewed. Amendments addressing concerns raised in this review will be undertaken by the Councils and/or NOAA Fisheries.

- A few weeks ago, NOAA Fisheries, Council, and other social scientists met to discuss and exchange information on the methods and research in the area of fishing community impacts (NS 8). The workshop focused on data and analyses for social impact analysis, development of a research agenda, and compilation of a NOAA Fisheries community impacts analysis practitioners' manual; and

- NOAA Fisheries has established a Bycatch Workgroup to review implementation of NS 9. Monitoring and minimizing bycatch and bycatch mortality, and establishing standardized bycatch reporting methodology, are top priorities for the agency. NOAA Fisheries will also review the allocation of scarce observer program funding to ensure the best possible coverage of fisheries for which bycatch monitoring is a high priority.

### *Addressing Overcapacity and Buybacks*

One of the fundamental problems in fisheries management is reducing overcapacity. Even fully rebuilt stocks cannot sustain the level of fishing effort associated with fleet sizes in many of fisheries. NOAA Fisheries has prepared preliminary analyses of overcapitalization and estimated the number of vessels and costs for buyback programs in key U.S. fisheries. In addition, we are reviewing the effectiveness of previous buyback programs, such as the one in the New England groundfish fishery. NOAA Fisheries is also considering modifications to Magnuson-Stevens which would facilitate industry-funded buybacks.

### *Budgets*

NOAA Fisheries has taken steps to implement many of the program budget resource and process recommendations included in the Kammer Report and other reviews, has acquired some of the needed resources, and has initiated management actions to improve its activities, such as RSP, as well as:

- Requests for budget adjustments for non-discretionary cost increases;

- Socio-economic analysis - NOAA Fisheries has identified steps to acquire additional data, economists, and social scientists, and is aggressively pursuing actions to improve socio-economic analyses required by the regulatory process;

- Stock assessment improvements - These are fundamental to NOAA Fisheries' success and the agency has recently approved a major improvement plan for these activities;

- Law enforcement - NOAA Fisheries is expanding cooperative enforcement efforts through new agreements with 25 states and territories and is adding staff to handle arrangements;
- Observer and Cooperative Statistics Programs - NOAA Fisheries has increased its number of observers nation-wide and has initiated greater data collection and analysis efforts with industry and regional and state authorities. These steps should help to reinforce other actions underway to improve NOAA Fisheries stock assessments, information on bycatch, and enforcement activities;
- Comprehensive Management - While recognizing that NOAA Fisheries conducts comprehensive reviews to capture the status and requirements for its science support functions, the Kammer Report recommended development of a nationally coordinated plan (status and requirements) for its management functions, i.e., fisheries, protected species, habitat conservation and enforcement. NOAA Fisheries has recently piloted an automated Annual Operating Plan system which will assist management in determining future program requirements and supporting budget requests. This system should be fully operational for FY 2003, and will be capable of determining individual program performance in NOAA Fisheries' regional offices and science centers, as well as provide agency wide crosscuts for national program activities.
- Adjustments-to Base - In recent years, NOAA has been successful in obtaining budget adjustments for inflationary cost increases which have seriously eroded program operations funding in the past.

### ***Science: NOAA Fisheries Science Modernization***

Several internal and external studies and reviews of NOAA Fisheries have concluded that much of fisheries controversy stems from the regulations necessary to ensure long-term sustainability of living marine resources. Particularly now that so many stocks are overfished, implementation of such measures is often challenged on the basis that the scientific information supporting management is inadequate or lacking. While NOAA Fisheries scientists are world leaders at the forefront of developing stock assessment models and methodologies, the agency's science is sometimes hampered by the lack of adequate data on which to base stock assessments, the lack of adequate sampling platforms, and the lack of sufficient staff to collect, process, manage, and analyze data; to evaluate the implications of the assessments; and to effectively communicate the results to managers and stakeholders. Widening gaps between public expectation and agency resources required to satisfy such expectations have fueled numerous and increasing numbers of lawsuits on the policy choices, and have resulted in the agency operating in a continual state of crisis management.

NOAA Fisheries is evaluating a long-term Science Modernization Initiative to create the holistic and integrated science infrastructure, that when added to the RSP, will begin to move NOAA Fisheries out of crisis management. Components of this initiative will represent the

implementation of recommendations by external reviews, such as the National Academy of Sciences, as well as internal reviews, such as the Data Acquisition Plan and the Marine Fisheries Stock Assessment Plan. Highlights of the Modernization needs include:

- Improve and expand living marine resource stock assessments, including cooperative research; a national observer program; enhanced protected species stock assessment capabilities; funding a national, web-enabled, state-federal data collection program; increased charter vessel days at sea; sufficient modern acoustically quiet fisheries research vessels; and an increase in the number of stock assessment scientists and technicians;
- Improve forecasting of living marine resource stock status and environmental impacts through advanced assessment technology, applied fisheries oceanography, and advanced conservation engineering technology for bycatch reduction;
- Incorporating ecosystem considerations into living marine resource assessments by understanding marine ecosystem dynamics, essential fish habitat assessment and restoration, and effects of human activities at sea that produce noise; and
- Adequately assessing the human dimension of fisheries by funding a national social sciences program to collect and analyze the socioeconomic data necessary for the decision-making process.

## CONCLUSION

Mr. Chairman, these are exciting and challenging times in the history of the conservation and management of the Nation's valuable marine resources. It is natural for many to look at the negative. But I think we also have a lot that gives us reason to accentuate the positive. Our recent Status of the Stocks report to the Congress showed that the number of fisheries listed as overfished is beginning to decline. For many of our stocks that are still depressed, we have at least been able to eliminate overfishing, giving them the opportunity to recover. We are getting better information on our fisheries.

NOAA Fisheries staff are hard working, talented, and dedicated individuals. We are addressing our challenges by working directly with the Councils, regions, headquarters offices, and NOAA General Counsel to review our SFA implementation, improve the regulatory process, and ensure adequate science and administrative support for these efforts. I plan to share my vision for NOAA Fisheries with our constituents in a series of workshops to be held in key locations around the country later this year. This will also provide an opportunity for me to hear from our varied constituents about their views for the agency over the next five to ten years.

We in NOAA Fisheries look forward to working with the Committee, with your staff, with the Councils, the states, and the commercial fishing, recreational fishing, environmental, scientific and other marine fisheries communities to continue to improve our operations and our



effectiveness in meeting the mandates that you have provided.

Thank you, Mr. Chairman. I would be glad to answer any questions.

**Testimony of**

**Dr. William T. Hogarth  
Assistant Administrator for Fisheries, NOAA**

**before the**

**Subcommittee on Fisheries Conservation, Wildlife and Oceans  
Committee on Resources**

**U.S. House of Representatives**

**Washington, D.C.**

**May 2, 2002**

Good morning, Mr. Chairman and Members of the Committee:

I am Dr. William T. Hogarth, the Assistant Administrator for Fisheries, NOAA. I want to thank you for the opportunity to be here today. I also want to commend you, Mr. Chairman, and the Committee, for all of the work that you have done over the past many months to move forward on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

It was just about a year ago that I testified before you and discussed the scope of many of the issues facing the Committee with respect to reauthorization of the MSFCMA. Since then, a lot has happened. Inside NOAA, we have been discussing a broad range of ideas. We convened an internal working group that developed ideas for a number of possible changes to the Act. And the Committee has been busy, holding many hearings around the country and preparing the discussion draft bill that you shared with us.

We do not have any specific legislative proposals for you today; but we would be glad to continue working with your staff as it fleshes out the many ideas that are being widely discussed throughout the country.

The significant amendments that were made in 1996 to the Act by the Sustainable Fisheries Act are only now beginning to take hold. We believe that these provisions deserve a more complete opportunity to take hold before enacting any major changes to the basic cornerstones of the law.

However, we also recognize that many in the fisheries constituencies have been concerned about many of the most basic

concepts contained in the Act both before and after the Sustainable Fisheries Act. We believe that even some of the modest changes currently being discussed have the potential to greatly improve our fishery management processes under the Act.

Today I would like to spend a few minutes discussing with the Committee the results of our working group, as well as our thoughts concerning some of the fundamental issues of marine fisheries governance facing us today.

### Results of the NOAA Fisheries Working Group

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act, known as the Sustainable Fisheries Act, included the most comprehensive revision of the basic law since it was first enacted in 1976. We in NOAA Fisheries, along with many in our extended fishery policy community, have been thinking seriously about reauthorization of the Act for three years. Last year, as these efforts intensified, NOAA Fisheries convened a working group that considered more than 60 potential problem areas in the administration of the Act. We have narrowed that list to those that we believe might make the Act work better. We have discussed many of these issues with several of our key constituencies, including the chairs of the Regional Fishery Management Councils and the Marine Fisheries Advisory Committee.

Our discussions and analysis reflect the view that the Magnuson-Stevens Act provides a basically sound legislative and procedural framework, and that only relatively modest changes are warranted. The issues that we considered mostly fell into the following major categories:

- (1) Fishery management plan (FMP) review and comment procedures
- (2) Statutory definitions
- (3) Fisheries law enforcement
- (4) Collection and use of economic and social data
- (5) Fisheries Observers
- (6) Fishing capacity reduction

I would like to call the attention of the Committee to some of the highlights and principal themes surfaced by the working group.

**Fishery Management Plan Procedures.** With respect to fishery management plan reviews and comments, we have noted some inadvertent problems in the 1996 amendments to the Magnuson-Stevens Act. Our highest priority concern in this area is the need to recouple the deadlines and procedures governing the FMP review and comment procedures with the review of implementing regulations. In addition, NOAA Fisheries would like to explore ways of improving the Secretarial review process. Strengthening the preliminary Departmental review and the NOAA/Council consultation process could result in fewer emergency actions and, at the same time, make them more effective.

**Definitions.** Currently, the Act uses the terms "overfished" and "overfishing" interchangeably, which makes it confusing for the public to understand the status of any given stock. "Overfished" applies to the state of a fishery resource, while "overfishing" applies to the act of fishing. In other words, the term "overfished" draws attention to the resource, while the word "overfishing" denotes a level of human activity that adversely affects the resource. This distinction is important because of its implications for rebuilding schedules.

**Improving Law Enforcement and Compliance.** With respect to fishery law enforcement, we are looking for ways to improve compliance with domestic fishery management regulations, and with various U.S. commitments in regional and international organizations. A fundamental problem that NOAA Fisheries and the U.S. Coast Guard have in enforcing our management regulations is the general absence of effective deterrents. We are considering ways to generally strengthen the hand of our fisheries law enforcement authorities in deterring and prosecuting violations. A high priority in this area would be to increase the maximum penalty, and promote more effective State-Federal partnerships in fisheries law enforcement.

**Social and Economic Information.** The collection and use of economic and social data are increasingly important in the entire fishery management process. Under the Magnuson-Stevens Act and other laws (e.g., the National Environmental Policy Act and the Regulatory Flexibility Act) and various Executive Orders, we and the Councils are required to complete a number of economic and social assessments associated with management actions. One general problem that we have had in meeting these

mandates is a lack of adequate, up-to-date, and comprehensive information, particularly fishery and fishery dependent community economic and social data. We would like to improve the Councils' and our ability to conduct these assessments in conformity with these mandates. Priorities would be obtaining economic information from processors; expanding the accessible scope of economic data; and dealing more effectively with proprietary and confidential data.

**Fisheries Observers.** Sound science and fisheries management rely in many instances on data obtained from on-board fisheries observers. However, provisions for collection of observer data have not been adequately addressed in the Magnuson-Stevens Act. The 1996 Sustainable Fisheries Act amendments made significant progress on this issue, but only with respect to federally managed fisheries in the North Pacific. To meet the need for expanded observer programs, the Secretary should be allowed broad authority to prepare statistically valid, mandatory monitoring plans for all fisheries. It would also be helpful if the Secretary were given the authority to establish, in cooperation with the Councils, a mechanism to pay for the costs of the monitoring plan in an equitable manner.

**Fishing Capacity Reduction Program Financing.** The last several years have witnessed mounting concerns over excessive levels of harvesting capacity in our federally managed fisheries. Overcapacity is basically a domestic concern, but the United States has also addressed this issue through an international initiative, the United Nations Food and Agriculture Organization- sponsored international plan of action on the management of fishing capacity. In the domestic sphere, the Councils and NOAA Fisheries have dealt with this problem through a number of means, including fishery management actions and recourse to buybacks of overcapacity in selected fisheries. The 1996 amendments to the Magnuson-Stevens Act authorized a fishing capacity reduction program in Section 312(b)-(e). NMFS acknowledges that these provisions could be implemented more effectively and, accordingly, we are investigating changes that would facilitate the development and approval of specific fishing capacity reduction programs that might be used in concert with complementary management tools such as entry limitations and individual quota systems.

**Additional MSFCMA Reauthorization Issues**

Mr. Chairman, in addition to the considerations of our working group last year, there are other issues that are important to the governance of our marine fisheries that many in the fisheries community are talking about. We in NOAA have been considering these for a long time. Many of these issues have been raised at several of the Committee's hearings. However, while they are important, they require increased communication and careful implementation. We have not had the opportunity to consult with the Councils or MAFAC on these ideas as we did on the working groups' considerations, and do not have any formal proposals to share with you. I would like to discuss our current thinking in NOAA Fisheries on many of these ideas in hopes of stimulating discussion and moving forward our consideration of these important issues.

**Individual Fishing Quotas.** Perhaps no question has dominated fishery policy debates so consistently and pervasively since the earliest days of the Act as have Individual Fishing Quotas (IFQs). The first major national workshop on IFQs for the regional fishery management councils was held in Denver in 1977. Since then the issue has never failed to engender lively debate all around the country. Today we have four IFQ programs in place. However, we also have many limitations on the use of IFQs that arguably limit their effectiveness. In fact, there is even currently a moratorium on the adoption of new IFQ programs by the Councils until October of this year.

As I testified at the Committee's February 13, 2002 IFQ hearing, NMFS concurs with the National Academy of Sciences report that the existing moratorium on new IFQs should be allowed to lapse in October 2002. We believe that, in some federally managed fisheries, we can manage resources with greater efficiency if the Councils and NMFS have IFQs available as a tool. We will be pleased to work with Congress as it considers legislation to set additional appropriate conditions under which new IFQ programs could be approved. The IFQ programs that are in place have worked well and receive wide support within the affected fishing industry. It is unfortunate and unreasonable that this one tool should be singled out for continued prohibition.

Several difficult and controversial issues remain regarding IFQs. These are broader than the Councils' prerogative and may require national level guidance to Councils and regions where they are used. Congress ought to allow the regional councils flexibility and discretion to address fishery-specific characteristics. NMFS is examining these and other IFQ issues such as foreign ownership, the collection of some share of

windfall profits and/or economic rent, and caps on cost recovery fees. Your proposed language provides a good starting point to reauthorize IFQs. We would like to work with the Subcommittee on how best to ensure the final language in a reauthorized Magnuson-Stevens Act is consistent with our proposal outlined in the FY 2003 Budget and can be implemented and operated most efficiently.

**Ecosystems.** Many suggestions are being made that would try to promote the application of ecosystems principles to marine fishery conservation and management. We think that these efforts are heading in the right direction, and are consistent with current law. It has been elementary to note the relationships among fish stocks, and between fish stocks and their marine and estuarine environments; but it is much more difficult to put ecosystems management into practice.

The data and the analytical and decision models currently do not fully support the implementation of a comprehensive approach to fisheries ecosystems. Nevertheless, this is a direction that we need to move in. We would like to see each Council develop an overall statement that considers the interrelationships of all of the fisheries that the Council has under its management. This would be the precursor in future years for detailed and comprehensive fisheries ecosystems plans.

We also would like to explore strengthening the basic policies and purposes of the Act in the way that they emphasize the ecosystems implications of fisheries conservation and management.

**Bycatch.** Among the major provisions of the Sustainable Fisheries Act were requirements aimed at reducing and minimizing bycatch. Although we have made some progress in this direction over the last five years, the Act still lacks precise bycatch reduction goals, and provides little guidance on how to reduce non-target catch and what would constitute acceptable bycatch levels. There is a widespread sense in much of the fisheries constituency that we and the Councils have not done enough to address this problem.

Getting a handle on bycatch and how to reduce and minimize it is expensive, perhaps more so than many other important uses of our fiscal resources. However, we do believe that there are some additions and changes that could be made to the Act that would improve the situation.

We are looking into the possibility of implementing a

statistically valid level of mandatory observer coverage in key fisheries. We are also considering incentives to reduce bycatch in all fisheries where bycatch is a serious problem.

**Matching Fishing Capacity to Available Resources.** Overcapacity in the harvesting sector plagues not only a number of federally-managed fisheries, but also many fisheries around the world. The United States has been a leader in the international community in articulating the need to match harvesting capacity to available fishery resources. We are currently working on a national plan of action for the reduction of overall fishing capacity in our fisheries. We have some tools in the Act to deal with this, but our efforts under the MSA and other authorities have largely been fractured and lacking effectiveness.

We believe that a lot more creative thinking needs to be applied to this problem. We would like the Committee to work with us in looking broadly at this issue, including the effect and implications of other agencies' programs.

#### Committee Issues

Mr. Chairman, we know that your staff has been working hard to put together some ideas for a draft bill to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act. We have had the opportunity to look at the language that was included in the April 19, 2002, discussion draft, although we have not had the opportunity to examine it carefully and provide detailed comments. What I would like to do is comment on some of the main themes that we have seen in the draft bill.

**Overfishing.** The definition of "overfishing" and "overfished" that the Committee is considering is included in the options that we have been considering. When we complete our review the Administration will share proposed language with the Committee.

**Data Collection.** I appreciate the Committee's commitment to improving the collection of data on our marine recreational fisheries. We believe that the emphasis for changes in the Act should be placed on collecting and managing the data. We are already working closely with the states and others to share marine recreational fisheries data. We look forward to working with you to improve these provisions. We also welcome your attention to the needs for collecting economic data from the processing sector.



**Essential Fish Habitat.** We recognize the importance of focusing essential fish habitat measures on those areas which are, in fact, most essential to fish stocks. The draft bill would amend the current requirement to minimize adverse effects of fishing on essential fish habitat. Under this draft bill, the requirement would only apply to fisheries for which there is available information on the growth, reproduction, or survival rates within habitats or production rates by habitat - what our essential fish habitat regulations refer to as Level 3 or Level 4 data -- or for fishing activities determined by a Council to jeopardize the ability to achieve maximum sustainable yield on a continuing basis. This type of conclusive scientific information does not exist for any of our fisheries, excepting a few salmon stocks for which there is some Level 3 or 4 information for small portions of their range in spawning rivers. We understand that we have limited resources to dedicate towards habitat protection and would be happy to work with the Committee to prioritize our activities to yield maximum habitat benefits.

**Other Issues.** The draft bill addresses a number of issues that we believe are critical, such as overcapacity, buyouts, ecosystems and bycatch. Some of these are issues that I have discussed elsewhere in this testimony, for example, bycatch. We would also support a research program for bycatch reduction gear research and development, and would suggest that this include a technology transfer program, and cooperative agreements with the states. We would be happy to work with the Committee to improve the discussion draft language.

We very much appreciate the Committee focusing its attention on these and we look forward to working with your staff in the development of this legislation.

### **Conclusion**

Mr. Chairman, these are exciting times in the history of our development and implementation of effective conservation and management for the Nation's valuable marine fisheries. They are also often difficult times, and always challenging. You have all heard me talk about the need to make NOAA Fisheries more responsive and open, more transparent and timely, more effective and service-oriented. I have initiated a 5-year review of the implementation of the Sustainable Fisheries Act in order to get a better picture of what is working and how we can make the Act work better. I am convinced that we can make this work.

A lot of times it is natural for us to look at the negative. But I think we also have a lot going on that gives us reason to accentuate the positive. Our recent report to the Congress showed that the number of fisheries listed as overfished is beginning to decline.

The Sustainable Fisheries Act gave all of us tremendous impetus to begin moving seriously and effectively in new directions. I believe that much of the potential of the SFA still needs to be explored. We have also tried today to begin to outline some fundamental issues that many of us have been considering, and outline some solutions. Not all of these will be popular in all circles, but it is time that we discuss these issues forthrightly and work together toward some real improvements in how we manage marine fisheries. We in NOAA Fisheries look forward to working with the Committee, with your staff, with the Regional Fishery Management Councils, the states and the commercial fishing, recreational fishing, environmental, scientific and other marine fisheries communities.

Thank you, Mr. Chairman. I would be glad to answer any questions.