

**Recommendations of the Regional Fishery Management Council Chairs
regarding
Magnuson-Stevens Fishery and Conservation and Management Act
Reauthorization Issues**

May 23, 2001

At the 2001 Council Chairs' meeting, representatives from the eight regional fishery management Councils reached consensus on a variety of recommendations associated with reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These recommendations are listed below, first as a group of "Highest Priority Issues" and then as "Other Significant Issues." Other than these two groupings, no relative priorities are assigned.

Highest Priority Issues

- **NEPA**

The process for social and economic analysis, scientific review, and public comment specified in the MSA is substantially the same as the process specified under the National Environmental Policy Act (NEPA). However, the timeline and administrative process under these two Acts often conflict. These conflicts have led to cumbersome and unnecessarily complex administrative procedures resulting in long delays between the time that decisions are made and regulations are adopted. They have also created significant opportunities for procedural lawsuits that frustrate Council conservation actions. The Congress needs to resolve these conflicts between statutes in order to clarify and streamline the process. The following is submitted as a possible remedy to the effects of litigation on Council management actions:

Section 305(f)...Judicial Review

Purpose: to clarify that the Secretary's failure to comply with the NEPA in the management of a fishery under the MSA should result only in judicial guidance regarding NEPA compliance rather than judicial management of, or injunction against, a fishery.

Amendment: We suggest the following subparagraph be added to Section 305. Paragraph (f) is amended by redesignating subparagraph (4) as subparagraph (5), and inserting after subparagraph (3) the following:

(4) If the secretary has failed to comply with the NEPA, Section 4332 of Title 42, United States Code, in the management of a fishery under this Act, the exclusive remedy shall be an injunction related to the substance of the environmental analysis or the process for developing such analysis."

- Section 3(29) and Section 304(e)...Redefine Overfishing

The Council Chairs believe that there are a number of problems related to maximum sustainable yield (MSY)-based definitions of overfishing. For example, data deficiencies may lead to inappropriate calculations of MSY, that in turn skew overfishing definitions. Ultimately, this could lead to unnecessary social and economic dislocation for fishermen who are subject to measures that are tied to stock rebuilding schedules skewed by unrealistic overfishing definitions. We would like to work with the Congress in seeking solutions to our concerns as the re-authorization process proceeds.

- Section 303(a)(7)...Essential Fish Habitat

The Sustainable Fisheries Act (SFA) required Councils to identify and describe essential fish habitat (EFH), but gave little direction on how to designate EFH. The EFH definition, i.e., "those waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity," allows for a broad interpretation. The EFH Interim Final Rule encouraged Councils to interpret data on relative abundance and distribution for the life history stages of each species in a risk-averse manner. This led to EFH designations that were criticized by some as too far-reaching. "If everything is designated as essential then nothing is essential," was a common criticism. The Council Chairs believe that the current definition and descriptions of EFH serve a very useful purpose in the consultation process between NMFS and agencies that are responsible for permitting or carrying out proposed development projects in the marine environment. Those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity are all habitats of importance to each fishery stock, and the range of each stock from egg to maturity is overlapped by the ranges of hundreds of other stocks. The Council Chairs do, however, endorse the concept of using habitat areas of particular concern (HAPCs) as the next step in describing areas of EFH critical to certain life history stages for each stock, as proposed in the two Senate bills drafted in 2000. For years a number of Councils have established HAPCs to protect pristine coral reef habitats and spawning aggregation sites.

- Section 304(e)(4)(A)...Rebuilding Periods

Without a doubt, the Council Chairs support rebuilding targets under the SFA; however, the Councils should have greater latitude for specifying rebuilding periods than is provided under the National Standard Guidelines. The Council Chairs recommend that "the SFA be amended to provide sufficient flexibility to make short-term adjustments to rebuilding targets/programs to account for scientific uncertainty, natural variation, current stock status, current stock trends, and multi-species fishery relationships".

- Executive Order for MPAs

The Council Chairs recognize that there is a conservation benefit realized by establishing marine protected areas (MPAs). The Councils have had the authority to establish MPAs for fisheries management and have done so since the first fisheries management plans were implemented under the MSA. The Councils are and will remain in the best position to determine when and what areas should be closed to fishing activities to protect fish stocks and habitat in the EEZ.

The Council Chairs recommend that Executive Order 13158 be rescinded, or alternatively, amended to reaffirm the sole authority of NOAA and the Councils to manage marine fisheries in the EEZ. Also, Congress should review the MPA issue and possibly develop legislation to clarify jurisdictional issues, set criteria for MPAs, and establish clear administrative procedures for establishing MPAs which among other things, reinforces the role of the states, territories, and Councils in managing marine fisheries.

- Section 303(d)(1)...Rescinding the Congressional Prohibitions on IFQs and ITQs
Section 303(d)(1) of the MSA prohibited a Council from submitting or the Secretary from approving an Individual Fishing Quota (IFQ) system before October 1, 2000. More recently, through the FY2001 Appropriation Act, this moratorium on IFQs/ITQs was extended for an additional two years. If the reauthorization process is completed in 2001, the Council Chairs support rescinding the moratorium before the year 2002 deadline. The Council Chairs recommend that MSA be amended to provide maximum flexibility to the Councils to tailor IFQ programs to specific regional, social, economic, and fishery conditions. Councils should have clear authority to address transferability and ownership issues; include harvesters, processors, and communities in such programs; promote conservation; and include measures necessary to successfully monitor and enforce the provisions of such a program.
- Section 313(a): see also Section 403...Observer Program
The Council Chairs reaffirm their support for discretionary authority to the Councils to establish fees to help fund observer programs. This authority would be the same as granted to the North Pacific Council under Section 313 for observers, but not necessarily limited to use of ex-vessel value as the basis in setting fees.
- Endangered Species Act (ESA)/Marine Mammal Protection Act (MMPA)
The Council Chairs recommend that the Councils be identified, for purposes of consultation, as being action agencies under the ESA and the MMPA, thereby being able to participate in the development of biological opinions.

ESA and MMPA considerations are playing an increasingly significant role in Council fishery management activities. The NMFS has stated that Councils "have a critical role in management of federal fisheries" and "must be aware of effects of proposed fishery management actions on listed species". However, NMFS and NOAA/GC have determined that the Councils are not federal action agencies; therefore, they are not included in the consultation process.

By foreclosing the opportunity to participate in the consultation process, NMFS and NOAA/GC have made it virtually impossible for Councils to meaningfully address their responsibilities under MSA, ESA, and MMPA.

Therefore, the Council Chairs recommend that the MSA be modified to specify that the Councils are deemed to be action agencies for purposes of formal consultation under ESA and MMPA.

- Section 304(a) and (b)...Coordinated Review and Approval of Plans and their Amendments and Regulations

The SFA amended Sections 304(a) and (b) of the MSA to create separate sections for the review and approval of fishery management plans (FMPs) and amendments, and for the review and approval of regulations. Accordingly, the approval process for these two actions now proceeds on separate tracks, rather than concurrently. The SFA also deleted the 304(a) provision allowing disapproval or partial disapproval of an amendment within the first 15 days of transmission. The Council Chairs recommend modification of these provisions to include the original language allowing concurrent approval of FMPs, amendments and regulations, and providing for the initial 15-day disapproval process. The Councils would also like the ability to resubmit responsive measures rather than having to submit a complete FMP or amendment as is now required by subsection (4) of Section 304(a).

- Section 304(a)...FMP Review Program

The Council Chairs believe that NMFS, in its review of proposed FMPs, amendments, and framework actions, has failed to adequately communicate to the Councils perceived problems in a timely manner. We propose the inclusion of a mandate in the MSA to require an abbreviated rule-making process in which NMFS would consult with the Councils and consider such new information as provided by the Councils before disapproving FMPs, amendments, or framework actions submitted by the Councils for NMFS approval.

Other Significant Issues

- Section 302(d)...Council Member Compensation

The MSA should specify that Council-member compensation be based on the General Schedule that includes locality pay associated with the geographic locations of the Councils' offices. This action would provide for a more equitable salary compensation. Salaries of members serving in Alaska, the Caribbean, and Western Pacific are adjusted by a COLA. The salary of the federal members of the Councils includes locality pay. The Department of Commerce has issued a legal opinion that prohibits Council members in the continental U.S. from receiving locality pay. Congressional action, therefore, is necessary to implement this change.

- Section 302(f)(4) and (7)...Receipt of Funds from any State or Federal Government Organization

Currently Councils can receive funds only from the Department of Commerce, NOAA or NMFS. The Councils routinely work with other governmental and non-governmental organizations to support research, workshops, conferences, or to procure contractual services. In a number of cases, complex dual contacts, timely pass-throughs, and unnecessary administrative or grant oversight are required to complete the task. The Councils request a change that would give them authority to receive funds or support from local, state, and other federal government agencies and non-profit organizations. This would be consistent with Section 302(f)(4) that requires the Administrator of General Services to provide support to the Councils.

- Section 302(i)(3)(A)(ii)...Review of Research Proposals

The MSA should be amended to include a provision for the Councils to close meetings to the public for the purposes of reviewing research proposals. Some of the Councils now provide and administer funding to researchers and fishermen for data collection and other research purposes. The proposals submitted to the Councils for funding may contain proprietary information that the submitters do not want to make public for various reasons. It will be in the best interests of this process for the Councils to have the ability to close meetings to consider these proposals.

- Section 303(b)...Regulating Non-Fishing Activities of Vessels

The Council Chairs recommend that Section 303(b) of the MSA be amended to provide authority to Councils to regulate non-fishing activities by vessels that could adversely impact fisheries or EFH. One of the most damaging activities to such habitat is the anchoring of large vessels near HAPCs and other EFH (e.g., coral reefs, etc.). When these ships swing on the anchor chain deployed in 100 feet of water, 10 to 20 acres of bottom may be plowed up by the chain dragging over the bottom. Regulation of this type of activity by the Councils should be authorized.

- Section 303(b)(7)...Collection of Economic Data

The MSA specifies the collection of biological, economic, and socio-cultural data to meet specific objectives of the MSA, and requires the fishery management councils to consider this information in their deliberations. However, Section 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting “proprietary or confidential commercial or financial information.” The NMFS should not be precluded from collecting such proprietary information so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analyses of fishery management regulations are not possible, preventing NMFS and the Councils from satisfying National Standard 2: “...conservation and management measures shall be based upon the best scientific information...”, National Standard 8: “...to the extent practicable, minimize adverse economic impacts...”, and other requirements of the MSA and the Regulatory Flexibility Act (RFA).

The Council Chairs recommend resolution of these inconsistencies by amending the MSA to eliminate the restrictions on the collection of economic data. Amending Section 303(b)(7) by removing “other than economic data” would allow NMFS to require fish processors who first receive fish that are subject to a federal FMP to submit economic data. Removing this current restriction will strengthen the ability of NMFS to collect necessary data, and eliminate the appearance of a contradiction in the law requiring economic analyses while simultaneously prohibiting the collection of economic data necessary for such analyses.

- Section 303(d)(5) and Section 304(d)(2)...Establishment of Fees

The Council Chairs are opposed to the imposition of fees that are not regional in nature and established by the Councils. However, we do support the National Academy of Science’s recommendation that Congressional action allow the Councils maximum flexibility in designing IFQ systems and allow flexibility in setting the fees to be charged for initial allocations, first sale and leasing of IFQs.

- Section 305(c)(2)(A)...NMFS Regional Administrator Emergency or Interim Action Vote
For the purpose of preserving the Secretary's authority to reject a Council's request for emergency or interim action, each NMFS Regional Administrator currently instructed to cast a negative vote even if he/she supports the action. While we recognize the extreme sensitivity in recommending a change to the voting responsibilities of our partners in the NMFS, we certainly do not wish to appear to be disparaging the Regional Administrator in any way. However, the Council Chairs believe that Congressional intent is being violated by this policy. We suggest a modification to the MSA as follows (new language in bold):

(A) the Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members (**excluding the NMFS Regional Administrator**) who are voting members, requests the taking of such action; and ...

- Section 311(a)...Enforcement
The Council Chairs support the implementation of cooperative state/federal enforcement programs patterned after the NMFS/South Carolina enforcement cooperative agreement. We applaud the inclusion of \$15 million in the 2001 NMFS budget to expand the program to other states. While it is not necessary to amend the MSA to establish such programs, Congressional action is needed to enhance management under the MSA to establish permanent funding for such cooperative state/federal programs.

- Section 312 (a)...Fisheries Disaster Relief
Purpose: to make available fishery disaster relief funds for fisheries being closed, or severely curtailed as a result of judicial decisions.

Amendment: We suggest modifying Section 312 of the Act as follows (new language in bold):

(a)...

(1) At the discretion of the Secretary or at the request of the Governor of an affected state or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of

(A)...

(B)...

(C)...

(2) or closures imposed by a court to a fishery [Redesignate paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5)]

Revise new paragraph (3) as follows (new language in bold): Upon the determination under paragraph (1) **or (2)** that there is a commercial fishery failure, **or a judicial closure of the fishery** the Secretary...

- Section 402(b)(1) and (2)...Confidentiality of Information

Section 402 replaced and modified former Sections 303(b) and (e). The SFA replaced the word “statistics” with the word “information”, expanded confidential protection for information submitted in compliance with the requirements of an FMP to information submitted in compliance with any requirement of the MSA, and broadened the exceptions to confidentiality by allowing for disclosure in several new circumstances.

The following draft language clarifies the word “information” in 402(b)(1) and (2) by adding the same parenthetical used in (a), and deletes the provision about observer information. The revised section would read as follows (additions in bold);

(b) CONFIDENTIALITY OF INFORMATION -

- (1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act **that would disclose proprietary or confidential commercial or financial information regarding fishing operations, or fish processing operations** shall be confidential information and shall not be disclosed, except...
- (2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement under this Act **that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations**, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

- Bycatch Issues

There appears to be an inconsistent definition of bycatch, depending on geography. In the Atlantic, highly migratory species harvested in “catch and release fisheries” managed by the Secretary under 304(g) of the MSA or the Atlantic Tunas Convention Act are not considered bycatch, but in the Pacific they are. We suggest that highly migratory species in the Pacific, managed under a Western Pacific Council FMP and tagged and released alive under a scientific or recreational fishery tag and release program, should not be considered bycatch. Note that there also is an inconsistency between the MSA definitions of bycatch and the NMFS Bycatch Plan. The NMFS definition is much broader and includes marine mammals and birds as well as retention of non-target species. The Council Chairs prefer the MSA definition. We also wish to retain turtles in the definitions of “fish” because of their importance in every region and especially in past, and possibly future, fisheries pursued by indigenous peoples of the Western Pacific Region.

- Section 302(i)(2)(c)...Notification of Meetings

The Council Chairs recommend that this section be modified to read: “notice of meetings be submitted for publication in local newspapers in the major fishing ports, or by other means that will result in wide publicity”. Other means such as press releases, direct mailings, newsletters, e-mail broadcasts, and web page updates of activities and events, including Council meetings are far more effective in communicating with our target audience than a legal notice in a local newspaper.

- Section 302(a)(1)(D) Caribbean Council

The Council Chairs request that Section 302(a)(1)(D) of the MSA be amended by inserting “Navassa Island,” before “the Virgin Islands”.

Testimony of Mr. David Benton, Chairman
North Pacific Fishery Management Council
to the
Senate Subcommittee on Oceans and Fisheries
May 9, 2002

Introduction

Good morning Mr. Chairman. For the record, my name is David Benton. I serve as the Chairman of the North Pacific Fishery Management Council. I also serve as the Chair of the North Pacific Research Board, a multi-agency organization which is establishing a long-term, comprehensive marine research program for the North Pacific and Bering Sea. The NPRB is newly formed, but will over time administer a multi-disciplinary research program providing research funding at about \$10-15 million per year.

First off, I want to thank you for the opportunity to offer comments to the Committee on our fisheries management process. I would liked to touch on two major areas today. Of course, because I am from Alaska, I want to highlight for you some of our successes as well as the issues facing the North Pacific Fishery Management Council as we work to conserve the vast marine resources of the North Pacific. I also want to discuss with you some of the issues facing all the Councils.

NORTH PACIFIC FISHERIES MANAGEMENT

I am going to start with the North Pacific. Needless to say, we in Alaska are proud of our record in meeting conservation goals and maintaining healthy fisheries. Working together with the National Marine Fisheries Service (NMFS) and the Alaska Department of Fish and Game, we have been very successful at managing the federal fisheries off Alaska. Given the focus of this hearing and the time constraints, I will not provide the endless details or numerous examples of these accomplishments; however, they need to be recognized and I have provided a supplemental folder of materials that summarize the overall management philosophy of the North Pacific Council and provides examples of what we are doing to conserve fish stocks, protect habitat, manage and reduce bycatch, and incorporate ecosystem considerations into fishery management decisions. I hope that these materials, which are in the white folder with our Council logo, along with my testimony, will be of use to the Committee as you consider what is right with our fishery management system as well as ways we can strengthen it.

Alaska's fisheries are valued at over \$1.1 billion annually, before processing, and provide over half the volume of fish landings in the United States. They are a powerful economic engine for coastal communities off Alaska, and provide tens of thousands of jobs in the fishing and processing industries throughout Alaska and the Pacific Northwest. With so much at stake, the North Pacific Council has approached fisheries management with an eye towards long-term sustainability of marine resources. Our formula for sustainable fisheries involves strong science and research programs, an effective reporting and inseason management program, a comprehensive observer program, limitations on fishing capacity, precautionary and conservative catch limits, strict limits on bycatch and discards, habitat protection measures, incorporation of ecosystem considerations, and an open public process that involves stakeholders at all levels. Here are some examples:

Precautionary and Conservative Catch Limits

Annual catches of our fish stocks are controlled by strict harvest limits (which includes all catch for each species whether targeted, retained, or discarded). The Council establishes annual harvest limits for each stock at a level that never exceeds a biologically safe and precautionary harvest level recommended by the scientists on the Plan Teams or Scientific and Statistical Committee. Our scientists set harvest levels in a precautionary manner; when less is known about the dynamics of a stock, the more conservative the harvest rate. Fisheries are closely monitored and closed when the harvest limits are reached. As an additional precautionary measure in the Bering Sea, the combined annual harvest limits for all species is limited to no more than 2 million metric tons, which is only about 65% of what could be safely removed without impacting fish stocks. The application of conservative catch limits has resulted in sustainable catches. Annual North Pacific groundfish harvests have been sustained in the 1.5 - 2.5 million metric ton range (3 - 5 billion pounds) for the past 30 years.

All of our groundfish stocks are considered to be at healthy biomass levels. None of our groundfish stocks are considered to be 'overfished'. I should note that I dislike that term 'overfished' because it implies that stocks got to low levels because of fishing, when in many cases the causes are related to environmental change or other factors. The marine ecosystems off Alaska are dynamic, and fish stocks increase or decrease in response to environmental changes, and generally not in response to the levels of fishing mortality found in our fisheries today. Of course, prior to the Magnuson Act, and even into the 1980's, some stocks suffered from fishing pressure largely from foreign fisheries. But today's management takes into account total mortality, and sets very conservative harvest limits to ensure sustainability.

For the two crab stocks in our region that are considered to be overfished, we implemented aggressive rebuilding plans - the fisheries have been closed entirely - even though scientific data indicated that abundance of these stocks depends almost entirely on environmental factors. And, bycatch in other fisheries has been significantly constrained. Due to these efforts, we are seeing some improvements, but recovery will ultimately depend on ocean survival conditions which appear to be dependent on long term environmental factors.

However, in our quest to always look for better ways to meet our obligation to conserve our nation's fishery resources, the NPFMC has recently established an independent scientific review process to look at our overall harvest strategies, especially the process and science which we use to establish harvest rates. The Council has contracted a group of independent, international experts to critique our system and make recommendations for improvements. We expect to receive their report later this year.

Observer Program and Inseason Catch Monitoring

Our comprehensive observer program (averaging about 36,000 observer days annually) and inseason monitoring program are integral to the conservation of our resources. Observers measure catch and bycatch and collect biological information. Observers are required on all vessels longer than 60 feet, and at all but the smallest shoreside processors. Observers are placed on vessels and processing plants through a NMFS-certified contractor, and the costs for the observers are borne by industry, not by the government. Inseason managers at NMFS use information provided by the fleet on weekly catch and processing reports, as well as daily information from onboard observers, to manage complex area and seasonal quotas. The combination of timely reporting and observer information allows managers to monitor catch levels and close fisheries so that catch and bycatch limits are not exceeded.

Bycatch Reduction

The Council has been concerned about bycatch of non-target organisms since the implementation of the first fishery groundfish management plan in 1979. Catch limits have been placed on species traditionally harvested by other gear types (halibut, crab, herring, and salmon). The intent is to minimize the impacts of bycatch on non-target populations while at the same time allowing directed fisheries to be prosecuted. For example, current allowable bycatch levels in the Bering Sea and Aleutian Islands area equate to less than 1% of the halibut, crab, herring, and chum salmon populations. Bycatch of chinook salmon has slightly larger

impacts, in the order of 2% to 3%, and the Council is pursuing several initiatives to further reduce this level. In addition, the Council has initiated work to adopt salmon bycatch controls in the Gulf of Alaska in addition to controls already in place on halibut.

Another type of bycatch is comprised of target and non-target species that are caught but then discarded. This discard bycatch is thrown back into the sea and considered wasteful by many. We have made considerable progress in reducing this type of bycatch. For example, in 1993, over 17% of the groundfish caught off Alaska were discarded. By 2001, less than 7% of the catch was discarded. In raw pounds this equates to a discard of about 350 million pounds in 2001, down from over 800 million pounds in 1993. This reduction is partly due to implementation of full retention and utilization requirements - you catch it, you keep it - for major species such as pollock and cod. The fishing industry has also worked to reduce bycatch in a voluntarily manner by sharing catch information and modifying gear to allow unwanted fish to escape. Additionally, the formation of cooperatives in the Bering Sea pollock fishery, as prescribed under the American Fisheries Act, ended the race for fish. This allowed vessels to slow down fishing operations, and combined with our ongoing bycatch reduction efforts resulted in further reducing bycatch and discards. The cooperatives also aided the development of additional markets for lower valued species, and significantly increased utilization rates (pound of product per pound of raw fish harvested).

Further reductions in discards will be achieved with full retention requirements for flatfish, which are currently scheduled to be implemented in 2003. We also are continuing to evaluate additional approaches to bycatch reduction, including assignment of individual vessel accountability, bycatch avoidance techniques, and bycatch pools under a cooperative-style approach.

The Council recently started a new initiative to look broadly at further bycatch reductions. As Chairman, I will be appointing a stakeholder committee to review each of our various fisheries and make recommendations for programs to further reduce and manage bycatch. In reality, this is a resumption of work the Council had been engaged in a few years ago, but was put on hold because of the need to respond to litigation, mostly to do with procedural problems under NEPA.

Habitat Protection

We all know that most fishery resources depend on healthy sea floor habitat. Although scientists have only a limited understanding of the distribution of benthic habitats off Alaska, and how these affect fish production, the Council has established numerous marine protected areas to reduce potential effects of our fisheries on habitat. Bottom trawling has been prohibited from a large portion of the continental shelf to protect sensitive fish and crab habitats. Closed areas in the Bering Sea total more than 30,000 square nautical miles, bigger than the state of Maine. Closed areas in the Gulf of Alaska are even larger, totaling about 45,000 square nautical miles. Management measures related to protection of Steller sea lions were implemented this year which include additional closures of vast areas of the Gulf of Alaska, Bering Sea, and Aleutian Islands to trawling, and in many cases, to all fishing with any gear type.

This work was in progress several years ago following the passage of the Sustainable Fisheries Act in 1996, but was subsequently put on hold due to lawsuits filed by the environmental community. They prevailed on procedural matters, with the overall effect that work on habitat protection essentially stopped until NEPA requirements were addressed. The Council is back at it though, currently working on an accelerated time line to develop and implement alternatives to improve the essential fish habitat protection program off Alaska. We are conducting a thorough evaluation of our fisheries, through an EIS process, and expect to recommend significant actions in 2003.

Ecosystem Considerations

Over the past several years, the Council has been developing an ecosystem-based approach for management of our groundfish fisheries. The principles and elements of our approach are essentially the same as recommended by the Ecosystem Principles Advisory Panel in their report to Congress and by the National Academy of Sciences in their report on sustaining marine fisheries. In fact, one of the authors sits on our Council and chairs our Ecosystem Committee. While we have yet to take the next step and develop specific fishery ecosystem plans, our strategy is to minimize potential ecosystem effects while allowing for sustainable fish removals as we gain the knowledge necessary to implement more specific measures.

In the meantime, a number of measures have been implemented to reduce potential effects of fisheries on marine mammals and seabirds. As a precautionary measure, directed fisheries for forage fish species are prohibited. In addition, we have dispersed fisheries over time and space to reduce potential for competition

with Steller Sea lions, and prohibited vessels from fishing too close to the areas of land on which they haul out or give birth. To reduce seabird bycatch in longline fisheries the Council recently approved a suite of regulations requiring vessels to use deterrent devices. These are some of the more stringent measures in the nation and possibly the world. And, while it is anticipated that these deterrent devices will reduce seabird bycatch by over 80%, the Council is also committed to working with the U.S. Fish and Wildlife Service to review and improve seabird avoidance measures in the future.

In concluding my remarks on North Pacific fisheries issues, I want to emphasize that the North Pacific Fishery Management Council is committed to conservation. We do our best to base our decisions on sound science and when there is a question, we try to err on the side of conservation. In recent years, much of our effort has, unfortunately, been focused on responding to litigation, most of which focuses on procedural matters. This has thwarted our efforts to take up new initiatives to manage and reduce bycatch and protect important fisheries habitat. We have a very transparent process that relies on the participation of all sectors of the public. Again, unfortunately, much of the litigation we are addressing comes from special interests that have decided to not participate in this very public forum. Apparently, they prefer to go to court, and then get in a closed room and conduct backroom negotiations with federal attorneys. Away from the public eye. Away from the science based deliberations that Congress intended when you established the Magnuson Stevens Act and NEPA, and the other relevant statutes.

GENERAL FISHERIES MANAGEMENT ISSUES

I believe that the current system, a collaboration between the Regional Fishery Management Councils, NMFS, and the states is the appropriate process for management of our Nation's fisheries resources. When it is carried out properly, this process has all the ingredients for responsible decision-making. It is based on science. It is deliberative. It is transparent. It is representative. And, where it has failed to meet the conservation test, it is not because of the structure, but because of implementation. With regard to the National Marine Fisheries Service, there are several levels of review ongoing relative to NMFS' organizational structure and its ability to meet mission requirements under multiple authorities. I believe that Dr. Hogarth is working hard to address the problems facing the agency. Rather than focus on organizational structure of the agency, or specific budget and management processes, I would like to provide my thoughts on a few overriding issues relative to the collective Council/NMFS management process. I believe these are fundamental problem areas that you should be aware of that are impeding our ability to collaboratively accomplish our management mission. I also want to point out that several of these issues are discussed in the

comments of the Council Chairs regarding MSA reauthorization, which I have attached to my testimony for your information.

Litigation gridlock

Litigation is currently the most pressing problem facing the agency, and attempting to gird our process against this litigation is threatening to cripple our management process. Because of conflicts regarding procedure under various statutes, the door is open to often frivolous lawsuits over procedural issues, which have the perverse effect of thwarting necessary conservation action. While judicial remedy should be available to address real shortcomings in our management programs, the Catch-22 is that we have reached a point where litigation is seriously impeding our very ability to effectively manage our fisheries and comply with Congressional direction. Whether this is by design, or an inadvertent result, I can't say. I can only note that the very interest groups who are calling the loudest for dismantling the Council process are often the same groups engaged in these procedural lawsuits.

For example, there has been a dramatic trend in litigation to exploit the mismatch between NEPA and the Council process, and circumvent the very public process envisioned by this and other Acts, by attempting to use the courts to achieve their desired end game, rather than participate directly in the Council process. Settlement negotiations between NOAA attorneys and plaintiffs, which often follow, further circumvent the process by avoiding the deliberative, public processes envisioned under all of the Acts. In some cases, litigation ostensibly aimed at conservation objectives has actually impeded implementation of conservation measures recommended by the Councils. Essential Fish Habitat (EFH) is a prime example, where several of the Councils' proposed EFH amendments (intended to comply with the 1996 Sustainable Fisheries Act), were challenged as inadequate. As I understand it, the plaintiffs were successful under the NEPA claim that the EIS was deficient. The net result of this litigation and attendant settlement negotiations is at least a three year delay in implementation of amendments which would have defined and provided protection for EFH and Habitat Areas of Particular Concern (HAPC), while the Councils and NMFS undertake development of a new and comprehensive Environmental Impact Statement to implement EFH protections.

Similarly, the North Pacific Council and NMFS have been, over the past three years, attempting to develop a comprehensive, programmatic-level EIS for our groundfish Fishery Management Plans. Through court orders and settlement negotiations, where plaintiffs are attempting to directly influence the outcome of the EIS process, completion of that EIS has been delayed for at least an additional year, more likely two. The

Council and NMFS devote thousands of hours of valuable, limited staff resources to these litigation-driven exercises, compromising our ability to focus time and resources to address real management and conservation issues. It is further frustrating that many of the groups who are criticizing the current fisheries management process have not attempted to participate in that process; rather, they have simply turned to litigation as their primary means of influencing fisheries policy and regulations.

Conflicting Acts

Among the recommendations from the Council Chairs is the need for clarification of the authorities and requirements among the primary Acts governing our process. The Magnuson-Stevens Act (MSA) outlines a process for public participation, extensive supporting analyses, and public participation that is similar in scope to that outlined under the National Environmental Policy Act (NEPA). However, there are some fundamental differences between these Acts, and some fundamental mismatches between the fisheries management process outlined under MSA and the process requirements under NEPA. It is these process requirements under NEPA that most often provide for litigation opportunities, regardless of the validity of the underlying science or the completeness of the analyses which support a proposed management action. And more importantly, often times despite the conservation benefits of the proposed action as well. It appears that the process and requirements for fisheries management plans and amendments as outlined under MSA satisfies most of the letter of NEPA and certainly all of the intent of NEPA, relative to analysis, public participation, and ultimately, environmental conservation. The attached Council Chair's recommendations contain specific reference to this issue, and proposes clarification that failure to comply with NEPA in the management of a fishery under MSA should result only in judicial guidance regarding NEPA compliance, rather than judicial management of, or injunction against, a fishery unless there is a clear MSA violation.

In addition to the litigation opportunities for procedural lawsuits under NEPA, there are some additional problems which result from our attempts to comply with both statutes. In the North Pacific, we are currently in the process of altering our annual quota-setting process so that establishment of Total Allowable Catch (TAC) levels will go through a complete and formal rulemaking process under NEPA, including lengthy public comment periods at both the Council level (before final recommendations by the Council) and the Secretarial level (in reviewing the Council's recommendations). Currently the Council sets quotas each fall for the upcoming fishing year, based on just-completed scientific survey data. One of the keys to success in avoiding overfishing is to use the most up-to-date scientific information to judge the health of fish stocks and adjust harvest accordingly. Under the proposed change, which is being suggested by NMFS to comply with

NEPA procedural requirements, quotas would be set on year-old survey data rather than on the best, most recently available scientific information, as mandated by the MSA. This is one example of a perverse, and presumably unintended consequence of the literal application of NEPA procedures to our management process.

Our Council is currently attempting to conduct an independent legal review of issues surrounding the intersection of these various Acts, including MSA, NEPA, and the Endangered Species Act (ESA). We hope that this legal review will better inform us how to balance the requirements among these Acts, as well as clarify NMFS and the Councils' respective roles in promulgating management measure under these Acts.

Regulatory Streamlining

NMFS has recently undertaken what is being labeled 'regulatory streamlining', in an attempt to ensure that all proposed fisheries management programs are legally consistent with the provisions of the Acts mentioned above, as well as other applicable laws. One aspect of this initiative would require all Fishery Management Plans, or amendments to those plans, to illustrate full compliance with NEPA and other laws prior to action by a Regional Council. NMFS hopes that this will better enable the Councils to make informed decisions and will, ideally, better enable the agency to defend these decisions against potential litigation. However, given the unique nature of the Council process, coupled with the process requirements under NEPA, there are concerns whether this initiative will ultimately be successful without some clarifications as to the relative applicability of NEPA vs applicability of the MSA. Again, the Council Chair recommendations contain specific reference to this concern, and suggest a potential remedy which would help define a more reasonable application of NEPA to our process, without jeopardizing the underlying environmental conservation objectives of this Act or the MSA.

Conclusion

There have been allegations recently that the Regional Council system is ineffective at addressing conservation objectives of the Magnuson-Stevens Act, and even suggestions that the Council system should be scrapped altogether, or, limited to only allocation decisions. This is a seductive bit of sloganeering that ignores some of the most fundamental lessons of fishery management. Much of the business of managing fisheries involves both conservation and allocation, and more often than not allocation and conservation issues cannot be separated. While some regions have been more successful than others at implementing the

baseline, conservation oriented management measures necessary to preserve and sustain these valuable resources, the Council process can work effectively to address both conservation and allocation issues. I can cite numerous examples of where our Council has taken the lead and approved conservation measures above and beyond that deemed necessary based on agency advice. These include the Pacific ocean perch rebuilding plan; the Southeast Alaska trawl closure; the 2 million mt OY cap in the Bering Sea; Bering Sea closures to protect depleted crab stocks, and the closure of the Aleutian Islands pollock fishery. I submit that fisheries in the North Pacific are a shining example of the ability for this process to directly address conservation objectives, and balance the allocation objectives that often come into play. It is this collaborative process between the Councils, the Department of Commerce, and the public that the drafters of the Magnuson-Stevens Act envisioned, which allows for an informed group of stakeholders and managers to craft fisheries regulations that take into account specific regional considerations.

This is not to say that our system is perfect by any means, or that there is not room for improvement. There are a number of issues we still need to address, such as fishery rationalization in our remaining open access fisheries, and the effects of such programs on conservation and communities, as well as the immediate distributional effects on participants. We need a greater understanding of ecosystem processes to allow us to manage with more of an ecosystem perspective. We need to continually engage in self assessment of our science programs, and our management strategies. And, we need to make the system more user friendly so that a broad cross section of stakeholders is engaged in a transparent process. We need to solve the conflicts among statutes to cut the chain of paper chase litigation so we can focus on the business of managing our marine resources in a responsible manner. NMFS, with input from the Councils, is working hard to achieve a more efficient regulatory process, and to ensure that our fisheries plans and regulations meet the tests outlined by various Congressional statutes. I believe this process is improving, and we stand ready to respond to any directions that come out of the Magnuson-Stevens Act reauthorization process or other Congressional actions. Again, I appreciate the opportunity to speak to you today on these issues. Thank you.

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Ricks E Savage
Chairman

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Deputy Director

May 10, 2002

RECEIVED
MAY 13 2002
N.P.F.M.C

Mr. David Benton, Chairman
North Pacific Fishery Management Council
Suite 306
605 West Fourth Avenue
Anchorage, AK 99501-2252

Dear Mr. Benton:

At its most recent meeting in Newport News, Virginia the Mid-Atlantic Council passed the following motion:

“We recommend at the next reauthorization of the Magnuson-Stevens Act, the following recommendation be adopted: Establish a voting seat on the New England Fishery Management Council for the state of New York”.

To effect this motion, the following language should be inserted into the Magnuson-Stevens Fishery Conservation and Management Act, at Section 302. REGIONAL FISHERY MANAGEMENT COUNCILS, (a), (1), (A) NEW ENGLAND COUNCIL .--


“Within 120 days after the date of the enactment of this Act, the New England Fishery Management Council shall be reconfigured to consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York and shall have authority over the fisheries in the Atlantic Ocean seaward of such states (except New York, and as provided in paragraph (3)). The New England Council shall have 19 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such state).”

I bring this motion to your attention because it is my understanding that the Council Chairmen will be addressing Magnuson-Stevens Act reauthorization at the upcoming Council Chairmen’s meeting hosted by your Council in Sitka, AK. By including this action on the agenda for that meeting, our Council is confident that this suggestion will get a full review by the Chairmen, and hopefully their positive endorsement.

By copy of this letter, I am also notifying the National Marine Fisheries Service of this Council's view with regards to adding New York to the New England Council. It is anticipated that such a change in Council make-up would be much like the change experienced by this Council when North Carolina was added to it through the Sustainable Fisheries Act of October 1996.

Your positive consideration of this request will be appreciated. Thank you.

Sincerely,


Daniel T. Furlong
Executive Director

DTF/j

cc: W. Hogarth , R. Lent, J. Dunnigan - NMFS
T. Hill, P. Howard - NEFMC
C. Oliver -NPFMC
G. Colvin, T. DiLernia, L. Nolan -(NY
R. Savage, R. Smith, C. Moore - MAFMC

**CONGRESSIONAL TESTIMONY OF
JUSTIN LEBLANC
VICE PRESIDENT, GOVERNMENT RELATIONS
NATIONAL FISHERIES INSTITUTE
BEFORE THE
FISHERIES CONSERVATION, WILDLIFE AND OCEANS
SUBCOMMITTEE
OF THE COMMITTEE ON RESOURCES,
U.S. HOUSE OF REPRESENTATIVES
ON THE REAUTHORIZATION OF THE
MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT
ACT**

MAY 2, 2002

Chairman Gilchrest, Representative Underwood, and distinguished members of the subcommittee, thank you for the opportunity to testify on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I am Justin LeBlanc, Vice President of Government Relations for the National Fisheries Institute (NFI). NFI is the leading trade association representing the diverse fish and seafood industry of the United States. We are an "ocean to table" organization representing vessel owners, processors, importers, exporters, distributors, retailers, and seafood restaurants. NFI is committed to providing U.S. consumers with safe, wholesome, and sustainably harvested fish and seafood choices.

Today, I am also here on behalf of the Seafood Coalition, a group of fisheries organizations and seafood companies from across the country seeking changes to the Magnuson-Stevens Act to rationalize the implementation of the Act while maintaining its core commitments to conservation and sustainability. The Seafood Coalition member list is attached to my written testimony.

The implementation of the Magnuson-Stevens Act over the past several years has revealed serious flaws in the Act that need to be addressed. These include:

- Improving the science base of fisheries conservation and management by defining the best scientific information available and ensuring the NMFS stock assessments undergo independent peer review;
- Focusing habitat protection efforts on Habitat Areas of Particular Concern instead of the entire Exclusive Economic Zone;
- Incorporating environmental variability into fisheries management by better defining Maximum Sustainable Yield, overfished, and overfishing;
- Initiating cooperative research programs to fill major data gaps;

- Establishing goals and objectives for observer programs and holding them accountable to those goals and objectives;
- And improving the socioeconomic impact analyses of fishery management decisions by requiring the National Marine Fisheries Service to consider the cumulative impacts of its decisions.

These priorities are addressed by the Fisheries Science Improvement Act; a discussion draft being proposed by Representative Tauzin. I would like to thank the congressman and his staff for proposing this important draft and urge the subcommittee's favorable consideration of it during the reauthorization process.

While we believe changes to the Magnuson-Stevens Act are needed, we are concerned that other legislative proposals before this subcommittee may frustrate efforts to not simply conserve fish, but to build sustainable fisheries.

The proposed Ocean Habitat Protection Act, for example, would prohibit the use of bottom tending trawl gear with footrope gear larger than 8 inches in diameter. The Seafood Coalition believes that decisions about fishing gear and its use are best made on a fishery-by-fishery basis by the Regional Fishery Management Councils. That said, we also believe this legislation will actually exacerbate the very problems it seeks to solve. First and foremost, a ban on large diameter trawl gear could actually worsen the impact of bottom trawl gear on soft-bottom substrates. Larger diameter gear has been developed for this type of ocean bottom because it has significantly less impact in terms of substrate disturbance and bycatch of nontarget species. In addition, a ban on large diameter trawl gear could result in modifications to small trawl gear to allow it to effectively fish in the rocky substrates that the bill seeks to protect. These modifications could have a more dramatic impact on these areas of the ocean bottom than the current large trawl gear being used.

If enacted, this bill would cause devastating economic impacts in fishing communities around the country. Alaska could lose \$180 million worth of groundfish landings annually, the West Coast could lose \$65 million worth of groundfish annually, and virtually the entire New England groundfish, shrimp, and whiting fisheries worth over \$130 million annually could be lost. It is because of these environmental and economic impacts that these types of decisions are best left to the Regional Fishery Management Councils.

Many of the proposals in H.R. 2570, the Fisheries Recovery Act also raise concerns. With its unfunded and unachievable mandates, this bill has been nicknamed as the "Fisheries Elimination through Litigation Act" by some in our community. In particular, we are concerned that the National Marine Fisheries Service will be unable to fulfill the bill's call for:

- the maximal avoidance of bycatch,
- limitations on new fishing gear and technology until demonstrated to have no adverse effects on essential fish habitat,
- the implementation of ecosystem-based fishery conservation and management without the scientific base necessary to do so,

- the application of the precautionary approach as a justification for worst-case scenario management, and
- universal observer coverage without clear goals and objectives.

Without dramatic increases in funding, not just authorized but actually appropriated, these mandates will open the agency and the commercial fish and seafood industry to litigation far beyond that which we have seen to date. As we have seen over the past several years, litigation and the courts are no way to build sustainable fisheries.

We would like to commend the Chairman and his staff for their efforts to forge a reasonable middle ground. The "Gilchrest Discussion Draft" released by the Subcommittee has many important provisions in it. We would encourage the Chairman to incorporate the provisions of the Fisheries Science Improvement Act into the Chairman's bill. We also wish to offer the following brief remarks on the discussion draft:

- The overcapitalization report is an important step towards addressing this critical issue facing U.S fisheries. We recommend that the Secretary be required to consult with the commercial fishing sector before providing recommendations for reducing excess fishing capacity.
- The buyout provisions may facilitate the use of this tool as a means of reducing excess fishing capacity. The language, however, needs to be carefully drafted to avoid unintended consequences, particularly in fisheries where vessel owners may own multiple vessels and permits.
- The Section on ecosystem-based management recognizes the fundamental barrier to effectively implementing such a management regime: information. This proposal is an appropriate first step in the development of the ecosystem-based management concept.
- Similarly, an analysis of the utility, benefits, and costs of a national observer program is an appropriate step before Congress considers mandating such a program.
- We recognize the need to separate the concepts of overfished and overfishing. We are concerned, however, that the proposed definitions are too rigid and recommend the definitions proposed in the Fisheries Science Improvement Act. We also appreciate the proposal to improve the quality of the Status of the Stocks Report.
- The bycatch section on gear research is a worthwhile strategy for achieving the goal of National Standard # 9. Including birds in the definition of bycatch, however, is unnecessary as sea birds are already covered by the Migratory Bird Treaty Act and, where necessary, the Endangered Species Act.
- Redirecting regulatory actions concerning Essential Fish Habitat to true areas of concern is similar to the emphasis on the Fisheries Science Improvement Act on Habitat Areas of Particular Concern We strongly support efforts to refocus our habitat efforts.

While the Seafood Coalition has taken no position on Individual Fishing Quotas (IFQs), the National Fisheries Institute believes that the current moratorium on IFQs should be continued until and unless the Magnuson-Stevens Act is amended to require that harvesters and primary processors be equitably treated given the corollary investments in excess fishing and processing capacity that traditional fisheries conservation and management regimes have encouraged.

Mr. Chairman, Thank you for the opportunity to testify. More detailed written comments on the bills before the subcommittee will be presented to the subcommittee staff. I would be pleased to answer any questions the subcommittee may have.

The Seafood

Coalition

National Fisheries Institute
Fishermen's Marketing Association (CA)
Garden State Seafood Association
Fisheries Survival Fund
Trawler Survival Fund
West Coast Seafood Processors Association
The Groundfish Group –Associated Fisheries of Maine
Ocean Garden Products, Inc. (CA)
Southeastern Fisheries Association
Coalition of Coastal Fisheries (WA)
North Carolina Fisheries Association
California Fish and Seafood Institute
Oregon Trawl Commission
Fishermen's Association of Moss Landing (CA)
Long Island Commercial Fishing Association (NY)
Sea Safari, Ltd./Ecrevisse Acadienne, USA (NC)
Monroe County Commercial Fishermen's Association
Blue Water Fishermen's Association

Subject: FW: Senate Hearing This Week

Date: Mon, 6 May 2002 16:30:51 -0400

From: Paul Howard <phoward@NEFMC.ORG>

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FYI

17 FISHERIES Panel to try to unravel NMFS management problems The Senate Commerce, Science and Transportation Committee will be analyzing the myriad management problems at the National Marine Fisheries Service on Thursday. NMFS is blamed for everything from too stringent regulations to violating a number of laws, all while operating under a tight and arguably insufficient budget with more than 100 lawsuits pending, eight different regional councils to coordinate with and nearly 1,000 fish stocks under its purview, in addition to marine mammals. "We talk about reauthorizing (the) Magnuson (Stevens Fishery Conservation and Management Act), but there appear to be some more fundamental problems with fisheries management that can't be fixed with just some changes in the act," said a committee aide. In fact, some of the changes made in 1996 with the Sustainable Fisheries Act amendments are what catapulted the agency into disarray. NMFS and the councils are still not complying with much of SFA, which moved fisheries management in the direction of conservation for the first time ever. The aide described NMFS as an "agency struggling to reinvent itself" in light of SFA. In addition to Magnuson, NMFS must comply with the National Environmental Policy Act -- an endless source of litigation -- along with the Endangered Species Act, Marine Mammal Protection Act and Regulatory Flexibility Act. The Oceans, Atmosphere and Fisheries Subcommittee will probe six panelists to determine whether the problem is statutory, budgetary, organizational or the result of paperwork, a lack of coordination or a lack of agility to respond to new information, to name a few possibilities. Or perhaps the right people are not in the right jobs, the aide said. "[Fisheries management] is a very cumbersome process and everyone seems to be a prisoner of it. ... There's burnout at the agency, people don't even want to work there, and they're basically in the press being vilified." The Forest Service also went through

this 10 years ago when it moved from focusing on harvest to incorporating conservation, the aide said. "Basically every agency goes through this." NMFS management problems are magnified by the agency's own scale; the agency is the fourth largest regulator in the federal government. The New England groundfish lawsuit is the most recent evidence of mismanagement at NMFS, highlighting some causes and effects from the shift to litigation (Greenwire, April 30). But while the New England issue has struck close to home for Subcommittee Chairman John Kerry (D-Mass.) and ranking member Olympia Snowe (R-Maine), the issue has hit every region of the country in some way or another. In Hawaii, it was longliners and bycatch issues; in Alaska, Steller sea lions and groundfish; and in the Pacific Northwest, a collapse in groundfish populations. Each situation has deeply impacted local fishing communities. The committee wants to find a way to get to the root of the problem and avoid future disasters. At the very least, the committee hopes the hearing will kick off some discussion on fisheries management -- and mismanagement -- and the committee will begin keeping better tabs on the agency's activities. Another hope is to encourage independent studies on the problem. The first panelists will include NMFS Administrator Bill Hogarth, in addition to Dave Benson, who chairs the North Pacific Fishery Management Council and has been chosen by the seven other councils to represent all eight councils at the hearing. The second panel will include Ray Kammer, who is now an independent consultant but as of two years ago was head of the National Institute for Science and Technology and was tapped to do an internal review of NMFS management and budget. Congress incorporated recommendations from the ensuing Kammer report, released in 2000, into NMFS's 2001 budget, and Kammer has since been tapped as lead consultant for another congressionally mandated study that is still in the works. The second panel will also include Penny Dalton, former NMFS chief during the Clinton administration and author of SFA while she worked for the subcommittee, according to the subcommittee. Suzanne Iudicello, an author and marine conservation consultant who used to be general counsel for the Center for Marine Conservation -- now called The Ocean Conservancy -- will also testify. She led the environmental coalition that negotiated SFA and was part of a consulting team that did an internal review of NEPA compliance at NMFS, according to the committee. She also serves on the Marine Fish Advisory Council, which advises the Commerce Department on fisheries issues and has completed some agency reviews. Finally, Richard Gutting, president of the National Fisheries Institute and also a member of MFAC, will testify for the fishing and seafood industry. Schedule: The hearing will commence at 9:30 a.m., Thursday, May 9, in 253 Russell. Witnesses: Bill Hogarth, NMFS administrator; Dave Benson, chair of the North Pacific Fishery Management Council; Ray Kammer, budget analyst; Penny Dalton, former NMFS administrator; Suzanne Iudicello, marine conservation consultant; and

Subject: FW: Latest on Magnuson

Date: Mon, 6 May 2002 16:30:17 -0400

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FYI

18 FISHERIES

Middle ground on Magnuson bill proves difficult

Last week's hearing on overhauling the nation's fisheries management law yielded

a plethora of recommendations from around the country and across political and

economic spectrums. Commercial fishermen, recreational fishermen, environmentalists, seafood processors, regulators, professors and members of Congress gave the House Resources Committee a lesson on opposites as their suggestions on everything from habitat protection to fishing quotas and overcapacity to bycatch often conflicted.

Habitat protection is shaping up to be a primary goal for the Subcommittee on

Fisheries, Wildlife and Oceans, which is drafting reauthorizing legislation for

the Magnuson-Stevens Fisheries Conservation and Management Act. Chairman Wayne

Gilchrest (R-Md.) is particularly interested in moving Magnuson toward ecosystem-based management, he said.

The committee's draft bill would add new language requiring the National Marine

Fisheries Service and the eight regional fishery management councils to establish criteria for developing ecosystem-based management plans, which the

conservation-minded Marine Fish Conservation Network applauded, as did the Pacific Coast Federation of Fishermen's Associations.

However, the two groups recommended that NMFS and the councils be required not

only to establish the criteria for ecosystem plans, but also to implement and

enforce the plans, which Gilchrest is willing to consider, according to statements he made on Thursday. The two groups suggested that Gilchrest add language from Rep. Sam Farr's (D-Calif.) Fisheries Recovery Act (H.R. 2570) on

ecosystem-based management plans, which requires implementation of the plans and

funds the effort.

And so comes into play the other three Magnuson reauthorization bills that are

floating through the lower chamber's halls, of which Farr's bill is just one.

Farr's H.R. 2570 has 71 cosponsors and enjoys broad support from

conservation

groups for its efforts to mandate and fund ecosystem-based management, observer

coverage, bycatch reporting and strong language on protecting essential fish habitat.

Gilchrest's bill attempts to be more moderate than Farr's, intending to "nudge"

NMFS and the councils in the direction the committee thinks is important without

writing inflexible mandates that will result in more lawsuits, Gilchrest said.

Justin LeBlanc of the National Fisheries Institute said of Farr's bill, "This

bill has been nicknamed the 'Fisheries Elimination through Litigation Act' by

some in our community."

Meanwhile, Rep. Billy Tauzin (R-La.) has introduced another fisheries bill with

several other members of Congress, including Rep. Felix Grucci (R-N.Y.), who joined the committee for Thursday's hearing. NFI supports Tauzin's Fisheries Science Improvement Act, as does the Seafood Coalition, which represents 15 fisheries organizations and seafood companies. The bill has not yet been formally introduced.

Subcommittee member Tauzin's bill calls for peer-reviewed, "statistically valid

data," Tauzin said, in addition to anecdotal information from fishermen. He also

supports forcing NMFS to take into account the cumulative socio-economic impacts

of management decisions on fishing communities and analyzing factors other than

fishing that could be impacting stocks.

Gilchrest said ecosystem-based management takes the comprehensive approach of

which Tauzin spoke, but Tauzin emphasized that his idea of comprehensive would

also include economic impacts.

A fourth and final fisheries management bill from Rep. Joe Hefley (R-Colo.) is

the Ocean Habitat Protection Act (H.R. 4003). This bill attempts to reduce the

effects of trawling and dredging on seafloor habitat, as recommended by a National Academy of Sciences report released in March (Greenwire, March 19).

Some of the other items addressed by Gilchrest's bill include essential fish habitat, individual fishing quotas and bycatch, among other things

(Environment

and Energy Daily, April 29).

Essential fish habitat

Gilchrest's bill requires councils to minimize adverse fishing impacts in EFH

areas that are identified based on information on growth, reproduction and survival rates within the area. The Seafood Coalition and NFI support this idea

because it focuses efforts on specific areas of concern, similar to the way Tauzin's bill focuses EFH emphasis on Habitat Areas of Particular Concern.

HAPCs

are prioritized areas within EFH. Currently, EFH covers the majority of the U.S.

exclusive economic zone, making it difficult to understand which areas are the

most important to protect.

MFCN and PCFFA -- which between the two represent conservation groups, marine

scientists and fishermen -- said Gilchrest's EFH provision "will

significantly roll back existing law," according to testimony from Gerald Leape, marine program director for the National Environmental Trust, testifying on behalf of

MFCN. Gilchrest's proposal restricts the requirement to limit damaging fishing practices because it focuses only on EFH areas that meet certain criteria, he said. The two fish advocacy groups have endorsed language in H.R. 2570, Farr's bill, instead.

Individual Fishing Quotas

Gilchrest's bill would allow the moratorium on IFQs to expire on Oct. 30, imposing a number of national requirements on IFQs but largely leaving it up to

the councils to tailor fishing quotas to each fishery. An item of concern brought out in the hearing was the five-year limit on quotas.

Conservationists and some fishermen prefer a strict limit on the number of years quotas are granted and a subsequent review before the quotas are granted again.

The goal is to ensure that quota shares do not become a compensable property right and conservation goals are being met. Rick Savage, testifying for the Mid-Atlantic Fishery Management Council, opposes the cap and said if a quota share is limited to five or 10 years, "a person wouldn't spend the money to buy it."

Another issue is processor shares, which Savage also opposes. The Mid-Atlantic

surf clam fishery instituted a quota program years ago -- before the moratorium

-- and has found it very successful, Savage said. Processors are not given shares -- although they could buy them if they wanted, Savage said -- and since

the quota system was put in place, processors have given harvesters a fair price

for surf clams, he said. NMFS chief Bill Hogarth also has concerns about giving

processors a quota share in the fishery because it limits market freedom by assuring processors a certain portion of the fishery.

Some witnesses also expressed concern about the possibility that IFQs could result in large companies gaining an unproportionately large number of the quota

shares and squeezing out smaller fishermen. Savage said the opposite has happened in the surf clam fishery.

Bycatch

Gilchrest's language on bycatch disappointed fish advocacy groups because although it sets a strict one-year timeline for the councils to develop standardized reporting methods to assess bycatch, it has a loophole allowing councils to opt out if they cannot meet the requirement. Conservation groups support Farr's language on bycatch.

Fish advocacy groups support the addition of birds to the definition of bycatch,

but the Seafood Coalition says birds are already protected under the Migratory

Bird Treaty Act and, in some cases, the Endangered Species Act. Hogarth agreed

birds are protected under both statutes, but the Fish and Wildlife Service has

control over MBTA and ESA, so NMFS is forced to consult with FWS over those laws. If birds were added to the definition of bycatch, the consultation process

would be much easier, he said.

Gilchrest is also considering adding marine mammals to the definition of bycatch.