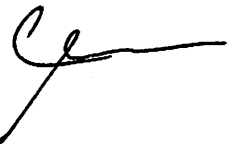


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director 

DATE: October 4, 1999

SUBJECT: Magnuson-Stevens Act Reauthorization

ESTIMATED TIME 1 HOUR
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**ACTION REQUIRED**

Update of Magnuson-Stevens Act reauthorization.

**BACKGROUND**

MSA reauthorization is beginning to come into focus a bit. It is unclear how fast it will progress, but at least we have a sense of the issues that may be considered. For example, the Regional Council chairmen met the end of June in Rhode Island and developed the recommendations under C-11(a). These were passed on to the House Subcommittee on Fisheries Conservation, Wildlife and Oceans at a hearing on July 22 by the chairman of the New England Council. Our own Chairman Lauber presented them to the Senate Subcommittee on Oceans and Fisheries on July 29. The testimony of Chairman Lauber and Council member Fluharty is under C-11(b). Item C-11(c) is the testimony of the new Assistant Administrator of the NMFS, Penny Dalton, at a Senate field hearing on September 25, 1999. It mainly focuses on New England issues, but also touches on NMFS issues for reauthorization starting on p. 6. Also, note that she put in a good word for Alaska fisheries on p. 3.

The House will hold a hearing on essential fish habitat sometime in February, submit a draft reauthorization bill, and then hold a second general hearing. The Senate may hold field hearings early in 2000 and possibly one may occur in Alaska in January. I have been cautioned that little in the way of new bills normally are passed in a presidential election year, so Magnuson-Stevens may not be amended until 2001.

**Magnuson-Stevens Fishery Conservation and Management Act  
Reauthorization Issues - Council Chairmen's Recommendations  
presented by  
Joseph M. Brancaleone, Chairman, New England Fishery Management Council  
to the Committee on Resources  
House Subcommittee on Fisheries Conservation, Wildlife and Oceans  
Thursday, July 22, 1999**

On behalf of myself and the other seven Council Chairmen, I would like to thank the members of the Subcommittee for the opportunity to present our views. First let me say the Council Chairmen believe the Magnuson-Stevens Act as amended in 1996 is a good piece of legislation and it is working. Many of our most important fisheries are prospering and we are seeing significant improvements in a majority of the overfished stocks under management. The changes we suggest are not substantial, but we believe they will serve to enhance and improve the Act. The points I make in this presentation concern only the reauthorization issues on which the chairs reached consensus. I believe individual Councils have positions on additional topics which I'm sure they will communicate as the reauthorization process moves forward. The Chairs discussed this document in a fair amount of detail at our meeting in late June. I'm happy to answer questions on any of the issues we covered or on issues of concern to the New England Council.

- **Rescinding the Congressional Prohibitions on IFOs or ITOs**  
Currently Section 303(d)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (M-S Act) prohibits a Council from submitting or the Secretary from approving an Individual Fishing Quota (IFQ) system before October 1, 2000. Section 407(b) prohibits the Gulf Council from undertaking or continuing the preparation of a red snapper IFQ program or any system that provides for the consolidation of permits to create different trip limits for vessels in the same class before October 1, 2000. If the reauthorization process is completed in 1999, the Council chairmen support rescinding these provisions before the year 2000 deadline. The chairmen also oppose extending the moratorium on IFQs.
- **Establishment of Fees**  
The Council chairmen are opposed to the imposition of fees that are not regional in nature and dedicated by the Councils, and are concerned about the ability of depressed fleets to pay fees. However, we do support the National Academy of Sciences 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 [M-S Act Sections 303(d)(2-5) and 304(d)(2)].
- **Coordinated Review and Approval of Plans and their Amendments and Regulations**  
The Sustainable Fisheries Act (SFA) amended Sections 304(a) and (b) of the M-S Act to create separate sections for the review and approval of plans 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 chairmen recommend modification of these provisions to include the original language allowing concurrent approval of plans and amendments as well as regulations and providing for the initial 15-day disapproval process. The Councils would also

like the ability to resubmit responsive measures without having to submit a complete fishery management plan or amendment, as now required by subsection (4) of Section 304(a).

- **Regulating Non-Fishing Activities of Vessels**

The Council chairmen recommend that Section 303(b) of the Act be amended to provide authority to Councils to regulate non-fishing activities by vessels that adversely impact fisheries or essential fish habitat (EFH). One of the most damaging activities to such habitat is the anchoring of large vessels near habitat areas of particular concern (HAPC) or other EFH (e.g., coral reefs, etc.). When these ships swing on the chain deployed for anchoring in 100 feet, 20 to 70 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 allowed.

- **Collection of Economic Data [Section 303(b)(7)]**

Language throughout the M-S Act specifies the collection of biological, economic, and socio-cultural data to meet specific objectives of the Act and for 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." 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 the requirements of the M-S Act and the Regulatory Flexibility Act (RFA). These inconsistencies should be resolved.

The chairmen recommend amending the M-S Act 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 plan 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 without allowing collection of the necessary data.

- **Confidentiality of Information [Section 402(b)]**

Section 402 replaced and modified former Sections 303(d) and (e). The SFA replaced the word "statistics" with the word "information", expanded confidential protection from information submitted in compliance with the requirements of an FMP to information submitted in compliance with any requirement of the Act and broadened the exceptions to confidentiality to allow 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, and that would disclose proprietary or confidential commercial***

*or financial information regarding fishing operations or fish processing operations shall not be disclosed, except--*

- A. to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;*
- B. 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;*
- C. when required by court order;*
- D. when such information is used to verify catch under an individual fishing quota program; or*
- E. when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act."*

*(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, and 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).*

- **Enforcement**

The Council chairmen support the implementation of a cooperative state/federal enforcement programs patterned after the NMFS/South Carolina enforcement cooperative agreement. While it is not necessary to amend the Act to establish such programs it is consistent with the changes needed to enhance management under the Act to suggest to Congress that they consider establishing and funding such cooperative state/federal programs.

- **Council Member Compensation** The Act should specify that Council member compensation be based on the General Schedule that includes locality pay. 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.

- **Observer Program**

The chairmen reaffirm their support to give 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.

- **Essential Fish Habitat**  
 The 1996 Act required the Councils to identify and describe EFH, but gave little direction on how to designate EFH. The EFH definition, i.e., “those waters and substrate necessary to 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 theme throughout the EFH designation process, on a national and regional scale. Either the EFH definition should be modified, or the guidance on how to use different types of data should be more specific.
- **Rebuilding Periods**  
 The Councils should have greater latitude for specifying rebuilding periods than is provided under the National Standard Guidelines. Social and economic factors should be given equal or greater consideration in determining schedules that result in the greatest overall net benefit to the Nation.
- **Redefine “Overfishing”**  
 The chairmen believe there are a number of problems related to MSY-based definitions of overfishing. For example, data deficiencies may lead to inappropriate calculations of MSY, which in turn affect overfishing definitions. Ultimately, this could lead to unnecessary social and economic impacts for fishermen who are subject to measures that are tied to stock rebuilding schedules. While we have no specific recommendations at this time, we would like to work further with the Subcommittee in seeking solutions to our concerns as the reauthorization process proceeds. This is an extremely important issue to the Councils but, through our conversations with NMFS staff, we appreciate that there are varying viewpoints to be considered before we are able to present clear, concise and productive recommendations on what is the foundation of the SFA.
- **Receive Funds from any State or Federal Government Organization**  
 Currently Councils can only receive funds through the Department of Commerce, NOAA or NMFS. The Councils routinely work with other government organizations to support research, workshops, conferences or to procure contractual services. In a number of cases, complex dual contacts, timely pass-throughs and unnecessary administration or grant oversight were required to complete the task. The Councils request a change that would give them authority to receive funds or support from other local, state and 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.
- **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 Magnuson Stevens Act 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 fishery management plan 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 Magnuson-Stevens Act definition of bycatch and the NMFS Bycatch Plan. The NMFS definition is much broader and includes marine mammals and birds and retention of non-target species. The Council chairmen prefer the Magnuson-Stevens Act definition. We also wish to retain turtles in the definition 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.

- **FMP Review Program**

The chairmen believe that NMFS, in its review of proposed plans, amendments and framework adjustments, has failed to adequately communicate to the Councils perceived problems in a timely manner. We propose the inclusion of a mandate in the Act to require that NMFS consult with the Councils before disapproving fishery management plans, amendments or changes made through the abbreviated rule-making process.

- **NMFS Regional Administrator Emergency Action Vote**

For the purpose of preserving the Secretary's authority to reject a Council's request for emergency or interim action, the NMFS Regional Administrator is 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 National Marine Fisheries Service -- we certainly do not wish to appear to be disparaging the Regional Administrators in any way -- the Council chairmen believe that Congressional intent is being violated by this policy. We instead suggest a modification to the language of Section 305(c)(2)(A) 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 . . .*

- **MAFMC At-Large Seat**

The Council chairmen recommend that an additional At-Large seat be added to the Mid-Atlantic Fishery Management Council (MAFMC) along with funding identified for that purpose. Such a seat would, most likely, be filled by an individual from the state of North Carolina. This would allow the state to have both a recreational and commercial representative on the MAFMC.

Mr. Chairman, I would like to thank you for this opportunity to comment on the Magnuson-Stevens Act reauthorization. As I mentioned earlier, I'm also happy to answer questions or provide further information about the positions taken by the Council chairmen.

**Testimony of Mr. Richard Lauber, Chairman**

**North Pacific Fishery Management Council**

**to the**

**Senate Subcommittee on Oceans and Fisheries**

July 29, 1999

Good morning Senators, and thank you for the opportunity to offer comments related to implementation of the Magnuson-Stevens Fishery Conservation and Management Act. As requested, my comments will focus on implementation of the 1996 amendments (the Sustainable Fisheries Act), and you will find more detailed comments attached to my summary oral comments. Also attached is a copy of the recommendations which arose from the Council Chairman's meeting which was held last month in Rhode Island. These are consensus recommendations from the eight Regional Councils regarding the upcoming reauthorization of the Act. I believe these recommendations were provided last week to the House Subcommittee on Fisheries, Conservation, Wildlife, and Oceans by Joseph Brancaleone, Chairman of the New England Council. I provide these collective Council recommendations for your reference and would be happy to try and answer any questions related to those recommendations. For now however, I will return my comments to implementation of the 1996 amendments.

In addition to provisions which apply to all the Nation's fisheries, there were as you know many provisions in the 1996 amendments which were specific to the North Pacific Council and the fisheries off Alaska. Beginning in late 1996 and continuing to the present the North Pacific Council, along with the National Marine Fisheries Service - Alaska Region, have devoted a tremendous amount of time and energy to implementing the provisions contained in those amendments. I am happy to say that those efforts have paid off, and that implementation of those amendments has improved our fishery management process and strengthened the long-term viability of an already healthy fishery resource in the North Pacific. I would like to take this opportunity to toot our own horn a bit and note that the North Pacific Council had already initiated several conservation related management programs at the time of passage of the SFA, and that the amendments therein provided both a mandate to follow through on those initiatives as well as a mandate for additional measures. I can assure you that the fish harvesters and processors in the North Pacific are as dedicated as anyone to preserving and maintaining the health of our fisheries and oceans, and we welcome the past and future efforts of Congress to provide us the tools to realize that goal.

I would like at this time to make note of the supplemental materials I have provided - you will find these in the white folder with our Council logo - which summarize the overall management philosophy of the North Pacific Council and provide examples of what we are doing as fisheries managers to protect these fisheries, and to incorporate habitat considerations and a broader perspective of ecosystem management. I hope you find these materials useful and I believe they will serve to instill some confidence that we are, with your guidance, operating as responsible stewards of our national marine resources off Alaska. I would like to speak further to some of the Council's actions in response to the provisions of the SFA. Most of those provisions are fully addressed by Council actions since 1996 while others are in the iterative stages of implementation.

Again, details on our implementation schedule for all issues covered by the 1996 amendments are contained in the attachment that has been provided. I would like to spend the remainder of my time briefly addressing a few of the specific actions that we have taken to implement the mandates of the SFA.

Overfishing definitions: Overfishing definitions, according to the mandates of the SFA, are now in place for all species managed by our Council. With the exception of Tanner crab, there are no overfished species in the North Pacific, though we actively manage over 100 species, or species complexes, of groundfish and crab. Tanner crab is the subject of an aggressive rebuilding plan drafted by the Council, National Marine Fisheries Service, and Alaska Department of Fish and Game, which is schedule for implementation this January.

Essential Fish Habitat: As required we have developed a comprehensive description of essential fish habitat for all species we manage, and are now concentrating on identification of Habitat Areas of Particular Concern (HAPC), based on ecological function and vulnerability to man-made impacts. Concurrent with that effort will be the necessity to evaluate potential impacts of fishing gears and implement additional measures as necessary. Our Council has found the use of marine protected areas to be a particularly useful tool for managing bycatch and protecting habitat. Vast areas of the North Pacific have been permanently closed to groundfish trawling and scallop dredging to protect habitat and juvenile crab. These marine protected areas comprise a relatively large portion of the continental shelf, and in many respects, serve as marine reserves. In the Bering Sea, habitat area closures encompass about 30,000 square nautical miles. To put this in perspective, this is an area larger than Indiana or Maine and more than twice the size of Georges Bank off the east coast of the United States.



**Bycatch Reduction:** Bycatch has been a focal issue for the Council over its 23 year existence and we spend a significant amount of our time addressing bycatch management, allocation, and reduction. Since enactment of the 1996 amendments the Council has taken the following specific actions:

\*Banned on-bottom trawling for pollock

\*Established an incremental chinook salmon bycatch reduction in trawl fisheries from 48,000 chinook down to 29,000 chinook by year 2003.

\*Are developing, in cooperation with industry, a halibut mortality avoidance program (HMAP).

\*Reduced the maximum retainable bycatch (MRB) amount for several species, including sablefish and rockfish.

Additional measures have been proposed and are awaiting development pending other pressing Council issues such as Steller sea lion protection and implementation of the American Fisheries Act.

**Waste and Discard Reductions:** Among the provisions of the SFA is the reduction of economic discards. The Council has implemented an Improved Retention and Utilization Program (IR/IU) which took effect beginning in 1998, and which prohibits the discard of all pollock and Pacific cod in all North Pacific fisheries, regardless of gear type or fishery. This measure has dramatically reduced overall discards of groundfish. For example in 1997, about 22,100 mt of cod (8.6% of the cod catch) and 94,800 mt of pollock (8.2% of the pollock catch) were discarded. In 1998, discard amounted to only 4,300 mt of cod (2.2%) and 16,200 mt of pollock (1.6%). These rates are not 0% as might be expected because at certain times of the year regulatory discards come into play, which are required to avoid exceeding the total allowable catch (TAC). A regulation requiring full retention of all demersal shelf rockfish species was adopted in 1999. Flatfish retention will be required beginning in 2003 - the delay will allow for development of new markets and gear technological responses by the vessels engaged in these fisheries. These overall retention requirements are expected to reduce total discard rates (all species) from about 15% to about 5%.

**Total Catch Measurement:** One section of the SFA requires the Council to develop and submit measures to ensure total catch measurement in each fishery under our jurisdiction, and to require weighing of all fish if necessary. I feel confident when I say that North Pacific fisheries are the most tightly managed and monitored in the U.S. Between the National Marine Fisheries Service in-season management division, the Alaska Department of Fish and Game fish ticket system, catch reporting requirements, the U.S. Coast Guard, the NMFS Enforcement Division, our comprehensive on-board fisheries observer program, and requirements for weighing of fish in many of our fisheries, we have a good handle on the amounts of catch, bycatch, and discards occurring in the North Pacific. The

Council initiated scale requirements for some of the pollock fisheries as early as 1994 to help tighten catch estimates. In specific response to the mandates of the SFA, our Council has undertaken a review of our estimation procedures which has included an assessment from the National Marine Fisheries Service, an assessment from the Alaska Department of Fish and Game, and an in-depth assessment by our Scientific and Statistical Committee (SSC) which is comprised of some of the most respected stock assessment scientists and fish population dynamics experts in the country. These assessments have resulted in suggestions for incremental improvements to our existing program, but overall have endorsed our catch measurement system as adequate, specifically in reference to the mandates of the SFA. The SSC comments conclude with the statement "*In many respects, the system in place is better than any found around the world*". Additional actions taken by the Council in 1998 include: (1) initiation of a requirement for either certified bins or scales in all pollock and yellowfin sole fisheries; (2) initiation of a framework plan to evaluate and improve catch estimation fishery by fishery; and, (3) began a formal process for the SSC to annually review sampling methods and catch estimation procedures.

In summary Madame Chairperson, I do not pretend that our system is perfect by any means, or that there is not room for improvements, whether those improvements originate in the Council arena or in the Congressional arena. Our Council respects the intent of the 1996 amendments and has worked extremely hard to effect that intent. We also stand ready to respond to any new amendments that come out of the pending reauthorization and to provide any input into that process that you require. Again, I appreciate the opportunity to speak to you today on these issues. Thank you.

**North Pacific Fishery Management Council  
Progress on  
Meeting Requirements of the Sustainable Fisheries Act of 1996**

Prepared for presentation to  
the Senate Subcommittee on Oceans and Fisheries  
July 29, 1999

**Introduction**

The Sustainable Fisheries Act of 1996 (SFA) added many new requirements to the Magnuson-Stevens Fishery Conservation and Management Act. Some apply across the board to all regional fishery management councils. Some apply specifically to the North Pacific Fishery Management Council (the Council). The following report summarizes actions the North Pacific Council has taken to meet the new requirements. The lead for responding to each of the requirements may be the Council or the National Marine Fisheries Service (NMFS). On most issues, there is shared responsibility for getting the job done by the required deadline. In order to compare each section below to the specific provisions in the SFA, we have included page references which are to the red copy of the Magnuson-Stevens Act, NOAA Technical Memorandum NMFS-F/SPO-23, dated December 1996. In summary, the Council and NMFS have responded to each of the required provisions of the SFA - most actions are complete, while a few others are in the iterative stages of development and implementation. During 1997 and 1998 the Council (and staff) spent a major portion of its time developing amendments to its fishery management plans to respond to these mandates. These amendments have strengthened the fishery management process in the North Pacific and helped to ensure the long-term viability of the fisheries off Alaska.

**Section 3: Definitions (pp. 4-11)**

SFA added twelve new definitions (e.g. bycatch, economic discards, essential fish habitat, fishing communities, individual fishing quotas, overfishing, regulatory discards, etc.) and revised several others, most notably optimum yield (OY), which now cannot exceed maximum sustainable yield (MSY). NMFS reviewed the Council's fishery management plans (FMPs) and regulations and found that, except for "individual fishing quota", none of the definitions was contained in the FMPs or regulations. Therefore, NMFS notified the Council by letter on February 20, 1997, that no revisions were needed. It was noted that OY is defined in the groundfish plans as a numerical range, which is still consistent with the new definition in the SFA. Although the definition of OY strictly speaking may not need revision, the Council needs to review each OY and ensure it does not exceed MSY. Progress on this review and revision is further explained below in reference to Section 303(a)(3) - OY and MSY specification.

**Section 302(e,i,j): SOPP Update to Reflect New Procedures (pp. 51-56)**

The SFA revised several Council procedures relating to the transaction of business, procedural matters, and disclosure of financial interest and recusal. The Council approved revisions to its Standard Operating Practices and Procedures on February 7, 1997. The revised SOPP was submitted to NMFS on February 12, 1997, and subsequently withdrawn on advice that NMFS is withdrawing the Council Administrative Handbook. Revised SOPPs are nevertheless in preparation and expected to be filed and published by end of 1999.

**Section 303(a): New Required Provisions of FMPs (pp. 58-60)**

There are new fishery management plan requirements that relate principally to the following five areas: (1) essential fish habitat; (2) overfishing and stock rebuilding; (3) bycatch reporting and minimization, (4) recreational and charter sector descriptions and allocations, and (5) fishery impact statements as they relate to impacts on fishing communities. Additionally, Section 303(a)(3) on the specification of MSY and OY, though unchanged, needs to be considered to ensure that OY does not exceed MSY. Conforming plan amendments were to be submitted by October 11, 1998 (see PL 104-297, sec. 108(b), M-S Act Section 303 note at top of p. 64).

**Status:** See individual amendments below.

**Section 303(a)(3) OY and MSY Specification (p. 58)**

The SFA did not amend this section directly, but because the definition of OY was revised to not exceed MSY (Section 3(28), p. 9), each FMP OY needs to be examined and revised if necessary to conform with this new definition. The Council has processed changes to OY as amendment 7 to the BSAI crab FMP, and amendments 6 to the salmon and scallop FMPs. These three FMPs defer management to the State of Alaska. These plan revisions were approved in June 1998 and are now in place; the proposed rule for the salmon plan revisions are being prepared for Secretarial review.

Regarding the groundfish fisheries, the Council has submitted and the Secretary has approved amendments 56 to the GOA and BSAI groundfish FMPs. They redefined overfishing and acceptable biological catch, but did not revise MSY and OY, which are numerical ranges in each plan. Trailing revisions of OY and MSY, as they relate to the overfishing definitions and minimum stock size threshold, may be considered in the future.

**Status:** Council actions complete on groundfish, crab, salmon, and scallops; all revisions except for salmon overfishing have been approved by Secretary.

**Section 303(a)(7): Essential Fish Habitat (p. 59)**

Councils are required to describe and identify essential fish habitat (EFH) based on the NMFS guidelines established under Section 305(b)(1)(A), and to minimize to the extent practicable adverse effects on such habitat caused by fishing. NMFS published EFH guidelines as an Interim Final Rule on December 19, 1997. The Council has moved ahead with processing amendments to its five fishery management plans, Gulf of Alaska (GOA) groundfish, Bering Sea and Aleutian Island (BSAI) groundfish, BSAI king and Tanner crab, scallops, and salmon. The latter three plans defer management to the State of Alaska. The Council also is describing EFH for various non-plan species such as herring, halibut, forage fish, and GOA crab. The final Council decision on identifying and describing EFH was made in June 1998, and the EFH amendments have been approved by NMFS.

A second new EFH requirement is to minimize to the extent practicable adverse effects on EFH caused by fishing. The Council already has enacted many measures such as closed areas to certain gears, mainly directed at controlling bycatch of crab, halibut, herring and salmon in the groundfish fisheries. To varying degrees, they also reduce the impact of fishing on EFH. The Council has implemented one additional mitigation measure, closure of the Cape Edgecumbe pinnacles off Sitka, an area critical to ling cod and rockfish recruitment. Other mitigation measures may be proposed and developed during the annual call for groundfish proposals this summer, where the Council has requested proposals to identify habitat areas of particular concern (HAPC).

**Status:** Council action complete on EFH amendments and approved by Secretary. Council will consider future proposals for habitat areas of particular concern, and will further consider impacts of fishing activities on EFH.

**Section 303(a)(10): Overfishing (p. 59)**

This provision requires addition of overfishing criteria, measures to prevent overfishing, and if necessary, measures to rebuild stocks identified as approaching overfished or are overfished. NMFS initially reported on overfished stocks to Congress on September 30, 1997. No North Pacific Council stocks were identified as overfished, although Tanner (bairdi) crab stocks have subsequently been classified as overfished under the new definitions. An aggressive rebuilding plan for bairdi crab has been developed and is scheduled for approval by the Council this fall. The Council has taken final action on new definitions of overfishing for each of its five fishery management plans: salmon, scallop, BSAI crab, BSAI groundfish, and GOA groundfish to conform to the National Standard guidelines published in the Federal Register on May 1, 1998. The plan amendments have been submitted to NMFS well ahead of the October 11, 1998 deadline.

**Status:** Council action complete - awaiting Secretarial approval for salmon overfishing definitions.

**Section 303(a)(11): Bycatch Reporting and Minimization (p. 60)**

The Council has implemented many measures to restrain and reduce bycatch and bycatch mortality of non-groundfish species in the groundfish fisheries over the past twenty-three years. However, to further comply with the new mandate in this section the Council, in summer 1997, put out a special call for proposals to reduce bycatch. Responses were reviewed by the Council in September 1997, and the following proposals (with proposer identified) were chosen for further development:

1. Ban on-bottom trawling for pollock in the BSAI (Alaska Marine Conservation Council);
2. Lower chinook bycatch limit in trawl fisheries from 48,000 to 36,000 salmon, and implement other measures to reduce chinook bycatch (Yukon River Drainage Fisheries Association);
3. Create an individual vessel checklist program, similar to harvest priority, and provide for a reward fishery (Alaska Marine Conservation Council);
4. Create a halibut mortality avoidance program (Groundfish Forum); and
5. Reevaluate halibut discard mortality and implement quick release mechanisms such as grid sorting (United Catcher Boats)

Plan amendments for proposals 1 and 2 were approved by the Council in 1998. Details of the remaining three proposals are being developed further by a special committee, with number 4 being developed further under an experimental fishing permit by industry participants. The Council believes the above actions, combined with existing bycatch management measures, satisfy the new requirements of the SFA, though it will consider fully any new proposals that may help to better address the bycatch issue.

Concerning bycatch reporting, NMFS and the Council believe that observer reports, as applied through the blend catch accounting system, provide sufficiently accurate information on bycatch in the groundfish fisheries to conform with the new requirements of the SFA. Only for chinook salmon bycatch in BSAI pollock fisheries does there remain concern over accuracy of the data. To address those concerns, the Council in April 1998 added options to the analysis of chinook bycatch reductions that could increase observer coverage to 100% on vessels over 60 ft in length when fishing in an area known for high bycatch, and provide for vessel monitoring systems on vessels fishing for pollock. The Council has also requested NMFS to report further on the accuracy of basket sampling for salmon and other measures to ensure accurate enumeration of catch.

The scallop, BSAI crab, and salmon plans defer management to the State of Alaska. The scallop fisheries are monitored with observers. The main bycatch of concern in the scallop fishery is crab, and the scallop plan contains provisions to close fisheries when crab bycatch caps are reached. Crab bycatch is closely monitored by the State of Alaska to determine mortality, size frequency, shell-age, and injuries. Additionally, halibut bycatch and discarded scallop bycatch are monitored closely through the at-sea observer program. Bycatch information is being added to the scallop fishery management plan along with the definitions of overfishing, MSY and OY, as part of amendment 6 which was approved by the Council in 1998. Additional bycatch mitigation measures are not being contemplated for the scallop fishery.

The crab FMP designates bycatch measures as category 3 measures which are deferred to the State of Alaska. The State has an extensive observer program for crab and has adopted seasons, escape rings, biodegradable panels, mesh size, and maximum entrance size requirements to reduce bycatch and associated mortality of non-target crab in the directed crab pot fisheries. These measures complement Council efforts to reduce crab bycatch in other fisheries, and are consistent with National Standard 9, which states that conservation and management measures shall, to the extent practicable, minimize bycatch and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Bycatch information on the crab fisheries is summarized in the crab FMP. Additional bycatch mitigation measures are not being contemplated by the Council for the BSAI crab FMP.

The salmon FMP covers a multitude of salmon fisheries managed directly by the Alaska Department of Fish and Game or through the Pacific Salmon Commission. Management decisions take into account the mixed stock nature of the fisheries which often is the basis for heated allocational disputes. Aside from recognizing the mixed stock nature of the fisheries, the Council is not contemplating any additional measures concerning bycatch or bycatch mitigation in the salmon fisheries beyond the chinook bycatch cap reduction described above. The Council is working on measures to control bycatch of salmon in the Bering Sea and Aleutian Islands groundfish fisheries as noted above, but not on bycatch measures for the directed salmon fisheries.

Status: Council action complete to date, but will continue to consider bycatch reduction and mortality measures including individual vessel incentives.

Section 303(a)(5,12-14): Recreational and Charter Fisheries Descriptions and Allocations (pp. 59-60)

The only significant recreational fishery under direct Council management is for halibut. That fishery has no fishery management plan. It is managed biologically by the International Pacific Halibut Commission, and the Council has authority over allocative and limited entry issues. Even though there is no formal fishery management plan, many of the types of data required by the SFA were presented in the analysis performed on the halibut charterboat industry, completed in 1997. Further action to establish a guideline harvest level (GHL) for the guided sport halibut fishery is scheduled for early next year. Future analyses on recreational halibut issues will include to the extent available the types of information identified in Section 303(a)(5, 12-14).

Status: Future analyses will incorporate this information as necessary and appropriate.

Section 303(a)(9)(A): Include Fishing Communities in Fishery Impact Statements (p. 59)

The Council already incorporates information on affected fishing communities in its fishery management plan amendment analyses as appropriate, and will continue to do so, particularly when fishery allocations are considered. Examples of recent efforts in this regard include comprehensive community profiles for 126 coastal communities in Alaska and the Pacific Northwest, and a Social Impact Assessment associated with recent major actions including inshore/offshore pollock allocations and license limitation programs.

**Status:** Future analyses will incorporate this information as available. The Council, through its Social and Economic Data Committee and NMFS, is also developing a more programmatic data collection program for baseline community impact information.

**Section 303(d)(4): North Pacific Loan Program** (pp. 63, 67, and 120)

Development of a North Pacific Loan Program is guided by three new provisions added by the SFA. Uncodified section 108(g) on p. 120 compels the North Pacific Council to recommend, by October 1, 1997, a loan program to guarantee obligations for sablefish and halibut IFQ purchases by entry level and small boat fishermen. The guarantees shall be based on a fee program developed in accordance with Section 304(d) on p. 67, and funds allocated as provided in Section 303(d)(4) on p. 63.

The Council took final action in recommending a loan program in September 1997. The process was then put on hold pending resolution of several issues, most notably the availability of funds to implement the program, and uncertainty in NMFS and NOAA GC regarding the appropriate form of the submittal package, more specifically whether an FMP amendment and/or implementing regulations would be required. Some of these issues were resolved by March 1998, and the Council wrote to NMFS on March 9, 1998, formally requesting agency action to implement the loan program. On March 26, 1998, NMFS wrote to the Council approving the loan program and stating that no further action was required by the Council to implement the program. Under the current arrangement, the loan program will be supported by special appropriations, unrelated to any fee program, for 1998. The fee program is being developed by NMFS and is scheduled for implemented in 2000 (see Section 304(d)(2) below). To base the loan program on the fee program, when implemented, may require additional action by the Council to amend its FMPs for groundfish and regulations for halibut (which has no FMP). NMFS and NOAA GC need to provide guidance to the Council on further actions.

**Status:** Council action complete. NMFS has implemented loan program based on appropriated funding. Further loans will depend on additional funding through the fee plan being developed by NMFS.

**Section 304(d)(2): Fees on IFQ/CDO Programs** (p. 67)

This section directs NMFS to establish fees up to 3% on IFQs and community development quotas (CDQs). NMFS is preparing the fee program as a secretarial amendment to the groundfish FMPs. A discussion paper was provided by NMFS to the Council at the April 1998 Council meeting. The Council established a committee to work with NMFS on further development of the fee program and reviewed an implementation plan for the fee program in late 1998. Implementation is expected in year 2000.

**Status:** Council action has been completed using a committee to advise NMFS on program structure and implementation. Fee program now awaiting implementation by NMFS.

**Section 305(i): Community Development Program** (pp. 78-80)

This section requires the Council to establish CDQ programs for groundfish and crab in the Bering Sea and Aleutian Islands. The Council already had approved a multispecies CDQ program in June 1995 along with provisions for a groundfish and crab license limitation program. The amendment package was submitted for Secretarial review on June 3, 1997 as amendment 39 to the BSAI groundfish plan, amendment 41 to the GOA groundfish plan, and amendment 5 to the BSAI crab plan. The amendments were formally approved by NMFS on September 12, 1997 and are now in effect.

Related to this section is the existing pollock CDQ program in the BSAI. It was due to expire at the end of 1998. In June 1998, the Council took final action on continuing the pollock CDQ program and melding it with the multispecies CDQ program. It has now been implemented, with revised percentages as mandated by the American Fisheries Act.

Status: Council action complete.

Section 313(f, i): Four-Year Reduction in Economic Discards and Report on Full Retention (p. 103, 105)

Section 313(f) requires the Council to submit measures to reduce economic discards for a period of not less than four years. The Council has complied by submitting amendments 49 to the BSAI and GOA groundfish FMPs, requiring full retention of pollock and Pacific cod in all groundfish fisheries beginning in 1998, and adding full retention of BSAI rock sole and yellowfin sole and GOA shallowwater flatfish in 2003. These amendments were approved by NMFS on September 3, 1997 for the BSAI and on October 29, 1997 for the GOA, and implemented on January 1, 1998. They will reduce economic discards of groundfish very significantly from pre-1998 levels. Discards of pollock and Pacific cod have been significantly reduced already, from 8.2% to 1.6% and from 8.6% to 2.2% respectively. Full retention requirements for selected rockfish species were recently approved by the Council as well. At this time there are no plans to develop such measures for other Council FMPs, all of which defer significant management to the State of Alaska.

Section 313(i) requires the Council to submit to the Secretary by October 1, 1998, a report on the advisability of requiring full retention and utilization. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and utilization requirements that have been implemented. Because the Council has already approved and implemented a full retention and utilization program for the groundfish fisheries, beginning in 1998, the emphasis of that report focused on the first-year performance of the fisheries under the new requirements and lessons learned.

Status: Council action complete.

Section 313(g): Bycatch Reduction Incentives (p. 104)

The Council may submit a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates. Though discretionary, the Council has a committee developing a vessel bycatch allowance system to place the onus for responsible fishing at the individual vessel level. This committee reported to the Council in June 1998, but has been on hold pending resolution of monitoring/legal issues with regard to accounting for individual bycatch quotas.

Status: Council action pending.

Section 313(h): Total Catch Measurement (p. 104)

This section requires the Council by June 1, 1997 to submit measures to ensure total catch measurement in each fishery under its jurisdiction that will ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards. By January 1, 1998, the Council and Secretary are required to submit a plan to Congress to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to ensure total catch measurement.



The Council and NMFS already have a long history on efforts to provide for total catch measurement in North Pacific fisheries. For the groundfish fisheries, catch reporting is based on weekly processor reports, observer reports, and NMFS' blend system that estimates catch over the entire fishery. Fish delivered ashore are weighed, and observed, at the processing station. For the offshore catcher processor and mothership fleet, catch is measured volumetrically and transformed into catch weight using various algorithms and density coefficients. The Council and NMFS have been working together since the early 1990's to improve catch estimation and reporting, beginning with the comprehensive observer program approved by the Council in 1989 and implemented for the 1990 fisheries.

By 1992, the observer program had been up and running for two years, the Council had just finished addressing the extremely contentious issue of allocations of pollock between the inshore and offshore sectors, and the first CDQ program had been approved for pollock in the BSAI. In resolving the inshore-offshore issue, significant debate revolved around how much pollock each sector was harvesting and how much pollock and other species were being discarded. Attention focused on the ability of then current catch measurement and reporting systems to provide accurate data. Thus, in January 1992, the Council commenced a special initiative to further improve catch information, by requesting development of a regulatory amendment that would require accurate estimation and reporting of total catch by species, either by weighing or volumetric measurements, and installation of communications systems capable of daily interactive reporting of harvest and observer data. By April 1993, the amendment had been prepared, and in June 1993, the Council took final action, recommending that catcher-processors in the pollock CDQ fisheries carry two observers and provide certified receiving bins for use in volumetric estimates of the catch, or provide tamper-proof scales to weigh all fish prior to sorting and discard. NMFS implemented regulations on May 16, 1994 requiring CDQ pollock vessels to either provide certified bins for volumetric estimates of catch or scales to weigh catch.

In a separate initiative in October 1994, the Council approved a requirement for all processors in the directed pollock fishery to weigh all pollock harvest on a scale, intending that the program be implemented within two years. Various technical problems arose in finding scales that performed accurately at sea and in finding scale inspectors that would ensure accurate performance by the scales once installed. The Council was briefed periodically by NMFS in 1995 on development of scale requirements and NMFS published an advanced notice of proposed rulemaking on February 20, 1996, stating its intent to require weighing of all fish on pollock processing vessels. In April 1996, NMFS informed the Council that certified scales would be needed before the new multispecies CDQ program, passed by the Council in June 1995, could be implemented.

In February 1997, NMFS emphasized once again to the Council that certified scales would be needed before the multispecies CDQ program could commence. NMFS described the funding that would be needed to commence such a program. In response, the Council wrote to NOAA on February 13, 1997, urging funding for the certified scale program so that the new CDQ programs could commence. NMFS published a proposed rule on June 16, 1997 that responded to comments received on the February 20, 1996 advanced notice. It established the ground rules for testing and certifying scales and performance and technical requirements in an At-Sea Scales Handbook, but did not require specific processors or vessels to use certified scales. NMFS then notified industry and the Council again that it would require certified scales in the multispecies CDQ fisheries that were scheduled to begin late in 1998. On February 4, 1998, a final rule was published establishing testing and certification procedures. Those catcher processors that intend to operate in the multispecies groundfish CDQ fisheries later in 1998 must have certified scales as well.

In direct response to the new Section 313(h) requirements, the Council in June 1997 requested a report from NMFS on the accuracy and precision of groundfish catch reporting, and from the Alaska Department of Fish and Game (ADF&G) on salmon, crab and scallops. ADF&G and NMFS reported to the Council in February 1998. ADF&G concluded that its harvest enumeration methods for all scallop, salmon, crab, and groundfish

species managed under FMPs were adequate to meet the requirements of the Magnuson-Stevens Act. NMFS presented a detailed report on groundfish reporting and several recent studies of their catch estimation procedures. The Council's Scientific and Statistical Committee (SSC) received a full-day presentation in February 1998 on NMFS catch and bycatch estimation. The SSC commended NMFS for its work to improve catch estimation and to document protocols and procedures, and then encouraged further work in that direction. The SSC provided specific recommendations for further improvements, but concluded in general that "...existing measures for observer, reporting, and monitoring requirements provide for a reasonable system of total catch and bycatch estimation. In many respects, the system in place is better than any found around the world." The SSC stated its intent to review catch estimation each February.

The Council then proceeded to take three actions in February 1998. First, it moved to initiate an analysis for a plan amendment for catch management measures in the pollock and yellowfin sole fisheries in the BSAI with an analysis of two options: (1) a certified bin program, and (2) a scale program. In recognition of limited availability of NMFS personnel to conduct the analysis, the Council did not set a deadline, but noted that although a fully developed amendment would not be prepared in the near future, the Council would need to report to Congress on this new initiative and work underway. Second, the Council requested NMFS to prepare a matrix of current measures used in each fishery and a framework plan to improve total catch estimation over time, and report back at a future meeting as staff availability allowed. Third, the Council asked NOAA General Counsel to provide a legal opinion on whether the Council was meeting the requirements of SFA. These initiatives will be the subject of further Council discussion in 1999 and 2000.

Status: Council action complete, except for ongoing analysis of catch measurement and refinements in future years. SSC will review annually each February and provide recommendations to Council.

Appendix: Russia Report (p. 120)

By September 30, 1997, the Council was required to submit to Congress a report describing the institutional structures in Russia pertaining to stock assessment, management, and enforcement for fishery harvests in the Bering Sea, and recommendations for improving coordination between the U.S. and Russia in managing and conserving Bering Sea resources of mutual concern. The report, entitled "Russian Far East Fisheries Management", was submitted on September 30, 1997.

Status: Council action complete.

In addition to the above specific provisions, the Council and Council staff also contributed reports and information to the National Academy of Science (NAS) reports on IFQs and CDQs.

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Testimony of David Fluharty

before the

U.S. Senate Committee on Commerce, Science, and Transportation

Subcommittee on Oceans and Fisheries

Hearing on Implementation of the Sustainable Fisheries Act of 1996

July 29, 1999  
Washington, DC

Thank you for the opportunity to testify on the implementation of the Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). I am David Fluharty, Research Associate Professor, School of Marine Affairs, University of Washington and a member of the North Pacific Fishery Management Council from Washington State. I speak in my personal capacity as an analyst (1) and participant in fisheries management, however, in preparation of this testimony, I have consulted with others (2), especially with respect to implementation issues before the Pacific Fishery Management Council. I had the privilege to Chair the National Marine Fisheries Service (NMFS) Ecosystem Principles Advisory Panel requested under the SFA (Section 406 MSFCMA). Our report entitled, "Ecosystem-Based Fishery Management" (3) was delivered to Congress in March 1999. I presently serve on the National Research Council, Ocean Studies Board, Committee on the Evaluation, Design and Monitoring of Marine Reserves and Protected Areas in the United States.

General Context for SFA Implementation Issues

The Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act were major steps forward toward solving many of the problems in US fisheries management. Congress clarified and strengthened its directives to the NMFS and the Councils to end overfishing, rebuild stocks, reduce bycatch, protect fish habitat, reduce conflict of interest and establish user fees. Congress intended reform. Conservation came first and fishery management was intended to become more precautionary. I believe that fishery management institutions are responding

In the scant two and a half years since enactment, implementation of the SFA is happening at a pace limited by three factors:

First, is the limit of the capacity of a large fishery management institutional system to make rapid change in a democratic and open process. I believe that NMFS deserves a fair amount of credit for organizing itself for implementation. Within weeks after the passage of the SFA, Councils were given marching orders in letters from the Director, Rolland Schmitt and NOAA General Counsel. Not everything could be accomplished at once. Priorities were established and then reestablished as regulatory processes bogged down. Still, I would argue that as much of what Congress intended was implemented in a short time under the SFA as in 1976 when federal management for the 200 n. mi. zone was established. Much still remains to be done. Continued support and oversight by Congress is a necessary component of staying the course.

Second, is the limit of the available resources for management. Few tasks were removed from management responsibility by the SFA, and enormous tasks were added. Congress did increase funding in later budgets, but, as with all legislative mandates, "Was the increase in budget and employees commensurate with the increase in tasks?" Besides the SFA, other federal fishery management responsibilities affected the implementation work loads of the Councils and NMFS in the Pacific West Coast. More species of salmon were listed as threatened or endangered under the Endangered Species Act (ESA). Similar ESA issues were raised with respect to Steller sea lions and the short-tailed albatross. The adequacy of the environmental impact assessment under the National Environmental Policy Act (NEPA) was challenged with respect to groundfish management. Finally, as members of this committee know, the passage of the American Fisheries Act (AFA) 1998, set in motion extensive reduction in fishing effort and rationalization of pollock fisheries in the North Pacific. Implementation of "sideboard" issues to prevent spillover effects into other fisheries has been a major focus of fishery management.

Third, is the limit of our understanding of the of fisheries and their interrelationships with ocean and coastal processes as well as other ecosystem components. This is to be distinguished from the failure to use the scientific knowledge and common sense that we do have available. It is not an excuse for inaction, nor is it a defensible formula for regulatory choices.

Actions that are being taken now may not show results for some time. Like a large ship, turning to a new course is not instantaneous. But the course is set. And the Councils with which I am most familiar, the North Pacific and Pacific Fishery Management Councils, have gotten the message. Much has been accomplished to implement the SFA and this is turning fishery management toward a more sustainable pathway. This should not be forgotten as we continue to implement other parts of the SFA.

#### Specific Implementation Issues

In the interest of brevity, these issues are presented in a series of short paragraphs without extensive documentation. (4) I would be pleased to answer questions or supply additional documentation as needed. The order of presentation is a focus on the fisheries environment issues and then moving to socio-economic and allocation issues. I have sought to avoid making recommendations for resolving these issues as I understand the Committee's focus for this hearing is on implementation.

#### Essential Fish Habitat (EFH)

The SFA requires that Councils become much more serious about habitat issues than before. For managed stocks, i.e., those under a fishery management plan (FMP), Councils are to designate essential fish habitat considering all life stages and, through new consultation requirements, manage to reduce impacts from other ocean uses. In addition, Councils were required to consider the effects of fishing on habitat. This latter emphasis is a new focus and one for which Councils and NMFS have the least information and preparation to implement.

NMFS worked extremely hard and quickly to develop regulatory guidelines to implement EFH and to initiate teams at the regional levels to pull together and evaluate information. Some scientific issues were raised about the original guidelines and many of these were resolved. More serious challenges to the guidelines, in concept, came from other potentially affected parties in the mining, forestry, agriculture and water resources management arenas. This delayed the final regulations, but the job did get done. The two important conclusions that I believe came from this effort are: 1) despite significant long term scientific study, we know remarkably little about distribution and utilization of habitat by life history stage of the managed species [and much less about non-managed species]; and 2) based on what we know, most of the waters and substrates within the 200 n.mi. Exclusive Economic Zone (EEZ) are essential habitats for some species at some life history stage. Some find fault with the definition of essential fish habitat by the Councils as being too encompassing, but I argue, the onus is on them to demonstrate their position given the language of the SFA. Habitat is important for fisheries management.

These results and the documents identifying EFH do several important things. They establish a baseline of knowledge from which to build. This should help to prioritize research. They show the necessity to gain a better understanding of time/space scales in fisheries in order to develop appropriate fishery management approaches that take these factors into account. They point out the iterative nature of the task, i.e., to continually develop and apply better understanding of fish and their habitats. Perhaps most important, is that expanded effort and expenditure of resources on better defining the habitat needs of fish is critical to avoid more serious management issues under the ESA and to avoid "surprises" in the management of fisheries.

Concern continues to exist over the EFH consultation requirements that the SFA advises for all fisheries and requires for anadromous species. To some these requirements are simply redundant to other regulatory processes (NEPA, Fish and Wildlife Coordination Act, ESA, etc.) where fishery management agencies have long held a commenting role. Others consider the requirements impractical and beyond the resources of fishery management if any but the most significant projects affecting habitat are brought forward for consultation. In fact, experience, so far, indicates that the Councils and NMFS in the NE Pacific region have not invoked the consultation provisions. NMFS has continued its normal role of commenting in other processes. It has assumed a major role regarding Section 7 consultations with respect to ESA processes for salmonids and the ESA trumps the EFH under such circumstances. Thus, the EFH consultative provisions do not appear to be another layer of bureaucracy. However, this could change if the implementation approach is challenged and that is the worry.

The aspect of implementation of the SFA provisions for EFH that is least complete is for Councils to identify and take actions concerning fishing effects on fish habitats. In the North Pacific and Pacific Council regions, very little study of benthic impacts of fishing has been done. Since passage of the SFA, efforts have increased but the task is almost overwhelming and the resources are undoubtedly inadequate for the task. This failure to take new, comprehensive actions under the SFA requirements, as is being urged in legal actions at present, should be seen in the context of efforts, [some before and after the SFA took effect] to reduce benthic impacts of fishing. In the North Pacific region, more than 15,000 sq. n. mi. in the Bering Sea are closed to bottom trawls to protect red king crab habitats, reduce crab bycatch and to reduce gear conflicts. In the SE Gulf of Alaska a much larger area is closed to bottom trawls. Numerous other fisheries gear closure areas exist. In addition, the requirement to use midwater trawls in the pollock fisheries lessens benthic impacts as well. This is not to argue that the Councils' work is done but to remind that we are not starting from a blank slate. In the North Pacific region, work is underway to develop a systematic approach to identification of Habitat Areas of Particular Concern as expected under the EFH guidelines.

#### Ecosystem-based Fisheries

The National Marine Fisheries Service (NMFS) Ecosystem Principles Advisory Panel established under the SFA (Section 406 MSFCMA) reported to Congress as noted above. The NMFS is in the process of implementing the portions of the recommendations that can be done under existing authorities. The Report makes recommendations to Congress on how to build off of the work done under the SFA (especially EFH) using the concept of a Fishery Ecosystem Plan (FEP). Ecosystem-based fishery management is not a substitute for good fisheries management. The full implementation of the SFA is a prerequisite to the development of ecosystem-based fishery management.

#### Marine Reserves

As noted above, extensive areas have been designated in the North Pacific (4) to control impacts of fisheries on habitat, reduce bycatch and to minimize gear conflicts. The tool of designating marine reserves for fisheries has long been part of fishery management and it is likely that it will be used more in the future. NPFMC is developing a systematic way to evaluate areas for consideration. The PFMFC has established a committee to advise it on how marine reserves can be used in fishery management. It

expects to initiate actions in the fall of 1999. The National Research Council, Ocean Studies Board, Committee on the Evaluation, Design and Monitoring of Marine Reserves and Protected Areas in the United States has met three times and is hard at work drafting its report [Draft expected by April/May 2000]. This study, sponsored by the NMFS and other agencies, should result in extensive information on use of marine reserves in fishery management and for other purposes. My impression of the West Coast fishery management institutions is that they are actively interested in how to use marine reserves in fishery management. They are keenly aware that such areas must be part of an integrated approach to fishery management. There is considerable concern over the frequently advanced view that large no-take reserves are a substitute for fishery management. Full implementation of the SFA measures will go a long way toward resolving the fishery management failures that critics can so easily point out. Marine fishery reserves should be employed for fishery management purposes where they are the most effective and reliable approach to achieving the goals and objectives defined. [There are, of course, other marine management goals and objectives that can be served by marine reserves].

### Overfishing

Probably the most fundamental shift in the SFA was the requirement that MSY not be exceeded for any reason. While this seems like it should be an obvious tenet of fisheries management, Councils and NMFS were permitted to exceed MSY for socio-economic and other reasons in the earlier versions of the MFCMA. The new overfishing definition had to be worked out and placed in regulations. This delayed somewhat its application in TAC setting until 1999. The new definition clarifies that all sources of fisheries mortality (including bycatch, discards, and estimates of unobserved mortality) should be counted against the Total Allowable Catch calculated around MSY. Fishery science has long regarded MSY as a crude measure and one that is not necessarily conservative because of its focus on "maximum" yields as opposed to long term sustainable yields. The regulatory definition goes quite far to incorporate more modern fishery reference points than straight MSY but the question remains as to how conservative it is and how useful it is to apply universally.

In the NPFMC area, conservative TACs have been set since 1977 so the new definition continues existing practices. The one species that falls under the new overfished definition is a species of crab for which the directed fishery has been closed for several years. Some discussion exists that there may be a need to examine how appropriate MSY is for management of crab species where recruitment and survival appear quite sensitive to ocean regimes as well as fishing pressure. This is a technical issue that can be resolved by stock assessment biologists given sufficient flexibility in the interpretation of the law.

For the PMFC the biggest issue in this respect has been how to implement the overfishing definition on its multi-species rockfish fisheries (nearly 60 species previously managed as a species complex). The overfishing definition applies to species and not to species complexes. Thus, there has been a major effort to work out scientifically how to implement the regulations and the species-by-species approach has radically reduced the TACs and fishing patterns have been altered. One of the most difficult parts for implementation is the assessment of direct and estimation of non-direct mortalities where there is not an observer program to gather reliable data across the fleet. PMFC is desperately aware of this problem and is working with members of this Committee to resolve it. There are further complications in managing this fishery because of the difficulty of using trip limits to accomplish management objectives. This appears to result in high regulatory discards and possibly in high grading of catches.

### Rebuilding Plans

Implementation of rebuilding plans is necessarily downstream of determination if a fish stock is overfished. Thus, rebuilding plans on the West Coast are lagging behind the SFA mandated schedule in terms of implementation. Significant progress has been made and these plans will go into effect in the near future. SFA has set in motion the kinds of actions intended to reverse downward trends in some fish stocks. For some species, results cannot be expected to be seen within a ten year time period due to the long life spans and slow recruitment into the fisheries (e.g., rockfish). For species dependent on special

environmental conditions beyond the control of management, a similar problem exists with the specification that the plan causes recovery within ten year. The most important effect of this provision of the SFA is that it forces Councils and the NMFS to focus on rebuilding the stocks once overfished.

### Bycatch

With the addition of a new National Standard, SFA requires Councils and the NMFS to "minimize" bycatch to the extent practicable, and, with respect to the NPFMC, sets a requirement for successive reduction of bycatch annually over a period of four years. NPFMC probably has some of the best data on bycatch over the years because of its extensive observer program. These bycatch amounts have been counted against the TAC for a considerable period of time and relatively little biological impact is attributed to it by the Plan Development Teams and by the Scientific and Statistical Committee of the Council. Bycatch of prohibited species (mostly high value species caught in other fisheries like salmon, herring, halibut) is closely monitored and, in some cases, this has led to a closure of a fishery before the TAC of the target species was caught. Thus, there has been a responsible management of bycatch to avoid conservation and economic concerns in the NPFMC area. To the extent that "minimization" of bycatch imposes costs over and above the biological benefits, it becomes a punitive measure in the eyes of the fishing fleets. Reducing bycatch commensurate to biological, conservation and economic realities is seen as reasonable approach whereas minimization for the sake of minimization is not. It all boils down to the interpretation of "to the extent practicable".

NPFMC has reduced its total bycatch by approximately 50% in on set of management actions taken just prior to the SFA amendments but implemented after the SFA. It required that all non-prohibited species of bycatch be retained and utilized under its Improved Retention/Improved Utilization amendments to the groundfish FMP for cod and pollock. Some objected to this being considered as bycatch reduction and instead, called it a sleight of hand because the same fish were caught but simply re-categorized as utilized. The difference was that they were no longer discarded. This points to the conflict among fishery management objectives that promote utilization and those that call for minimizing bycatch. A common sense approach is needed to ensure that where there is not a discernible biological or conservation impact, utilization would seem a more important objective than bycatch reduction. To further complicate matters, some insist that utilization of fish for purposes other than human consumption is inappropriate even if profitable. Again, a common sense clarification is necessary along with what is outlined above.

Further actions by the NPFMC have aimed at reducing bycatch but these have not been as dramatic in effect as the earlier measures. They have probably resulted in a reduction in bycatch in each of the subsequent years but it is difficult to track completely. This points to the need for flexible options for bycatch reductions, rather than a target schedule, as effective ways to reduce bycatch. In the same amendment that produced large reduction in bycatch in pollock and cod fisheries, NPFMC adopted the goal of IR/UT for yellowfin sole and rock sole in five years from date of approval to allow the industry to adapt gear and equipment to accommodate the acknowledged changes that would be necessary.

In the PFM region bycatch amounts are less well known because of the lack of an observer program over the full range of fisheries. To be certain, some management measures like trip limits and regulatory discards from them, make implementation difficult. Problems with interceptions of ESA listed salmon runs and a general management concerns over other depleted stocks have led to greater efforts to restrict time and fishing areas to those with the least interceptions and/or highest degree of catch of hatchery fish. This has had major impacts on all salmon fisheries but especially on coastal charter fisheries and commercial troll fisheries.

I am convinced that a necessary component of bycatch reduction measures is bycatch allocation and monitoring at the vessel level. NPFMC efforts from its Vessel Incentive Program (VIP) demonstrate this. Effective use of such measure at the vessel level is complicated by due process limitations and by concerns that such allocations represent individual quotas not allowed under the SFA moratorium on IFQs.

### Reducing Overcapacity

The SFA and concomitant measures under ESA for salmon have resulted in some buyback programs for fisheries in economic crisis in the PFMC region. Obviously, the long term goal is to have healthy fisheries and fishing industries. The SFA measures discussed above are setting the stage for that scenario.

One of the keys to successful implementation of fisheries management measures is providing the right kinds of incentives to fishermen to do what is needed. When the fishing industry can see the justification for and reap the benefits of management measures, they can more readily accept additional costs to achieve them. If the benefits are not spread too thinly, fishing interests are much more likely to be able to afford the sometimes costly measures required to achieve management goals. On the West Coast, fishery managers and fishing interests are eager to embrace a variety of programs that would reduce the amount of fishing capacity. In this regard, the SFA provides for the use of industry funded buyback programs. However, the federal regulations for this approach are yet not approved, despite pleas from some segments of the fishing industry and interventions by some members of this Committee. This delay in developing regulations has impeded industry actions to develop such programs.

The SFA moratorium on IFQ programs has set back Council development of IFQ plans in several cases on the West Coast. Because of its concerns about the use of IFQ programs, Congress requested that the National Research Council report on use of IFQs in fisheries management. That report was released earlier this year. It finds that IFQs and similar measures should be in the fishery management toolbox for use where they are determined to be appropriate at the regional level, and where they are properly conditioned to avoid mistakes and unintended consequences of some previous efforts. This sparks interest in reviving in that mechanism.

Since passage of the SFA, fishery management Councils have continued efforts to limit access to the fisheries through moratoria on new entry and through license limitation programs. While these measures are important in and of themselves, they do not address the underlying issue of too much active and latent capacity in the fishing fleet. For some fisheries, like Bristol Bay red king crab, the race for fish under very hazardous conditions cannot be solved by license limitation alone. Management problems, too, are considerable in such a short duration, high intensity fishery. It is my impression that market-based choices by fishing entities to exit or remain in a fishery relieve the Councils of this onerous task and are more likely to be viewed as fair than any formula that might be designed by a Council process. These choices are served by a variety of effort limitation mechanisms, including industry funded buyback programs, IFQs, etc.

Since the passage of the SFA, one of the most innovative developments in capacity reduction is the formation of a Pacific whiting fishing cooperative that significantly reduces the number of vessels competing for a specific allocation of the Pacific whiting catch in the Pacific region. In 1998, a similar cooperative approach was enabled through passage of the American Fisheries Act (AFA) with leadership by members of the this Committee. Already pollock fisheries cooperatives have formed among the at-sea processors and the catcher vessels delivering fish to them. Similar efforts are underway for catcher vessels delivering to onshore processors as one of the alternatives allowed by the AFA. The cooperative approach is being observed favorably by other fishing sectors and it is likely that other efforts will be made to form them. The benefits of increased recovery rates, reduced bycatch and increased ability to produce high value products, as opposed to high volume products, appear to be realized. The environmental costs of operating redundant fishing capacity, the ending of the "Olympic-style" competitive race for fish, the losses to net economic benefits, and the social benefits of more stable fishing opportunities at increased returns all point in the right direction from the cooperative approach.

### National Standard for Safety

Two new national standards were promulgated under the SFA -- for bycatch (discussed above) and for fishing safety. With respect to the national standard for fishing safety, it does not appear that significant



changes are being made to implement it in FMPs. The willingness of fishing entities to take risks seems highly correlated with the economic incentives to race for fish in high value, low volume, short duration fisheries. Management measures that allow more flexibility in choices of when and how to fish without competing for a share of the fish, seem most favored by the participants in such fisheries. Market-based and cooperative mechanisms are likely to develop the innovations to vastly improve decision-making with respect to risk. In addition, fishing operations that are profitable are able to maintain vessel systems and retain qualified crew members - all of which contribute to but do not guarantee safety of fishing.

#### National Standard Definition of Fishing Communities and Socio-Economic Information

One of the realizations of efforts to implement the fishing community definition was that socio-economic data gathered by states are woefully inadequate for fishery council deliberations. Almost no socio-economic data are collected on fishing entities (despite willingness of industry to provide them) that are sufficient for management decisions. This means that even qualitative judgments are hard to make. Implementation of a scientifically sound policy with respect to fishing communities requires a significant new effort to obtain them on a routine basis and this implies a need for budgetary support.

#### Other Issues

Two issues of particular concern for West Coast fisheries are the development of an observer program and the continuation state management authority for dungeness crab in federal waters off Washington. Whether the observer program is based on fees collected from the fleet or general appropriation is a matter to be decided, as well. Without an observer program it is nearly impossible to make measurable progress toward bycatch reduction or the monitoring of discards or high-grading. The ability of the state to continue to manage dungeness crab in federal waters is particularly important given its co-management agreements with Native American tribes under Treaty obligations. This option has been implemented quite successfully under the SFA and makes the management approach inside state waters and in federal waters a more coherent and consistent one.

In the SFA, there were a variety of other reports on such things as lien registries for fishing vessels and reduction of subsidies in fishery management. Based on anecdotal reports these studies are progressing but not yet complete. These reports are needed links in developing more innovative and sustainable fisheries under the SFA.

#### Notes:

1. See, for example, Fluharty, David. 1996. "Magnuson Fishery Conservation and Management Act Reauthorization and Fishery Management Needs in the North Pacific Region." *Tulane Environmental Law Journal*. Vol. 9:2 Summer 1996. Pp.301-328.
2. Preparation of this statement included discussions with a number of people in the "Council families" of the North Pacific Fishery Management Council and the Pacific Fishery Management Council. NPFMC: Rick Lauber, Chairman; Clarence Pautzke, Executive Director; Dennis Austin, Council Member Washington Department of Fisheries and Wildlife (WDFW); Wally Pereyra, Council Member; Arnd Thomsen, Alaska Crab Coalition; Paul MacGregor, Jim Gilmore, Trevor McCabe, At-Sea Processors Association; Tom Casey, Alaska Fisheries Conservation Group. PMFC: Larry Six, Executive Director; Phil Anderson, Council Member WDFW; Bob Alverson, North Pacific Vessel Owners Association and Council Member; Rob Zuanich, Purse Seine Vessel Owners Association. The press of time did not allow for contact with processors, tribes, and many other interests.
3. <http://www.nmfs.gov/sfa/reports.html>
4. This presentation is coordinated with that of Rick Lauber, Chairman, NPFMC in order to avoid repetition. Materials supporting his presentation are incorporated by referenced herein as well.

**FINAL  
TESTIMONY OF  
PENELOPE DALTON  
ASSISTANT ADMINISTRATOR  
NATIONAL MARINE FISHERIES SERVICE  
U.S. DEPARTMENT OF COMMERCE  
ON  
THE MAGNUSON-STEVENSON  
FISHERY CONSERVATION AND MANAGEMENT ACT**

**BEFORE MEMBERS OF THE  
SENATE SUBCOMMITTEE ON OCEANS AND FISHERIES  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
PORTLAND, ME FIELD HEARING**

**September 25, 1999**

Madame Chair and members of the Subcommittee, thank you for inviting me to Portland to testify on implementation and reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to speak on issues of concern to New England fishermen. I am Penny Dalton, Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

**Building a Foundation for Sustainable Fisheries -- New England**

As you know, the fisheries off New England shores are a valuable national resource. In 1998, New England commercial fisheries harvested close to 595 million pounds of fish, producing almost \$540 million in dockside revenues. While the seafood industry makes a substantial contribution to the Northeastern economy, current harvest levels are a fraction of the estimated long-term potential yields from these fisheries. We at NOAA Fisheries are working to rebuild to New England's fish stocks so that eventually they could sustainably support a billion dollar industry. Consider the following-- five years ago, the news about groundfish stocks was grim. Spawning stocks of cod were at dangerously depressed levels and recruitment was at a record low for the third year. Yellowtail flounder populations on Georges Bank were reduced to historical lows. Gulf of Maine haddock was declared commercially extinct. From the fisherman's perspective, times are rough for nearly everyone. Some traditional fishing grounds on Georges Bank have been closed year-round for five years now, and days-at sea were cut in half.

Yet these management measures are starting to pay off, and we are beginning to see signs of a recovery. Stock assessments released July 30 by the National Marine Fisheries Service indicate there is some good news for many stocks-- not necessarily that there are a lot more fish of harvestable size, but that the mortality caused by fishing is lower, or that the fish left in the water

are getting larger. In a few cases, there actually has been recruitment success — for instance, there are large numbers of young fish coming into the haddock stock. The 1998 year class is the largest in the past 20 years. One Cape Cod fisherman told a NOAA Fisheries scientist that 1999 haddock harvests by the Cape hook fleet were the best in 30 years.

The situation has also improved for Georges Bank cod, where the stock biomass has increased 43 percent above the record low 1995 levels. Yellowtail flounder is improving, with growing populations and decreased fishing mortality for stocks off Georges Bank, Southern New England and Cape Cod. In addition, witch flounder is well on its way to recovery — we've seen good recruitment and a doubling of spawning stock biomass since 1995.

Sea scallops have grown in size and number in areas closed to fishing to protect groundfish spawning. This summer, scallopers were able to return to a closed area off of Georges Bank, in what may be the beginning of a "crop-rotation" management strategy. This opening put as much as \$40 million into Southeast New England fishing communities — benefits directly attributable to conservation from the closures. Benefits to scallop stocks from closing portions of Georges Bank appear to be so significant that we may not have to impose additional reductions on days-at-sea scheduled for the scallop fleet this year.

Despite these positive signs, for other fish stocks we are still in the early stages of our transition to sustainable fisheries. The Gulf of Maine cod situation remains particularly troubling. Fishing effort has been reduced, but cod mortality is still two or three times what it needs to be to promote a recovery. For cod populations on both Gulf of Maine and Georges Bank, recruitment remains a problem. We have not had a good cod year class in many years.

While realizing that some stocks have a long way to go, we can be cautiously optimistic. We must protect the gains some fish stocks have made, focus on improving yields over the long-term, and identify additional measures that would move depleted stocks toward recovery. It is clear that fish management can work. When we reduce mortality, biomass increases and at some point, when nature cooperates, good year classes enter the fishery. However, we must remain cautious as we face the challenges before us. We must maintain management plans that work, adjust our course where plans are not effective, and minimize to the extent possible the impacts on communities and the fishing industry as we make the transition to sustainable fisheries. I appreciate the commitment of members of the Northeast delegation and New England fishing communities to this transition. I look forward with you to restored fish stocks that support a vibrant fishing industry and healthy coastal economies that once were a New England tradition.

### **Building a Foundation for Sustainable Fisheries -- The National Outlook**

As we approach the close of the 20th Century, we are at a crucial point in fisheries management, with considerable work ahead of us. In the 23 years since the enactment of the Magnuson-Stevens Act, we have seen the complete Americanization of fisheries in federal waters, the expansion of the U.S. fishing industry, declines in many fishery resources, and the rise of public interest in fisheries issues. We have seen some successes from our management actions,

including the initial rebound of a few depleted stocks like Georges Bank haddock, the rebuilding of Atlantic king mackerel, and the continued strong production of fish stocks off Alaska. However, 12 percent of U.S. living marine resources are overfished or are approaching overfished, 24 percent are not overfished, and there is another 64 percent whose status is unknown. And in New England, the percentage of overfished stocks in 1998 was approximately 40 percent. Yet, recovery is certainly possible as we know from recent successes in the Georges Bank scallop fishery. Scientists estimate that we could increase U.S. fishery landings by up to 3 million metric tons by rebuilding fisheries and harvesting them at long-term potential yields.

The Magnuson-Stevens Act, of course, provides the national framework for conserving and managing the wealth of fishery resources found within the 197-mile-wide zone of Federal waters contiguous to the United States. Over the years, it has changed and evolved through several reauthorizations. In 1996, Congress ushered in a new era in fisheries management, making significant revisions to the Magnuson-Stevens Act in the Sustainable Fisheries Act (SFA). The SFA addresses a number of conservation issues. First, to prevent overfishing and rebuild depleted fisheries, the SFA caps fishery harvests at the maximum sustainable level and requires fishery management plans to rebuild any overfished fishery. NOAA Fisheries now reports annually on the health of marine fisheries and identifies fisheries that are overfished or approaching an overfished condition. Second, the SFA refocused fisheries management by emphasizing the need to protect fisheries habitat. To enhance this goal, the SFA requires that management plans identify habitat that is necessary to fish for spawning, feeding or growth. The new law also clarifies our existing authority to comment on Federal actions that affect essential fish habitat. Third, to reduce bycatch and waste, the SFA adds a new national standard requiring that conservation and management measures minimize bycatch and the mortality of bycatch that cannot be avoided. It also calls for management plans to assess bycatch and to take steps to reduce it.

The new conservation requirements may have far-reaching effects on recreational and commercial fishing and on fishermen, their families and communities in New England and elsewhere around the country. To address this concern, the SFA establishes a new national standard 8 that requires, consistent with conservation objectives, that fishery management plans ensure sustained participation of fishing communities and minimize adverse impacts. In addition, a national standard has been added on promoting the safety of human life at sea. Finally, the SFA provides a number of new tools for addressing problems relating to the transition to sustainable fisheries, including amendments to provide for fisheries disaster relief, fishing capacity reduction programs, vessel financing, and grants and other financial assistance.

### **Implementation of the Sustainable Fisheries Act**

NOAA Fisheries takes seriously its new mandates under the SFA. We are continuing to work to ensure that SFA requirements are implemented, and that conservation and management measures fully protect the resource and provide for the needs of fishing communities and the Nation. A great deal of work remains to be done. We are laying a better foundation for future fisheries management, yet the benefits of the changes made by Congress in 1996 will take years, perhaps

decades, to realize. In addition, the management decisions that we face are becoming ever more complex and contentious, and good solutions are hard to come by. We need to direct resources and effort to the scientific and technical aspects of our work. We also must build consensus with the public and among various stakeholders to facilitate progress in developing management programs that will move us toward the goal of healthy and sustainable marine resources.

The SFA imposed a deadline of October 11, 1998 for amendments to each of the 39 existing fishery management plans to implement its changes. Despite the Councils' best efforts, there were some proposed amendments that did not satisfy the requirements, for which the analyses were inadequate, or that did not minimize socioeconomic or environmental impacts to the extent possible and achieve management objectives. NOAA Fisheries disapproved or partially approved those amendments and is working closely with the Councils to improve them, particularly in the areas of assessing social and economic impacts, rebuilding overfished stocks, minimizing bycatch, identifying and protecting fish habitat, and improving the scientific basis for management. I will outline some of the work we are doing in each of these areas:

**Social and economic analysis** One of NOAA Fisheries' highest priorities is to improve our social and economic analyses. These analyses are required by a number of laws in addition to the Magnuson-Stevens Act, including the Regulatory Flexibility Act, the National Environmental Policy Act (NEPA), and Executive Order 12866. The requirement of the Magnuson-Stevens Act to include a fishery impact statement, and the new standard on fishing communities, also make clear our mandate to consider the social and economic impacts of any management program. This consistently has been an important part of the decision-making process and has affected our choice of fisheries conservation and management actions. For instance, here in New England, the New England Council and NOAA Fisheries decided to phase in the days-at-sea program over two years instead of one in the Northeast multispecies fishery, because of concerns that fishermen could not weather such a sudden decrease in effort. Similarly, the fishery management regulations that curtail the monkfish fishery, will be implemented incrementally to end overfishing over three years to delay their economic impact. Further delays in ending overfishing, however, would threaten the ability to rebuild monkfish within the statutory 10 year period.

To strengthen our social and economic analysis capabilities, we will issue revised Regulatory Flexibility Act guidelines to our employees at the end of the year, hire more economists, and work with other Federal agencies and states to improve our data collection. As a result, economic, social, and biological considerations will be better integrated to assist fisheries managers in making the best possible decisions to balance conservation, the fishing industry, and community needs.

**Rebuilding overfished stocks** NOAA Fisheries is committed to ending overfishing and rebuilding stocks. This has proven to be a very difficult task, in part because of the complex biological structure of fisheries and complicated calculations of maximum sustainable yield, and other fishery parameters. However, initial signs of recovery have been observed for some New England fish stocks under rebuilding programs begun before the SFA was enacted. For example, the adult stock biomass of Georges Bank haddock has increased fourfold since early 1993, and favorable recruitment is forecast to continue. Georges Bank cod populations also

have grown, despite unfavorable recruitment. These trends show that recovery measures can work, and the effects of those measures can be observed quickly.

Turning to the management of wide-ranging Atlantic fish like tunas and billfish, NOAA Fisheries has taken the lead in preparing management plans and rebuilding programs. This past April, NOAA Fisheries completed a fishery management plan for Atlantic tunas, swordfish and sharks (HMS Plan) and an amendment to the billfish fishery management plan (Billfish Amendment) that contained rebuilding programs. Numerous and substantial changes were incorporated in the final rule to implement the HMS Plan and Billfish Amendment, based on the thousands of public comments received by the agency. Advisory Panels established under the SFA and composed of representatives of commercial and recreational fishing interests and other knowledgeable individuals, including members of the ICCAT Advisory Committee, participated in the development of the management measures. The final rule became effective July 1, 1999. In addition, we are working hard to complete restrictions on the use of spotter planes. We do face serious legal challenges, however, and lost an important case last year. Recently, we responded to concerns from purse seiners in the BFT fishery and removed the cap.

**Essential Fish Habitat** One significant change that resulted from passage of the SFA is the increased emphasis of the Magnuson-Stevens Act on conserving and enhancing essential fish habitat (EFH). Here in New England, EFH was designated for the 18 species managed by the New England Council, a number of species managed by the Mid-Atlantic and South Atlantic Councils that range into New England waters, and some highly migratory species in the Gulf of Maine and southern New England that are managed directly by NOAA Fisheries. EFH was identified for each individual species and life stage using the information available to the Councils and generally constitutes about 60 percent of the geographic range of each managed species in New England. While the area covered by all the designations together is quite broad, this scope is unavoidable and recognizes the diverse habitats of a wide variety of federally managed species.

Within an EFH, we can focus on a subarea called a "habitat area of particular concern." For example, on Georges Bank, the New England Council did an excellent job of using available scientific information to identify a relatively small area that is extremely important refuge habitat for juvenile cod, as well as other species. When portions of the closed area on Georges Bank were re-opened to scallop fishing this summer, the area of particular concern was excluded and remained closed to protect the habitat. Such areas do not always require restrictions on fishing, but we must carefully examine potential threats, and in some cases management measures may be necessary to avoid adverse impacts.

The EFH provisions of the Magnuson-Stevens Act also help address threats from non-fishing activities. NOAA Fisheries has conducted over 1,900 consultations to date with Federal agencies whose actions may adversely affect EFH. Over 600 of those consultations have been in the northeastern states and about 40 here in Maine. One of our goals is to integrate EFH consultations into existing environmental review processes (such as Environmental Impact Statements) as a way to minimize regulatory impacts on federal action agencies and the public. We expect the number of consultations to increase as outreach efforts with Federal agencies continue to build awareness of the EFH statutory requirements.

**Bycatch reduction** Minimizing bycatch continues to be a very high priority for NOAA Fisheries, and we are working closely with industry to develop new gear, and to promote clean fishing practices in all the fishing sectors. For instance, vessels participating in the New England Sea Scallop Exemption Program (Exemption Program), which allows scallop vessels to fish in an area closed to protect groundfish on Georges Bank, are required to use a twine top with a minimum mesh size of 10 inches. Furthermore, effective December 16, 1999, vessels fishing under the sea scallop effort-control program outside of the Exemption Program area will be subject to a minimum 8- inch twine top requirement. This increase from the current 5.5-inch requirement is expected to produce significant reductions of certain bycatch species, especially flatfish. In addition, the Exemption Program fishery will be closed when a certain percentage of yellowtail flounder is caught, ensuring that the program will not jeopardize the yellowtail rebuilding schedule.

**Improving technical and scientific information and analyses** NOAA Fisheries is committed to using the best possible science in the decision-making process, and to incorporating biological, social, and economic research findings into fisheries conservation and management measures. Meeting our responsibilities under the Magnuson-Stevens Act and other applicable laws requires collection of a considerable amount of data. We will continue to support a precautionary approach in the face of scientific uncertainty. At the same time, we are expanding our own collection efforts and our partnerships with the states, interstate commissions, industry and others to collect and analyze critical data. In January of this year, NOAA Fisheries delivered a Report to Congress entitled *Proposed Implementation of a Fishing Vessel Registration and Fisheries Information System* that calls for innovative state-federal partnerships to improve the quality and quantity of information for marine resource stewardship. Such federal-state partnerships are an important mechanism for sharing resources and reducing duplicative efforts.

### **Reauthorization Issues**

We are still working to understand and effectively implement the changes to fishery management policies and procedures made by the SFA. Consequently, we would not propose major changes to the Magnuson-Stevens Act at this time. However, we have established an internal agency task force to evaluate SFA implementation, and the group has identified some revisions of existing provisions that may be useful to make the management process more efficient and to resolve some relatively minor problems. We currently are reviewing various issues raised by the task force, the Councils, and some of our stakeholders. Among the issues identified are the following:

**Review process for fishery management plans, amendments and regulations** The SFA attempted to simplify and tighten the approval process for management plans and regulations. However, one result of that effort has been two distinct review and implementation processes -- one for plans and amendments and another for implementing regulations. This essentially uncouples the review of plans and amendments from the process for regulations, and as a result, the decision to approve or disapprove a plan or amendment may be necessary before the end of

the public comment period on the implementing regulations. We are considering amendments that would modify the process to address this issue.

In addition, the Committee may wish to consider reinstating the initial review of fishery management plans and amendments by the Secretary. Considerable energy and staff resources are expended on plans or amendments that are ultimately disapproved because of serious omissions and other problems. At present, two to three months must elapse before the Secretary makes his determination, and if the amendment is then disapproved, it can be months or longer before the Council can modify and resubmit the plan or amendment. While the initial review was eliminated by the SFA to shorten the review process, it actually may provide a mechanism to shorten the time it takes to get a plan or amendment approved and implemented.

**Restrictions on data collection and confidentiality** The Magnuson-Stevens Act currently restricts the collection of economic data from processors. Removal of this restriction could improve the quantity and quality of information available to meet the requirements of the laws requiring social and economic analysis. In addition, the SFA changed the term "statistics" to "information" in the provisions dealing with data confidentiality. The change has raised questions about the intended application of those provisions, particularly with respect to observer information, and Congressional clarification would be useful.

**Coral reef protection** Special management areas, including those designated to protect coral reefs, hard bottoms, and precious corals, are important commercial resources and valuable habitats for many species. Currently, we have the authority to regulate anchoring and other activities of fishing vessels that affect fish habitat. Threats to those resources from non-fishing vessels remain outside agency authority except when associated with a Federal action that would trigger EFH consultation or where addressed in regulations associated with a national marine sanctuary. We suggest amending the Act to clarify, consolidate, and strengthen NOAA Fisheries' authority to regulate the actions of any recreational or commercial vessel that is directly impacting resources being managed under the Magnuson-Stevens Act.

**Caribbean Council jurisdiction** The current description of the Caribbean Council limits its jurisdiction to Federal waters off Puerto Rico and the U.S. Virgin Islands. As a result, the Council cannot develop FMPs governing fishing in Federal waters around Navassa Island or any other U.S. possession in the Caribbean. Jurisdiction of the Caribbean Council could be expanded to cover Navassa Island, by including "commonwealths, territories, and possessions of the United States" within the description of that Council's authority.

**Council meeting notification** To meet the notification requirements of the Magnuson-Stevens Act, Councils spend tens of thousands of dollars a year to publish meeting notices in local newspapers in major and/or affected fishing ports in the region. By contrast, fax networks, mailings, public service announcements, and notices included with marine weather forecasts are much less expensive and could be more effective in reaching fishery participants and stakeholders. The Committee may wish to consider modifying notification requirements to allow Council use of any means that will result in wide publicity.

We look forward to working with Congressional members on high-priority policy issues such as



observer programs, individual fishing quotas, and funding and fee authorities, although, at this time, we have no specific recommendations for changes in the Act to address these issues. We will continue to work closely with the Northeast delegation, New England Council and our stakeholders to resolve problems affecting New England fisheries.

Madame Chair, this concludes my testimony. Thank you for the opportunity to discuss the implementation and reauthorization of the Magnuson-Stevens Act. I am prepared to respond to any questions you and members of the audience may have.