

**H.R. 4749, THE MAGNUSON-
STEVENS ACT AMENDMENTS
OF 2002**

LEGISLATIVE HEARING

BEFORE THE
SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS

OF THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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May 2, 2002
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**LEGISLATIVE HEARING ON H.R. 4749, THE
MAGNUSON-STEVENSONS ACT AMENDMENTS OF
2002**

**Thursday, May 2, 2002
U.S. House of Representatives
Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
Washington, DC**

The Subcommittee met, pursuant to call, at 2:06 p.m., in room 1334, Longworth House Office Building, Hon. Wayne T. Gilchrest [Chairman of the Subcommittee] presiding.

Mr. GILCHREST. The Subcommittee on Fisheries Conservation, Wildlife and Oceans will come to order. I apologize to the Chairman of the Transportation Committee for being late. My watch said 10 to 2. My wife set it this morning.

I want to thank the Members for coming to testify at our Magnuson-Stevens hearing. I ask unanimous consent that my statement be included in the record.

[The prepared statement of Mr. Gilchrest follows:]

**Statement of The Honorable Wayne Gilchrest, Chairman,
Subcommittee on Fisheries Conservation, Wildlife and Oceans**

I would like to welcome our witnesses today. As most of you know, the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act has been one of the top priorities of the Subcommittee. We have held six hearings during the 107th Congress on various aspects of the reauthorization. Following these hearings, I have attempted to identify the most pressing problems with domestic fisheries management and those areas of the Act that needed to be strengthened. The bill that was released as a Discussion Draft was the result of that effort. I released it as a Discussion Draft because I wanted to solicit input before I introduced the bill. I look forward to all of your comments on the Discussion Draft.

Let me start by saying that I believe the Act is fundamentally good. The basic provisions give guidance to the Councils and the Secretary but provide flexibility to the regions to address problems and situations in different manners. The legislation we are looking at today is designed to give the Secretary and the Councils a nudge in the directions we believe are important—rather than writing provisions that will result in more lawsuits.

I have attempted to determine what areas of fisheries management still need improvement and which of these areas are the most important and pressing. I have taken a prudent approach and attempted to address these areas in a realistic manner—again to provide guidance with flexibility.

The current Magnuson-Stevens Act is a balancing act. There is a balance between the needs of the fish and the economic needs of the fishermen and the fishing communities. There is a balance between the various components of the marine ecosystem. There is a balance between the various and often competing users of the

resource. I have attempted to maintain this balance, with the goal of restoring overfished populations and moving toward ecosystem-based management.

I look forward to the testimony of the witnesses and hope that we can have a constructive discussion that will lead to a comprehensive reauthorization that will continue to move us toward better management of the Nation's fishery resources.

Mr. GILCREST. I ask unanimous consent that Mr. Underwood's statement be included in the record.

[The prepared statement of Mr. Underwood follows:]

Statement of The Honorable Robert A. Underwood, a Delegate in Congress from Guam

Thank you Mr. Chairman for holding this hearing today and for your continued leadership on this very important issue. I also appreciate your ongoing efforts to ensure the sustainability of our marine fisheries now and in the future. We cannot underestimate the importance of this goal.

Just yesterday, the National Marine Fisheries Service released its annual—albeit six months late—Status of U.S. Fisheries report. The good news is, for the first time since the report has been released, the number of stocks categorized as overfished has actually declined. The bad news is, there are still more than 90 stocks in trouble, and our work is far from done. Perhaps of just as much concern is the hundreds of stocks for which we have no information and are currently classified as “unknown”. How long can fishing on these stocks continue before they too become overfished?

Still, the decline in the number of overfished stocks that we know about is a good thing, and it highlights a very important point. Conservation measures to rebuild fisheries—however difficult they may be—do work, and when they do, both the fish and the fishermen benefit. Given that, and given the significant number of fisheries still in trouble, now is not the time to undermine our commitment to rebuilding these stocks. I am sure you would agree Mr. Chairman, and I look forward to working with you to ensure that the legislation moving through this Committee does not weaken the current law, and provides the tools necessary to restore our marine fisheries.

I am concerned, Mr. Chairman, that there has not been sufficient time for review of the proposed bill by the broad range of interests, including the fishing industry in the Western Pacific, who will all be impacted by any changes to the Magnuson Act that are put in place. I hope we can work together to ensure that there is adequate opportunity for input from all interested parties before we move this proposal or any bill to mark up.

Again, I thank you for your efforts and dedication to the protection of our marine environment.

Mr. GILCREST. We look forward to your testimony, and I yield now to the Chairman of the Transportation Committee, Mr. Don Young.

STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. I thank the Chairman. And I am also the Vice Chairman of the Resources Committee. I want to make sure you remember that, Mr. Chairman, because it is crucially important as time goes by, if you don't catch that, I hope you all—

Mr. GILCREST. What was that again?

Mr. YOUNG. I am still Vice Chairman of the Resources; so, anyway, thank you, Mr. Chairman.

I do appreciate the effort that went into your bill. You tried to find compromise on some important fishery management issues and I would like to compliment you on this effort. I think it has been a legitimate, well-done effort. While I recognize the lengths

you have gone to to find the balance, there are a few areas I would like to go a little further in the bill.

While I think the Sustainable Fisheries Act was essentially a good Act, it has led to more lawsuits under the Magnuson-Stevens Act than ever before. With this reauthorization, we need to make certain we are not allowing new lawsuits. We must also change the provisions in the current Act that are leading to lawsuits. Fisheries management should not be done by the courts.

As I mentioned, I think, Mr. Chairman, you have done a great job and are on the right track with this bill. There are a few provisions that need further work, in my opinion. In particular, I know the issue of adding birds to the definition of bycatch has been discussed by the environmental community. However, I am curious what effect this will have in the real world. Longliners in the North Pacific and the Bering Sea have taken many measures to reduce bird bycatch. I am very concerned that adding birds to the definition of bycatch would force more restrictions on fishermen when other causes of bird mortality can't be addressed by the Councils or the National Marine Fisheries Service.

Listen to that very carefully. If this was being included in the bycatch, they can eliminate the Councils and the works of the National Marine Fisheries Service of accomplishing the goal.

The Essential Fish Habitat provision in this draft bill is a step in the right direction in getting this provision back on track. When the Resources Committee passed this language in 1995, I understood, we understood that this provision would be used to identify discrete areas that were necessary, and let me emphasize that word necessary, for specific fish species. I never, we never envisioned that the agency would warp the idea so much that we now have huge areas of the oceans identified as EFH. It disturbs me that with little or no science, huge areas are designated EFH. The Act then requires reductions in gear impacts when we aren't even sure if it is necessary habitat.

Because EFH is so broadly identified and the Act requires Councils to minimize adverse impacts caused by fishing, they will be tied up for years trying to figure out the impacts of all the gear types on all different habitat types designated as EFH. Either that, or the Councils or the agency will be in court explaining to a judge why the mandate is impossible to meet with the current information levels. Had I known or had we known that would be the outcome, I probably would not have let the Senate bill get to the House floor at the end of the 104th Congress. This is an example of good intentions with bad implementation.

At this point I would recommend we redraft the existing EFH provision to get the agency to go back to square one and try to get it right this time. I know this may not be a popular idea, but we never envisioned such a bureaucratic nightmare and lawsuit magnet. I know one way to limit it is to eliminate the law schools and we wouldn't have this problem. Especially when we attempted to do the right thing—remember, we attempted to do the right thing by giving fisheries habitat some protection. I find it outrageous that some environmental groups are telling Congress not to review or make changes to the EFH language because their lawsuits now have the agency in compliance with the regulations. It is comments

like that which lead me to think we need to overhaul the total bill. The requirement that gear impacts on EFH be modified is a real problem. While I do believe Councils should do this, making it a requirement is asking for lawsuits and gear battles over allocation. We are already beginning to see the results of that.

My good friend Congressman Hunter has introduced legislation to ban longline gear on the West Coast. This is a blatant attempt by recreational fishing groups to hide behind habitat concerns to get rid of the group they compete against for allocations. It has nothing to do with habitat protection.

Now I have my good friend sitting at the table, Mr. Hefley, who has worked with me all these years, has introduced legislation that will ban certain types of bottom gear. While this may be a sincere attempt to protect habitat, I believe it will actually have the opposite effect. I think this is an attempt to remove one gear type from the fishery so that others can harvest those fish.

While well intentioned, Mr. Hefley, your bill does not differentiate between effects of bottom gear or sandy bottom where the effects may be temporary or insignificant and the effects on what might really be sensitive habitat. It takes these important decisions out of the hands of the regional Fishery Management Councils and bans a specific type of fishing gear everywhere.

Again the Council, the North Pacific Council, which is my Council, has implemented time and area closures for bottom gear to minimize the impact on truly sensitive habitat. I believe you, Mr. Hefley, have recognized that blanket calls by environmental groups for an outright ban on snow mobiles are a problem, so I would hope you would understand that an outright ban on bottom gear will have a huge economic impact on my fishermen and it really creates problems.

Putting aside the economic impacts, by the way, it would be about \$185 million just off the coast of Alaska. Think about it, \$185 million just off the coast of Alaska. The bill may actually have the reverse effect of its stated purpose and may actually encourage the use of smaller roller gear which may cause more damage to the sensitive habitat. I believe we ought to rely on the Council. The Council in my area has done an outstanding job, not at the whims of competing gear groups that are more worried about allocation than habitat, or by the environmental community trying to tie the agency up in knots, consequently destroying the fisheries.

Again, Mr. Chairman, I look forward to working with you. In crafting this bill, I think we have come a long ways. I think we have a little further to go to make sure it is a good bill. I again go back to EFH language authorizing action against virtually every commercial fishery in the country for such violations as catching fish, rocks, mud, worm tubes or clumps of seaweed. This is being implemented by the agency under the current EFH provisions. I really want you to reconsider what we have done by a piece of legislation that was really well intended—and I voted for it, you voted for it. It was the right way to go and it is completely out of whack at this time, and consequently, Mr. Chairman, we have a ways to go on your legislation. I am willing to work with you, but let us get facts on the table.

And, finally, I look forward to the testimony from the witnesses. Thank you, Mr. Chairman.

[The prepared statement of Mr. Young follows:]

Statement of The Honorable Don Young, a Representative in Congress from the State of Alaska

Chairman Gilchrest, I appreciate the effort that went into the draft bill. You tried to find compromise on some important fishery management issues and I would like to compliment you for this effort. While I recognize the lengths you have gone to find balance, there are still a few areas where I would like the bill to go further.

While I think the Sustainable Fisheries Act was essentially a good Act, it has led to more lawsuits under the Magnuson–Stevens Act than ever before. With this reauthorization, we need to make certain we are not allowing new lawsuits, and we must also change the provisions in the current Act that are leading to lawsuits. Fisheries management should not be done by the courts.

As I mentioned, I think Chairman Gilchrest is on the right track with this bill. There are a few provisions that need further work in my opinion. In particular, I know the issue of adding birds to the definition of bycatch has been discussed by the environmental community, however, I am curious what effect this will have in the real world. Longliners in the North Pacific and the Bering Sea have taken many measures to reduce bird bycatch. I am very concerned that adding birds to the definition of bycatch would force more restrictions on fishermen when other causes of bird mortality can't be addressed by the Councils or the National Marine Fisheries Service.

The Essential Fish Habitat provision in this draft bill is a step in the right direction to getting this provision back on track. When the Resources Committee passed language in 1995, we understood that this provision would be used to identify discrete areas that were “necessary”—and let me emphasize that word “necessary”—for specific fish species. We never envisioned that the agency would warp the idea so much that we have huge areas of the oceans identified as EFH. It disturbs me that with little or no science, huge areas are designated EFH. The Act then requires reductions in gear impacts when we aren't even sure if its “necessary” habitat.

Because EFH is so broadly identified and the Act requires Councils to minimize adverse impacts caused by fishing, they will be tied up for years trying to figure out the impacts of all the gear types on all of the different habitat types designated as EFH. Either that or the Councils or the Agency will be in court explaining to a judge why the mandate is impossible to meet with the current information levels. Had I known that would be the outcome, I probably would not have let the Senate bill get to the House Floor at the end of the 104th Congress.

At this point, I would recommend that we redraft the existing EFH provision to get the agency to go back to square one and try to get it right this time. I know that may not be a popular idea, but we never envisioned such a bureaucratic nightmare and lawsuit magnet when we attempted to do the right thing by giving fisheries habitat some protection. I find it outrageous that some environmental groups are telling Congress to not review or make changes to the EFH language because their lawsuits now have the Agency in compliance with the regulations. It is comments like that which lead me to think we need to overhaul the language.

The requirement that gear impacts on EFH be modified is a real problem. While I do believe Councils should do this, making it a requirement is asking for lawsuits and gear battles over allocation. We are already seeing the results of that. Congressman Hunter has introduced legislation to ban longline gear on the West Coast. This is a blatant attempt by recreational fishing groups to hide behind habitat concerns to get rid of the group they compete against for allocations. It has nothing to do with habitat protection.

Congressman Hefley has introduced legislation that will ban certain types of bottom gear. While this may be a sincere attempt to protect habitat, I believe it will actually have the opposite effect. I think this is an attempt to remove one gear type from the fishery so that others can harvest those fish.

While well intentioned, the Hefley bill does not differentiate between effects of bottom gear on sandy bottom where the effects may be temporary or insignificant and the effects on what might truly be sensitive habitat. It takes these important decisions out of the hands of the Regional Fishery Management Councils and bans a specific type of fishing gear everywhere. Again, my council, the North Pacific Council, has implemented time/area closures to allow bottom gear, but minimize its impact on truly sensitive habitat.

I believe Mr. Hefley has recognized that blanket calls by environmental groups for an outright ban on snowmobiles are a problem so I would hope he would understand that an outright ban on bottom gear—which will have a huge economic impact on my fishermen—has problems. Putting aside the economic impacts (which are estimated to be in the neighborhood of \$185 million just off Alaska), the bill may actually have the reverse affect of its stated purpose and may actually encourage the use of smaller roller gear which may cause more damage to sensitive habitat.

The issue of dealing with effects of specific gear on sensitive habitat needs to be dealt with at the Council level and based on good science—not on the whims of competing gear groups that are more worried about allocation than habitat or by the environmental community trying to tie the agency up in knots.

I look forward to working with Chairman Gilchrest to craft a bill that will eliminate lawsuits and create better fisheries management based on good science. I think this draft bill is a step in the right direction.

Mr. GILCHREST. Thank you, Mr. Young. Your statement is heard loud, clear, and understood. We will continue to work on this legislation to ensure fundamentally sound language for the conservation of the resources in the ocean for the present generation and future generations, and to the extent that we can reduce the energy that goes into lawsuits and increase the energy and efficiency that goes into conservation of the oceans, I look forward to working with you on those particular particulars.

And I yield to Mr. Grucci. I ask unanimous consent that Congressman Grucci be allowed to sit with us in the Subcommittee and ask questions.

Mr. Grucci, do you have any opening remarks?

STATEMENT OF THE HON. FELIX J. GRUCCI, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. GRUCCI. Yes, Mr. Chairman, and I appreciate your graciousness in allowing me to sit in on this hearing today.

Thank you, Mr. Chairman, for allowing me to hear testimony on this very important issue. My district lies in eastern Long Island and is the home of many hard-working commercial fishermen. These men and women work long and difficult hours to retain a vital industry for Long Island. These commercial fishermen bring over \$150 million into the economy of New York and the surrounding area. I am deeply concerned about the great deal of rule-making and regulation decisions made by the National Marine Fisheries Service in the area of commercial fishing. Too often huge tracts of waters are being closed hastily and based on questionable scientific finding.

I am happy to support Chairman Tauzin's Fisheries Science Improvement Act and I look forward to the ensuing debate on this important legislation.

Commercial fishermen have been vigilant stewards of the waters they fish following the many difficult and complex regulations as well as adapting to the closing of waters time after time. It is important that we keep in mind not only the livelihood of the fishery but also of the fishermen. Economic viability and well-being of the many fishing communities along our coastlines, commercial fishermen are already subject to too many complex laws regarding gear, bad limits, days at sea, to mention just a few.

I am deeply concerned about the growing trend of rulemaking decisions by the National Marine Fisheries Service.

Thank you very much for the opportunity to be with you and I yield back the remainder of my time.

[The prepared statement of Mr. Grucci follows:]

**Statement of The Honorable Felix J. Grucci, Jr., a Representative in
Congress from the State of New York**

Thank you Mr. Chairman. I appreciate your graciousness in allowing me to sit in with your Subcommittee today and hear testimony on this very important issue.

My district lies at the Eastern End of Long Island and is the home of many hard working commercial fishermen. These men and women work long and difficult hours to retain a vital industry for Long Island. These commercial fisherman bring over \$150 million into the economy of New York and the surrounding area.

I am deeply concerned about the great deal of rulemaking and regulation decisions made by the National Marine Fisheries Service in the area of commercial fishing. Too often, huge tracts of waters are being closed hastily and based on questionable scientific findings. I am happy to support Chairman Tauzin's Fisheries Science Improvement Act and look forward to the ensuing debate on this important legislation.

Commercial fisherman have been vigilant stewards of the waters they fish, following the many difficult and complex regulations, as well as adapting to the closing of waters time after time. It is important that we keep in mind not only the livelihood of the fishery, but also the fishermen.

Mr. GILCHREST. Thank you Mr. Grucci.
Mr. Saxton.

**STATEMENT OF THE HON. JIM SAXTON, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. SAXTON. Thank you, Mr. Chairman. It is good to be here. I just wanted to make a short opening statement. Let me say first I am a co-sponsor of Mr. Hefley's bill and I have to apologize to my friend Mr. Hefley whose bill I have co-sponsored. I forgot to tell you that when we wrote that bill, we had to put a paragraph in it to exempt Alaska. I am sorry.

Mr. HEFLEY. My mistake.

Mr. YOUNG. I told you.

Mr. SAXTON. Mr. Chairman, thank you for holding this hearing today. I think it is very timely and important. I am particularly pleased with the Highly Migratory Species section of the draft Magnuson-Stevens bill in which the Secretary would be required within 1 year to report to Congress on any nation that is fishing in the Atlantic for HMS and is not in compliance with the conservation management provisions or rebuilding recommendations enacted by the international management body.

The report will also include recommendations for action the U.S. could take to ensure such compliance. This issue is important, as you know. We are making some progress on some highly migratory species, particularly swordfish. However, I continue to remain concerned. In the last Congress we came close to having—we did have agreement, but we didn't have funding for a bill which I thought as a compromise measure would provide real conservation for highly migratory species. We did not get it enacted because of the funding provisions, and I continue to be concerned. The white marlin population continues to fall, and there are those who are considering listing it as an endangered species. That is dangerous for the

entire Atlantic fishery because essentially it means that anyone who is in a fishery that takes a white marlin bycatch would be prohibited from fishing; not a good thing. So I hope we can continue to look at ways to address this issue, as it is extremely important not only to those who are immediately involved in the fishery but to others who would suffer great economic hardship were the various fisheries involved in white marlin bycatch to be essentially put out of business.

So, Mr. Chairman, this is an important issue for my district as I know it is for yours, and I ask that my entire statement be put in the record.

Mr. GILCHREST. Without objection so ordered. Thank you Mr. Saxton.

[The prepared statement of Mr. Saxton follows:]

**Statement of The Honorable Jim Saxton, a Representative in Congress
from the State of New Jersey**

Mr. Chairman, members of the subcommittee, I am pleased to be here today to discuss this very important reauthorization, the Magnuson–Stevens Act. I believe Mr Gilchrest's discussion draft bill is a good first step to begin the discussions on this important piece of conservation legislation.

I am particularly pleased with the Highly Migratory Species section of the draft bill, in which the Secretary would be required, within one year, to report to Congress on any nation that is fishing for Atlantic HMS and is not in compliance with the conservation and management provisions or any rebuilding recommendations enacted by the international management body. The report will also include recommendations for action the U.S. could take to ensure such compliance.

This issue, as you know, continues to be extremely important. We stand at an historic crossroads for the conservation of highly migratory species (HMS).

The effective management of Atlantic HMS is one of the most complex and difficult challenges facing the National Marine Fisheries Service. These species range widely throughout international waters and the jurisdictions of many coastal nations with diverse political perspectives on how to properly utilize and manage this valuable resource.

As you know, the Magnuson–Stevens Fishery Conservation and Management Act, passed in 1976 is the primary law dealing with fisheries resources and fishing activities in Federal waters (those waters extending from the edge of State waters to the 200-mile limit).

The primary goals of the Magnuson–Stevens Act are the conservation and management of the U.S. fishery resources, the development of U.S. domestic fisheries and the phasing out of foreign activities within the 200-mile fisheries conservation zone adjacent to the U.S. coastline. This area became known as the Exclusive Economic Zone (EEZ) following a 1983 proclamation by President Reagan.

I recognize that there will likely be issues of disagreement to be worked out among all the many and varied players in this reauthorization, but this is a good first step toward ensuring this important piece of legislation remains an integral part of fisheries management.

It is of the utmost importance that today, more than ever, we work diligently to ensure our world's fisheries populations are maintained at sustainable levels. If we fail to protect them, there are some species that may disappear forever, which would be tragic.

Thank you.

Mr. GILCHREST. Gentlemen, thank you for your patience this afternoon.

Mr. Frank, you may begin.

**STATEMENT OF THE HON. BARNEY FRANK, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
MASSACHUSETTS**

Mr. FRANK. Thank you, Mr. Chairman. I became really involved with fishing in 1992 when, thanks to redistricting, I became the representative for the city of New Bedford and surrounding areas, which is a major fishing area, and I had not been previously involved here. And I have to say I just have one suggestion, looking at that painting behind you, if you were to borrow John Ashcroft's blue cloth, I think it would be put to better use over here than at the Justice Department. It is a little weird, that painting.

But as to fishing, I am here really in a situation of some distress, really. And I appreciate the remarks of the former Chairman of the Full Committee, the Chairman of the Transportation Committee, when he talks about a bill that was passed and did not seem to many of us to be what it has been subsequently interpreted to be in a number of areas.

A Federal judge just issued an order that will have a devastating effect on the fishery in New England, just devastating, far beyond what good science requires, far beyond what responsible environmentalism requires. Indeed, one of the plaintiff organizations in this lawsuit, the Conservation Law Foundation, which has hardly been in the forefront of defending the fishing industry, worked out an agreement with some of the defendants for a set of restrictions, and the judge went far beyond that and rejected that, and I thought that went too far.

So I appreciate your willingness, Mr. Chairman, to take on what is not going to be an easy job, and I mean this genuinely. Even people who have some disagreement with some aspects of your bill appreciate your willingness to see that we meet our responsibilities, and I believe we as the Congress have a responsibility to reauthorize and redraft that bill somewhat this year.

I have some specific concerns. One that has become a real problem for us is the definition of overfishing, and we have a definition of overfishing that I have been convinced is really unrealistic and unnecessary. When we talk about the maximum sustainable yield, that obviously goes beyond sustainable yield. There is a debate about what is maximum sustainable yield. One of the things I am going to ask unanimous consent to submit as part of my testimony is a very good article by a man named Brian Rothschild, who runs the program at the University of Massachusetts-Dartmouth for the study of fishing in which he, I think, makes some very good points about the mistaken assumption that everything that affects the fish stock has to do with the amount of fishing. There is a cyclicity he points out to this that doesn't get taken into our definition.

[The information referred to follows:]

Comments on Current Fisheries Management

BY BRIAN ROTHSCHILD

Our institutional framework for managing the Nations fish stocks is not working. The opportunity to provide informed stewardship of our fisheries resources and to protect the livelihoods and investments of those engaged in harvesting, processing, and selling fish is at stake. The breakdown in the institutional framework is expen-

sive in terms of the burgeoning costs of management, revenues foregone, waste, and community welfare.

Two recent events exemplify the breakdown of the framework. First, last month the New England Fishery Management Council decided not-to-decide on management measures for the thought-to-be depleted Gulf of Maine cod stock. The decision not-to-decide leaves Gulf of Maine cod management in a state of confusion and, in effect, eliminates the possibility that the mandated consideration of adverse economic impacts on the community can be vetted among those who are most effected. The management regulations are no longer in the hands of those concerned with the welfare of the region; rather, they are now in the hands of the U.S. Secretary of Commerce. Second, on December 28, U.S. District Court Judge Gladys Kessler agreed with plaintiffs (the Conservation Law Foundation, the Center for Marine Conservation, the National Audubon Society, and the Natural Resources Defense Council) that the Secretary of Commerce and its agencies—the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service had failed to comply with the provisions of the Magnuson–Steven’s Act and the Sustainable Fisheries Act (SFA) to prevent overfishing and minimize bycatch in the waters of New England. In other words, the Judge essentially ruled that the federal agency has failed to implement a major part of its responsibility.

At the confluence of these events, the judge has ordered the Secretary and the plaintiffs to participate in a conference on January 28, 2002. At the conference, the judge will mandate a remedy or course of action to be taken by the Secretary. Her decision is a double-edged sword. On one edge, the decision puts the Secretary on notice that the laws of the land cannot be ignored by an agency charged with their implementation. On the other edge, it highlights the fact that while well-meaning, aspects of the legislation and the way parts of it have been interpreted by the agency do not pass the test of common sense and scientific understanding. Because of this implementation that follows the sense of the pertinent legislation may border on the impossible.

In order to analyze the situation it is necessary to briefly review the evolution of the legislation that governs federal fishery management. The Fishery Conservation and Management Act of 1976 was the ground-breaking legislation that formed the foundation for the presently operable Magnuson–Stevens Act. The 1976 Act declared U.S. jurisdiction over the stocks of fish out to 200 miles off our coasts, essentially eliminating the huge foreign fleets that fished in our waters. The Act also established what Senator Warren Magnuson called a new form of governance. This new form of governance was a breath of fresh air. It advocated the use of scientific rationality to manage the stocks and to give those who would be most affected by management decisions a say in the management process.

To accomplish these common-sense goals, the 1976 Act established eight regional councils to advise the Secretary of Commerce on fishery management measures. Each council’s management advice is based on the development of a management plan for each species or mix of species. The management plans needed to be consistent with National Standards described in the Act. These Standards today mandate the following: 1) Conservation and management measures shall prevent overfishing while achieving optimum yield; 2) conservation and management measures shall be based upon the best scientific information available; 3) individual stocks of fish shall be managed as a unit throughout its range; 4) conservation and management measures shall not discriminate between residents of different States; 5) conservation and management measures shall consider efficiency in the utilization of fishery resources; 6) conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches; 7) conservation and management measures shall minimize costs and avoid unnecessary duplication; 8) conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to A) provide for the sustained participation of such communities, and B) to the extent practicable, minimize adverse economic impacts on such communities; 9) conservation and management measures shall, to the extent practicable, A) minimize bycatch and B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch; 10) conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

Thus, the nation set forth in 1976 in a new era of rational fishery management. Managers were armed with a directive to develop management plans involving each stock. Further, the National Standards provided a benchmark for the adequacy of management plans not initially at the centralized federal bureaucratic level, but in the context of local needs by regional fishery management councils.

However, by 1996 the provisions of the 1976 legislation and its descendent, the Magnuson–Stevens Act was thought to not fully protect the stocks of fish and, as a consequence, the requirements for “conservation” and the Secretary and Councils were ratcheted up. The ratcheting was embodied in the Sustainable Fisheries Act in 1996. This Act required the Secretary of Commerce to not only prevent overfishing but to also rebuild depleted stocks and to report, assess, and minimize by-catch.

This very cursory background enables us to begin to understand the institutional problems that plague the public interest in implementing fishery management. Let us illustrate with an analysis of a few of the National Standards. First, those that know the technical aspects of fisheries-management theory agree that some of the most important Standards are extremely difficult to apply in the real world. Second, a strictly interpreted application of some Standards can easily constrain the attainment of other Standards. Because of the interrelationship among the National Standards, carefully reasoned judgments must be made in order to achieve balance among the Standards. Without this balance, fishery management plans are counter-productive.

Take the issue of “overfishing,” for example. How do we determine whether or not a stock is overfished? It may come as a surprise to many, but biological overfishing is technically only clearly identifiable for a small set of stocks where the theory of fishing, or the data at hand, actually reflect that stock abundance (i.e., reproduction and productivity) will materially decline with increased fishing effort. In fact, because overfishing is so difficult to identify, various proxies have been derived to artificially (more or less) indicate whether a stock is overfished. There are plenty of cases where the theory predicts that increased fishing will cause only an inconsequential decline in stock size and the data are often sufficiently variable that an optimal level of fishing (i.e., maximum sustained yield) cannot be resolved. Put another way, it is difficult to determine whether many stocks are overfished.

Even more importantly, calculations that conventionally determine whether or not a stock is overfished do not take into account environmental variability, even though we are mandated to do so by the National Standards. Environmentally induced variability in a fish stock is often difficult to separate from fishing-induced variability. Nevertheless, it is clear that major fluctuations in fish stock abundance are commonly driven as much by a changing environment as by the influence of fishing. We know from a reasonable number of stocks observed prior to industrialized fishing, that stock abundances fluctuate substantially in response to natural environmental changes. Today, any downward fluctuation in a stock is attributed to so-called overfishing, while any increase is termed a management success. These assertions are obviously made ignoring environmental effects a view akin to that held by the folks who do not believe in global warming. As we will point out, the present inability to clearly separate environmentally driven changes from those that owe to fishing challenges the rationality of attempting to rebuild stocks.

Even the issue of obtaining the best scientific advice has become warped. The National Standards direct us to base our declarations of overfishing on the best scientific information available. Unfortunately, the best scientific information delivered to management councils is now interpreted as a level of fishing mortality (for example) cited by the scientific community. This is not sufficient scientific advice. Overfishing estimates need to be accompanied by a description of the often great uncertainties associated with the estimates.

The Councils are mandated to take into account possible adverse economic impact of regulations. However, as implied above the councils cannot consider each National Standard in a vacuum absent of the other Standards. The Standards need to be balanced. If the difficulties in defining overfishing as described above are not fully vetted before a Council, then how can it balance the relation between the priority prevention of overfishing and adverse economic impact?

The SFA presents specific problems that need to be rectified. The SFA changes the balance of the National Standards that exists in the Magnuson Stevens Act. Because the SFA focuses on preventing overfishing, rebuilding stocks, and bycatch issues, the pendulum of legal concern swings from a balance among the National Standards to a focus on the hard-to-define overfishing standard. The biggest problem in the SFA is the concept of rebuilding. The concept of rebuilding leads to arbitrary management measures. The idea is that a so-called depleted stock should be rebuilt to some past level of abundance. The past level is identified and used as a target. When the stock reaches this past level of abundance it is considered to be rebuilt. Typically, the highest level of past abundance is chosen. However, it is not known whether this past level of high abundance was the result of extremely favorable environmental events, a reduced level of fishing, or the result of a complex interaction between these factors. As a consequence, rebuilding goals can easily be

set which have small likelihood of ever being attained. This situation results in arbitrary management measures that drift from the hands of local and regional into the hands of the federal government.

This vignette gives us a glimpse at the foundations of institutional failure. To bring us back into the arena of "wise use" stewardship, we have to reexamine the implementation of our legislation to make sure that it really is following the intent of Congress. However, we also need to examine the legislation, particularly the SFA to determine whether it is technically possible to achieve its extremely admirable goals. I am afraid that the SFA has taken us beyond the information that we have available (and are likely to ever have, at least in the near term) and as a consequence it can lead only to arbitrary fisheries management regulations. This arbitrary regulation spurns and suppresses fishing communities. Without a buy-in by fishing communities we have lost the opportunity for stewardship.

The issues described above are just the tip of the iceberg. The public good demands a sweeping review of the practicality of the SFA and implementation of fishery management policy. This must be an essential task for the new administration and the new Administrator of NOAA.

But what do we do in the meantime? Judge Kessler had no opportunity to make an alternative judgment because the issue before her was so narrowly framed and in the eyes of the law it appears that the Secretary has done nothing to move the management process forward. Other judges faced with related cases have probably with great frustration developed a narrowly focused remedy to deal with the complaint. To do so in this particular case, however, would be to ignore the breadth of the several National Standards and the legislative history that mandates local involvement. Accordingly, it would make sense for the Judge to require the Council to reconsider the Gulf of Maine cod management plan in a timely way. In its reconsideration, the Council needs to take full and explicit account of the quality of data and the nature of the analysis that led to the estimation of an extraordinarily high fishing mortality rate. The Council also needs to recognize the fact that the Gulf of Maine cod is not a single stock but migrates back and forth from Georges Bank, mingling with the so-called Georges Bank stock. In their deliberations, the Council needs to be encouraged by the Secretary of Commerce to balance all of the National Standards and to focus on expediting the framing of regulations.

The conservation organizations need to realize that without support from the fishing community, the fishery management process will not work, at least not in a way that is cost effective. The conservation community needs to embrace the idea of wise use of fishery resources. The conservation community needs to advocate 1) the collection of adequate, reasonably accurate, easily retrievable data; 2) advances in the approaches that convert these data into management decisions approaches that equally take into account the ocean environment, its interaction with fish stocks, and are based upon modern operations-research techniques; and 3) an environmental research program to understand more fully the factors that induce fish populations to vary. Most importantly, these programs for New England need to be undertaken in the context of the mixed-species trawl fishery, which exemplifies the technical challenges that we have before us in managing fish stocks.

Mr. FRANK. We have a situation where we use this definition where the stock can be increasing and it will still be held to be overfished and cut back very drastically even when it is increasing to a sustainable point, and I think that definition has to be taken into account.

The bill set out a variety of factors that were supposed to be balanced, and in practice it hasn't been balanced. In practice, the legitimate economic concerns of communities and individuals has been subordinated. The statute, at least by the judge who recently decided it, was turned into kind of an absolutism that wasn't there.

I hear the bells. I don't want to interfere with my colleagues. I will be submitting some further testimony, but I believe we are in a situation now, and I do agree with the gentleman from Alaska that the lawsuits and the threat of lawsuits have become a problem.

Mr. FRANK. I had a very good conversation with the administrator today who I think is trying to do a good thing in a particular

area and the threat of a lawsuit, particularly, frankly, in a region where a Federal judge just gave a somewhat draconian decision disrupts the procedure and there needs to be more play in these—the question of sustainability. The question of the fishery is a more complex one than has been interpreted by some of these authors.

Finally, I want to express the opposition of a substantial number of the people I represent are really quite strong to the IFQ situation. They really feel—and fishing is an industry where there are a lot of smaller independent people, and they are very concerned about the implication of greater concentration that could result if you get into this. I will amplify those, but having heard the bells, I will cut it off now and thank you for this opportunity.

Mr. GILCREST. Thank you, Mr. Frank. Your full statement will be included in the record.

[The prepared statement of Mr. Frank follows:]

**Statement of The Honorable Barney Frank, a Representative in Congress
from the State of Massachusetts**

The author of the following article, Brian Rothschild, is the Director of the School for Marine Sciences and Technology (SMAST) at the University of Massachusetts Dartmouth. The attached article was published in the New Bedford Standard-Times in January of this year. Under the leadership of Dr. Rothschild, SMAST conducted independent research on scallop stocks in 2000. That research demonstrated that, as argued by New Bedford area fishermen, the stocks were more abundant than government statistics had indicated. Dr. Rothschild then played a key role in persuading the National Marine Fisheries Service to incorporate these findings into its analysis of the scallop stocks. As a result, less severe restrictions than originally planned were put in place for the fishery.

Mr. GILCREST. Mr. Hefley

**STATEMENT OF THE HON. JOEL HEFLEY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF COLORADO**

Mr. HEFLEY. Mr. Chairman and Committee, thank you. Although it is with some fear and trepidation that I testify after hearing Chairman's Young's opening statement—

Mr. GILCREST. Is your mike on, Joel?

Mr. HEFLEY. I am sorry.

Mr. YOUNG. I wasn't going to tell you.

Mr. HEFLEY. You weren't. Jim is absolutely right. I don't know how I could have neglected exempting Alaska from this.

But, Mr. Chairman, in your statement earlier you talked about the fisheries being sustained for us and for our descendants and for their descendants and that is what I am talking about with this bill. It is one thing if you overfish and then it may take them a long time to get the populations back up. It is quite another if you destroy the habitat and that may never recover. So what I am talking about here is the habitat, not about overfishing. And I do have a complete statement that I would like to ask that it be put into the record and I will summarize it.

Mr. GILCREST. Without objection.

Mr. HEFLEY. I got interested in this several years ago when I simply read an article in the newspaper. What do I know about ocean fishing? I know how to catch trout and catfish, but what I know about ocean fishing—but it piqued my interest because it made the statement that every year worldwide an area equivalent

to the size of the Lower 48 states—and, see, Don, also Alaska is exempted from that. The Lower 48 states was being subjected to bottom trawling each year with an impact equal to that of clearcutting the forest.

Now I know about clearcutting forests because we had that out in the West and I hate it. It is ugly and I know managers tell you sometime that is a good idea, but I don't find it a good idea. So I became concerned and that is kind of the reason I got into this and I began to do research and tried to learn as much as I could about it, with still not nearly the expertise that you have on this panel. But we do love the oceans. I have loved the opportunity since being in Washington to experience, Mr. Chairman, your Chesapeake Bay and what a wonderful asset that is to the United States. We vacation every year at Edisto Island in South Carolina where we get a little bit of an ocean experience, and I applaud the Chairman for what you have done to try to clean up the bay and bring it back, and enormous progress has been made.

So when I looked into this further, it appeared to me that there was something that should be done about this if we are actually destroying the habitat, and there is a lot of scientific evidence that we are. Currently bottom trawling as is currently practiced I think is shortsighted. It can maximize the take for bottom fishermen, no question about that, but it can leave an environment sterile of the species that associate with structured habitat during some stages of their life, including the juvenile Atlantic cod, the lobster, and the Pacific rock fish.

Some recent studies have suggested that the reason Atlantic cod are not rebuilding as quickly as expected is because they depend on structured habitat for protection when they are juveniles. Without that habitat, the juveniles have nowhere to hide and are quickly eaten by predators. So in the last Congress, I introduced the Seabed Protection Act. That bill would have placed a moratorium on fishing in 16 areas along the Atlantic, Pacific and Gulf Coasts. It served mainly as a shot across the bow of the NMFS which had been ordered by Congress in 1996 to study and manage the impacts of bottom trawling, but which 5 years later appears little has been done, if anything.

This year we took a different approach. This particular bill, 4003, is narrowly tailored to protect the most bottom structure and sustainable habitat while having a minimal impact on bottom trawlers who use the large rollers and rockhoppers to gain access to these sensitive areas. It does this by limiting the size of these gear to 8 inches in diameter or less. The bill mimics State and regional law. All 18 coastal States have structurally complex habitat, and 5 of the 8 Federal Fishery Management Councils have begun to limit the size of rollers and rockhoppers or have outright banned bottom trawling. This bill would ensure uniform regulation.

As a member of the Resources Committee, I have listened to many debates over the years about commercial activities on public lands. I believe in a multiple use process. I believe in fishing. I believe in commercial fishing. And, in fact, fishing disputes were at the heart of the American Revolution, or one of them. Crab cakes and clam chowder are just as American as apple pie. But I fear that unless we do something to preserve the seabed environment,

we won't have a fishing industry in 20 years, and if that happens, we will not only have lost jobs, but we will have lost a part of our heritage.

This bill is supported by a wide array of environmental organizations, recreational and commercial fishing groups that recognize this destruction must be stopped. Therefore, I encourage the inclusion of H.R. 4003 in the reauthorization of the Magnuson-Stevens Act.

With that, Mr. Chairman, I would conclude, and appreciate the opportunity to be with you.

[The prepared statement of Mr. Hefley follows:]

**Statement of The Honorable Joel Hefley, a Representative in Congress
from the State of Colorado**

Mr. Chairman, I'd like to thank you for the opportunity to give testimony today on my bill, H.R. 4003, the Ocean Habitat Protection Act.

This subject first caught my interest more than three years ago with an article in my local newspaper, the Colorado Springs Gazette Telegraph. At a December 14, 1998 press conference, representatives of the American Oceans Campaign and the Marine Conservation Biology Institute said that, worldwide, an area equivalent to twice the size of the lower 48 states was being subjected to bottom trawling each year with an effect equal to that of clear-cutting a forest.

I was concerned by that word picture. While I represent—or perhaps because I represent—a district in a land-locked state, I have always been fascinated by the sea. My family and I regularly vacation at Edisto Island in South Carolina and I've enjoyed my time on the Chesapeake Bay in Maryland. I applaud and support the efforts made by the chairman and others to restore the health of the Chesapeake Bay.

Based on what I have read, the ecological impacts of bottom-trawling are every bit as bad as those which have crippled the Chesapeake. Worse than mere over-fishing, bottom-trawling can completely alter the species composition, shifting from species such as snapper or grouper to flounder and dogfish. The practice seems shortsighted for, while bottom-trawling can maximize the take of bottom fishermen, it can leave an environment sterile of species that associate with structured habitat during some stages of their life, including juvenile Atlantic cod, lobster and Pacific rockfish species. Recent studies suggest part of the reason that Atlantic cod are not rebuilding as quickly as expected is because they depend on structured habitat for protection while they are small juveniles. Without structured habitat, the juveniles are unable to hide and are quickly eaten by predators long before they reach reproductive age.

Because of this, in the last Congress I introduced H.R. 3059, the Seabed Protection Act. H.R. 3059 would have placed a moratorium on the use of bottom trawls and dredges in 16 key areas considered essential for maintaining fisheries and other marine life until the Secretary of Commerce determined that the impacts of dredging on the productivity of fisheries, marine life and seafloor habitat were negligible. That bill attracted 14 bipartisan cosponsors.

H.R. 3059 was a shot across the bow of the National Marine Fisheries Service and its regional fishery management councils. The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act, NMFS had been directed to study the impact of bottom-trawling and develop ways to ensure that the practice proceeded in a manner that was self-sustaining. Yet five years after these mandates, NMFS had yet to issue a policy on the subject.

At the beginning of this Congress, I planned to reintroduce H.R. 3059; my goal had always been to have its measures included in the larger Magnuson-Stevens Act. But, after deliberation and discussion with those groups that have supported my efforts, we decided to take a different approach and focus on the most damaging type of bottom gear, which is responsible for wiping out the last safe havens for fish in the oceans. My new bill, H.R. 4003, is narrowly tailored to protect the most bottom structure and sustainable habitat while having a minimal impact on bottom trawlers who use large rollers and rockhoppers to gain access to these sensitive habitats. Rather than terrifying the fishing industry by shutting down designated areas while the NMFS took an indeterminate amount of time to develop a policy, we decided to develop legislation which would eliminate the gear which was causing

the problem. The bill that emerged was H.R. 4003, the Ocean Habitat Protection Act.

H.R. 4003 would protect complex, rocky seabed habitats by restricting the use of rollers and rockhoppers more than eight inches in diameter and rockhoppers. Until the 1980s, bottom-trawling was used mainly to harvest haddock and other species that inhabit sandy, mud and small gravel sea floor habitats. But, as with so many things, the technology improved and trawlers began to direct their efforts to these complex areas they had previously avoided or had been unable to access. These newly accessible areas provide homes to living structures such as sea anemones, sponges and deep-sea corals and often serve as settlement and nursery areas for juvenile groundfish and crustaceans of commercial and recreational importance. The new method of improved trawling improved fishing yields but left many of these complex areas barren of species that depend on structure.

When there is no place for fish to hide," says Jeff Hutchings of Dalhousie University, "we can devastate entire populations. There is evidence that severely over-exploited populations may not recover, even decades after depletion." Large rollers and rockhoppers, similar to the large drift-nets that have been banned due to the needless destruction that they cause, flatten precious and unique species like deep-sea corals, homogenize seafloor habitat and leave fish that depend on structured habitat with no place to hide.

On March 18, the National Academy of Sciences issued a report on the effects of bottom-trawling. The report stated that bottom-trawling had different effects on different types of bottom habitats. Recovery times also varied but the NAS study concluded that some sensitive areas would require so long a period of time to recover as to be irrecoverable.

The NAS report also gave NMFS a conclusion that sounded a lot like that heard before wolves were released into Yellowstone, namely that there was no need for further study of the issue. Enough data already exists to properly manage fisheries and bottom-trawling.

The lack of area-specific studies on the effect of trawling and dredging gear is insufficient justification to postpone management of fishing effects on sea floor habitat," the report said.

My bill mimics trends at the state and regional level. All 18 coastal states with structurally complex habitat and five of the eight federal fishery management councils have begun to limit the size of rollers and rockhoppers or have outright banned bottom trawling. The problem is, we now have a complicated set of regulations that only apply to certain fisheries, areas and times, and leave much complexly structured habitat unprotected.

At the present time, the bill has 15 cosponsors and the support of the Recreational Fishing Alliance, the West Coast Fishing Alliance, The Ocean Conservancy, Friends of the Earth, the Natural Resources Defense Council, Oceana and the American Oceans Campaign, the Marine Conservation Biology Institute, the National Environmental Trust, the National Coalition for Marine Conservation, Fish Forever and the Jersey Coast Anglers Association, among others. I'd like to enter into the record of full record my bill's supporters and cosponsors.

I am often asked why I, a congressman from a landlocked state, would have such an interest in ocean fishing and bottom-trawling. I answer that I like to fish. But, aside from that, it's because I don't have a commercial stake in this issue. I don't have to answer to a vocal fishing industry in Colorado. But I can appreciate that something has to be done.

As a member of the Resources Committee, I have listened to many debates concerning commercial activities on our public lands and, generally speaking, I support the multiple-use of those lands. The Forest Service used to put up signs that read "A Land of Many Uses." I believe that's the way it should be.

The nation's forests are beautiful but they've also yielded timber that provided jobs for Americans and lumber for homes and furniture. When we eliminate lumbering—either by regulation or by overcutting—we are not just eliminating jobs, we're cutting out a part of our heritage.

So it is with the fishing banks, as well. I don't have to tell any of you about the place the commercial and recreational fishing industries hold in this country's history. Fishing factored into the reasons for the American Revolution and in the works of Herman Melville and Jack London. And, it may be argued that crabcakes, cod and clam chowder are at least as American as apple pie. I fear that, unless we take steps to preserve the environment that sustains our fishing industry, we won't have one in 20 years. And with that, we will not only have lost jobs but a part of our heritage. The Ocean Habitat Protection Act is endorsed by a wide array of environmental organizations and recreational and commercial fishing groups that recognize

that the devastation must be stopped. And that is why I urge your inclusion of H.R. 4003 in the re-authorization of the Magnuson-Stevens Act.

Again, thank you for hearing my testimony.

Mr. GILCHREST. Thank you, Mr. Hefley. We have a vote going on, but we have time for Mr. Farr's testimony before we leave. So, Mr. Farr, you may begin.

**STATEMENT OF THE HON. SAM FARR, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. FARR. Thank you very much, Mr. Chairman. I appreciate the opportunity to continue to work with you. I am really pleased that your hard work on Chesapeake Bay is so matched by the hard work that I am trying to do on the Monterey Bay. I would like to point out that Jean-Michel Cousteau was here the other day and he said our oceans are sick. The patient is the world, and the lungs of the world, the oceans, are not doing well, and we see this all the time. I probably represent a greater diversity of marine scientists and fishermen, and even fisheries in my district, compared with any other district, just tons of marine schools and fishing ports. The problem is that we find from the National Marine Fisheries Services, who just 2 weeks ago released their fish stock assessment, that only two fish stocks have improved since last year. The number of overfished stocks has declined, but overall things are not getting any better.

We have about 950 fish stocks in the ocean. We know the status of less than a third of these stocks. Of the 304 on which we have some information, over 30 percent are overfished or rapidly heading that way. I think that those of us who have been on this Committee, and I sit now on the Agriculture Appropriations Committee, are very interested in sustainability. How do we continue the fishery business and continue our agriculture business while sustaining the environment that raises the plants and animals of the planet?

I have introduced a bill, H.R. 2570, the Fisheries Recovery Act, to amend the Magnuson-Stevens Act. It has 71 co-sponsors, and I think that this issue is important to the Committee members on both sides of the aisle. I don't know if we have enough time, but I wanted to go through and make some comments on your bill, on your draft, that I think would be constructive.

The fishermen in my district—

Mr. GILCHREST. Mr. Farr, if you do feel rushed, you can be the first witness when we come back from the vote, if you would like.

Mr. FARR. Why don't we start there. I will come back and start with the discussion on your draft, which I think would be constructive.

Mr. GILCHREST. We will do that. And Mr. Hefley and Mr. Frank, I know the issue is definition of overfishing, precautionary approach, maximum sustainable yield, conservation versus—

Mr. FRANK. Don't worry, Mr. Chairman. We won't come back.

Mr. GILCHREST. The gentleman from Massachusetts.

We will recess. It looks like we might have 2 votes, so for the people in the audience and other witnesses, it probably will be about 20 minutes.

[Recess.]

Mr. GILCHREST. The Subcommittee will come back to order.

We thank everyone for their patience and indulgence here. We will probably have another vote in about 45 minutes, but at this point I want to re-recognize Mr. Farr from California.

Mr. FARR. Thank you very much, Mr. Chairman. And as I said, I am delighted to be here and I really appreciate all the hard work you have personally done to tackle this issue. I think it is so essential to the sustainability of fisheries and, more importantly, to best management practices of the sea, which is essentially the same thing we recognize and appreciate when we deal with agriculture and land. I think we need to apply a lot of our same sort of smart practices or good practices to the ocean. We are going to have to gain more information and change gear and so on.

I would like to just go through some of the provisions of your bill which correspond with the provisions of my bill and offer some reflection on it. I hope that this is all done in a positive perspective, because I really appreciate your personal interest in all this. I just want to share with you some of my reactions to some of the wording, more than anything else.

I think the direction of the bill is a magnificent one, and you are to be applauded for your leadership on it. As you know, on the House floor in 1995 I introduced an amendment to require that fishing impacts on habitat be reduced. The amendment was accepted by an overwhelming vote of 251 to 162. At that time we worked together to ensure that the Councils were required to protect essential fish habitats from damaging fishing techniques. Unfortunately, since that time, very little has actually been done with respect to essential fish habitat and the problems still persist.

As I pointed out, the fishermen in my district support the protection of essential fish habitat and we are trying to learn more and more about it. We know that without that, without essential fish habitat, we cannot have a sustainable fishery, and it is just a matter of time before it is all gone. I represent the area where the sardines disappeared, and know what happens when a fishery disappears. All the canneries shut down, everybody who worked in the cannery, all the families lost their jobs, people lost their livelihood, and there wasn't any alternative there or government to come and bail them out. It was a disaster and it took us 25, 30 years before we turned Cannery Row in Monterey into a tourism area and, frankly, a lot of recognition of that area goes to writer John Steinbeck who made the area famous in his books. We don't want to go through again is a loss of a fishery like that. It is worse than a base closure. It is worse than a company moving out or shutting down.

So here is what I am suggesting, that you emphasize the use of habitat areas of particular concern as a means to focus the protection efforts. Habitat areas of particular concern are important because of their ecological significance, rarity, sensitivity, or because they are threatened by human activities. Because this is a concept contained in the National Marine Fisheries Essential Fish Habitat Regulations, the Councils and the National Marine Fisheries are familiar with it and have identified many habitat areas of particular concern. The proposal will place greater emphasis on these

habitat areas but would not serve to exclude any essential fish habitat from future protection.

I also strongly recommend that the sections of H.R. 2570 that concern the impact of fishing gear on habitat be included in your bill; for example, the required evaluation of the potential impacts of any new types of gear prior to their introduction. When you think about it, almost every other thing we apply gear to or a new machinery to, we do on an impact analysis. I am not suggesting we go that deep, but at least be aware that there could be impacts and that those impacts ought to be taken into consideration prior to authorizing it. Also, please include the establishment of a program to identify new, less damaging gear for all areas and to fund its introduction.

In your bycatch section, my comments and suggestions are this, that your draft reflects your recognition of bycatch as a serious problem. I commend you on the inclusion of birds as a definition of bycatch. I strongly disagree with Mr. Young that they shouldn't be included. I think that the inclusion needs to be better defined. I think stating a deadline, as you have done for the Councils, to report bycatch is very important but I think you should give Councils a chance to explain why they cannot develop such systems. Requiring the Councils to only explain why they cannot develop such systems may create unforeseen and exploitable loopholes, and I think that needs to be tightened up a little bit, and I would recommend that you include certain provisions such as requiring the Councils to annually reduce bycatch, requiring annual reports on the progress being made in reducing bycatch, and creating incentives for the reduction of bycatch. In this way we can be sure that the Councils be held accountable every year and that they would be required to act on the information they have gained.

On your observers' programs, I do not agree that we need to study the need for observers. We need them and the data they obtain. It is undeniably clear that there exists a great need for data collection. There needs to be better data on bycatch, on discards, and the impacts on certain types of fishing gear, all of which have impacts on essential fish habitat. The best way to prioritize the essential fish habitat of most concern is through observers being able to collect adequate data.

As I wrote in the Fisheries Recovery Act, I strongly recommend that the observer coverage be required in each and every fishery until we collect statistically significant data on bycatch, discards, and habitat impacts. Observer data are further essential for getting information on the growth, reproduction and survival rate of species, and I think that observer data will enable managers to accurately determine catch rates and set correct quotas.

Many fishermen with whom I have spoken oppose observers largely because of the cost of observer coverage, particularly when you have to take an observer and you have to pay for it. I propose funding of observer coverage with money from the Saltonstall-Kennedy Act, matched with a percentage of landing fees that does not disproportionately impact smaller scale fishermen.

On your ecosystem-based management, I know that you and I share the belief that this may be one of the most important policies

that could come out of the Magnuson reauthorization. I think we are making great headway. We need to keep pushing this.

I am, however, concerned that the language in your draft will allow the Councils to extend indefinitely the process of implementing ecosystem-based management plans. For that reason, I believe that this section should go beyond only supporting and encouraging ecosystem-based fisheries management.

We need to mandate the requirement of the Councils to rapidly develop fishery ecosystem plans for every major fishery within their jurisdiction.

I also believe that much of the data that you are requesting prior to the implementation of the ecosystem-based management plans are really available now through a number of systems. We can expect the National Marine Fisheries to define the criteria for ecosystem-based management, I think, at most in 2 years. Two years after the development of the Marine criteria, the Council should be required to develop fishery ecosystem plans. They should make sure that the fisheries management plans are consistent with the ecosystems plans, and I absolutely believe that it must be required from the very date of enactment of this legislation that no fishery be allowed to expand unless the complete fisheries ecosystem plan is established and the standards are determined that will protect the underlying marine ecosystems.

On the issue of cooperative research, I join you in supporting cooperative research and I also join you in trying to shut up this telephone.

Any effort or money to put toward the cooperative research programs I think is a win-win proposition. I know that fishermen in my district and around the country are enthusiastic about cooperative research and support proposals included in my bill.

I want to draw your attention particularly to two aspects of the issue. It taps into the creativity of the natural knowledge of fishermen by providing financial incentives to the development and use of fishing gear and practices that limit bycatch and minimize habitat damage.

It also proposes and funds this program with money from the Saltonstall-Kennedy program. Currently the vast majority, approximately \$70 million of the money collected from this program, is used to offset NOAA's operating budget. My proposal would redirect the money to programs that are more directly linked to fisheries management such as cooperative research and observers.

And last, in the overcapacity reduction, I strongly support your efforts to tackle the problem of overcapacity initially through buyouts. We are very close to adopting this policy to help reduce the pressure on ground fisheries in the West Coast.

In closing, Mr. Chairman, I think that you are doing an incredibly good job of getting into the detail and realizing how important it is to rewrite the Magnuson Act in terms of what we know within modern knowledge, and I am also co-chair of this Bipartisan Oceans Caucus and, as you know, there are two groups out there, one authorized by Congress via a bill that passed this Committee and the Senate and was signed by the President to create an Oceans Commission. The Oceans Commission is at work now traveling around the United States. There is also one created by the

Pew Trust that Christie Todd Whitman was the Chair and now that she is gone to the administration, former Congressman Leon Panetta has assumed the Chair. That foundation's commission is going around the country and trying not to duplicate what the Federal commission is doing, but both of them, I think, even with a lot of industry folks on the commissions, have recognized that this is the time that we have got to tackle the health of the oceans. And it is, as you have said so many times, that the oceans—if you look at this planet, it is a blue planet because of the oceans. The oceans cover 73 percent plus of the world. They really are the lungs of the planet. We must learn how to better manage and sustain them. I don't know how many years we can just go and dump what we don't like into the oceans and take out, without restrictions, as much as we want before we end up seriously hurting the Planet Earth.

So I appreciate the tough role you are in and look forward to working with you.

[The prepared statement of Mr. Farr follows:]

Statement of The Honorable Sam Farr, a Representative in Congress from the State of California

Good afternoon, Mr. Chairman and the Members of the Subcommittee.

Thank you very much for holding this important hearing. I appreciate the opportunity to discuss with you your draft for the reauthorization of the Magnuson-Stevens Fishery Act. This is an issue about which all of us feel passionately, and I hope I can help you develop fisheries management legislation we can all live with.

The urgency of this matter was highlighted by the report to Congress released this week from the Secretary of Commerce on the status of our nation's fish stocks. The good news from this report is that in fisheries where conservation measures have been implemented, stocks are beginning to be rebuilt.

The bad news is that the National Marine Fisheries Service has only two such fish stocks that have improved since last year's report. While the overall number of overfished stocks has declined, nine of the 11 stocks that were removed from the list this year were removed because their stocks are declining for reasons other than fishing. On the West Coast, the status of the groundfishery has gotten worse, with two additional stocks being listed as overfished and one listed as approaching overfishing. This should not be counted as fishery management progress.

We still have a serious problem on our hands. We fish from over 950 stocks. We know the status of less than a third of those stocks. Of the 304 stocks on which we have some information, over 30% are overfished or rapidly heading that way..

Last year, I introduced H.R. 2570, the Fisheries Recovery Act, to amend the Magnuson Act. That bill presently has 71 cosponsors. This issue is important to many of our colleagues, from both sides of the aisle. Mr. Chairman, I know how deeply the problems in our nation's fisheries concerns you, and I offer the following comments only to help you strengthen the proposed legislation.

Essential Fish Habitat (EFH)

Comments and Suggestions:

* In 1995, the Magnuson reauthorization bill that came out of the Resources committee made discretionary the requirement to minimize the impact of fishing on essential fish habitat (EFH).

- On the House floor, I introduced an amendment to require that fishing impacts on habitat be reduced. That amendment was accepted by an overwhelming vote of 251 to 162.
- Mr. Chairman, at that time, we worked together to ensure that the councils were required to protect essential fish habitat from damaging fishing techniques.
- Unfortunately, since that time, very little has actually been done with respect to EFH, and the problems persist.
- The fishermen in my district strongly support the protection of essential fish habitat.

- * I recognize your desire to narrow the application of this requirement, and I suggest that you emphasize the use of habitat areas of particular concern (HAPC), that have already begun to be identified, as a means to focus the EFH protection efforts.
 - There are areas of EFH that are significant because of their ecological significance, rarity, sensitivity, or because they are threatened by human activities.
 - Because this is a concept contained in NMFS's EFH regulations, the councils and NMFS are familiar with it and have identified many HAPCs.
 - The proposal will place greater emphasis on HAPCs but does not serve to exclude any EFH from future protection.
- * I also strongly recommend sections of H.R. 2570 that concern the impact of fishing gear on habitat:
 - the required evaluation of the potential impacts of any new types of gear prior to their introduction
 - the proof that gear will not damage an area before it is allowed to be used in that area
 - the establishment of a program to identify new, less damaging gear for all areas and fund its introduction.

Bycatch

Comments and Suggestions:

- * This section of your draft reflects your recognition of bycatch as a serious problem.
 - I commend the inclusion of birds in the definition of bycatch.
 - Stating a deadline, as you have done, for the Councils to report bycatch is very important, however,
 - giving the councils a chance to explain why they can not develop such systems may create an unforeseen, exploitable loophole.
 - I recommend you include certain provisions from my bill, such as:
 - requiring the councils to annually reduce bycatch
 - requiring annual reports on the progress being made in reducing bycatch and
 - creating incentives for the reduction of bycatch.
 - In this way, we can be sure that beyond the initial reporting of the bycatch situation, the councils would be held accountable each and every year and would be required to act on the information they have gained.

Observers

Comments and Suggestions:

- * I do not agree that we need to study the need for observers. We know we need them.
- * It is undeniably clear that there exists a great need to collect data on:
 - bycatch, discards and the impacts that certain types of fishing are having on essential fish habitat.
 - This data is the best way to prioritize the Essential Fish Habitat of most concern.
 - Observers are an effective means by which to do this.
- * As I wrote in the Fisheries Recovery Act, I strongly recommend that observer coverage be required in each and every fishery until we collect statistically significant data on bycatch, discards and habitat impacts.
 - Observer data are absolutely essential for getting the information on the growth, reproduction, and survival rate of species.
 - Observer data will enable managers to accurately determine catch rates and set correct quotas.
- * Many fishermen with whom I have spoken oppose observers largely because of the cost of observer coverage.
 - I've proposed funding of observer coverage with money from the Saltonstall-Kennedy Act, matched with a percentage landing fee that does not disproportionately impact smaller-scale fishermen.

Ecosystem-based Management

Comments and Suggestions:

- * I know that you and I share the belief that this may be one of the most important policies that could come out of the Magnuson reauthorization.
- * We are making headway and we need to keep pushing this.

- I am, however, concerned that the language in your draft will allow the councils to extend indefinitely the process of implementing ecosystem-based management plans.
- * For that reason, I believe that this section should go beyond supporting and encouraging ecosystem-based fisheries management.
- * We need to mandate the requirement that the councils rapidly develop fisheries ecosystems plans for every major fishery within their jurisdiction.
 - I believe that many of the data that you are requesting be gathered prior to the implementation of ecosystem-based management are largely available now for a number of systems.
 - I think we can expect NMFS to define the criteria for ecosystem-based management in, at most, two years.
 - Two years after the development of the NMFS criteria, the councils should be required to develop fisheries ecosystem plans and then make sure that their fisheries management plans are consistent with the ecosystem plans.
 - I absolutely believe that it must be required, from the very date of enactment of this legislation, that no fishery be allowed to expand unless a complete fisheries ecosystem plan is established and standards are determined that will protect the underlying marine ecosystems.

The bottom line, Mr. Chairman, is that people have been talking about ecosystem-based management for decades. It is time to time to, and we are able to, move beyond talk and require action.

Overfishing

Comments and Suggestions:

- * Defining overfished refer as only stocks that are below the natural range of fluctuation associated with the production of the maximum sustainable yield is a complicating factor that might be used by the industry to block action on rebuilding stocks.
 - I recommend that this provision be dropped.
- * I do suggest language from H.R. 2570 that amends the definition of conservation and management to require the inclusion of a margin of safety to guard against scientific uncertainty.

Cooperative Research

Comments and Suggestions:

- * I join you in strongly supporting cooperative research. Any effort or money put towards the development of cooperative research programs is a win-win proposition.
 - I hope you will look to the section on cooperative research in H.R. 2570 as you develop your recommendations.
 - I know that fishermen in my district and around the country are enthusiastic about cooperative research and support proposals included in my bill.
- * I want to draw your attention particularly to two aspects of this issue:
 - It taps into the creativity and natural knowledge of fishermen by providing financial incentives to the development and use of fishing gear and practices that limit bycatch and minimize habitat damage.
 - It proposes and funds this program with money from the Saltonstall-Kennedy program.
- * Currently, the vast majority, approximately \$70 million of the money collected for this program is used to offset NOAA's operating budget. My proposal would redirect that money to programs that are more directly linked to fisheries management, such as cooperative research and observers.

Overcapacity reduction

I strongly support your efforts to tackle the problem of overcapacity initially through buy-outs. We are very close to adopting this policy to help reduce the pressure on groundfish along the West Coast.

In closing, I recognize, Mr. Chairman, that all issues in fisheries management would benefit from more study. However, we already have sufficient information to move forward on a number of problems. I hope the final version of this bill will mandate clear action, first, using the data we already have and then, definite actions following the collection of additional data. We need action now to promote the long-term economic and ecological sustainability of our nation's fisheries and fishing culture.

Thank you very much.

Mr. GILCHREST. Thank you, Mr. Farr. We appreciate the time and scrutiny of our legislation, and basically it is a draft proposal for the reauthorization of this Act, and the reason for this hearing is so that we can improve the Act with the input from a variety of people so that all of us here will have some consensus and some pride that we move this Act in the direction of conservation so that there will be more of what everybody wants there to be more of, whether you are a fishermen or not a fisherman. So we appreciate the time you have taken to give us your input, and if there are any questions from Mr. Tauzin.

Mr. TAUZIN. No, sir.

Mr. GILCHREST. Mr. Grucci?

Mr. GRUCCI. No, sir.

Mr. GILCHREST. Thank you very much. Before I call up the next panel, there are chairs around the lower dais if anyone wants to sit down for the next hour or two.

Our next panel is Dr. William Hogarth, Assistant Administrator for the National Marine Fisheries Service, and Mr. Ricks Savage, Chairman, Mid-Atlantic Fishery Management Council. Gentlemen, welcome. Thank you for coming this afternoon. We look forward to your testimony. Welcome to the Nation's capital, and I realize that both of you gentlemen are extremely busy, so we will take your words with a great deal of sincerity.

Dr. Hogarth, you may begin

STATEMENT OF WILLIAM T. HOGARTH, ASSISTANT ADMINISTRATOR, FISHERIES, NATIONAL MARINE FISHERIES SERVICE

Dr. HOGARTH. Good afternoon, and thank you for inviting me here today. I am Bill Hogarth, the Assistant Administrator of Fisheries.

First of all, I want to commend you for your constructive efforts to reauthorize the Magnuson-Stevenson Fishery Conservation and Management Act. We think this is an extremely important effort that needs to take place and we look forward to working with you in any way we can to see this come to bear.

Two days ago we issued the latest status of the stocks report to Congress. The report shows a decrease in the number of fish stocks that are overfished as well as increases in stock sizes for those species that are under rebuilding programs. I think the Chair's report demonstrates that while some stocks still need scientific and management attention, responsible actions by the Councils and NOAA Fisheries are paying off since the Magnuson-Stevens Act was strengthened in 1996. While there is still progress to be made in some fisheries, overall fish populations are more plentiful than last year, proof that rebuilding programs work. Many fisheries like Georges Bank haddock and yellow tail flounder that were heavily overharvested 5 years ago are either healthy today or headed toward recovery. Fishery-management plans are now being designed to allow fishermen to continue fishing under strict regulations while the stocks continue to grow to stable levels.

The improvements recorded in this year's stocks report are evidence of the effectiveness of the agency's fisheries management approach in its rebuilding programs. Now we have to fix problems in

the remaining fisheries, strengthen that data for those species whose stock status is unknown, and target limited resources on activities that will most benefit fish stocks in fishing communities that depend on these stocks.

I think this is the third time I have come before the Committee on the Magnuson-Stevens reauthorization and related issues. Last year NOAA Fisheries convened a working group that considered potential problems in the Act. We worked from a list and we narrowed the list and discussed these with key constituents, including the Councils. Today I am pleased to discuss a few highlights of the working group and thoughts concerning the draft bill you have put forward.

First, the group has suggested exploring ways to improve the Secretarial review process and to strengthen the NOAA/Council consultation process. This will result in fewer emergencies and, at the same time, make them more effective and timely.

Second, the committee, like your Committee, we support improved data collection and management and consider it a priority. Various Federal laws require NOAA Fisheries to complete economic and social assessments associated with management decisions. Unfortunately there is a lack of adequate current economic and social data. We are already working closely with the States and others to share fishery data, but this is an area that needs attention.

Third, we believe provisions for observer data collection have not been adequately addressed in the Act. In 1996, SFA amendments resulted in significant progress of the North Pacific fisheries and held that the Secretary should be allowed authority to prepare monitoring plans for all fisheries as well as mechanisms to pay for them in an equitable manner.

Fourth, the Committee's draft bill addresses overcapacity. NOAA Fisheries is working on a national plan of action for the reduction of overall fishing capacity. The Councils and NOAA Fisheries have utilized management actions and buybacks to deal with the problem. However, improvements can be made to capacity reduction programs under section 312. We would like for the Committee to look broadly at this issue with us and see if we can find a solution. It is my belief that overcapacity is probably the number 1 issue we have to address if we are going to get the fisheries back to sustainable fisheries.

Fifth, in some federally managed fisheries, we believe we can manage resources with greater efficiency if the Councils and NOAA Fisheries have IFQs available as a tool. NOAA Fisheries concurs with the National Academy of Sciences' recommendation that the existing moratorium on IFQs should be allowed to lapse this October. Your proposed language provides a good starting point to reauthorize IFQs. We will work with you to ensure that language of the reauthorized Magnuson-Stevens Act is consistent with our proposal outlined in the 2003 budget and can be implemented most efficiently.

Next week we will have conducted a workshop in Galveston, Texas which should provide us with additional information for guidance as we go forward with IFQ. We will make this available

to you hopefully by May the 10th or 12th, in that neighborhood, so you can have it as you move forward.

I also have some thoughts on other issues included in your draft bill. First, I note the provision regarding overfishing and overfished definition that the Committee is considering is very similar to the concepts that we have been considering. These terms are used interchangeably, making it confusing for the public to understand the status of any given stock.

Dr. HOGARTH. Second, we recognize the importance of the focus in the essential fish habitat measures on areas most essential to fish stocks. The draft bill would amend the current requirement to minimize adverse impacts of fishing on essential fish habitat. We understand we have limited resources to dedicate toward habitat protection, and we are interested in working with the Committee to prioritize our activities in this area.

Third, regarding the application of the ecosystem principles, we think this is headed in the right direction and consistent with current law. However, we must move forward in a way that would not overburden current available resources.

Finally, although we have made progress at minimizing bycatch, that lacks precise reduction goals and provides little guidance on how to reduce nontarget catch and really what constitutes acceptable bycatch levels. Changes can be made such as implementing valid levels of mandatory observable coverage in key fisheries, incentives to reduce bycatch, increase bycatch reduction gear, research and development and cooperative agreements with States.

We appreciate the Committee's interest, and we are happy to work with you to improve the discussion draft language.

NOAA Fisheries needs to be more transparent and timely, more effective and service oriented. I have initiated a 5-year review of our implementation of the Sustainable Fisheries Act. Working with our Council partners, we are reviewing our priorities and addressing the 10 national standards, assessing gaps in their implementation and setting priorities and working at meeting the challenge of completing this implementation.

Mr. Chairman, I thank you, and I will be very happy to answer any questions.

[The prepared statement of Dr. Hogarth follows:]

Statement of Dr. William T. Hogarth, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

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

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

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

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

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

However, we also recognize that many in the fisheries constituencies have been concerned about many of the most basic concepts contained in the Act both before and after the Sustainable Fisheries Act. We believe that even some of the modest changes currently being discussed have the potential to greatly improve our fishery management processes under the Act.

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

Results of the NOAA Fisheries Working Group

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

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

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

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

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

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

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

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

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

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

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

Additional MSFCMA Reauthorization Issues

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

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

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

Several difficult and controversial issues remain regarding IFQs. These are broader than the Councils' prerogative and may require national level guidance to Councils and regions where they are used. Congress ought to allow the regional councils flexibility and discretion to address fishery-specific characteristics. NMFS is examining these and other IFQ issues such as foreign ownership, the collection of some share of windfall profits and/or economic rent, and caps on cost recovery fees. Your proposed language provides a good starting point to reauthorize IFQs. We would

like to work with the Subcommittee on how best to ensure the final language in a reauthorized Magnuson–Stevens Act is consistent with our proposal outlined in the fiscal year 2003 Budget and can be implemented and operated most efficiently.

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

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

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

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

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

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

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

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

Committee Issues

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

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

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

Essential Fish Habitat. We recognize the importance of focusing essential fish habitat measures on those areas which are, in fact, most essential to fish stocks. The draft bill would amend the current requirement to minimize adverse effects of fishing on essential fish habitat. Under this draft bill, the requirement would only apply to fisheries for which there is available information on the growth, reproduc-

tion, or survival rates within habitats or production rates by habitat B what our essential fish habitat regulations refer to as Level 3 or Level 4 data—or for fishing activities determined by a Council to jeopardize the ability to achieve maximum sustainable yield on a continuing basis. This type of conclusive scientific information does not exist for any of our fisheries, excepting a few salmon stocks for which there is some Level 3 or 4 information for small portions of their range in spawning rivers. We understand that we have limited resources to dedicate towards habitat protection and would be happy to work with the Committee to prioritize our activities to yield maximum habitat benefits.

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

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

Conclusion

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

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

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

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

Mr. GILCHREST. Thank you, Dr. Hogarth. Mr. Savage.

STATEMENT OF RICKS SAVAGE, CHAIRMAN, MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Mr. SAVAGE. Good afternoon, Chairman Gilchrest, members of the Subcommittee. I am Rick Savage, Chair of the Mid-Atlantic Fisheries Management Council.

Mr. GILCHREST. Is your mike on, Mr. Savage?

Mr. SAVAGE. Yes, sir. My written comments reflect the views of all eight Regional Fishery Management Councils. I am generally in favor of individual transferable quotas.

First, I would like to reiterate the position that the chairman of the eight regional councils have expressed to you last year by our former Mid-Atlantic Council Chairman, Dr. James Gilford. He testified that the consensus view developed in May 1999 in the 2000 Council chairmen's meetings was that the blanket moratorium on IFQs and ITQs should be lifted and that the Council should have those tools available as possible management options. IFQs and

ITQs provide fishery managers an option for assuring stakeholders long-term benefits of rebuilding programs.

There should be minimal national standards on transferability and the ability to charge fees, but councils should have the maximum flexibility to develop IFQs or ITQ programs which recognize the unique characteristics of specific fisheries. Since then, they have reaffirmed this position at their 2001 meeting.

Now I will tell you my personal experience with the surf clam and ITQ surf clam and ocean climber ITQ fisheries, which became the Nation's first ITQ program. My father was an ocean climber from 1949 until the mid-1980's. I started working with him when I was 15. I owned clam boats from 1964 until just before the ITQ program came in in 1990. The Mid-Atlantic Council initiated development of the Nation's first EEZ fishery management plan for these two resources at its first council meeting in September 1976 and implemented management measures in 1977.

By 1981, we were on the third amendment to the FMP. The surf clam resource had been significantly overfished prior to the Federal management, but by the early 1980's it was being rapidly rebuilt. Unfortunately, our effort-based management system was becoming rather Draconian. With initiation of the plan, we restricted fishing to 96 hours per week per vessel. We ratcheted down the allowable fishing time to not exceed the maximum sustainable yield target. But as the surf clam resource began to rebuild and as the catch rates climbed, we were obliged to further reduce fishing effort.

By 1985, allowable time was reduced to only 3 hours per week. We actually worked 6 hours every other week.

Effort management was clearly not working. ITQs were initially discussed by the Council and industry in the late 1970's, but it was not until the mid-1980's that nearly everyone agreed that the resource and the increase in efficiency of the vessels were—there was too much capital invested to support all of the vessels in the fishery. Overcapitalization and the cliché “too many boats chasing too few fish” can apply not only when a resource is overfished, but also when a resource is healthy.

In 1979, there were 168 permitted surf clam vessels. In 1990, the ITQ system was implemented and the surf clam fishery numbered 128 vessels. By 1992, the surf clam fleet had consolidated to 59 vessels and by 2000, there were only 31 vessels landing surf clams. That was just surf clams.

Industry consolidated itself. There was no multi-million dollar buyout by the Federal Government as there has been in the New England ground fish fishery. The industry capital and the fishery is now used much more efficiently as the average boat, which made 34 trips in 1990, made 56 trips by 1992 and made 69 trips in 2000. Individual surf clam vessels have greatly increased their production and thus the economic health of the individual vessels remaining in the fishery has greatly improved.

In 1990, the average annual catch of the surf clam vessel landed was about 24,000 bushels. The landing amount doubled by 1992, and by 2000 it was over 77,000 bushels.

Enforcement and compliance with the regulations were also areas which showed dramatic improvement following implementation of the ITQ program. Cheating under the prior system gen-

erally took the form of fishing longer than your allocated hours. Everybody fished on the back end, not on the front end. Poaching in the areas closed for nursery grounds was also a problem. These rules were very expensive to enforce, as they required Coast Guard cutter and aircraft to observe vessels at sea for purposes of detecting such violations.

With ITQ management the world changed. First, there were no more time limits. People could fish when they wanted, and they didn't need to race for the resource. This improved both safety and profitability. Fishing rights were no longer tied to boats. Industry could finally consolidate the fleet and use only as many boats as were needed to catch the quota. This brought tremendous savings to the industry.

Enforcement efforts were allowed to switch from costly at-sea operations to comparatively cheap dock-side enforcement as the clams were moved to the processing plant. This saved taxpayers large amounts in Coast Guard cutter and aircraft time.

Cheating fell dramatically for two reasons. First, people are a lot less likely to break the rules when they are finally able to make a decent living from their work. Second, the right to fish one's quota is very valuable, and they are put at risk if one is caught repeatedly. Hence, people are going to think twice before undertaking an illegal activity that if detected and penalized could result in the loss of their further income stream that an ITQ represents.

Finally, we as Council members could stop micromanaging the clam industry. Instead of trying to regulate what goes into an industry such as when people fish, where people fish, how people fish, what gear people use, what size boat people use, we could just specify by an annual quota what comes out of the fishery each year and leave the rest to the industry.

Right now the surf clam and ocean fisheries require very little government time to manage. Before the ITQ management, the Council had to address issues on a clam plan at almost every meeting.

ITQs are successful in the surf clam industry because the Council prevented overfishing with the initiation and management. There was extensive council, industry, National Marine Fisheries Service cooperation. The industry itself was vertically integrated and had a limited fishery. The industry provided excellent data through logbooks. NMFS devoted sufficient scientific effort toward the research, and finally there are minimal bycatch, discard and essential fish habitat issues.

The Mid-Atlantic Council takes great pride in its clam ITQ management efforts. More than once in the past decade, scientists at the Northeast Fisheries Science Center stock assessment meetings have labeled this the best managed fishery in the United States, if not the world.

It may be that not all fisheries are appropriate for this type of management, and it may be that ITQs are not a one-size-fits-all management tool, but give the Councils the flexibility to make that decision. Give the Councils the authority to use or not to use ITQ management options.

Our Council has discussed ITQs for other Mid-Atlantic resources and supports the pro-ITQ position of the Mid-Atlantic scallop in-

dustry. Our Loligo squid and tilefish fisheries, which are each limited to less than a hundred vessels, are basically single species fisheries, with the ideal candidates for this management approach. Congress should lift the moratorium and restore this very useful management tool to the Council.

I appreciate your having invited me, and I thank you for allowing me to express my views about reauthorization of the Magnuson-Stevens Act. Thank you very much.

[The prepared statement of Mr. Savage follows:]

**Statement of Ricks E. Savage, Chairman, Mid-Atlantic Fishery
Management Council**

RECOMMENDATIONS OF THE REGIONAL FISHERY MANAGEMENT COUNCIL CHAIRS
REGARDING MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT
REAUTHORIZATION ISSUES

MAY 23, 2001

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

Highest Priority Issues

- NEPA

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

- Section 305(f)...Judicial Review

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

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

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

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

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

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

The Sustainable Fisheries Act (SFA) required Councils to identify and describe essential fish habitat (EFH), but gave little direction on how to designate EFH. The EFH definition, i.e., "those waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity," allows for a broad interpretation. The EFH Interim Final Rule encouraged Councils to interpret data on relative abundance and distribution for the life history stages of each species in a risk-averse manner. This

led to EFH designations that were criticized by some as too far-reaching. "If everything is designated as essential then nothing is essential," was a common criticism. The Council Chairs believe that the current definition and descriptions of EFH serve a very useful purpose in the consultation process between NMFS and agencies that are responsible for permitting or carrying out proposed development projects in the marine environment. Those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity are all habitats of importance to each fishery stock, and the range of each stock from egg to maturity is overlapped by the ranges of hundreds of other stocks. The Council Chairs do, however, endorse the concept of using habitat areas of particular concern (HAPCs) as the next step in describing areas of EFH critical to certain life history stages for each stock, as proposed in the two Senate bills drafted in 2000. For years a number of Councils have established HAPCs to protect pristine coral reef habitats and spawning aggregation sites.

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

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

- Executive Order for MPAs

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

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

- Section 303(d)(1)...Rescinding the Congressional Prohibitions on IFQs and ITQs

Section 303(d)(1) of the MSA prohibited a Council from submitting or the Secretary from approving an Individual Fishing Quota (IFQ) system before October 1, 2000. More recently, through the fiscal year 2001 Appropriation Act, this moratorium on IFQs/ITQs was extended for an additional two years. If the reauthorization process is completed in 2001, the Council Chairs support rescinding the moratorium before the year 2002 deadline. The Council Chairs recommend that MSA be amended to provide maximum flexibility to the Councils to tailor IFQ programs to specific regional, social, economic, and fishery conditions. Councils should have clear authority to address transferability and ownership issues; include harvesters, processors, and communities in such programs; promote conservation; and include measures necessary to successfully monitor and enforce the provisions of such a program.

- Section 313(a): see also Section 403...Observer Program

The Council Chairs reaffirm their support for discretionary authority to the Councils to establish fees to help fund observer programs. This authority would be the same as granted to the North Pacific Council under Section 313 for observers, but not necessarily limited to use of ex-vessel value as the basis in setting fees.

- Endangered Species Act (ESA)/Marine Mammal Protection Act (MMPA)

The Council Chairs recommend that the Councils be identified, for purposes of consultation, as being action agencies under the ESA and the MMPA, thereby being able to participate in the development of biological opinions.

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

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

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

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

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

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

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

Other Significant Issues

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

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

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

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

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

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

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

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

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

The MSA specifies the collection of biological, economic, and socio-cultural data to meet specific objectives of the MSA, and requires the fishery management councils to consider this information in their deliberations. However, Section 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting "proprietary or confidential commercial or financial infor-

mation.” The NMFS should not be precluded from collecting such proprietary information so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analyses of fishery management regulations are not possible, preventing NMFS and the Councils from satisfying National Standard 2: “...conservation and management measures shall be based upon the best scientific information...”, National Standard 8: “...to the extent practicable, minimize adverse economic impacts...”, and other requirements of the MSA and the Regulatory Flexibility Act (RFA).

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

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

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

- Section 305(c)(2)(A)...NMFS Regional Administrator Emergency or Interim Action Vote

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

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

- Section 311(a)...Enforcement

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

- Section 312 (a)...Fisheries Disaster Relief

Purpose: to make available fishery disaster relief funds for fisheries being closed, or severely curtailed as a result of judicial decisions.

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

(a)...

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

(A)...

(B)...

(C)...

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

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

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

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

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

(b) CONFIDENTIALITY OF INFORMATION -

(3) Any information submitted to the Secretary by any person in compliance with any requirement under this Act that would disclose proprietary or confidential commercial or financial information regarding fishing operations, or fish processing operations shall be confidential information and shall not be disclosed, except...

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

• Bycatch Issues

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

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

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

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

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

Mr. GILCHREST. Thank you, Mr. Savage. I will start with Mr. Tauzin.

Mr. TAUZIN. Thank you, Mr. Chairman, and I want to thank the witnesses.

In regard to the recommendations you made, Dr. Hogarth, in terms of the Chairman’s draft, let me ask you a couple of questions regarding some proposals that we are interested in and get your focus on them. In regards to the term and the use of the idea—using the best scientific information available in making decisions regarding fisheries management plans, do you have any trouble with the notion that the—that idea that the best scientific information available should be information that is determined to be directly related to the specific issue under consideration?

Dr. HOGARTH. The only concern I would have, as you look toward ecosystem management, I think you have to look at the big picture than if you can take the fact that you are looking at the ecosystem and the data that is available for the—but I would be concerned if we didn’t look at the big picture.

Mr. TAUZIN. But in regards to looking at the big picture, shouldn't you be concerned about the specific issue under consideration?

Dr. HOGARTH. Yes.

Mr. TAUZIN. As the information relates to it in the process?

Dr. HOGARTH. That is correct.

Mr. TAUZIN. Second, should it be based on the statistically valid samples, such that conclusions can be drawn that are reasonable and not speculative?

Dr. HOGARTH. Well, I think the resources available, you know, we have to sample, to the best we can, do the surveys. And we try to supplement that we can check the cooperative research money that the Congress has provided. But I don't think the lack of data should prevent us from protecting the resource, no, sir.

Mr. TAUZIN. So you are saying that the best available information should not be based upon statistically valid samples?

Dr. HOGARTH. I think the—

Mr. TAUZIN. When they are not available?

Dr. HOGARTH. I think the goal should be always to get the best data that you can get and—

Mr. TAUZIN. You should get statistically valid samples whenever you can, right?

Dr. HOGARTH. That is right.

Mr. TAUZIN. So the term "best available information" can include statistically valid samples. You ought to go get them, shouldn't you?

Dr. HOGARTH. That is correct, yes, sir.

Mr. TAUZIN. Third, do you have any problem with those—that term "statistically"—"the best scientific information available"—do you have any problem with it being adequately and independently peer reviewed?

Dr. HOGARTH. No, sir. We are trying to get all that data peer reviewed.

Mr. TAUZIN. I think that is a good idea, too. Do you disagree that the information that is going to be the best scientifically available information should at least—you ought to try to collect it within a timeframe that is reasonably related to the specific issue under consideration?

Dr. HOGARTH. Yes, sir.

Mr. TAUZIN. There ought to be more recent information if you can get it, right?

Dr. HOGARTH. That is correct.

Mr. TAUZIN. So if you are going to use best scientific information available, you want to try to get recent information, statistically valid samples. You ought to at least include evidence, information regarding the specific issue under consideration while you may be looking at a broader picture. And should it also be consistent with information that is available from other reliable sources?

Dr. HOGARTH. I think all information available should be put on the table.

Mr. TAUZIN. See whether it makes sense with other things you already know, right?

Dr. HOGARTH. All the data should come to the table and be evaluated.

Mr. TAUZIN. And could it include but not be limited to anecdotal information collected from the harvesting and processing of fish? As long as you said that that wasn't enough, could you at least include as part of the consideration anecdotal information collected in such a process?

Dr. HOGARTH. Give me just a minute to explain this. I think anecdotal information is good to help you determine what may have taken place, but it is very difficult to put, you know, statistical valid—

Mr. TAUZIN. What I am saying is you wouldn't exclude it.

Dr. HOGARTH. No.

Mr. TAUZIN. I am going to run out of time so I want to hurry with this. Would you have any trouble in allowing each Council to establish, if it wants to, scientific review committees?

Dr. HOGARTH. No, sir. I think—

Mr. TAUZIN. Would you have any problem with giving the Councils the ability rather than to regulate the entire Exclusive Economic Zone but actually to look at habitat areas of particular concern so they can focus in on other marine activities that might be impacting an area of fisheries other than just fisheries?

Dr. HOGARTH. I am not sure if I quite understand that. You are talking about areas of particular concern?

Mr. TAUZIN. Well, right now the whole Exclusive Economic Zone has now been defined as the fisheries habitat, essential fisheries habitat. What I am suggesting is wouldn't it be helpful if the committees were allowed to look at habitat areas of particular concern within the entire economic zone so they could focus in on activities that may be harmful to fisheries?

Dr. HOGARTH. Those are most critical life stages, yes.

Mr. TAUZIN. It might be worth doing, would it not be?

Dr. HOGARTH. That is correct.

Mr. TAUZIN. I am going to run out but I want to get this one in if I can. The term "maximum sustainable yield" has generally been used in the way that law and the implementation has worked to mean the greatest yield and the best year, the best environmental condition. Do you or will you concede to me that depending upon environmental conditions, environmental conditions change, that the notion of maximum sustainable yield could be impacted by things other than fishing? That is going to be impacted by environmental conditions, could it not?

Dr. HOGARTH. That is correct.

Mr. TAUZIN. Should not that term take that into consideration in the way we implement the law?

Dr. HOGARTH. It should and I think it does in many instances, yes.

Mr. TAUZIN. If it doesn't adequately, you wouldn't have any problem with us trying to make sure it does?

Dr. HOGARTH. I like the terms you were using.

Mr. TAUZIN. That is a good answer. You obviously want to see it. But I am just trying to get the principle in mind. You don't have a problem with the term taking into account, as it probably should, the environmental conditions that might affect maximum sustainable yield?

Dr. HOGARTH. No, because I think the harvest levels we try to put in place reflect that, and the environmental conditions—

Mr. TAUZIN. And, Mr. Chairman, I know I am out of time, but we always ask that cumulative effects be examined on the state of the fisheries, on the habitat. Well, we say, don't just look at what one guy is doing or what one person is doing or what one activity does. You want to look at all of these activities together to see if the cumulative effect of these activities adversely affects the habitat.

Would you have any problem when the law and the implementation of the law has to examine the effects on the economic side, on the commercial fishing side, that it also have the same responsibility, looking at cumulative effects of other activities or perhaps other decisions?

For example, with the Department, they are making three different decisions, each one of which taken alone may not have a significant impact on the commercial fishing community or the commercial fisheries, but collectively the three decisions may be devastating. Do you have any problem with our law at least asking the Department and asking them to at least look at the cumulative effects of its multiple decisions upon the commercial fisheries?

Dr. HOGARTH. No. I think that is part of the assessment we try to make now, particularly on a community basis.

Mr. TAUZIN. I know you try to do that now, but would you have any problem if we made sure that you always did it?

Dr. HOGARTH. As long as you give us the mechanism to gather the social and economic data necessary to make it.

Mr. TAUZIN. Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Tauzin. I think Mr. Tauzin very eloquently described, in my judgment, an approach that is necessary to manage our fisheries, which is in a comprehensive way looking at more than just the impact of fishing. That is what an ecosystem approach is.

Mr. TAUZIN. But if the Chairman would yield, likewise I think we also have—if we are going to have a balance I think we have always wanted in this decisionmaking, we have to take the same sort of holistic approach when we examine the effect of various decisions upon commercial fishing or the commercial fishing community, so that we take into account environmental changes that would affect maximum sustainable yield, would take into account how recent the information is and how statistically valid the samples were and how reasonable the conclusions were based upon other known factors, how several decisions collectively might impact.

Those are all things I think that require fairness and balance in this process, with the goal in mind always—you have said it best—let me get your name. Mr. Savage. You said it best in the end. If this is all going to work right, the commercial fisheries industry is going to be as sustainable as the fisheries, because they both need one another.

Mr. GILCHREST. That is what this is all about.

Dr. HOGARTH. Just one last thing. I think the key to this, too, is to make sure that we manage fish areas, and if the environmental conditions are changing drastically and we cannot control

those, you cannot let the fishing go uncontrolled, because then you will get stocks to the point that you cannot rebuild. So I am saying you have to be very careful that you look at the fishing impact on top of or in combination with the environmental. We can't control many environmental things that have taken place, and if you don't do that, then we could just let the fishing go and then you would have stocks so overfished that you wouldn't have any economic balance out of it, period.

Mr. TAUZIN. If the gentleman would yield, I didn't suggest that. All I suggested was that if you use as a criteria defined maximum sustainable yield, the yield that can be achieved under the most extraordinarily perfect environmental condition, if that is your target all the time, it is an unnatural target. There are average environmental conditions. There are highs and lows, just as there are in the affairs of men and women and the affairs of life, and the environment goes up and down. But if you always use this as the only goal, as the measure in which you are going to relate all of your decisions and you don't take into account that there is an average, some mean somewhere, a golden mean that the Greeks talked about in all of their writings, if you don't take that into account somewhere, you have got an artificial is all I am saying.

No, you should never let the fishery stock be managed on the basis of the worst environmental conditions either, because you lose them all and you will lose the commercial fishing industry with it, as well as the great stocks of fish.

Thank you, sir.

Mr. GILCHREST. I thank you, Mr. Tauzin. Since there is a potential that Mr. Tauzin is going to drop a bill dealing with the Magnuson Act and the issue of maximum sustainable yield which is so critical. In fact, to a large extent, it is one of the pillars upon which the fisheries depends. I would offer an invitation to speak at length with Mr. Tauzin about a number of people's perspective on that term "maximum sustainable yield" and how we can use that, with some flexibility, with the concept of the precautionary approach that will in fact improve the fishery by ensuring that there are more fish and the commercial industry can be even healthier.

Mr. TAUZIN. Again, we can't conduct our negotiations like this, but I took Mr. Hogarth through a number of the provisions that we would like to see some attention paid in the process of marking up a new bill, and they are included in a potential draft of the bill that we would file. And I would certainly welcome the opportunity to negotiate with the gentleman on those terms and to indeed allow him to explore ways in which even our own ideas might be improved.

Mr. GILCHREST. And I say that as we move forward with the legislation, so that by the time we reach the House floor there will be a good deal of mutual understanding as the process moves forward.

Mr. TAUZIN. Thank you.

Mr. GILCHREST. The gentleman from New York, Mr. Grucci.

Mr. GRUCCI. I am glad that you asked that question, Mr. Tauzin, because I represent a district that commercial fishing represents about \$150 million to the economy, and I represent a district that has Montauk Point in it and Orient Point in it, and our fishermen are out in the ocean, Sag Harbor, which you know very well. It is

a beautiful district, and its commercial fishing is a very healthy part of it, and I must admit I have come to this argument a little late, in the sense that I have dealt with it now for about a year and a half since I became a Member of Congress, not recognizing the huge, huge obstacles that lie in the face of our commercial fishermen, and all that they want to do is try to make a living.

They said to me very compellingly—and I have to tend to agree with them after hearing their argument—that no one is more concerned about the health of the fishing industry or the stocks, the quality of water than they are. That is how they put their kids through school. That is how they put a roof over their head. That is how they pay their bills, make their living. They certainly don't want to deplete their inventory, and they certainly don't want to pollute the asset that gives them that.

So they are very concerned about it, too, but they have a real problem with these terminologies of "maximum sustainable yield," and the way it was kind of described to me, it is almost a goal that you can never accomplish, you can never reach. Somewhere along the line something was established, and the battle now goes, how do you get there every year, and each year the fishing industry has less and less opportunity to fish a stock that may very well be on its way back.

One of the things that was brought out to me—and I will get to a question in just a moment for you, Mr. Hogarth—is that when the data was being collected for the determination on the sustainable yield and whether or not the fishing stock was coming back, was that what was being harvested in boats that were being used for purposes of gathering this data—they were working next to commercial fishing boats, and what was coming up from the vessels that were designed to provide the catch for the data was woefully less than that which was coming up from the commercial fishing boats.

The argument being made is that commercial fisherman know how to fish and that perhaps they should be brought into that process, as well as in the data gathering section, and it is just a thought I throw out to you, because their argument was pretty compelling, that if two boats are working in the same area, in the same—and looking at the same stock and what is coming up on deck is completely different, on both, somebody is doing something right and somebody is doing something wrong, and as a result of that data it may give you a false reading that the fishing stock is indeed being depleted, overfished, and as a result, you know, brakes need to be put on and safeguards need to be put in place. And you may be hurting a fishing of a stock that may not truly be in danger of being depleted.

So I just offer that to you to consider in the process that you undertake to gather your data. But I do have a couple of questions. One of them is why did the National Marine Fisheries Service decide to stop the Cooperative Science Survey Program with the commercial fishermen, along the Northeast coast? I know you agree that stopping these cooperative surveys would give NMFS less information and not more in determining the accurate fish population.

Dr. HOGARTH. I am not sure personally which survey you are talking about, because we just completed a monthly survey with the New England fishermen, and we are initiating a sea bass program also. There was a survey on ground fish that we did not agree on the design, and we are still working with them on that. And we have gone to the Council with some of the money they are getting proposals for, additional cooperative research. But if you tell me a specific program, I will check it out and get back with you.

Mr. GRUCCI. I will be more than happy to do that, and I know ground fish is something that has been on the fishermen's minds, because it is something that is being taken away from them, and I think that may very well be the survey that they are referring to.

One more question, Mr. Chairman, if I do have the time. While I understand the importance of protecting all the fisheries and support the fair and complete application of current law, it is paramount to take into account the economic vitality and well-being of many fishing communities along the coastline.

Commercial fishermen are already subject to many complex laws. Recently there has been a lawsuit in Boston regarding the Northeastern Fisheries Management Council. It is disturbing to see that the options that were drafted by the National Marine Fisheries Service essentially closes off the northeastern coast to fishing of various species.

How can commercial fishermen continue to work when their hands are regularly being tied by the regulations and rulemaking of NMFS? That area they showed me on the map is tantamount to Vermont, Maine, Connecticut, Rhode Island and New York. Just shift that off the mainland and put it out in the ocean, and that is the area that has been closed off to fishing as a proposal by you all in that lawsuit. How can you justify that?

Dr. HOGARTH. The lawsuit—the proposal or the lawsuit came about through mediation required by the judge. There were, I think, nine members that went forward and seven of the nine agreed with the mediation. The area that I think you are talking about, there were two areas that were heavily concentrated with small cod, which is the problem in the area, and we closed the Gulf of Maine—southern part of the Gulf of Maine and then one area called Cashes Banks due to the number of fish and the bycatch problems in that area. The judge decided to close two other areas that were not closed in this mediation. It was her determination that those areas were as important as the area that we closed and they were necessary to rebuild. We have that under consideration now, but we have no choice but to put those in place to keep the fishery open.

Under amendment 13, which is being designed and implemented now by the Council process, which will take approximately another year, all of these restrictions are being evaluated to do amendment 13, and so we could have an opportunity to refine and look at how this will be done in amendment 13.

Mr. GRUCCI. Thank you, Mr. Chairman. You have been very gracious with your time.

Mr. GILCHREST. Thank you, Mr. Grucci.

Mr. Savage, you made a number of positive statements based on your experience in the quahog clam industry dealing with ITQs, and we are looking at certainly lifting the moratorium to allow the Councils to develop ITQs.

Based on your experience with ITQs, do you have any concern about the concentration of a few entities controlling the greater percentage of the ITQs in any fishery?

Mr. SAVAGE. Based on what I have seen in the clam fishery, no, absolutely not, because it went just the opposite. When the initial ITQ allocations were given out in 1990, the biggest shareholder of all was Borden's, and Borden's had a big presence in the fishery. They have been there for many, many years. They bought Snow's Canning Company, and there is no more Borden's today in the fishing industry. Borden's is gone. The other big ones were—Doxsee was a big company. They are gone, and all of these big companies—American Original was a tremendous big company, and they are gone, and all of those shares that they had have been bought up by little people. There is more little people—you know, the little people that are in the fishery that you all worry about being bought up, they are actually the buyers. They are not the sellers. There have been a few little ones that sold, but by and large, the big companies are gone.

Mr. GILCHREST. Can you give us any specific recommendations for criteria that we would put into the Act that the other Councils may follow in order to prevent any concentration?

Mr. SAVAGE. Not really. We didn't do anything before, and it worked very well, and I don't see—you know, I just don't see that happening. Everybody worries about it, but it is sort of like worrying about the big bomb. It hasn't happened yet and I don't see it on the horizon.

Mr. GILCHREST. Do you have any concern or would you agree with an ITQ that had a sunset to it, let us say 10 years? There is no sunset to any ITQs in the Mid-Atlantic quahog or clams fishery, but would there be any concern that you might have if in the Act we set up ITQs that did have, let us say, for example, a 10-year sunset, for it to be reviewed, to be reissued?

Mr. SAVAGE. Well, what you have done then if you do that, you have destroyed the value of it. Who is going to buy something and spend probably a 10-year payout on it and then in 10 years have it have no value? It has got to be held for something down the road. We took out half the boats almost overnight just by consolidating, and people were willing to buy, because they saw it as worth something, but if you are going to say you can have it for 5 years or 10 years and then take it back, a person wouldn't spend the money to buy it.

Mr. GILCHREST. Dr. Hogarth, any comment on sunseting of ITQs or concern about concentration of ITQs in other councils?

Dr. HOGARTH. I have heard some concern about the concentration, you know, as far as controlling price. If a couple industries could own the whole fishery, that would be more of a control for prices and this type of thing. As far as the sunset, in your bill is the first time we have heard that mentioned, and I think there is some concern about the value of the permit. Once you do that, then will people really want to buy it?

Some people may say that is a good idea, because one of the problems with IFQs now is they have become a \$60,000 permit or something, and they shouldn't—there is some concern about the price they get to. I personally think we should look at the concentration, the number or percentage it would have.

I think that the Congress could ask for a report on how effective they have been without really having a sunset and then take action based on the report of the effectiveness and how many were established and what was accomplished.

Mr. GILCHREST. Do either of you have any comment about processor shares for ITQs?

Mr. SAVAGE. I do. I am opposed to processor shares. I think they shouldn't have it. We had—before the ITQs came into the surf clam fishery, you could easily send—it was a deal where you could send two truckloads of clams to a plant. The guy could just look at you. He shucked the clams. They were there and they were having them. He would say, you know, they were really poor, and I am—I just—I can't pay you \$10 a bushel for them. I will give you 8, 7. He would give you whatever he wanted to give you, and with the advent of the ITQs, all of that changed, because you said we were very dependent on who we sold to. There aren't a lot of processors. You don't sell surf clams just anywhere. You sell them to a processor, you know, that has a plant and is able to shuck them. And before the ITQs, we were at the mercy of the processors, and with processor shares I see that coming right back again. If you have got a quota and I am a processor and you have caught your quota, I will say, yeah, I will let you catch them, but they will be 2 bucks. And you could lay to the dock if you want to or you can catch them. We are going back 12 years if you want to do that.

Mr. GILCHREST. Dr. Hogarth?

Dr. HOGARTH. Well, I think as an agency we have some real concerns about the processor shares. I have looked at some of the data that was presented I think at your last hearing. The professor had done some work on the West Coast with some of them. We are continuing to look at this and discuss this issue, because I think it is an extremely important issue, but I am concerned about what it does to the price and to the fact that—you know, the freedom of fishing, of selling. It is sort of saying that the process—it takes X to process, then it has government to come from a certain fish window, and you have got to determine how he gets it. So that certainly gets into a lot of the freedom to fish and freedom to sell, and there is some concern there.

Mr. GILCHREST. I understand. Thank you.

Dr. HOGARTH. I understand you say it happens and I think we need to look at further, And that is what we are trying to do next week, also.

Mr. SAVAGE. Could I say one last thing on that? There is nothing to stop a processor from buying right now. Any processor can buy ITQ allocation if they wanted. They are not precluded. What you are talking about is giving it to them now or what—any new thing in the Act would be just an awarding of the processors a share.

Mr. GILCHREST. Do you think we should give—should another approach be for us to give the Council the option to allow processors to be involved in ITQ system?

Dr. HOGARTH. I personally think that is an option that should be looked at. We recommended that at least we put into the Magnuson to make sure the processors are considered fisheries. There is some concern there whether the language, the definition as it is now in Magnuson, would include processors as being eligible as a fishery.

So I think that should be done, and then the Councils would have the option to look at it then.

Mr. GILCHREST. Mr. Savage?

Mr. SAVAGE. I think the Council could handle it if you wanted to do that.

Mr. GILCHREST. Well, I have a few more questions, but I don't want to take up the bulk of the time here.

Mr. GRUCCI, do you have any other questions?

Mr. GRUCCI. No, Mr. Chairman. I am just listening.

Mr. GILCHREST. All right. I am going to sort of pretend I am on a second roll here. I don't know if Kevin wants to hit the green light again or not.

There has been an interesting proposal floating around about having the Councils continue to have authority over allocation, and for the Secretary to have authority over conservation, and I would just like to get your comment on that. Dr. Hogarth.

Dr. HOGARTH. There has been a lot of discussion recently about the effectiveness of both the National Marine Fisheries Service and the Councils in managing the resource and rebuilding these stocks, and one of the concerns was that there is tremendous pressure on the Councils to commercial fisherman—and that we should look at a mechanism that would take some of the pressure off the Council, so to speak, and have a scientific determination through the science and through a scientific committee that would say that the amount of harvest that would come out of the resource should be in this range, and then the Council had the right to then allocate that catch or allowable biological catch.

I think the concern with that is that—that I have heard expressed, because I am probably one of those that you may have heard discuss this based on comments that I have heard—is that it takes a lot of the Council's considerations, deliberations away from them, so to speak, and that they are now just a body that will allocate among a few people but not really look at the big picture. I think it was put on the table as a discussion of how we as a group, both the National Marine Fisheries Service and the Councils, should do a better job, and I think to do a better job we have decided internally that we have to work closely with the Councils and we have to give the Councils more direction up front, not at the end of the process.

And that is our goal, to be more of a team process with the Councils up front and scoping and looking at alternatives and hopefully that we can—and saying no if we have to. I mean, I think sometimes the Councils have thought we were second-guessing them. We said no, but I think we have to look at the national standards at what Congress has directed us as the Secretaries to do, and I think if we do that we may not need that type of a situation.

Mr. GILCHREST. I see.

Mr. Savage.

Mr. SAVAGE. I speak for myself as a Council member and not as a chairman and certainly not representing any other Council, but if that is what you intend to do, I would rather go home. It is just we are finished. If we get to do nothing but the allocation and just say, OK, have somebody else determine all the numbers and everything that is going to go and then just say, OK, you guys now get to throw it out, we are finished. I mean, it is over. So pat us on the head and send us home.

Mr. GILCREST. All right. Thank you very much.

In our draft proposal we have included sea birds as a bycatch, and Mr. Young has expressed his opinion on that. Some have suggested that we not only include birds as bycatch but we include marine mammals as bycatch. Now, it has been discussed that marine mammals are protected by the Marine Mammal Protection Act.

Dr. Hogarth, do you agree with sea birds being considered as a bycatch in the reauthorization, and do you have any feelings on marine mammals being also considered as bycatch?

Dr. HOGARTH. I do agree that birds should be included for several reasons. Several of the birds are endangered, and now fisheries do interact. We are not responsible for birds under the Endangered Species Act and the National Migratory Bird Act. The Department of Interior is. So then we have to consult with them on the fisheries and what is taking place.

It is much better that the Council have that to look at from the beginning. I think it makes the process work better. It is not an afterthought that may end up delaying the fishery opening or having someone else get involved in determining what measures should be in place. I think from a national standpoint, it is important to us, because our fisheries are sometimes minor players in this, but they are players, and if I am not having that right, so to speak, in our fisheries, it is very difficult for us to go forward and argue with other countries that they need to reduce their bird bycatch or bycatch of marine mammals and this type of thing. It helps us as part of our work, and I think I have no problem with birds.

I think marine mammals are protected under the Marine Mammal Act, and the Councils need to look at that, which we encourage them to do now.

Mr. GILCREST. Dr. Hogarth, you don't think it is redundant—

Dr. HOGARTH. No, sir.

Mr. GILCREST. —that that is put into that?

Mr. SAVAGE, any comment on that?

Mr. SAVAGE. In the Mid-Atlantic area, we don't have that much interaction with birds anyway, so I am not that familiar with it, and it has never come to us as a problem before. So I really shouldn't speak to it.

Mr. GILCREST. All right. One other comment—or question. In the Act we are looking at trying to understand this concept of ecosystem fisheries management, and we have a 2-year study to take a look at it, a 1-year study to fill the gaps and then a 2-year implementation of the knowledge but no specific criteria for a timeframe in which a fisheries management plan must be an ecosystem approach.

One of the things we have been discussing is—among others—are there any Councils in either of your opinions that would, let us say, be ready to go as a pilot project or an ecosystem fisheries management plan in the next 3 years?

Dr. HOGARTH. We have one ecosystem plan that is out for review right now, and that is one done by the West Pacific Council on coral reefs. We have had many Councils talk about it, but to be honest with you, with the resources available and the problems we now have to correct our NEPA problems and process problems to hopefully get us out of court as much as we are in court, I am concerned about the additional work that will be put on the Councils to do this in that timeframe.

I think we all are working toward ecosystem management. I think the agency is working with the Councils, and we plan to have a workshop very soon, national workshop, to look at the implementation of ecosystem management. But I think we need to discuss this part with you a little bit more and make sure we understand and it doesn't get it into a predicament where we just get more lawsuits than we have now, and that is one of the concerns we have with that provision at the present time.

Mr. GILCHREST. Mr. Savage.

Mr. SAVAGE. Chairman Gilford, who was the chairman before me, in the last couple of months of his term, he appointed an ecosystems committee, and I reconstituted that committee when I was elected chairman, and we do have a committee. Could we have a plan ready in 3 years? Probably not. We were just I think at this point—you know, we are still trying to—the committee is still trying to get themselves up to speed on what it would take, what it would mean and where it would have to go, and really I wouldn't stick their necks out and say they would be ready in 3 years, but we are working on it.

Mr. GILCHREST. I see. Thank you.

Mr. Tauzin, we sort of started a second round. So before we move on, do you have any questions?

Mr. TAUZIN. No.

Mr. GILCHREST. I have another question.

The complexity of an ecosystem management approach I think is well appreciated by those of us on both sides of the aisle on the Committee. But we would like to firm up this commitment, since everybody seems to agree that an ecosystem fisheries management plan is probably or likely the best thing we could do to preserve fisheries, bring them back, make them healthier. And so I am wondering if either one of you would have a suggestion, not that we want to accelerate too fast so this whole big thing just collapses in lawsuits, because we are not ready to do it in 3, 4, 5 years, but is there—therefore, for example, a suggestion that a statement or language be put into the national standards and section 301 to be revised to emphasize the importance of ecosystem management? Is that something that would be a good idea or—and I shouldn't say or—and should each Council be required to develop an overall umbrella statement that considers the interrelationships of all of the fisheries that the Council has under its management, something stronger, for example, than is in the draft bill right now that will move us in this direction without the concerns of waste—we are

not wasting but putting our energies in lawsuits and in fact maybe even putting some type of timeframe in the language for the implementation of ecosystem management plan?

I guess I gave you three questions, the national standards, an umbrella statement and a timeframe, Mr. Savage.

Well, let me ask you this, Mr. Savage, before you just answer that question, and I know you just came off a pretty rough couple of weeks. The language that we have in the draft bill now dealing with the studies on ecosystem management, do you find that reasonable? Does it go too far? Does it not go far enough?

Mr. SAVAGE. Well, I think it is reasonable. I am not sure it goes too far, but we are still—let me remind you, we are still fighting the effect of the last 5 years from the lawsuits we have had on our plans from the SFA. You know, we are burdened under that. We are still amending all of our plans to get the essential fish habitat requirements from the SFA in there, and it is just we are way behind the curve, and I think everybody else is, too. We are up to our neck in lawsuits.

Mr. GILCHREST. All right. We want to work with you on that.

Dr. Hogarth.

Dr. HOGARTH. I think our concern is what do all of the groups that we deal with, commercial, recreational, environmental and general public, really think ecosystem management means and does? It could be very comprehensive. In fact, we have looked internally at what would it do to implement a full ecosystem management plan. I think you would be somewhat astonished at the amount of money it would take if you really want to do full. We now have 600 and—still 650 species that we know very little about, on account of how we do—you know, the money to do surveys. In fact, ground fish right now, which is very important to us, we do surveys every 3 years. And so I think we have to look at the priorities of where the money goes, and I think we all want to get the ecosystem management approach.

I am concerned that if we move too fast, we will kill that program, somewhat like I think the controversy that surrounded the essential fish habitat. The essential fish habitat has not caused the problems that a lot of people think. If you go back and look at the number of projects we have looked at and the impact it has had, you know, it has not caused projects to shut down or caused great delays. It has caused some mitigation and some changes in projects to make them better.

I just don't want to see us move with the speed without the money to do it right and to have the resources it takes. I think it would be good for Congress in this bill for us to sit down and try to look at criteria quickly or something like that that the Congress could put in here to have us to work forward with the goals, to develop criteria within a certain number of years, which ones you go to, which is the most important in the data collection, the type of data collection and that. But I don't want to see it drop, and I hope you don't take this as being negative, because I think as an agency managing this resource, I think we all feel that if we could get the ecosystem management—we could switch over overnight and be there, I think it would be better off for everyone concerned in the

long run, but it is a matter of getting out of the hole we are in and getting to this start of a new approach.

Mr. GILCHREST. Just one last question. Part of the ecosystem management approach would be collecting data, which is always a critical issue. Can both of you give me your opinion on who should have the authority or some combination thereof to establish an observer program, the Secretary or the Councils?

Dr. HOGARTH. Well, I personally think it should be the Secretary with the cooperation of the Councils. I think it should be both. I think the Councils, if they choose not to do it for certain reasons and that information is necessary for bycatch or carrying out the mandates that Congress gives us, then I think the Secretary should have the authority to do it. But I think the Councils should be involved in that. We don't want to take their authority away, but I think if for some reason they decide not to, and it is very obvious from the scientific standpoint for data collection and other mandates of the Congress in the Magnuson-Stevens or any other laws we are working under that we needed that data, then I think the Secretary ought to have the authority to do it.

Mr. GILCHREST. Mr. Savage?

Mr. SAVAGE. We have been working very hard on cooperative research, and we have invested a lot of time and effort into our set-aside programs and all of that to collect data. And I don't think it ought to be—I think it ought to be a shared obligation, if you will. I am not in favor of taking it all one way or the other.

Mr. GILCHREST. Thank you.

Mr. Tauzin.

Mr. TAUZIN. Mr. Chairman, you know, you have inspired me to at least make one comment to Mr. Hogarth. All of us want to make sure you have adequate resources to do these jobs correctly, but I just want to put something on the record. It doesn't help the agency when it makes that claim to us when we look at some of the raw data that is collected by the agency to back up some of its decisions and find that some of the data has been arbitrarily discarded so that the results are arbitrarily skewed.

Now, you can deny that happens, but when our fishermen tell us it is happening and they see it happening on test trials and test runs, then we go out and look at the raw data and find indeed that some runs were discarded just arbitrarily where there was, for example—I will give you a specific when we are looking at some of the raw data, on some of the runs on some of the TEDs issues that were so controversial in my district, and some of the runs indicated some rather substantial losses of catch, and those runs were simply discarded.

In fact, the Service actually came out with a conclusion that carrying a TED, which allows for an opening in the net to allow a turtle to escape, actually enhanced the number of shrimp caught, that having an extra hole in the net produced a result where more shrimp were caught than if you didn't have a hole in the net.

Now, most normal people would consider that a rather inaccurate conclusion, but you got to it by discarding arbitrarily those runs which produced an abnormally high loss of shrimp catch. We uncovered that. We exposed that, and we never got an adequate explanation.

And so the people we represent, the people that Congressman Grucci is talking about, who simply want a fair shake, who just want to make sure the information is accurate when you do make a ruling, when you do make a decision, look at those things happening, and they say don't you dare give those people more money. Don't you give more money to do that to us again until they promise you they are going to quit doing that or they promise you they are going to take adequate and fair samples, they are going to really come up with honest conclusions that don't compromise common sense.

Dr. HOGARTH. I am not aware of that, but if you will give me the specifics, I will get you an answer.

Mr. TAUZIN. Oh, trust me, I will get them to you.

[The information referred to follows:]

Question for Dr. Hogarth from Rep. Tauzin

Allegations made by shrimp fishermen that NMFS technical work on the effects of TEDs on harvests is flawed by an unscientific selection of samples.

Answer: Fishermen were concerned about missing data on shrimp loss estimates used in the proposed rule to amend the TED requirements published October 2, 2001. They allege the NMFS report on shrimp loss data did not contain information from 58 tows and that the lack of providing data from all observed tows may reflect selective reporting. The data set in question resulted from testing conducted in 2000. That data set did not include unsuccessful tows. Unsuccessful tows are those that include problems which would bias the data in a manner unrelated to the TED, i.e., fouled tickler chain, torn nets, and catches dumped together. As a result, data gathered from such tows can not be used to make a judgment on the functioning of the TED. However, all tows are recorded by the observer and any problems are noted.

Some shrimp fishermen believe that the shrimp loss data gathered by NMFS on the double cover flap TED are flawed in many respects. Since publication of the proposed rule, NMFS conducted further testing of the double cover flap TED. During the height of the shrimp season, from January through August, 2002, the double cover flap TED has been tested during normal commercial fishing operations against current commercially available TEDs for shrimp loss aboard 12 commercial shrimp trawlers in the Gulf Area, and one trawler in the Atlantic Area. In the Gulf Area, seven vessels fished in inshore and near shore areas (two in Texas, two in Louisiana, one in Mississippi, one in Alabama and one in Florida). Offshore testing was conducted along the northeast coast of Florida by one vessel, the pink shrimp grounds of southwest Florida by two vessels, Louisiana by two vessels and Texas by one vessel. In order to obtain statistically valid data, a minimum of 20 comparative tows were conducted during each trip. Testing has included the shrimp season openings in Texas, Louisiana, and Mississippi. A total of 305 comparative tows were conducted. The double cover flap TED experienced a 0.1 percent shrimp gain when compared to current commercially available TEDs, which is not statistically different from zero. Excessive shrimp loss due to back washing and large catch loads were not experienced during the tests to date. Additionally, several vessel captains have remarked that the double cover flap appears to work better in excluding debris such as sticks, grass, and jellyfish.

Dr. HOGARTH. I am aware of the problem we have with the protocol in looking at the bycatch reduction devices in the Gulf, and we changed that protocol because there was a problem. If you got certain parts through, you had to discard some samples, and it didn't work as well and we went back and redid—

Mr. TAUZIN. Well, let me just ask you—and I will. I will bring you the information. I will bring you this information how these runs were discarded.

Mr. GILCHREST. Well, Mr. Tauzin—

Mr. TAUZIN. I am sorry, sir?

Mr. GILCHREST. I was saying you could bring the information to the Committee as well and we could have a hearing on it.

Mr. TAUZIN. We did already.

Mr. GILCHREST. We had a hearing on it?

Mr. TAUZIN. Yeah. It came out of Committee, I believe, but we will bring them again. But the point I will make is I will bring you those things and I will show you the conclusion where the Department actually concluded that you are going to catch more shrimp if you carry a device that creates a hole in your net than when you don't have a hole in your net, and you tell me if somebody didn't have a hole in the head when they wrote that conclusion. I will be extraordinarily disappointed if you don't come to the same conclusion we did.

It is that sort of thing that sends people up the wall, and, you know, those are the people we have to go back to and say, you know, every November send me back to Washington because I am a good Representative. They say, you let that happen to us? Put yourself in our shoes. Imagine going back to those same people who were faced with a regulation based upon that kind of conclusion and try to defend it and try to defend their government to them.

Dr. HOGARTH. That is why we try to make this more open and communicative to prevent this type of thing.

Mr. TAUZIN. I mean, look, if it is a fair evaluation, if the samples are accurate, if there is real information that determines a management decision is critical, that is good for all of us. It is good for the environmental community, it is good for the fisheries and good for the fishing community. But when those kind of things happen, it destroys the credibility of the program. It makes it difficult for folks like us who want to help you with the money to do it right to come back and help you.

Dr. HOGARTH. I am unaware, but I will get you an answer. That was before my time, but I will still get you an answer.

Mr. TAUZIN. God's sake, if you are employing a burglar, don't arm him if he is going to come in our house. That is the answer we get.

Thank you, sir.

Mr. GILCHREST. Mr. Grucci.

Mr. GRUCCI. Thank you, Mr. Chairman. I don't want to sound like I am piling on to the issue, but—

Mr. TAUZIN. Pile on.

Mr. GRUCCI. —it is exactly what I was trying to say earlier. You have two fishing boats working side by side. They knew that the way that they were capturing the data for purpose of determining the size of the stock was wrong. They were trolling far too fast. They knew that they would never capture anything in the nets. I am talking about the professional fishermen, and indeed I hear the same stories where they say—when they get stuff that comes up on the boat, they throw it over the side and therefore their numbers are skewed.

Now, I don't have the data on that, so I can't provide you the specifics on it, but I will share with you this situation that Chairman Tauzin talks about is not unique to Louisiana. It is happening in New York, and if it is happening in New York and Louisiana,

I have got to believe it is happening elsewhere. It might even be happening in Texas.

So the point is, is that these folks are only asking for the opportunity to make a living, and we are making it more and more difficult on them, and they are saying we are making it difficult on them artificially. They want the fishing stock protected. They want it preserved. They want it to be there for them and hopefully their children.

Today I was out at a seminar where NADS stood up and said, listen, I don't have a college education but I have \$2 million tied up in my couple of boats, and all I do is go out and fish and now they are going to close off half the ocean to me. They are getting information that is inaccurate. They have got the sustainable fishing quotas that are artificial. You can't reach them.

Is it because they want to put us out of business and have fishing farms where we get the fish from? Is it because they want to put the American fishing industry out of existence and the foreign vessels can come in and fish the same waters and aren't subject to those same quotas?

I mean, these guys have a lot of problems out there, and we are creating a lot of it for them.

Dr. HOGARTH. Let me just respond real quick, and I will make this a quick response. I think the cooperative research that Congress has provided money for is an excellent program, and it is working.

One of the real problems is commercial fishermen are excellent at catching fish. They know how to catch fish. They know how to catch legal sized fish. The surveys that we do as an agency for scientific purposes are not targeting the size of the fish. We are looking at recruitment. We are looking at small fish, and it is a difference. What we have to do is work with them, and that is why we supplement that like we did with monk fish. We were able to really find—you know, supplement that data and find out how well off the population really was. So it is a matter of us working with the industry and talking to the industry, and hopefully we can start that dialog and communication. And it is beginning, and I think we have to continue that. But no way does this agency want to shut down the commercial fishing industry in the U.S., but we do have to take some—I think we have got some major problems with the amount of capacity and the status of some of these stocks and that unless we do a better job of managing I don't see the commercial industry having a bright future, and I think we have got to get these fisheries to a sustainable level so that those guys who have an investment can continue to fish.

Mr. GRUCCI. We will be the first to tell you that they are in total agreement to that. Where the difference lies, because they don't believe that the data is accurate based upon what they see every day out on the water. One of the things that they brought to my attention, which, you know, for the life of me I can't understand, and maybe you can enlighten me on it, is that the quota is established and now all of a sudden they are out there fishing and they reach their quota. They pull up their net. They have more fish in it than what their quota is. They have to throw it over the side. They are throwing the fish over the side that are dead. I don't understand

the logic in that, because if they come back to port with that, they are going to get murdered. Their boat could be confiscated. There could be huge fines involved with them. They could be put out of business.

So they are out there fishing and the next thing you know they are throwing fish over the sides of their boat because if they get caught with it on their boat, they are going to be subject to significant fines, which kind of leads you to believe the next question has to be asked is if it is such an endangered species, how come they are getting so much of it?

Dr. HOGARTH. Well, I think you brought up two issues. I think No. 1 is that bycatch is one of the major issues that we deal with, because, you know, when you reach—and particularly in multi-species—when you reach a level that we feel is safe to be harvested and then you continue to fish, you catch these fish that you shouldn't be catching and you throw them over dead. That impacts the future of the recovery.

Dr. HOGARTH. Fishermen see—and we agree with fishermen. For example, in New England groundfish, the stocks are improving but they are not at the level of stability that is sustainable, and so that is what is the difference. They are out there every day. They say they are improving, we say they are improving, but they think we ought to take off all restrictions and we have to address the back issue. It is a major issue in this country.

Mr. GRUCCI. I hate to interrupt you, but I can only speak for the fishermen that I represent. They don't want you to eliminate all rules and regulations. They just want them to be on a level playing field.

Mr. GILCHREST. Mr. Grucci, we have a vote and I think what we will do is we will recess, and Dr. Hogarth and Mr. Savage, your time with us will be done for this afternoon. And I strongly appreciate your patience and your testimony, but, Mr. Grucci, just very quickly, no foreign fishing vessel can come in to U.S. waters, so your fishermen are safe regardless of what happens there. And the observer program is important to collect the data so that your fishermen can feel secure that NMFS is giving out the right data.

And, Dr. Hogarth, and I apologize for this, but I did have one other quick question that give a yes-or-no answer that deals with gear type. Mr. Tauzin brought up the TEDs, and there are a number of issues dealing with essential fish habitat when we deal with just a whole range of gear types. Is there some way that we could privatize the development of gear type for the fishing industry? As opposed to having NMFS do it, can we privatize that and ask American ingenuity to create a specific gear type for specific fisheries?

Dr. HOGARTH. That could be done. The DSCAPE funds that we have, the solicitation for proposals for the next year, is just going to the Federal Register. One of the top priorities there is gear, and so the fishermen or anyone can give us proposals under that scenario. Plus we have a gear group in Pascagoula that will work with any of the commercial industry. I think the commercial industry particularly knows what to do and has a lot of ingenuity, and I think it is just giving them the events that they need to do something and give them some help; yes, sir.

Mr. GILCHREST. Mr. Savage.

Mr. SAVAGE. I think the gear technology, the improvements come right off the boats. It doesn't have to come from anywhere private or from the government. The guys that are fishing are doing it every single day and they are the ones that when something new like that comes up, something new in the dredge, it comes from some guy on a boat. It doesn't come from someone down the road selling that thing.

Mr. GILCHREST. Mr. Savage, Dr. Hogarth, thank you very much. We are in recess.

[Recess.]

Mr. GILCHREST. The Subcommittee will come back to order. I understand one or two people have to leave by a quarter to 6 to catch a plane. We will try to expedite the process. If we are not done at that point, whoever you or they are, please feel free to leave. We will try to stick to the 5-minute rule during the opening testimonies and get to the heart of the matter during the questioning. Thank you, gentlemen, for coming. We appreciate your attendance and we look forward to your testimony.

Mr. GILCHREST. Mr. Houde, you may begin your testimony.

STATEMENT OF EDWARD D. HOUDE, PROFESSOR, UNIVERSITY OF MARYLAND, CENTER FOR ENVIRONMENTAL SCIENCE

Dr. HOUDE. I thank the Chair—

Mr. GILCHREST. Can you move the microphone over there? Thank you.

Dr. HOUDE. I thank the Chair and Subcommittee for providing me this opportunity to comment on the discussion draft of the Magnuson-Stevens reauthorization, and I commend Chairman Gilchrest for the high priority that he is giving to this reauthorization and hope that the comments I am making will identify some science issues that should be considered in strengthening the proposed legislation. My comments will briefly address some of the issues in the draft bill. My written testimony provides more detail.

Given the uncertainties of stock assessments and the uncertainty in the effectiveness of management actions which, by the way, often do not reflect the quality of science and management but, rather, the random and unpredictable behavior of marine ecosystems, I believe there is a need for more dedicated language on precautionary approaches in the reauthorized Act. There is a need because marine ecosystems are complex and never will be completely predictable. Complexity requires a broad knowledge of how ecosystems function, and also a healthy respect for their variability and complexity. Firm language in the Act to recognize and acknowledge the need of precautionary approaches would be welcome.

Overcapacity and excess efforts, these are the global problems that have been recognized as the major management issues in marine fisheries. It is good to see the problem recognized and the recommended actions highlighted in the discussion draft. The National Academy Committee in 1999 came to the same conclusions and recommended that this should be a major emphasis of renewed management in the United States. In fact, they said that had there been an effort-to-control effort for most of the overfished

single-species fisheries in the past, that the need for more extensive, complex, and broader ecosystem approaches that we now are faced with would have been less of an issue had we reduced effort in overcapacity in the years past.

I was pleased to see the language regarding IFQ management in the discussion draft. Many resource economists and managers, of course, have been recommending that Councils have the discretion to apply IFQs as an option at least to be considered in fishery management, and it was good to see that language in the Act. There are potential pitfalls, of course, but overall it is a good measure that will allow IFQ management plans to be developed at Council discretion. I think it will help control capacity and effort, the two things that are identified as the major problem.

Ecosystem-based approaches, I noticed in the previous discussion that we were talking about ecosystem management; I prefer to talk about ecosystem-based approaches. Ecosystem management is a formidable concept and idea. Ecosystem-based approaches, on the other hand, implies that in an incremental way, we could move toward managing those critical components of the ecosystem, and this seems entirely feasible to me. I think that the discussion draft is not as firm as it could be in some respects with respect to these kinds of approaches. I am an advocate of such approaches, multi-species management, admittedly difficult, and ecosystem-based approaches, even more difficult, are on the horizon. Many of these approaches can benefit fisheries today, helping to overcome the uncertainties already mentioned. The Ecosystems Principles Advisory Panel in 1999 that NMFS put together strongly recommended development of such umbrella plans, fishery ecosystem plans. The discussion draft of your bill recognizes the value of this conceptual advance and recommends a process that will lead to research on them but not the implementation. It will take 3 years after reauthorization to even reach a point where recommended research will be presented to the Secretary by each Council. To me this seems too long. I think it is possible to move faster.

Essential fish habitat, I am in the camp that thinks that essential fish habitat ought to be defined better, that habitat areas of particular concern ought to be defined. The seascape is not homogeneous, and individual species and species groups have preferred and required parts of marine ecosystems that are critical for production and well-being. The HAPC designation has been used by Councils and could be formalized in the Act. Some have recommended that a new standard be developed for EFH. I am not certain that this is required, but recognition of importance of habitats in both a broad sense and a more specific sense I think will help in applying ecosystem approaches.

Marine protected areas are another idea that doesn't appear in the draft language. This is an especially explicit way of complementing traditional kinds of management. It is unlikely that marine protected areas would be a stand-alone tool, but the National Academy Committee on MPAs and the Ecosystem Advisory Panel thought that there were many benefits of MPAs that could be applied now. Some recent applications of MPA approaches have been quite positive. Many of you are familiar with the successes of MPA implementation on Georges Bank with respect to scallops, for ex-

ample. Admittedly, such closures need to be implemented with care and evaluated to confirm their efficacy. I believe that supportive language to undertake research and to move toward implementation of MPAs, where appropriate, should be included in the Act.

There are data needs. The draft discussion recognizes this. Again, the National Academy, in the Year 2000 report, laid out a long list of data needs that could help to improve fishery management in the United States. I have summarized some of these in my written testimony, but the big idea that they came up with that I would support is that there is a need for a National Fisheries Information System. NAS recommendations could ensure improved data accessibility for stock assessments, socioeconomic analysis, and environmental research.

Finally, the National Academy also addressed the possibilities for government-academic partnerships. They made many recommendations to alleviate manpower shortfalls in NMFS. Primary among the recommendations was an idea to expand and develop partnerships between NMFS and academic institutions to train experts and to conduct collaborative research. Cooperative marine and education research programs have been instituted to an extent on the East Coast of the United States and an expansion of the CMER concept would be helpful to improve habitat research, stock assessments, and ecosystem approaches to fisheries management in particular, while educating the next cohort of fishery scientists to address these new problems.

I want to thank you, Mr. Chairman, for allowing me to testify on this discussion draft. I know you have been sensitive to the needs of commercial, recreational, and environmental interest in fisheries and marine resources management and that developing a strong and effective reauthorization of the M-S Act is high on your priority for the 107th Congress.

If I can answer questions here or later as you work on this bill, I would be pleased to respond.

Mr. GILCHREST. Thank you very much Dr. Houde.

[The prepared statement of Mr. Houde follows:]

Statement of Edward D. Houde, Professor, University of Maryland Center for Environmental Science

The Need for Reauthorization

The 1996 reauthorization of the Magnuson–Stevens Fishery Conservation and Management Act (the Act) took important steps to improve management of fish stocks in the U.S. EEZ. It did not free us of the problems of overfishing and associated overcapitalization in many fisheries, but its declarations that overfished stocks would be rebuilt, that overfishing was not acceptable, and that fisheries management in general would become more risk-averse under the Regional Councils have had an effect on stabilizing stocks, curtailing declines, and beginning the rebuilding process in some stocks. More steps need to be taken. Proposed amendments in the present reauthorization draft of MSFCA acknowledge the need for additional legislative action aimed at improving fish stocks, the fishing industries, and ecosystems that support fisheries. I am cautiously optimistic that marine fish stocks can be managed sustainably. Even with perfect legislation, however, achieving and insuring sustainability will not be easy tasks.

I appreciate having the opportunity to address the Subcommittee and to present my views on the discussion draft for reauthorization of the Act. My comments mostly represent personal views, particularly on science-related issues, and not those of the University of Maryland's Center for Environmental Science (UMCES). However, my recommendation to add language to the Act that establishes Cooperative Marine

Education and Research (CMER) programs between the National Marine Fisheries Service and seven universities is an initiative supported by UMCES.

Recent History, Precautionary Management

Emerging paradigms in fisheries management on a global basis hinge on the “precautionary approach” that has been adopted as a standard (FAO 1995). The ethic espoused in this approach advocates setting risk-averse targets as “biological reference points” rather than more liberal “thresholds” or “limits” that had been recommended historically. The precautionary approach is accepted in principle and is being applied in many fishery management plans, although the present Act and the draft discussion are mostly silent on it. An explicit acceptance of the precautionary approach and a definition of it in the Act would be helpful to promote the ethic, both in principle and in effect.

Fishing Effort, Overcapitalization and Alternatives for Fisheries Management

Excess Effort and Overcapacity

Language in the discussion draft (Sec. 3 and Sec. 4) that addresses reduction of overcapacity and overcapitalization is welcome. These problems have been recognized repeatedly as the major problem in controlling and managing marine fisheries. This is true globally as well as in the United States. The National Academy report, “Sustaining Marine Fisheries” (NAS 1999a) urged solution of this problem to allow U.S. fisheries to be managed sustainably. There is excess effort invested in many of the nation’s valuable fisheries. Serious allocation, conservation, and economic problems too frequently accompany the excess effort and capacity of fisheries, eroding potential benefits and profits, and threatening sustainability. Language in the draft, if it generates actions to reduce capacity, can be beneficial to some marine fisheries.

Individual Quotas and Community Development Quotas

Limiting entry and establishing individual quotas (IQs) have been debated vigorously in the U.S. (e.g. Hanna et al. 2000) and globally. A NAS study (1999b) was guardedly positive on the role of IQs and recommended them for specific fisheries at the discretion of the Regional Councils. The accumulated evidence from a scientific perspective supports the implementation of IQ management under appropriate circumstances, recognizing the need to consider initial allocation of shares, the threat of monopolies developing, and the rules for transfer and duration of IQ permits.

It was good to see language in the discussion draft that will allow Councils to develop new IQ fisheries (Sec. 12), and which addresses the issues that most often concern those who are opposed to such limited-access approaches to management. I expect that declaration of IQ programs and implementation will continue to be contentious in many marine fisheries. The requirement to hold referenda among stakeholders before an IQ plan can be instituted is included to democratize the process, but choice of those included in a referendum is to be determined by the Council, with guidance from the Secretary. The “guidance” from the Secretary, in the absence of specific directives in the Act, will be critical in determining effectiveness of IQ implementation. Firmer, more prescriptive language on the referenda criteria would be helpful.

Benefits of IQs, in addition to controls on effort (and fishing mortality), are probable. For example, IQ-based management is potentially more ecosystem friendly than open-access participation in some fisheries. This may be true, for example, with respect to fishing impacts on habitat and with respect to bycatch reduction.

Ecosystem-Based Approaches and Issues

Ecosystem-Based Management

The proposed language in the discussion draft (Sec. 6) may not be strong enough to insure effective actions by the Councils. It urges managers to “support and encourage efforts to understand the interactions of species,” which is important and could have a positive influence on “better stewardship and sustainability of coastal fishery resources.” But, there are no firm directives that lead to implementation and no explicit approaches mentioned. For example, the NMFS Fisheries Ecosystem Principles Advisory Panel (1999) and the National Research Council’s Committee on Marine Protected Areas (NAS 2001) strongly recommended incorporation of protected areas and other spatially-explicit approaches for fisheries management. These approaches tend to reduce the dependency of management on conventional effort and landings controls towards more ecosystem-sensitive approaches that can be favorable to protect essential fish habitats, reduce bycatches, and protect threatened species.

Fisheries Ecosystem Plans

The amended MSFCMA (1996) recognized that marine fisheries management has been too little concerned with marine ecosystems, their stability, variability, and sustainability of high productivity that will assure sustainable and profitable fisheries. Accordingly, Congress mandated that an Ecosystems Principles Advisory Panel be established to undertake an analysis of the extent to which ecosystem principles were being applied in fisheries and to recommend actions that should be undertaken by the Secretary and Congress to expand application of ecosystem principles in fisheries management. The report of the Panel (NMFS, 1999) included many specific recommendations and a major conceptual recommendation—the proposal that each Council develop a Fishery Ecosystem Plan(s) within its region. A FEP is envisioned to be a document that serves as an umbrella under which individual Fishery Management Plans (FMPs) would reside and to which they must adhere. Adopting the FEP concept is likely to insure that many individual FMPs will be more ecosystem-sensitive because the function and structure of ecosystems would be highlighted when managing an ecosystem's constituent fisheries.

I was pleased to see language in the discussion draft that addresses the need to develop criteria and to move towards establishment of FEPs (Sec. 6). However, the language may not be sufficiently firm and the timetable to establish criteria seems far too long. As written, after two years Councils are to complete development of criteria for FEPs and then within one additional year must (with the Secretary and Congress) select specific marine ecosystems within their regions to “develop and begin to implement research plans” that address issues identified in the Fisheries Ecosystem Panel report (NMFS 1999). The approach is good, but the timetable is not. After three years, the Councils need only begin to develop research plans. When will management measures based on ecosystem principles be instituted? I recommend that language in the discussion draft on ecosystem-based management be reconsidered to require more timely actions, and that explicit recommendations be included to plan for implementation of FEPs.

Essential Fish Habitat

The SFA (1996) contains specific language on Essential Fish Habitat (EFH), directing Councils to identify such habitats in their respective FMPs and presumably to implement measures to protect such habitats to insure healthy fisheries. The definition of EFH as it now stands, however, tends to be so broad that it is questionably useful in the management process, although the ethic that supports broad consideration of EFH is appropriate. It is reassuring that there is recognition of the broad habitat needs to support marine fisheries, but the language in the discussion draft of the Act does not clearly recognize that some habitats are especially important to protect and produce the many and diverse stocks of fish being managed under the MSFCMA. I believe that this is a deficiency of the discussion draft. We should be moving towards identifying the specific types of habitat that are critical for some species or species groups, which have been termed Habitat Areas of Particular Concern (HAPC), and which deserve particular attention in managing the stocks. Some additional consideration is necessary in the discussion draft, which then should be followed by addition of more specific language on EFH that provides guidance to managers, in addition to highlighting the criteria for, and kinds of, habitat-related research that are required. I am not certain that a specific National Standard needs to be added to the Act, but this possibility should be considered.

Bycatch

The discussion draft includes strengthening of recommendations and guidance for bycatch reduction in marine fisheries (Sec. 9). This language is very welcome in the Act. Bycatch can be wasteful and potentially damaging to marine ecosystems. There are ways to address the problem and to reduce the amount of “technical interaction” in fisheries that will lower the catch of non-targeted organisms. Observer coverage and modification of gears can document and reduce bycatch. Research on methods and approaches to reduce bycatch already are being implemented; the language in the discussion draft will reinforce and strengthen these actions.

The language in the discussion draft that specifically allows distribution of dead bycatch to charitable organizations, while acceptable in principle, could be misdirected if it induces subtle shifts in fishing strategies and locations by fishermen to areas where bycatches may be high. Under “Bycatch Reduction Gear Development” (Sec. 408), it seems remiss to not clearly specify the “Amount of bycatch, if known” in the list (page 12, lines 23–25) for fisheries with bycatch problems (page 12, lines 23–25 of discussion draft). This would highlight the magnitude of the problem in those fisheries where bycatch is problematical.

Marine Protected Areas

Closed area management is not new in fisheries, but nevertheless it has been used rather sparingly. The concept of marine reserves or other closed areas, with various restrictions on fishing and other human uses, was recognized in the 1996 reauthorization of the MSFCMA and has been on the planning tables of Regional Councils in recent years. Some marine areas have, in fact, been closed to some kinds of fishing effort (e.g. parts of Georges Bank). A detailed study of MPAs by the National Academy of Sciences (NAS 2001) broadly evaluated their potential, including their use as a tool in fisheries management. The NAS Committee concluded that MPAs have a role in fisheries management. In a broad sense, setting aside areas to protect spawning stock can serve as a buffer against the uncertainty of obtaining accurate stock assessments, i.e., a kind of insurance. More specifically, the NAS Committee recommended that MPAs for fisheries management should be designed as parts of broader networks of MPAs that are zoned for permitted activities, and that the networks be embedded in a broader plan of coastal ocean management that considers the full spectrum of human activities and need to protect ecosystem structure and function. The NAS Committee recognized and emphasized that stakeholders (fishers) must be included in every stage of MPA development, from discussion of concept through design, and continuing into the evaluation and monitoring phase after implementation.

MPAs are not a stand-alone solution to fishery management problems but their role, which is likely to increase, should be recognized. Language in the pending reauthorization of the Act could be added to address the issues and identify probable benefits of MPAs, to specify research needs, and develop criteria for MPA implementation. The impetus to do this is underscored by the Executive Order issued by President Clinton in May 2000 directing federal agencies to develop networks of MPAs in the coastal ocean.

Data and Information Needs

The issues of data availability, collection of data, and data management for stock assessment and management purposes represent key needs for improvement of fishery management and, to an extent, are addressed in the discussion draft (Sec. 5 and Sec. 20). A National Academy of Science Committee (NAS 2000a) developed a comprehensive list of detailed recommendations for data collection and management specifically addressed to Congress, NMFS, or the Councils. That committee recommended implementation of a national Fisheries Information System (FIS), which remains an important need and could be emphasized in the reauthorized Act. The summarized and consolidated NAS recommendations, many of which should be considered for inclusion in the reauthorized Act, are:

- Congress and NMFS. Standardize and improve fisheries data collection and management methods and procedures nationwide. Develop a Fisheries Information System (FIS).
- Councils. Be more proactive in determining needs and requesting appropriate data and models to improve potential for success in management. This recommendation is applicable to both commercial and recreational fisheries.
- Congress. Make commercial fisheries data more accessible to agencies for stock assessment scientists by amending laws relevant to confidentiality.
- NMFS. Develop more cost-effective ways to collect and manage data, including data collected for recreational fisheries in the Marine Recreational Fishery Statistics Survey (MRFSS) surveys.
- NMFS. Develop new data collection and stock-assessment methods, including those that consider ecosystem functions and processes, habitats, and environmental variability.
- NMFS. Involve stakeholders (fishers) in the data identification and collection processes more than at present. Better cooperation with stakeholders will improve quality of data. Reports of data analysis and assessments should be made available to stakeholders on a regular basis.
- Congress and NMFS. Insure that NOAA has a strong and capable fleet of research and survey vessels for fisheries data collection and assessment.
- Congress and NMFS. Increase the level of observer coverage on fishing vessels to improve data collection and interpretation.

Congress, NMFS and Councils. Institute better and more complete monitoring and evaluation of marine ecosystems and EFH. Build this information into stock assessments.

Cooperative Research and Education

Many of the needs for fisheries science, the requirements for management action in the existing Act, and the implementation of recommendations in the discussion

draft will require increased funding and also additional staff and personnel trained in quantitative fisheries science, ecosystem science, economics, and sociology. At present, the National Marine Fisheries Service (NMFS) cannot meet its demand for stock assessment specialists and has too few social scientists and economists on its staff to effectively provide management information and advice to the Councils. A National Academy of Sciences workshop (NAS 2000b) on manpower needs in NMFS explored the need for such experts and made recommendations to NMFS to help recruit new talent. However, it is not certain that such needs can be met without significant stimulation of effort and funding by Congress. Furthermore, the needs for stock assessment scientists and socioeconomic experts on Council staffs and in academia (to train the new cadre of experts) is problematic, a kind of Catch-22 since virtually all experts in quantitative fisheries science at the PhD level who are U.S. citizens now take positions in NMFS, leaving a minuscule pool of talent for Council staffs or for academic institutions to recruit into faculty ranks. Language in the Act that served to insure programs and funding to address the research and educational needs of NMFS and other research institutions would be an excellent investment for sustainable fisheries and ecosystems that support them.

Cooperative Marine Education and Research (CMER)

To meet the challenges posed by issues of resource management in the marine environment, a partnership between NMFS and universities has been proposed to conduct research on coastal fisheries and to help resolve the manpower shortage in NMFS of highly-trained fishery scientists, marine ecologists and socioeconomic experts. The Cooperative Marine Education and Research (CMER) program already exists in four universities (University of Massachusetts, University of Rhode Island, Rutgers University, and College of William and Mary) through funding from the NMFS Northeast Fisheries Science Center. The Director of each university's program is a NMFS scientist who administers the program and participates in research and education activities at the academic institution. CMER could benefit immensely from a permanent authorization in the Act and by expansion to include the universities already participating plus three others (University of Maryland, University of New Hampshire and Stony Brook University- -the State University of New York). These universities constitute a consortium that will partner with NMFS to meet research and educational needs of the agency and the country.

The following language is proposed for inclusion in the Act: "Cooperative Marine Education and Research- -For the purposes of developing adequate, coordinated, cooperative research and training programs for living marine resources, the Secretary may establish a Cooperative Marine Education and Research Program. Under this program the Secretary is authorized to enter into cooperative agreements with universities and institutions of higher learning in order to conduct research in areas that support conservation and management of living marine resources. Research conducted under this program may include biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, and other ecosystem components, and the linkages between fish habitat and fish production and abundance."

Summarizing

There are many science-related issues that need to be addressed in the reauthorization process. The problems of fisheries science and management, and recommendations to solve them, were nicely encapsulated by Pamela Mace in her keynote address at the 2nd World Fisheries Congress (Mace, 1997). Mace's essay is global in scope, but most of the issues she addresses are relevant to U.S. fisheries. She believes that overcapacity is the single largest problem in fisheries management on a global basis, and that control of excess effort is essential to have healthy fisheries. The draft language in the reauthorized Act now recognizes this issue and proposes actions to alleviate the problem. Also, Mace (1997) states, "I contend that, to date, lack of national policies and institutional failures have been more limiting than science, management or data. Sound national and international policy and effective institutions are essential for providing the necessary environment to foster good science, management and data collection programmes." The reauthorization of the Act must provide the legislative guidance to support NMFS and the Councils that will allow them to conduct the science, recommend effective management measures, and then implement regulations to assure healthy and sustainable fisheries. Amendments proposed in this discussion draft of the Act, if supplemented by additional recommended actions and firmer, more prescriptive language, will help to insure that those goals are met.

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Mr. GILCREST. Mr. Hayes.

**STATEMENT OF ROBERT G. HAYES, GENERAL COUNSEL,
COASTAL CONSERVATION ASSOCIATION**

Mr. HAYES. Thank you. I am the general counsel of the Coastal Conservation Association, and, as such, I would like to give you the views of their 80,000 members on your draft. There are a number of those views that have been included in my testimony, and I don't want to just repeat those, so what I will do is pick four or five which we think are of significance, some of which haven't been touched on today, and deal with those directly.

Mr. GILCREST. And we will include your statement in the record.

Mr. HAYES. Thank you. Let me start with the definition of "by-catch." we have no position, frankly, on the issue of whether you include birds, and certainly no objection to it. We do, however, have an objection to having bycatch apply essentially to recreational fishing. Recreational fishing as an activity by and large is a bycatch fishery. The connotations in the statute suggest that bycatch is a bad thing that ought to be minimized or avoided. So what you are basically saying in the statute to the average recreational fisherman is, the activity that you are engaged in, including all catch and release activities which are generally viewed as a pretty positive conservation measure, are something that we ought to be avoiding as a matter of national policy. Frankly, NMFS has wrestled with this issue. We wrestled with it in certain plans, the highly migratory species plan on the marlins. It is an intractable problem, frankly, and it results from the existing definition. And what

we would like to do is work with you on developing a definition that clearly preserves the conservation ethic that you are trying to preserve, but which doesn't label an activity incorrectly as something that ought to be avoided and minimized. That is the first one.

The second one, I would like to suggest, that I saw your study on HMS fisheries dealing with fostering the international compliance with ICCAT. We think that is a very positive step forward. Frankly, we passed the resolution here only about 2 months ago dealing with multilateral compliance with international conservation measures by ICCAT. We are going to Tokyo, I think at the end of this month, to further some discussions along those lines; and, again, this is one of those things we would like to get back with the Committee after we get back and include—it turns out I am the Recreational Commissioner—but I would like to include the other commissioners, including the Federal Commissioner, Dr. Hogarth, in an active discussion of how we can move forward in this arena. This is something that is sorely needed for the international compliance on those measures.

The third thing I would like to do is applaud you for your introduction, a concept that we have embraced as long as I have been involved in the Coastal Conservation Association, which has now gone on about 20 years; that is, we believe very strongly that recreational sale of fish is not recreational fishing. Recreational fishermen are out there to conduct recreation. The sale of those fish is a commercial activity. It should be accounted for as a commercial activity. It is believed by certain members and, frankly, by almost every recreational group I have talked to, as something that ought to be prohibited. You ought to prohibit the sale of recreationally caught fish. And so I was glad to see that in your draft.

Just briefly on ITQs, CCA has long been a proponent of the use of ITQs. We think the Councils ought to have the broadest possible discretion to determine how to use them. To imagine that the Federal Government—and not to chastise the Congress, but maybe worse yet—that the Congress could actually conceive of the right system to apply in a specific fishery is a little unimaginable to me, frankly. They are very complicated, they are not useful in every fishery. There are different economic and social and biological concerns that have to be taken into place. These are probably the most complicated thing you can do in fishing, and, frankly, the institution that ought to be looking at them is the Councils, and they ought to be looking at them pretty much in an unfettered way. That is sort of our sense of the thing.

Last, I want to mention two things. One, you have a provision in here which has a research provision for oysters, which I found very interesting and very commendable. But I got to a certain provision of it and I was a little bit taken back, and that provision dealt with the no fishing area which you would have the Federal Government impose on citizens of the State of Maryland in internal waters in the State of Maryland. I would suggest that that is the only time that has ever been done, at least to my knowledge, and that it was an extraordinary thing to do.

I took the liberty of talking to the DNR folks over in the State of Maryland, and they were slightly astonished, frankly, to see it. And I was reminded by the fellows I talked to in Virginia that we

fought a war over this at one time. So that provision I thought was a little bit surprising.

Second, it does bring up something that Dr. Houde has just brought up which I think is an important consideration. We think this concept of marine protected areas, which some people, particularly in the environmental community, love to refer to as no fishing zones, is something that ought to be shaped with some guidelines in the Magnuson Act. We are not opposed to no fishing areas. We are not opposed to closed seasons. We are not opposed to time and area closures. In fact, recreational fishermen are, by and large, in favor of most management measures.

What we are opposed to is arbitrarily excluding the public from a public resource when there is no scientific basis for it and there is no public participation in the decision that was ultimately made. That is something that from a recreational fishing standpoint simply can't be allowed, and the reason for that is pretty simple. The economic value and, frankly, the recreational value of recreational fishing is that you have access to a resource. You can limit me the number of days, you can tell me what size I can catch, you can put slot limits on, you can tell me I have got to release every fish, you can tell me I have got to take the barbs off the hooks, you can tell me I can only use a fly rod.

Mr. GILCHREST. Or a canoe.

Mr. HAYES. Or a canoe. And none of that is going to bother me. When you tell me I can't go down the Sassafras River and cast to a fish that is there, even though I might have to release it, that is something that annoys recreational fishermen and it is something that we would like to get very clear with specific guidelines in the Magnuson-Stevens reauthorization.

I would note there is a bill, Freedom to Fish Act. We love the name. And it does include some guidelines. We would be perfectly be happy to talk about those guidelines and the extent of those guidelines, and we would come to visit with you and have a chat about it.

[The prepared statement of Mr. Hayes follows:]

**Statement of Robert G. Hayes, General Counsel,
Coastal Conservation Association**

Good Afternoon, my name is Bob Hayes and I am the General Counsel for the Coastal Conservation Association ("CCA"). I would like to thank the Chairman for this opportunity to address the Committee on the reauthorization of the Magnuson-Stevens Act. First, I would like to tell you a little about CCA and how it operates. Second, I will address some of the issues the Chairman has addressed in his draft bill and finally, I will raise some of the issues of concern to recreational fishermen that are not addressed in the draft bill.

The Coastal Conservation Association is the leading marine recreational fishing group in the United States. Formed by a small group of sportfishermen in Houston in 1978, CCA has grown to a fifteen-state operation representing 80,000 members. Each of our states operates somewhat independently focusing on issues in the state that are important to marine recreational fishermen. However, like so much in fisheries management, conservation issues encompass a regional and national perspective; therefore, CCA learned long ago that federal and international fisheries management were just as important to the local marine recreational fishermen as the conservation of the most local fish population.

CCA pursues conservation policies set by our state and national Boards of Directors. These boards are made up of active volunteers concerned about the health of the nation's fisheries. CCA has been active in a number of conservation issues in the last twenty years, including: all of the east and gulf coast net bans; game fish

status for redfish; speckled trout; tarpon; striped bass; river shad; marlins; spearfish; sailfish; and the reduction of bycatch through the use of closed areas and technology. Our Maryland chapter is actively involved in the health of the Chesapeake Bay and management of its valuable recreational species. Sherman Baynard testified at your recent field hearing on oyster bed protection in the Bay.

MAGNUSON-STEVENSON ACT

Our comments on the draft bill are organized in the same fashion as the draft; therefore, the order of our comments does not suggest any emphasis by CCA.

Report on overcapitalization. As a first step toward right-sizing the commercial fleets in this country this report should be extremely useful. We suggest, however, that the report's geographical breadth of "United States waters" be clarified to ensure that state as well as federal fleets are included. For example, if only federal fleets were included, the list would exclude the Texas inshore shrimp fleet, which the state has not only determined to be overcapitalized but is in the process of reducing through the buyback of half of the permits in the fleet.

We further suggest that this study be done every five years so that future overcapitalized fleets can be identified.

Buyout Provisions. While section of the Sustainable Fisheries Act ("SFA") has been almost dormant since 1996, there have been buyouts and proposed buyouts through Congressional action. There are few groups in this country that have spent as much time and effort in developing acceptable buyout provisions for commercial fisheries as CCA. In addition to our efforts to reduce the size of the pelagic longline fleet, recreational fishermen are the sole source of funds for the present reduction of the Texas shrimp fleet. What we have learned is that the stumbling block is not the buyout itself but rather the source of the funds to execute it. We suggest the creation of a fund specifically for the purpose of buyouts that could be funded through an accumulation of all of the penalties now paid for fisheries violations and any funds collected as fees for licenses or Individual Transferable Quotas ("ITQs").

Data Collection. Recreational fishermen are not opposed to improving the collection and use of data about recreational catch. In fact, we would like to see a significant improvement in the collection of catch data and the economic data required to comply with the Regulatory Flexibility Act. To the extent that sharing state collected data will improve the system, we support the sharing of it. We suggest that data regarding the impact of fishing regulations on the recreational industry should, in certain instances, also be collected.

Ecosystem Based Management. CCA supports the development of a workable definition of ecosystem management. CCA does not support a requirement that an unnamed and unknown advisory panel develop criteria for using this management technique. CCA is not opposed to the further development of the science as proposed in the draft bill; to the contrary, we encourage it. However, ecosystem management is scientific theory with little or no practical application. Its parameters are not well understood and the principles for its use are not easily identified. One example—the ill-fated Sargassum plan in the southeast—surely should have been identified as the likeliest candidate for approval as an ecosystem plan. Yet, five years after development, it still has not been approved because NMFS cannot figure out how it fits into the present statutory scheme. What the draft bill suggests is taking this principle and requiring Councils to put it into place in, for example, the Florida Keys. In order to accomplish the implementation of this principle, not only does the scientific approach need to be changed, the entire structure of the Magnuson-Stevens Act needs to be adjusted.

Therefore, we suggest that the requirement in Section 2(1)(B) be deleted and that you add a requirement for a report from the Secretary regarding what changes, if any, need to be made to the Statute, implementing guidelines and regulations in order to put an ecosystem plan in place.

Overfishing. The changes proposed in separating the definitions of overfishing and overfished seem reasonable enough on their face. Since only the definition of overfished seem to have changed and it would appear to be a lesser standard than the present definition it would be useful to find out the impact of the change before it was made. CCA suggests that the Committee ask NMFS to determine what effect this will have on existing fishery management plans before it moves forward with the change.

Bycatch. Most importantly, the definition of bycatch should be amended to exclude recreationally caught fish. Several attempts have been made administratively to accomplish this but in each instance the definition in the Act was problematic. There are no approved catch and release programs under the Magnuson-Stevens Act making the second sentence of the definition inoperable. The first sentence does nothing more than show a complete lack of understanding of the marine recreational fish-

ery. Let's use the catch of white marlin as an example. White marlin is a targeted fish in the recreational fishery. They are very rarely landed, almost never retained for personnel use, and are not under a catch and release program. Yet, they are bycatch and subject to the bycatch reduction provisions. The Billfish Advisory Committee and NMFS wrestled with this problem for almost two years and finally gave up by declaring that the definition just did not make any sense in this fishery.

We would like to work with the Chairman on a definition that makes sense and does not brand recreational activity as something to avoid.

CCA supports the use of bycatch donations so long as it does not lead to a reduction in the conservation of the resource or undermine state and federal gamefish laws. For example, we would not support the landing of striped bass in any state that has a gamefish law nor would we support the landing of marlin for a consumptive purpose. We suggest that this section be further amended to ensure that the donation of the fish would not undermine the underlying purpose of and state or federal management measure.

Bycatch reduction gear development. CCA supports the development of technological methods of avoiding and reducing bycatch. Bycatch reduction devices in the shrimp fishery are the best example of the use of technology to reduce bycatch, but there a number of other fisheries that could use this research. We suggest you set a date certain for the first Secretary's report and require the Secretary to develop and implement a program at a specific amount.

Essential fish habitat. CCA supports the emphasis on measures that address destructive practices by commercial fishermen. Overfishing is still the greatest threat to the viability of the nation's marine resources but habitat destruction is a close second in many fisheries. The destruction of the bottom in the shrimp fishery may not jeopardize the shrimp fishery, but it does a significant amount of damage to other fisheries through the reduction of habitat. Strengthening this section to focus on something that the Councils and the Secretary can realistically impact is the right thing to do with this section.

Oyster reproduction sites. CCA has previously testified on this concept. Our suggestion then was to reduce the impact to the maximum amount possible. We perceive that this section attempts to reduce the impact by limiting the area that will be closed. We suggest that you limit the impact by excluding only those activities which will have a negative impact. If the Chairman's intent is to conduct an experiment, then we suggest using a completely closed area as a control for others that are left open, and determining whether fishing has any impact on the recovery of oysters.

We should note also that the requirement for the Secretary to impose specific regulations for fishing in an area where no other federal regulations for fishing exist is an extreme and unprecedented use of federal power. CCA is adamantly opposed to the Congressional use of this form of power when there is no demonstration of the need for such regulations. A Congressional field hearing in Annapolis is hardly the kind of public process envisioned in the Magnuson-Stevens Act and, even if it was, the requirement represents an extraordinary intrusion on the sovereignty of the States of Maryland and Virginia.

Individual quota limited access systems. CCA recently provided testimony to the Committee on the use of individual transferable quotas ("ITQs"). Many of the suggestions about involving participants in the fishery and giving the Councils' broad discretion to implement the system are included in the draft proposal. There are two things, however, which are troubling about the proposal. The first is the charging of fees for the use of the system. This concept is based on the perception that individual recipients are getting something akin to a privilege for the right to use the quota. CCA does not make that assumption. Rather we view the granting of an ITQ as nothing more than an individual allocation which is subject to recall from whoever has it. Charging a fee will be viewed as a deterrent to the use of the system and may restrict the use of the device rather than encourage it. ITQs, properly implemented, can be a useful conservation tool and should be encouraged, not discouraged.

Additionally, the section does not appear to allow the Secretary to develop limited entry systems or ITQs for highly migratory species. I assume the use of such tools in those fisheries would have the same beneficial effect as it does in other fisheries. At a minimum, the section ought to be made clear that ITQs can be used in HMS fisheries as well.

Cooperative Education and Research. CCA is not opposed to the use of commercial vessels to do research so long as the underlying science is not compromised.

Highly Migratory Species. For the last five years, the United States has worked at the International Convention for the Conservation of Atlantic Tunas (ICCAT) to achieve compliance with the international conservation measures adopted. Inter-

national compliance has been slow to come. The provision you have added will help achieve acceptance of a market driven, internationally-approved enforcement mechanism in order to make international conservation effective. Much more needs to be done. After the upcoming meeting of ICCAT in Tokyo later in May, the other Commissioners and I can meet with the Chairman to develop a more effective system.

Prohibited Acts. A prohibition on the sale of recreationally caught fish is long overdue. Most states already prohibit such sale and some of the fishery management plans also follow this system. CCA has long argued that a recreational fisherman does not sell his catch and I believe the vast majority of recreational fishermen agree with this position.

Membership of Fishery Management Councils. CCA supports the intent of this amendment. Individuals who have no financial interest in the fish being managed ought to be on Fishery Management Councils. CCA has argued for years that the hired hands of interest groups are not the right people to make unbiased decisions about how to manage the resource. There has always been a clear distinction between people that are knowledgeable and those who have been hired to represent a point of view. Today, there are Council members who are paid to be members by recreational, commercial and/or environmental groups. They are there not because of their own knowledge, but to represent the views of the group that pays them.

We suggest that the section be applied to all Council members and be changed to prohibit the appointment of any individual who is employed by any association of commercial, recreational, charter and/or non-governmental organization, or is a paid representative of any entity that has an interest in a Council decision. We believe that all but about 100 of CCA's 80,000 members would be eligible under these criteria. Hundreds of thousands of environmental and conservation representatives would still be eligible under these criteria. Lawyers, consultants, association operatives and the like would all be ineligible and the Council system would be much better for it.

At a minimum environmental interests ought to be added to the list of prohibited interests. The environmental representative's point of view can be bought just like the rest.

Miscellaneous amendments. All of the miscellaneous provisions appear to be good additions to the Act.

RECOMMENDED ADDITIONS TO THE MAGNUSON-STEVENS ACT REAUTHORIZATION.

Marine Protected areas.

In the last few years, there has been increased interest, primarily in the environmental and academic communities, in the use of Marine Protected Areas (MPAs) as a device to manage and restore marine fisheries. MPAs are different things to different people. To most fishery managers, they are a tool that has been used in both fresh and salt water for years. Time and area closures for spawning aggregations are the best known use of an MPA. Closed areas for destructive gear types are also common. Time and area closures have been proposed by CCA for any number of conservation problems and are broadly supported in the recreational community.

The environmental community views them as a clean and efficient way to manage fishery resources by excluding uses, including all fishing, from large areas of the ocean. In their view, the creation of no fishing areas will enhance stock recovery and protect large portions of the biomass. Environmental groups are heralding the use of MPA as a new day for oceans management and have announced their objective of putting 20% of the nation's oceans in no fishing zones.

Why are recreational fishermen so opposed to no fishing zones?

MPAs, at least as the environmental community envisions them, limit recreational access to the resource without any demonstrable benefit to the health of most fishery resources and, so far, with little public involvement. MPAs are unpopular because anglers believe they will be used to restrict access. Expanding angler access is something the recreational sector, local, state and federal officials have been trying to encourage for twenty years.

Recreational fishermen have led the fight to conserve America's marine fisheries. Striped bass, weakfish, redfish, mackerel and Atlantic shad are all recovering as a result of the efforts of recreational fishermen. We have worked inside the existing management system with the existing tools to turn around the exploitation of these resources and recover them. We've done it because we believe the highest and best use of these resources is for recreation.

For a number of years the economic development theory for recreational fishing has followed two paths. The first is to provide for ease of access to the resource. Millions of dollars of angler's money has been spent through the Wallop Breaux program to increase angler access. The second path has been the recovery of key rec-

reational species. This rebuilding was done on a "build it and they will come basis." The explosion in recreational fishing for these rebuilt species has more than proved the point. It works. Today, sportfishing contributes more to the economy than ever before.

Recreational fishermen are not opposed to the use of traditional management measures to address specific management issues based on good science and implemented as a result of a public process. As a result we support the Freedom to Fish Act H.R. 3104 which amends the Magnuson "Stevens Act by adding guidelines for the use of MPA's. These guidelines would also apply to the management of marine recreational fisheries in federal marine sanctuaries. In essence they provide for a public process, sound science and a nexus between the problem being solved and the measure being proposed. They are intended to make the exclusion of the public from a public resource the management measure of last resort for stock rebuilding.

We recommend that you support the inclusion of H.R. 3104 in your bill.

Judicial review. One of the major flaws in the Sustainable Fisheries Act is the inability of the Courts to take into account the status of the stock prior to issuing an order on whether NMFS and the councils have complied with either the overfishing prohibition or the rebuilding program. Most fishery management plans are based on at least two year old data. Most plan amendments take a couple of years to put together and most court reviews occur one to two years later. Courts are restricted from taking into account whether the plan adopted is working. Rather, the court looks at whether the statute was implemented and whether the record rationally supports the measures adopted. Courts not only do not know whether the plan is working, they are restricted from ever looking at it by the Administrative Procedure Act. Considering that the court is looking at a series of decisions made on data that may be five years old at the time of the ruling, there is little relevance between the decision being made and the status of the stock as a result of the measures adopted. Therefore, we suggest that courts be required to take into account the present status of the stock prior to determining whether the measures adopted could achieve their purpose. Section 305 (f) should be amended by inserting the following:

(5) In any action which is a challenge to measures intended to prevent overfishing or rebuild an overfished fishery a hearing will be held prior to issuing any order impacting such measures, which (A) assesses the impact of the measures on preventing overfishing or on rebuilding and (B) assesses the status of the fishery at the time of the hearing. Findings from the hearing will be taken into account prior to issuing any order.

Thank you for allowing us to testify here today and share the views of the Coastal Conservation Association.

Mr. GILCREST. Thank you, Mr. Hayes. Those are excellent suggestions. I will say that I am not surprised that DNR was astonished at something I did or said, because they are usually surprised if they pick up the phone and I am on the other end. But we can work out these issues, I am sure, and put some language for the guidelines of MPA in Magnuson.

Thank you very much. And the Sassafras River is a great place for canoes.

Mr. GILCREST. Mr. Leape.

STATEMENT OF GERRY LEAPE, MARINE CONSERVATION PROGRAM DIRECTOR, NATIONAL ENVIRONMENTAL TRUST, MARINE FISH CONSERVATION NETWORK

Mr. LEAPE. Mr. Chairman, my name is Gerald Leape and I am the Marine Conservation Program Director for the National Environmental Trust. Thank you for the opportunity to testify today on behalf of 145 member groups of the Marine Fish Conservation Network. These groups collectively represent the views of more than 5 million Americans. NET is a member of the advisory board, and I am a member of its executive committee.

Mr. Chairman, we appreciate the intent and direction of this draft in its goal of strengthening Federal fisheries management

and moving toward ecosystem-based management. We share that goal. We believe that your draft includes several improvements to existing law. Overall, however, we believe that too many of the sections are missing directives with deadlines for action on those directives, and rely instead on additional reports. Relegating action on these issues to reports, we feel, will lead to more inaction and delay in addressing the critical problems facing our oceans.

Overall, Mr. Chairman, we believe that your draft needs some significant improvements in several areas to achieve our shared goal of healthy marine ecosystems. If you will incorporate our suggested changes, we will not only support your bill upon introduction, but we will fight for its enactment this year.

There are three provisions included in your draft that we believe roll back conservation protections from current law. Those include the new "overfished" definition, the opt-out provision for the Councils from implementing the bycatch reporting systems, and the movement from required to discretionary of the mandate to minimize the impacts of fishing gear on essential fish habitat. We urge you to consider dropping these provisions prior to introduction.

I would like to focus my remaining comments on six key areas: ecosystem-based management, IFQs, observers, overfishing, bycatch, and essential fish habitat.

While the ecosystem-based management section contains adequate research plans and a process for setting criteria for fishery ecosystem plans, it lacks the requirement, as you heard earlier, of a deadline for Councils to develop and implement these plans for all fisheries under their jurisdiction. We feel that if you fail to put a deadline for Councils to develop these plans for all their fisheries, it will doom progress on our shared goal for at least another decade.

At the hearing you chaired on this issue last year, we learned that there is currently sufficient data to get started on ecosystem-based management. That hearing also showed that 2 years of dedicated additional research could fill in many of the remaining data gaps. We strongly urge you to merge your research provisions with those in H.R. 2570, include the deadlines from H.R. 2570, and authorize specific funding as we heard the needs from Dr. Hogarth for this section to ensure that the work gets done.

On IFQs, the Network believes, first and foremost, fish are a public resource; and we support continuation of the current moratorium unless and until Congress can adopt legislation containing mandatory national standards for new IFQ programs to ensure that these programs contribute to and enhance the conservation and management of our fisheries and ensure equity among all fishermen participating in the fishery.

Related to the draft, we are concerned that the 5-year review, while well intentioned, will be ineffective unless it is accompanied by a 5-year sunset. Directly connecting the review with the sunset period would not only require an IFQ program to pass the review to get renewed, but there would be a built-in consequence for failure.

Finally, the Marine Fish Network is opposed to quota shares for processors. We believe that this draft, in addition, should authorize a national observer program. Information gained from these ob-

server programs is crucial to moving toward ecosystem-based management, reducing bycatch, eliminating overfishing, and also protecting essential fish habitat. There are several regional observer programs already in place in areas, but they are lacking a central coordinating mechanism to maximize the benefit of the data that they are collecting. In addition, this program could fill in the gaps where currently there are no observer programs in place. There are several creative ways to finance observer programs, and this legislation should include those alternatives.

On overfishing we urge to you eliminate the mixed stock exception created by NMFS which allows overfishing for the weakest stock in a mixed stock fishery. It is our feeling this regulation was against the plain language in the SFA and should be overturned through this year's legislation. While we are opposed to the new overfished definition, we could accept a third definition such as "depleted," as long as that definition was tied to the same rebuilding obligations as those that apply to overfished under current law.

On bycatch, we are very pleased with the addition of seabirds to the definition and the requirement that Councils finally have to develop and implement standardized reporting methodologies. We strongly urge you to include the provisions from H.R. 2570 which require annual reductions in bycatch for those fisheries where the problem has already been assessed.

On EFH, the problem with your new information requirements, we heard earlier from Dr. Hogarth, is that the necessary information doesn't exist for most species. NMFS has set in motion a 4-year plan to begin to get that information, through completion of the NEPA required environmental impact statements for each fishery around the country. We urge you to let that process work. Upon completion we should have the kind of knowledge for these species that your draft would require, and under current authority greater focus and refinement can be made to Federal actions to protect habitat as needed. We urge you to drop those habitat provisions from your bill.

In closing, we look forward to working closely with you, Mr. Chairman, as we have over the last few years, and your staff to strengthen this draft to improve fisheries management for the fishermen and the fish. I will be happy to answer any questions.

Mr. GILCHREST. Thank you Mr. Leape.

[The prepared statement of Mr. Leape follows:]

**Statement of Gerald Leape, Marine Conservation Program Director,
National Environmental Trust, on Behalf of the Marine Fish
Conservation Network**

Good afternoon Mr. Chairman and Members of the Subcommittee and thank you for the opportunity to testify on behalf of the more than 145 member groups of the Marine Fish Conservation Network (Network) and our more than 5 million members. My name is Gerald Leape and I am a member of the Network's executive committee and the Marine Conservation Program Director of the National Environmental Trust. We look forward to continuing to work with you and your staff to strengthen the conservation provisions of this draft so that we can support it when it comes to markup and realize our shared goal of ensuring sustainable fisheries and healthy marine ecosystems. The Network has a comprehensive agenda for strengthening the Magnuson-Stevens Fishery Conservation and Management Act, which is appended to my statement. In addition, I have appended a copy of the Network's IFQ legislative proposal to my statement for the record. We also want to convey to you our strong support for H.R. 2570, the Fisheries Recovery Act of 2001, which

was introduced by Congressman Sam Farr on July 19, 2001. As you know, 67 members of the House have cosponsored Mr. Farr's bill.

As requested, we will focus our comments on the discussion draft circulated with the invitation letter. We support the general intent of the discussion draft, however, several provisions need significant modification to ensure that current regulations are not undercut, fish conservation is enhanced, and the Network can enthusiastically support the bill.

First, we would like to offer some overall comments on the draft. In most of the conservation provisions in the bill, the proposed amendments call for more studies and reports to Congress. In many of the sections, there is no directed action or if there is such a suggested action, there is no deadline for completing the action.

In several cases, there are rollbacks from existing law that, if enacted, would undercut the gains in habitat protection, rebuilding overfished stocks, and minimizing bycatch realized by passage of the Sustainable Fisheries Act (SFA) amendments of 1996. These amendments were passed by the House by a vote of 387-38 and in the Senate by a vote of 99-0. Mr. Chairman, those votes support our position that, at a bare minimum, we must not go backwards. For the sake of the fish and the fishermen, we must move forward to not only complete implementation of the SFA, but also strengthen existing law to achieve the vision of the 1996 amendments to the Act. Below are my specific comments organized by section of the discussion draft.

SECTION-BY-SECTION ANALYSIS AND RECOMMENDATIONS

Overcapacity Report

The Network agrees that overcapacity in our fisheries should be reduced as overcapacity is linked to many other problems faced by U.S. fish populations. The General Accounting Office (GAO) has investigated the issue of overcapacity and buyback programs several times, most recently in June 2000. Therefore, we question the need for another study.

Recommendation:

We recommended that you: 1) ensure that the report does not duplicate previous work by the GAO; 2) require the Secretary to detail a specific course of action to address the problems he identified in both the June 2000 GAO report and this proposed report; and 3) establish firm deadlines for addressing the problems.

Buyouts

We believe that this section contains the strongest improvements to existing law of any part of this discussion draft. This new language, which directly addresses problems that have plagued buyout programs to date, i.e., capacity being redistributed instead of permanently retired, can improve future buyouts by more effectively reducing fishing effort and capacity. One important drawback to this section is that it does not identify a funding source for the buyback program. We also recommend that the program be expanded to include state fisheries data.

Recommendation:

Identify and include a dedicated source of funding.

Data Collection

We support this effort to improve recreation data by directing NMFS to collect and consolidate recreational fisheries data from the states. In fact, many states have indicated a willingness to cooperate in similar efforts, yet lack the resources to do so. Without some new mechanism or incentive to encourage states to participate, we feel that a lack of cooperation from the state could frustrate this effort to collect valuable recreational fishing data. Additionally, this program should be expanded to include the collection of state commercial fisheries data.

Recommendation:

We recommend identification of a mechanism to encourage and enable states to comply with the spirit and letter of this new directive.

Conserve Marine Ecosystems

Fishery managers and scientists have long recognized the need to expand fishery management beyond traditional single-species planning to include ecosystem considerations. As far back as 1980, studies of federal fisheries management by the American Fisheries Society, National Fish and Wildlife Foundation, and others have called for moving to ecosystem-based management. Such an approach includes, but is not limited to, interactions between key predator and prey species within an ecosystem and the habitat needs of living marine resources and other limiting factors

in the environment. This concept supports the precautionary approach to fishery management, especially when the ecosystem effects of fishing are uncertain. The precautionary approach requires managers to act to avoid likely harm before causes and effects are clearly established.

It is widely believed that some fishery declines and difficulties in restoring overfished populations are due, at least in part, to fishing caused disruptions of ecosystems. Under existing law, fishery managers do have limited authority to consider ecosystem interactions, including predator-prey relationships, in management plans. The principal reasons ecosystem relationships are not currently being adequately considered is a lack of guidance regarding the information that is needed, clear direction regarding the principles and policies that should be applied, and most importantly, the absence of a legal mandate to require the application of such principles and policies to fishery management decisions.

Mr. Chairman, you have been a steady advocate for ecosystem-based management since we first worked with you on fisheries management issues more than eight years ago. Six years ago, during debate on the SFA, we worked closely with you to identify the questions that needed to be addressed prior to beginning the necessary transition from single species management to ecosystem-based management. The NMFS advisory panel, created by the SFA and charged with answering these questions, has done its job. They have not only answered the questions raised, but have made recommendations on how to proceed. We are happy to see that the section on ecosystem-based management in H.R. 2570 would implement these recommendations.

Concern:

The draft is admirable in its effort to promote the development of plans to fill identified information gaps and begin the process of establishing criteria for the development of fisheries ecosystem plans. However, there is no requirement for managers to develop fisheries ecosystem plans, or to ensure that their fisheries management plans are consistent with ecosystem principles, in short, to implement ecosystem-based management. As we pointed out earlier, a number of studies and reports over the last two decades have recommended moving toward ecosystem-based management, yet little has happened. Dr. Bill Hogarth testified before this Subcommittee in June of 2001 that NMFS was moving to implement ecosystem-based management and that NMFS would be holding stakeholder meetings in the Fall, again, nothing substantive has happened. The message to us and we hope you, is clear, without a legal mandate, NMFS and the councils will not implement ecosystem-based management. Finally, there is no dedicated source of funding to accomplish this enormous task.

Recommendation:

To realize the goal of ensuring America's of fisheries are managed in an ecosystem context Mr. Chairman, there must be a legal requirement for managers to do so. Therefore, we recommend that you merge your ecosystem research plan language with the ecosystem language in H.R. 2570. This will codify the recommendations of the SFA mandated panel, establish a clear legal mandate for ecosystem-based management, set up a reasonable 6 year timetable for action, and dedicate specific funding to achieve this goal.

Establish a National Fishery Observer Program

Objective observation and accurate data collection are vital to effectively manage marine fish and fisheries. The ability of fishery managers to address the problems of overfishing, bycatch, and degradation of EFH is currently limited by a lack of accurate and reliable information on a fishing vessel's catch and bycatch. In many fisheries there is an incomplete understanding of the total catch, i.e., landed catch and discarded bycatch. Overfished stocks cannot be rebuilt if we do not understand and control all types of mortality. Minimal, but inadequate, observer coverage exists along the Atlantic Coast, the Gulf of Mexico, and the West Coast. A far more comprehensive national observer program is necessary to protect the sustainability of America's marine fish, fisheries, and fishing communities. The catch and bycatch data that would be achieved as a result of such a comprehensive program is vitally important to meeting the objectives of the Magnuson-Stevens Act, including the promotion of sustainable fishing.

Concern:

Consistent with your efforts Mr. Chairman and the efforts of others on this Subcommittee to gain an additional \$25 million for observers in fisheries around the country, we believe that progress on this issue should not be relegated to another report. There is broad and substantial support for and agreement on the need for

a national observer program. Another feasibility study will only serve to further delay implementation of this badly needed program.

Recommendation:

Require the establishment of a national observer program. The information generated from such a program will allow us too make true progress in reducing bycatch and protecting essential fish habitat. We strongly recommend the observer language of H.R. 2570, which requires establishing observer programs in each fishery in order to gather statistically valid data. This does not mean requiring 100% observer coverage, but would require enough observers to produce statistically valid data. NMFS staff has told us that statistically valid data would generally require 30% observer coverage in most fisheries.

To help fund such a program, H.R. 2570 proposing using \$25 million in Saltonstall-Kennedy funds to offset the cost of observers. The remainder of the funding would come from a landings fee. If there is a need for an additional report, we recommend that it focus on other mechanisms to fund such a program and the level of observer coverage necessary in each fishery to provide statistically robust data. However, let me reiterate our strong opposition to authorizing a study without requiring the establishment of a national observer program, since we firmly believe that such a study would only serve to delay the establishment such a program.

Overfishing

Overfishing has been and continues to be one of the major problems threatening the survival of fisheries and the fish populations on which they depend. The most recent NMFS Status of U.S. Fisheries report found 81 stocks overfished (21% of the federally managed species that are assessed) and 65 stocks experiencing overfishing (24% of the managed species that have been assessed). This represents some improvement over last year, but much work remains to be done. We must continue to move forward to end all overfishing and to rebuild all overfished or otherwise depleted fish populations.

Concerns:

We appreciate your interest in separating the definition of overfished from overfishing. However, the proposed definition of overfished will significantly weaken existing law. Enacting this definition, which links the definition of overfished to a stock size that is below the natural range of fluctuation associated with producing MSY, would legitimize the efforts of those who blame all fisheries declines on anything but fishing. We in the conservation community believe that environmental change should be considered in efforts to determine the cause of fluctuations in biomass, but not as an excuse to avoid regulations necessary to rebuild overfished fish populations. Incorporating the "natural range of fluctuations" into the definition will add further scientific uncertainty and subjectivity to the definition, thus increasing the potential to increase the number of lawsuits rather than decrease them. We are also concerned that the proposed definition of overfished in the Chairman's draft would, because of the difficulty in identifying the natural range fluctuations, force NMFS to place greater numbers of stocks into the "unknown" status in its annual report on overfished fisheries. These unknown stocks will not be afforded the protections of the SFA.

Recommendation:

Maintain the existing overfishing definition in the draft bill, but remove the natural fluctuations clause from the proposed definition of overfished. Furthermore, we recommend that the draft should include language from H.R. 2570 that would eliminate the loophole that allows overfishing of weak stocks in a mixed stock fishery, require rebuilding plans for those stocks that are approaching an overfished condition, and requires the development of uncertainty buffers to prevent and stop overfishing.

Bycatch

Bycatch is the indiscriminate catching, killing, and discarding of fish and marine life other than those a fishing vessel intends to capture. This includes fish that are not the target species, sex, size, or quality. It also includes many other fish and types of marine life that have little economic value but are ecologically important, such as birds, starfish, sponges and skates. Primarily, bycatch results from fishing practices and gear that are not selective. In addition to visible mortality, fish and other sea life are sometimes killed or injured when passing through or escaping fishing gear, and through "ghost fishing" from abandoned or lost gear.

Environmental problems caused by bycatch include overfishing, increased scientific uncertainty regarding total fishing mortality, and potentially serious changes

in the functioning of ecological communities. Economically, bycatch equates to lost fishing opportunities as a result of mortality of commercially valuable juvenile fish.

Concerns:

While we appreciate the addition of birds to the definition of bycatch and the addition of a deadline into the standardized bycatch reporting system requirement, we take strong issue with the proposal to exempt councils from that reporting requirement if they simply explain why they can't meet it. While few councils have taken any action to assess or reduce bycatch, the legal obligation remains. We believe that any provision providing a loophole for continuing inaction on bycatch issues, such as the one provided in the draft bill, will be fully exploited by the councils given their current non-compliance with legal mandates. The proposed exception, if enacted, would be a significant step backward in the effort to reduce bycatch nationally. In addition, in those cases where the amount of bycatch in the fishery has been assessed, the draft contains no requirement for actual reductions in bycatch. We appreciate the intent of a gear development program for bycatch reduction; however, this may be a program that is more effective if run regionally under a national mandate. In addition, without authorized funding, it will be difficult for this program to realize its goal.

Recommendation:

We strongly recommend that you drop the language that allows councils to ignore the requirement to develop a bycatch reporting system. In addition, we urge the adoption of language from H.R. 2570 that requires councils to annually reduce bycatch, sets strict timelines for implementation of the current requirement for all councils to develop a standardized reporting methodology, and requires an annual report on efforts to reduce bycatch.

Essential Fish Habitat

We are greatly concerned that this proposal will severely limit the application of the SFA requirement to minimize the adverse impact of fishing on important fish habitats, thus rolling back existing law. This proposal will restrict the requirement to limit damaging fishing practices to only essential fish habitat (EFH) that has been identified based on information on growth, reproduction, and survival rate by habitat type. The requirement is further restricted by limiting it to fishing activities that jeopardize the ability of the fishery to produce MSY. Since this information is not available for nearly all managed fish species, this proposal will eliminate the requirement to minimize fishing impacts on EFH for years, if not decades.

In our view, this proposal will significantly rollback existing law. If this change is approved, it is assured that nothing will be done to protect EFH from the well-documented damage of some fishing gears on EFH. Litigation on this issue has been settled and a process is in place where NMFS is going to come into compliance with the current regulations. Congress should let NMFS continue its work and if any changes need to be made, it should be in the form of additional funding for NMFS to do its job and developing precautionary language that will prevent the introduction of damaging fishing gear.

Recommendation:

We urge you to protect and strengthen current law by dropping this proposal to limit the protection of EFH. In its place, please include language from H.R. 2570, which will ensure that the impacts of damaging fishing practices will be evaluated and mitigated for before they are allowed.

Individual Fishing Quotas

Individual fishing quotas (IFQs) grant fisherman and fishing companies the privilege to catch specific amounts of fish. Congress has placed a moratorium on the submission, approval, or implementation of any plan that creates an IFQ program until October 1, 2002.

The Network supports continuing the moratorium on IFQ programs unless and until Congress adopts legislation containing standards for the design and conduct of IFQ programs to ensure that these programs contribute to and enhance the conservation and management of our nation's fisheries and ensure equity among all fishermen participating in any IFQ fishery. For your information, I have appended a redline copy of the Network's proposed legislative language detailing these necessary standards.

Concerns:

There are a number of positive changes contained in your proposal. First, we are pleased with your inclusion of language specifying that IFQs do not create a prop-

erty right and that they must be reviewed every five years. There are also a number of provisions that will protect fishermen and fishing communities including requirements to provide fair and equitable allocation of quota shares and to establish limitations on consolidation. Finally, we are pleased with the requirement that such systems promote conservation.

However, the five-year review will likely be ineffective because it lacks a consequence i.e. a sunset of the program or some other penalty, for failing the review. In addition, the qualification on the 10-year sunset provision which states only that a review has to be conducted, not that fishing quota programs have to pass the review, virtually assures that no IFQ program would ever sunset, thus making the initial IFQ a permanent asset. Also, with no enforcement mechanism behind the review or requirement that IFQ participants pass the review, there will likely be no serious consideration of the conservation or equity requirements of the program. The mandatory consideration of historical fishing gears, rather than participants, in considering allocation of quota, will, we believe based on experience, inevitably result in a codification of current fishing practices leaving little or no room for changes in the fishery to more environmentally friendly gear. While we appreciate the inclusion of a double referendum, we believe that it is a mistake to leave it up to the councils to decide who would be eligible to vote. All participants in the fishery should have a voice in the decision on adoption or rejection of an IFQ program. Finally, we are strongly opposed to the language in the draft that will allow processor quota shares. As we testified at the February IFQ hearing, processor quotas are likely to violate protections against anti-trust laws and are very likely to cause serious economic hardships to fishermen, while providing no public benefit to either the economy or conservation.

Recommendations:

Standards must be adopted that, among other things, clarify that IFQ programs:

- Do not create a compensable property right;
- Are of set duration, not to exceed five years;
- Demonstrably provide additional and substantial conservation benefits to the fishery (defined as reducing bycatch, eliminating overfishing, and protecting essential fish habitat);
- Are reviewed periodically by an independent body to determine whether the programs are meeting their conservation goals;
- Provide for the review of individual permit holders and revocation of shares if the share holder fails to pass such a review;
- Realize total recovery of costs (the proposed percentages may not be sufficient); and
- Are only transferable if the above standards are enacted.

Additionally, we recommend that the language allowing processor quota shares be dropped and the removal of any provision stating that only permit holders can vote in the referendum.

Conserve Atlantic Highly Migratory Species

NMFS is responsible for conserving Atlantic highly migratory species like tunas, swordfish, marlins, sailfish, and coastal and pelagic sharks. All of these species, with the exception of sharks, are also managed under multilateral agreements through the International Commission for the Conservation of Atlantic Tunas (ICCAT).

In 1990, the Magnuson–Stevens Act and Atlantic Tunas Convention Act (ATCA) were amended to preclude U.S. fishery managers from issuing regulations, which have the effect of “decreasing a quota, allocation or fishing mortality level,” recommended by ICCAT. Since then, NMFS has done little more than implement ICCAT quotas and allocate them among domestic user groups. Moreover, where no ICCAT recommendations exist, no precautionary measures have been taken.

Although ICATT sets quotas, measures to implement the quotas and minimize bycatch mortality, such as area closures and gear modifications, must be implemented through domestic regulations. NMFS, however, interprets the law to prevent the U.S. from unilaterally reducing bycatch if it would affect the ability to fill the U.S. quota.

Concerns:

In cases where domestic management requirements are more stringent than those agreed to by the international community, NMFS and industry have often inappropriately interpreted this provision as essentially exempting U.S. HMS fisheries from the requirements of the Magnuson–Stevens Act. Such action is inappropriate and inconsistent with the intent of the Magnuson–Stevens Act and unfair to other commercial fishermen who must follow U.S. law.

Recommendations:

To address these concerns, the draft should be amended to include language that:

- Gives the U.S. greater discretion and flexibility in the conservation and management of highly migratory species;
- Repeals language that prevents or hinders the U.S. from implementing management measures that are more conservative than those recommended under international agreements; and
- Requires NMFS to meet the requirements of the Magnuson–Stevens Act when managing highly migratory species.

Similarly, the ATCA should be amended to remove language limiting U.S. authority to conserve highly migratory species. Legislative language implementing these changes is contained in H.R. 2570.

Fishery Management Councils

Although regional fishery management councils are charged with managing the nation's marine fish for all Americans, representatives of fishing interests dominate the councils. Interests of the general public, as well as non-consumptive users of marine fish, such as divers, are not adequately represented on the councils. Marine fish are public resources and must be managed in the public trust. Decisions regarding their management should be made in the public interest, not simply the economic interest of the fishing industry. Accordingly, the interests of the public must be adequately represented on regional fishery management councils.

Concern:

While we support your intention of adding a non-fishing voice to each council, we feel that it is only a small step toward the balance that we need and deserve on these fishery management councils.

Recommendation:

To address these concerns, we recommend the provision from H.R. 2570 that calls for balanced representation between commercial fishermen, recreational fishermen, and individuals who represent the public and do not derive any of their annual income from commercial and recreational fishing.

Authorization of Appropriations

Finally, Mr. Chairman, we strongly urge you to increase significantly the level of authorized funding in the bill. In addition, we would urge you to look at increased user fees and the proposed allocation of funds from the Saltonstall–Kennedy program to fisheries management as proposed in H.R. 2570. These are funds already being collected and were originally intended to be used to promote the fishing industry. We can think of no better way to promote the fishing industry than through sustainable fisheries management. Let's return a greater share of these annual funds back to their original purpose.

Conclusion

Once again, I, on behalf of the National Environmental Trust and the Marine Fish Conservation Network, appreciate the opportunity to testify on your discussion draft to reauthorize the Magnuson–Stevens Fishery Conservation and Management Act. The Network looks forward to working closely with you and your staff to strengthen this draft prior to its introduction so that we can give it our full support. I would be happy to answer any questions.

[An attachment to Mr. Leape's statement follows:]

Changes to the Magnuson-Stevens Fishery Conservation and Management Act if the Marine Fish Conservation Network's Individual Fishing Quota Proposal is Enacted
(additions are underlined and deletions are crossed out)

§ 302. REGIONAL FISHERY MANAGEMENT COUNCILS

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(g) COMMITTEES AND PANELS

* * * * *

(5) (A) Within one year of the date of enactment, each Council shall establish and maintain an Individual Fishing Quota Review Panel to conduct reviews of individual fishing quota holders as required by section 303(d)(3) and based on the standards developed pursuant to section 303(d)(6)(A)(iii) to determine whether the permit holders are meeting the conservation requirements of the relevant individual fishing quota program (including the conservation requirements of the Act) and to identify quota share holders that are exceeding the conservation requirements of such program.

(B) Each review panel shall make recommendations to the Council on whether an individual fishing quota holder should continue to hold individual quota shares issued under a fishery management plan.

(C) Each review panel:

(i) shall consist of at least 7 individuals with knowledge and expertise in fisheries management;

(ii) may not include individuals holding individual fishing quotas for any fishery under the Council's jurisdiction; and

(iii) shall meet as necessary to conduct the reviews required by subsection 303(d)(3)(E).

(5) (6) Decisions and recommendations made by committees and panels established under this subsection shall be considered to advisory in nature.

§ 303. CONTENTS OF FISHERY MANAGEMENT PLANS

* * * * *

(d) INDIVIDUAL FISHING QUOTAS.—

(1) (A) A council may ~~shall~~ not submit and the Secretary may ~~shall~~ not approve or implement before ~~October 1, 2000~~, any a fishery management plan, plan amendment, or regulation under this Act ~~which creates a new individual fishing quota program that does not meet the requirements of this subsection.~~

(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately return by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).

(2) (A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

(B) This subsection shall not be constructed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

(3) ~~If an individual fishing quota of other limited access system authorization program is established under or pursuant to a fishery management plan, any individual quota issued under such program --~~

(A) shall be considered a permit for the purpose of section 307, 308, and 309;

(B) (i) may be revoked or limited at any time in accordance with this Act;
or

(ii) shall be revoked if the quota share holder is not meeting the conservation requirements of the Act;

(C) shall not confer any right of compensation to the holder of such individual fishing quota ~~or other such limited access system authorization~~ if it is revoked or limited; and

(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested;

(E) shall be reviewed no later than 6 months prior to expiration under subparagraph (F) to determine whether the quota share holder is providing additional and substantial conservation benefits to the fishery;

(F) shall expire not later than 5 years after the date it is issued in accordance with the terms of the fishery management plan, or if the review required pursuant to subparagraph (E) is not completed;

(G) upon expiration under subparagraph (F), and based on the review required under subparagraph (E):

(i) may be renewed if the quota share holder is in compliance with all program conservation requirements, and is providing additional and substantial conservation benefits to the fishery;

(ii) shall be reallocated if the quota share holder is not meeting the conservation requirements of the program; or

(iii) may be reallocated if the quota share holder is in compliance with program conservation requirements, but is not providing additional and substantial conservation benefits to the fishery.

(H) if reallocated pursuant to subparagraphs (G)(ii) or (iii), the reallocation shall give preference to quota share holders that are providing additional and substantial conservation benefits to the fishery, based on the recommendation of the Council's individual fishing quota review panel;

(I) shall provide an opportunity for at least 5%, but not more than 25% of the total quota shares to be obtained by persons who do not intend to and shall not be allowed to catch the quota of fish but to reserve the quota share for other ecosystem purposes. For the purpose of this subparagraph, such quota share shall:

- (i) be considered landed;
- (ii) not be taken into account for the protection of marine ecosystems when setting optimum yield; and
- (iii) not be reallocated to other quota share holders or other persons of entities.”; and

(J) shall be issued to a citizen who is a natural person of the United States and held in an individuals name.

(4) (A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C.App.1274(a)(7)), to issue obligations that aid in financing the--

- (i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and
- (ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

(B) A council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

~~(5) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the national Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program An individual fishing quota program established in a fishery management plan shall --~~

~~(A) establishes procedures and requirements for the review and revisions of the terms of such program (including any revisions that may be necessary once a national policy with respect to individual fishing quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of individual fishing quotas provide additional and substantial conservation benefits to the fishery;~~

~~(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 304(d)(2) to recover actual costs directly related to such enforcement and management be of a set duration, not to exceed 5 years;~~

~~(C) provides for a fair and equitable initial allocation of individual fishing quotas, prevents any person from acquiring an excessive share of the individual fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for entry level fishermen, small vessels owner, and crew members who do not hold or qualify for individual fishing quotas be reviewed at least 6 months prior to the end of the~~

5 year period established under subparagraph (B) to determine if the program is providing additional and substantial conservation benefits to the fishery;

(D) expire if the review required in subparagraph (C) is not completed, or if such review finds that the program is not providing additional and substantial conservation benefits to the fishery;

(E) provide for effective enforcement and management of the program, including observer coverage adequate to provide the statistically valid and reliable data necessary for management of the fishery, and for the establishment of fees payable by holders of individual fishing quota shares under section 304(d) to recover all direct costs of administering the program, including the costs of enforcement, observer coverage, and review of the program, provided that such fees shall be computed and assessed on the basis of and proportionate to the amount of fish landed by each quota share holder; and

(F) (i) provide for fair and equitable initial allocation of individual fishing quotas based on multiple criteria that provide preference for:

(I) conservation performance, including the use of selective fishing practices that have minimal bycatch and adverse impacts on essential fish habitat,

(II) owner operators, and

(III) long-term participation in the fishery;

(ii) prevent any person from acquiring an excessive share of the individual fishing quotas issued; and

(iii) allocates a portion of the annual catch in the fishery for entry-level fishermen, small vessel owners, and crew members who do not otherwise hold or qualify for individual fishing quotas.

For the purposes of this paragraph "excessive share" shall mean any quota share in excess of 1% of the total individual fishing quotas issued for a fishery. A Council may increase the excessive share of an individual fishing quota program:

(i) to no more than 5% if the Council can demonstrate that such an increase will not be detrimental to other individual quota share holders in the program; or

(ii) to no more than 15% if there are 20 or fewer participants in the fishery and the Council can demonstrate that such an increase will not be detrimental to other individual quota share holders in the program.

(G) provide that quota share holders shall be allowed to forego the use of some or all of their shares in any given year and that such quota share holders shall not be penalized or assessed a fee for failing to catch and land fish. For the purposes of this subparagraph, fish not caught shall not be utilized in subsequent years or be reallocated to other quota share holders or other persons or entities.

(H) except for quota shares obtained pursuant to paragraph (3)(I), promote fishing of the quota share directly by the quota share holder."

(6) (A) Within 6 months of the date of enactment, the Secretary shall establish the National Individual Fishing Quota Program Review Panel for the purposes of—

(i) conducting reviews of individual fishing quota programs as required by subparagraph (5) to determine whether a program is meeting the

requirements of this subsection, including providing additional and substantial conservation benefits to the fishery;

(ii) providing the appropriate Council with recommendations on whether an individual fishing quota program should be renewed, and if renewed what, if any, modifications should be made to the program to improve conservation; and

(iii) developing standards for the review of individual fishing quota share holders by Council individual fishing quota review panels.

(B) The National Individual Fishing Quota Review Panel:

(i) shall consist of at least 17 individuals with knowledge and experience in fisheries management, each Council Individual Fishing Quota Review Panel shall have one representative on the national panel;

(ii) individuals not representing a council may not have any financial interest in any fishery in the United States; and

(iii) shall meet as necessary to conduct the reviews required by subparagraphs (3) and (5).

(7) For the purposes of this subsection, the term "additional and substantial conservation benefits to the fishery" means scientifically measurable benefits that, based on the status and condition of the fishery at the time of establishment of the program, substantially:

(A) avoid bycatch and minimize the mortality of unavoidable bycatch;

(B) prevent highgrading;

(C) reduce overfishing (including localized depletions) and rebuild overfished stocks; and

(D) protect essential fish habitat.

If it is not possible to directly measure conservation benefits, the term means actions taken by the quota share holder necessary to provide such benefits.

Mr. GILCREST. Mr. LeBlanc.

**STATEMENT OF JUSTIN LeBLANC, VICE PRESIDENT OF
GOVERNMENT RELATIONS, NATIONAL FISHERIES INSTITUTE**

Mr. LeBLANC. Thank you, Mr. Chairman. Thank you for the opportunity to testify today on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. I am Justin LeBlanc, Vice President of Government Relations for the National Fisheries Institute. I am also here on behalf of the Seafood Coalition, a growing group of fisheries organizations and seafood companies from across the country, seeking changes to the Magnuson-Stevens Act to rationalize the implementation of the Act while maintaining its core commitments to conservation and sustainability. The Seafood Coalition member list is attached to my written testimony.

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

Improving the science base of fisheries conservation and management by defining the best scientific information available and ensuring the NMFS stock assessments undergo periodic peer review;

Focusing the habitat protection efforts on habitat areas of particular concern instead of the entire exclusive economic zone;

Incorporating environmental variability into fisheries management by better defining maximum sustainable yield, overfished and overfishing;

Initiating cooperative research programs to fill major data gaps;

Establishing goals and objectives for observer programs and holding them accountable to those goals and objectives;

And improving the socioeconomic analyses of fishery management decisions by NMFS by requiring NMFS to consider the cumulative impacts of its decisions.

These priorities are addressed by the draft Fisheries Science Improvement Act, a discussion draft outlined by Representative Tauzin this afternoon in his questions to Dr. Hogarth. I want to thank the Congressman and his staff for proposing this important discussion draft and urge the Subcommittee's favorable consideration of it during the reauthorization process.

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

Many of the proposals in H.R. 2570, the Fisheries Recovery Act, are of deep concern. With its unfunded and unachievable mandates, this bill has been somewhat playfully nicknamed as the "Fisheries Elimination Through Litigation Act" by some in our community. In particular, we are concerned that the National Marine Fisheries Service will be unable to fulfill the bill's call for the elimination of bycatch, limitations on new fishing gear and technology until demonstrated to have no adverse effects on essential fish habitat which requires one to prove a negative, the implementation of ecosystem-based fishery conservation and management without the scientific base necessary to do so, the application of the precautionary approach as a justification for worst-case scenario management, and universal observer coverage without clear goals and objectives for that program. Without dramatic increases in funding, not just authorized but actually appropriated, these mandates will open the agency and the commercial fish and seafood industry to litigation far beyond that which we have seen to date. And as we have seen over the past several years, litigation and the courts are no way to build sustainable fisheries.

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

The overcapitalization report is an important step toward addressing this critical issue facing U.S. Fisheries. We recommend that the Secretary be required to consult with the commercial fishing sector in each fishery before providing recommendations for reducing capacity in those fisheries.

The buyout provisions may facilitate the use of this tool as a means of reducing excess fishing capacity. The language, however, needs to be carefully drafted to avoid unintended consequences,

particularly in fisheries where vessel owners may own multiple vessels and/or multiple permits.

The section on ecosystem-based management recognizes the fundamental barrier to effectively implementing such a management regime: information. This proposal in the draft is an appropriate first step in the development of ecosystem-based management.

Similarly, an analysis of the utility, benefits, and costs of a national observer program is an appropriate step before Congress considers mandating such a program.

We recognize the need to separate the concepts of overfished and overfishing. We are concerned, however, that the proposed definitions are too rigid and recommend the definitions proposed in the draft Fisheries Science Improvement Act. We also appreciate the proposal to improve the quality of the Status of the Stocks Report which, I might add, has considerably improved this year.

The bycatch section on gear research is a worthwhile strategy for achieving the goal of National Standard 9. Including birds in the definition of bycatch, however, is unnecessary, as seabirds are already addressed by the United Nations international plan of action on reduction of seabird bycatch and of course domestically, where necessary, by the Endangered Species Act.

Redirecting regulatory actions concerning essential fish habitat to true areas of concern is similar to the emphasis in the draft Fisheries Science Improvement Act on habitat areas of particular concern. We strongly support action to refocus our habitat efforts.

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

Mr. Chairman, thank you for the opportunity to testify. More detailed written comments on the bill before the Subcommittee will be presented to Subcommittee staff. I will be pleased to answer any questions you may have.

Mr. GILCREST. Thank you very much, Mr. LeBlanc.

[The prepared statement of Mr. LeBlanc follows:]

**Statement of Justin LeBlanc, Vice President, Government Relations,
National Fisheries Institute**

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

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

As this subcommittee has heard through numerous hearings, the implementation of the Magnuson–Stevens Act over the past several years has revealed serious flaws

in the Act that need to be addressed. The Seafood Coalition believes there are six critical issues for the reauthorization process, including: improving the science base of fisheries conservation and management by defining the best scientific information available and ensuring the NMFS stock assessments undergo independent peer review; focusing habitat protection efforts on Habitat Areas of Particular Concern instead of the entire Exclusive Economic Zone, incorporating environmental variability into fisheries management by better defining Maximum Sustainable Yield, overfished, and overfishing; initiating cooperative research programs to fill major data gaps, establishing goals and objectives for observer programs and holding them accountable to those goals and objectives; and improving the socioeconomic impact analyses of fishery management decisions by requiring the National Marine Fisheries Service to consider the cumulative impacts of its decisions.

We believe these priorities are most effectively addressed by legislation being drafted by Representatives Tauzin, Jones, Grucci, Walden, and Simmons. On behalf of the Seafood Coalition, I would like to thank Rep. Tauzin and the other Members for drafting language on this important issue.

While we strongly support the Fisheries Science Improvement Act, we are deeply concerned about the impacts other legislative proposals before this subcommittee would have on the commercial fish and seafood industry, if enacted.

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

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

We are also deeply concerned about many of the provisions in H.R. 2570, the Fisheries Recovery Act. With its unfunded and unachievable mandates, this bill has been nicknamed as the "Fisheries Elimination through Litigation Act" by some in our community. In particular, we are concerned that the National Marine Fisheries Service will be unable to fulfill the bill's call for the maximal avoidance of bycatch, limitations on new fishing gear and technology until demonstrated to have no adverse effects on essential fish habitat, the implementation of ecosystem-based fishery conservation and management without the scientific base necessary to do so, the application of the precautionary approach as a justification for worst-case scenario management, and universal observer coverage without clear goals and objectives. Without dramatic increases in funding, these mandates will open the agency and the commercial fish and seafood industry to litigation far beyond that which we have seen to date. As we have seen over the past several years, litigation and the courts are no way to build sustainable fisheries.

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

- The overcapitalization report is an important step towards addressing this critical issue facing U.S. fisheries. We would recommend that the Secretary be required to consult with the commercial fishing sector before providing recommendations for reducing excess fishing capacity.
- The Buyout provisions may facilitate the use of this tool as a means of reducing excess fishing capacity. While we can recognize the interest of the subcommittee in eliminating both excess vessels and permits, the language needs to be carefully drafted to avoid unintended consequences, particularly in fisheries where vessel owners may own multiple vessels and permits.

- The Section on ecosystem-based management recognizes the fundamental barrier to effectively implementing such a management regime: information. This proposal is an appropriate first step in the development of the ecosystem-based management concept.
- Similarly, an analysis of the utility, benefits, and costs of a national observer program is an appropriate step before Congress mandates such a program.
- We appreciate the efforts of the Chairman to separate the concepts of overfished and overfishing. We are concerned, however, that the proposed definitions are far more stringent than the current National Marine Fisheries Service regulatory guidelines and would recommend the definitions proposed in the Fisheries Science Improvement Act. We also appreciate the Chairman's efforts to improve the quality of the Status of the Stocks Report.

The emphasis in the bycatch section on gear research is an appropriate approach to achieving the goal of National Standard 9. With regard to including birds in the definition of bycatch, this provision is unnecessary as sea birds are already covered by the Migratory Bird Treaty Act and, where necessary, the Endangered Species Act.

- The focus of regulatory actions on Essential Fish Habitat to true areas of concern similar to the emphasis on the Fisheries Science Improvement Act on Habitat Areas of Particular Concern is an appropriate emphasis that we strongly support.
- While the Seafood Coalition has taken no position on Individual Fishing Quotas (IFQs), the National Fisheries Institute believes that the current moratorium on IFQs should be continued until and unless the Magnuson-Stevens Act is amended to require that harvesters and primary processors be equitably treated given the corollary investments in excess fishing and processing capacity that traditional fisheries conservation and management regimes have encouraged.

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

The Seafood Coalition
 Peter Leipzig, Executive Director
 Fishermen's Marketing Association
 320 Second Street, 2B
 Eureka, CA 95501
 707-442-3789
 707-442-9166 FAX

Represent Groundfish and Shrimp Trawlers in California, Oregon, and Washington.

Nils Stolpe
 Communications Director
 Garden State Seafood Association
 212 West State Street
 Trenton, NJ—08608
 ph—215 345 4790
 fx—215 345 4869
 Representing New Jersey's Fish and Seafood Industry

Fisheries Survival Fund
 2 Middle Street
 Fairhaven, MA 02719
 Participants include over 120 full-time Atlantic sea scallop fishing vessels from New England to North Carolina

Trawler Survival Fund
 (same address)
 Participants include over 50 groundfish trawlers from Southern New England through Boston
 Represented by David Frulla
 Brand & Frulla
 923 Fifteenth St. N.W.
 Washington, D.C.—20005
 202-662-9700 / fax:—202-737-7565

Rod Moore
 West Coast Seafood Processors Association

P.O. Box 1477, Portland, OR—97207
503-227-5076 / 503-227-0237 (fax)

WCSPA represents on-shore seafood processors and associated businesses in Oregon, Washington, and California.—WCSPA members process the majority of Pacific groundfish, Dungeness crab, pink shrimp, squid, and coastal pelagic species landed in those states.

Maggie Raymond
The Groundfish Group
Associated Fisheries of Maine
P.O. Box 287
S. Berwick, ME—03908
Representing groundfish, shrimp, and whiting vessels from Maine

John Filose, Vice President
Ocean Garden Products, Inc.
P.O. 85527
San Diego, Ca., 92186-5527
Phone (858) 571-5002

Bob Jones
Southeastern Fisheries Association
1118-B Thomasville Road
Tallahassee, Florida 32303
850-224-0612 / fax: 850-222-3663
SFA represents fishermen who use a variety of gear types, processors, and associated seafood business in the southeastern United States.

Ed Owens, Executive Director
Coalition of Coastal Fisheries
5132 Donnelly Drive SE
Olympia, WA 98501-5012
Voice:—360-456-1334
Email (2) FHNRFForum@home.com

Jerry Schill
North Carolina Fisheries Association
Box 12303
New Bern, NC 28561
NCFA represents fishermen and processors in North Carolina

Rob Ross
California Fisheries and Seafood Institute
1525 I Street
Sacramento, CA 95814
Representing seafood harvesters, processors, importers, retailers, distributors, and associated businesses in California—

Joe Easley
Oregon Trawl Commission
P.O. Box 569
Astoria, OR 97103
503-325-3384 / fax: 503-325-4416
Representing Oregon groundfish and shrimp trawl fishermen

National Fisheries Institute
1901 North Fort Myer Drive
Suite 700
Arlington, VA 22209
703-524-8884 / fax: 703-524-4619
ATTN: Justin LeBlanc
NFI is the largest fish and seafood organization in the U.S., representing nearly a thousand companies, individuals, and organizations involved in harvesting, processing, importing, growing, selling, and distributing seafood.

Fishermen's Association of Moss Landing
P.O. Box 44
Moss Landing, CA 95039
ATTN: Kathy Fosmark, Vice President

Bonnie Brady, Executive Director
 Long Island Commercial Fishing Association
 P.O. Box 191
 Montauk, NY 11954
 516-527-3099 / 631-668-7654 (fax)
 Represents commercial fishermen from 11 ports and 15 gear types and, so far, 2
 fish docks.
 Mailing list at present is 300

Mr. GILCHREST. Mr. Grader.

**STATEMENT OF ZEKE GRADER, EXECUTIVE DIRECTOR,
 PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS**

Mr. GRADER. Thank you, Mr. Chairman, for your kind invitation to testify before you today both discussing the reauthorization generally of the Magnuson-Stevens Act and, in particular, your discussion draft. I have been the Executive Director for the Pacific Coast Federation of Fishermen's Associations for the past 26 years. Our organization—

Mr. GILCHREST. Excuse me for 1 second, Mr. Grader.

Kevin, can you put that microphone to the last seat on the dais here? See that mike sticking up in the air there? Can you push it down? Right in front of you. So I can see Mr. Grader. Thanks.

Kevin is a great canoer.

Mr. GRADER. Thank you. In any event, you have, Mr. Chairman, a copy of our written testimony. What I would like to do here is basically highlight some of the critical issues that we see in your discussion draft and some other needs we see that are necessary for this reauthorization go-around of the Magnuson-Stevens Act.

I want to add at the outset that I think in your discussion draft there are a number of real improvements being made to the Act. However, I do have some concerns with some provisions of it. More specifically, a number of studies are called for. In many instances, while studies may be of further use to us, I think really what we are looking at—what really is needed in some instances is just plain action. We know what needs to be done and specifically, as an example of that, is the issue of buybacks. We know in a number of our fisheries that the problem is that we have excess fishing capacity. We know where that is. We know what has to be done and we simply have got to get on with the job of reducing it.

I think the best example is the Pacific Coast groundfish fishery. Senator Wyden, I think, came up with a good proposal, working with the industry for reducing that fleet which could help greatly in stopping the hemorrhaging there. The problem there wasn't that we needed a study. The problem was that we needed money.

Just this week the Congress is passing billions of dollars in subsidies for agriculture. I don't think it would hurt at all if we spent a few million to help out our fisheries, particularly when that few million now could go a long way in helping us rebuild the stocks quicker and help those fishing communities. And if we spent \$100 million or whatever may be needed on the Pacific Coast groundfish fishery to reduce that fleet, that, like I said, would help us greatly and would probably be the last investment we would have to make. But we need to make it now. Otherwise the problem is just going

to continue to fester. So, again, that is not a matter of studying; it is just a matter of spending the bucks.

The second issue has to do with essential fish habitat. This is an issue that is of a great deal of concern to my members, particularly among the salmon fishermen who have been arguing for well over 20 years of the need for habitat language in the Magnuson-Stevens Act. Frankly, I have been looking around it and trying to determine where EFH language is really causing a problem to the fishing industry right now. I don't really know where the real problems exist. I do know it does cause problems for oil companies and the timber industry and the farm industry who are apoplectic that they may, for the first time ever, have to take care in their operations to protect fishery resources. But I don't know where EFH right now, as we put it in under the Sustainable Fisheries Act, is causing any real problem for the fishing industry.

And the other thing I am worried about in this instance, too, is that organizations such as my own have been arguing for years, trying to protect fish habitat from nonfishing activities. If we all of a sudden retreat now from protecting habitat from damage done by fishing activities, how can we then in good faith go argue to try and protect habitat that is being damaged by nonfishing activities? There it really puts us in a real hypocritical position. We are involved tomorrow morning in Federal court in Oakland, trying to get some water back into the Klamath River. We need to have those EFH provisions in there both to protect fish habitat from our own fishing activities as well as from nonfishing activities. We cannot retreat.

The third issue has to do with overfishing. I think here there is a problem in definition, and one of the concerns I would have is that anytime we have a depressed stock or depleted stock, it tends to get listed as overfished. There are a number of fish stocks right now that are in trouble, many of them because of habitat degradation. We need to come up with a better definition in the Act that correctly identifies those stocks but does not retreat from addressing overfishing where it is a problem.

And I see my time is nearly up, Mr. Chairman, but let me just hit on a couple of other issues here. I think in regards to bycatch—and I would agree with some of what the recreational fishermen have said—is that there are some fisheries where bycatch is not really creating a problem; that is, where the fish are released back alive. For example, in the Dungeness crab fishery, this is a sustainable fishery that has been going on for 100 years, we release the females alive, back over the side. The juvenile males are released back over the side. It is not a problem. But if we are not careful how to define bycatch, it could become a problem.

Likewise in the salmon fishing, when we release undersized salmon with our barbless hooks, they have a good chance for survival.

What we need to distinguish in bycatch is between that type of bycatch where there is likely to be high degree of mortality versus that where there is a low degree of mortality, and that is the real difference in how we need to define it there.

I think as far as IFQs go, I think you made a good start here in trying to establish the national standards. I have identified, I

think, some further standards that we think need to be in that. I want to emphasize again that we need to have an absolute prohibition against processor-owned or separate allocation for processors for IFQs. We start allowing processors to have IFQs, and you are making fishermen sharecroppers. That is what it amounts to.

Mr. Chairman, there are a few other remarks I want to make, but I think that concludes—my time is up here, and if you would like to take a few, I do have to hop out of here pretty soon to catch a plane.

[The prepared statement of Mr. Grader follows:]

Statement of W.F. “Zeke” Grader, Jr., Executive Director, Pacific Coast Federation of Fishermen’s Associations

Chairman Gilchrest, members of the Subcommittee, thank you the kind invitation for me to provide testimony before you this afternoon on the reauthorization of the Magnuson–Stevens Act and proposed amendments to our nation’s principle fishery statute. My comments here today will focus on your discussion draft Mr. Chairman, with some discussion of elements in Mr. Farr’s measure, H.R. 2570 (which we had input into), and some changes we would urge you consider in this reauthorization of Magnuson–Stevens.

The Pacific Coast Federation of Fishermen’s Associations (PCFFA) represents working men and women in the West Coast commercial fishing fleet, mostly owner-operators of small to mid-size fishing vessels. PCFFA is the largest fishermen’s organization on the West Coast and was established shortly before the passage of H.R. 200, the Fishery Conservation & Management Act of 1976. Fishermen belonging to PCFFA member organizations are engaged in a number of different fisheries, including those for salmon, crab, groundfish, swordfish, shark, herring, squid, shrimp/prawns, California halibut, white sea bass, albacore and sea cucumbers. Their gear types are equally as varied ranging from troll to small trawl, gillnet to purse seine, traps to longlines.

I have served as executive director of PCFFA since its founding and, prior to that, worked in and managed fish processing plants while in high school, college and law school. PCFFA has been involved in providing comments and drafting language in past reauthorizations of the Magnuson–Stevens Act and was the first organization to actively work for inclusion of habitat language within the law. I am pleased therefore for the opportunity to comment on proposed amendments in this reauthorization, as well as recommend changes we believe necessary.

Mr. Chairman I would like to use your discussion draft as an outline for my comments. I should add that my members have not yet had an opportunity to review that draft so these comments will be based essentially on past positions of PCFFA on the numerous issues touched on in your draft.

Section 3. Report on Overcapitalization.

Overcapitalization, or “excess harvesting capacity” in the U.S. fishing industry has been written about extensively over the past two decades, including the June 2000 GAO report. A report on overcapitalization, as proposed in the discussion draft, however, could be useful in identifying those fisheries where there is excess fishing capacity and to provide guidance on appropriate measures for addressing excess capacity where it threatens conservation of fish stocks or the economic viability of the fishery. Such a report should include recommendations for funding sources for reducing fleet harvest capacity.

The proposed report identifying the fisheries with “the most severe examples of excess harvesting capacity” should, too, distinguish between those fisheries where: 1) the fleet capacity substantially exceeds the maximum sustainable yield of the fishery; 2) the fleet capacity exceeds the amount of fish currently or foreseeably available for a sustainable harvest in a fishery where the resource decline is attributable to non-fishing impacts; 3) the fleet capacity exceeds the fish available to it, at current ex-vessel prices, for the participants to achieve on average a reasonable income; or 4) the fleet is overcapitalized due to some combination of the first three. I raise this because there are, in fact, at least three different types of overcapitalization and each may require a different remedy.

The first type of overcapitalization (1 above) clearly would warrant some form of fleet reduction as the correct remedy. Reducing fleet capacity would facilitate the matching of fleet harvest size to the size of the resource.

In the second type of overcapitalization (2 above) an alternative to reducing the fleet, may be to restore the resource; for example where disease or habitat loss may have taken a heavy toll on the stocks. Indeed, fleet reduction, where fishing impacts are not the cause of the resource decline, could send a fishery into a death spiral. For example, in the west, how will policy makers allocate water in a stream between fisheries and agriculture if the value of the fishery continues in decline due to a shrinking fleet when agriculture has “unmet” water demands? It becomes difficult to argue for the rebuilding of fish stocks if the fleet has been depleted.

In the third type of overcapitalization (3 above), the remedy may be to look first at the economic factors driving ex-vessel prices down. If there is collusion among processors that is resulting in low prices or if national trade policies are depressing fish prices, should the fleet be reduced—diminishing the gross economic worth the fishery, when perhaps the answer may be with the Justice Department or the U.S. Trade Representative. Alaska’s current salmon crisis, for example, is not because there are “too many boats and too few fish,” but the result of a spate of cheap farm salmon imports.

The final point I want to make regarding Section 2 of the discussion draft, is that while I agree we should not dump our surplus fishing fleet on foreign nations, there should be some flexibility here. Specifically, I suggest language that would allow vessels removed from the U.S. fisheries to go into the fisheries of other nations if the Secretary finds that the vessels would: 1) not contribute to overfishing in that nation; 2) not be used to fish the same stocks U.S. vessels are fishing (in U.S. or international waters); and 3) contribute to modernization for improved product quality or fisherman safety, or contribute to development of individual, private owner-operator fleets. I bring this up because in places such as the Russian Far East there is a real need to develop a small coastal fishing fleet that could employ local fishermen and support local fish processing. Some of the surplus U.S. vessels, that are still serviceable, could be used to help with the development of such fleets, where the purchase of new vessels would initially be prohibitive.

Section 4. Buyout Provisions

The discussion draft provisions for fishing capacity reduction programs is an improvement over current law, giving guidance on the conduct of such programs and providing for both the removal of vessels and their permits from a fishery. The two concerns I have with this section of the discussion draft are these:

First, as noted in Section 3, there should be discretion to allow vessels removed from U.S. fisheries to go to the fisheries of another nation if certain conditions are met (as mentioned above).

Second, and most important, a source of funding needs to be established for the buyouts to occur. The impediment right now to some much needed buy-outs, such as for trawlers in the Pacific groundfish fishery (Senator Wyden’s proposed legislation, for example) is not a good program but a lack of funds. If Congress can provide massive amounts of subsidies for agriculture, including proposals to buy-out and retire agricultural lands, then certainly some funds are appropriate now to remove vessels whose construction the government encouraged and even helped finance (vessel loan guarantees, for example). Establishing a fund and appropriating the monies needed now for buy-backs would help stop the hemorrhaging in many fisheries and speed the recovery of stocks. A buy-back fund should probably be some mix of public and industry funds—that mix to be determined by the circumstance of each fishery.

Section 5. Data Collection

In a number of U.S. fisheries the recreational catch may equal or exceed the commercial harvest. In some fisheries the recreational impact may be greater as well, including significant bycatch. It is therefore important that a good data collection system be established for the marine recreational fishery. The proposal in your discussion draft could greatly improve recreational data collection. Two recommendations I would to this section are:

First, the data collection program should also be required to gather information on bycatch in the recreational fishing by fishery and gear type. This information will be needed by fishery managers and anglers in addressing those fisheries or types of recreational tackle with significant catch mortalities.

Second, observers should be part of the data collection program to better ensure the quality of the information gathered. This could, perhaps, be tied into the observer program in Section 7 of the discussion draft.

Finally, the discussion draft also addresses the availability of economic data in the commercial fishing sector from fish processors. The problem with some of this data is that it may either be incomplete or inaccurate. Steps must be taken to en-

sure a system exists, and enforced, for the accurate reporting of all catches and the true ex-vessel price paid for the fish.

Section 6. Ecosystem-Based Management

Some of us have long recognized that it is not possible to conserve and manage fish stocks without considering the habitats of the fish, including water quality, and predator-prey relationships. Fishermen in my organization, at least, have long been cognizant of the importance of habitats and have been careful observers of predator-prey interactions. For a quarter century now my organization and a few other fishing groups around the country have worked to protect water quality, freshwater flows and fish habitats. They understand the importance of maintaining forage stocks. Commercial fishermen in California, for example, favored conservative quotas for their herring fishery, recognizing those fish were forage for salmon and other commercially and recreationally important species. They also drafted and lobbied the passage of state legislation banning the take of white sharks, a top of the food chain predator, and a prohibition on fishing for krill, an important species near the bottom of the ocean food chain. All of this is to say that the importance of ecosystems have long been understood by many in the fishing industry; this isn't rocket science. And, it makes sense therefore that we should manage fisheries based on an ecosystem approach.

The language in the discussion draft making it U.S. policy to support and encourage ecosystem management is sound. However, I think we need to go beyond just talking about ecosystem management and begin implementing it. To that end, I suggest the Subcommittee look at the language in H.R. 2570 (Section 8) calling for implementation of fishery ecosystem plans. I believe the language in the discussion draft, establishing U.S. policy for ecosystem management and defining the term ecosystem, can be melded with that in H.R. 2570 setting forth the development of ecosystem plans and a new national standard in the Magnuson-Stevens Act.

Finally, let me emphasize with regards to ecosystem management, that lack of information about an ecosystem or the lack of an ecosystem plan should never be an excuse for doing nothing where overfishing, or habitat destruction, or unacceptable levels of bycatch are known to exist. The too often heard phrase in the implementation of the ESA, Magnuson-Stevens and other conservation laws, that "we can't do single-species management," is nothing more than the rationale of those who do not want to act. Yes, we need to make it U.S. policy to support ecosystem management. Yes, we need to put in place a timetable for establishing ecosystem management plans. But in the meantime, we should not let the lack of ecosystem data, or the lack of ecosystem plans, prevent implementation of sound fishery conservation and management measures based on what is known.

Section 7. Observers

There is considerable resentment among many in the fishing industry regarding on-board fishing observers. It is felt by many to be an invasion of privacy—"Big Brother," an inconvenience at best and, at worst, another mouth to feed, someone who is in the way, a potential source of liability, and someone who may not necessarily be recording information accurately or who is engaged in more than just scientific data gathering. At the same time, most recognize the value of on-board observers. On the West Coast, information from on-board observers in the Pacific whiting fishery helped to model regulations aimed at avoiding the take of salmon. On-board observers in the Pacific groundfish fishery can provide the independent data on the levels of bycatch among different gear types, as well as the effectiveness of new or modified gear to avoid the take of non-target species. Longline swordfish fishermen in the Pacific are wanting to have observers aboard whose data may quell the allegations made against that fishery regarding turtle and sea bird bycatch and the take of immature fish. Off the north coast of California, salmon trollers will be taking observers aboard this summer to determine contact rates with coho salmon. It is their hope independent observer data will show what the fishermen believe to be true: that the contact rates are low and a liberalized season for chinook salmon can be justified without impacting recovery of the ESA-listed coho.

I don't think there is any question on the need for a national fishery observer program. The issue is what are the needs of such a program. Many of the needs for a national observer program, I believe, are known. For that reason, I suggest the Subcommittee consider the language in H.R. 2570 (Section 7) that would both develop and fund a national fishery observer program. A study could be useful for further delineating needs, providing it not delay establishment of a national observer program (such as that proposed in H.R. 2570). Many of the recommendations requested in the needs study, proposed in the discussion draft, are for questions I think we already have answers to. However, if a study is to go forward, it should

request recommendations for: 1) observers in the recreational fisheries; 2) observer training and salaries; 3) observer usage in the testing of new or modified fishing gear and experimental fisheries; and 4) observers for new coastal and open ocean aquaculture operations. Again, I want to emphasize that we cannot wait for further study to establish a national observer program and I urge your adoption of the observer language in H.R. 2570.

Section 8. Overfishing

The definition of overfishing in the Magnuson–Stevens Act has been particularly troubling to my organization, especially with regard to the way it has been applied to the salmon fishery. Many salmon stocks on the West Coast are depressed, some even listed under the ESA, primarily due to destruction of these populations' in-river spawning and rearing habitat. Because there was no other way to describe depressed fish populations, they were categorized as "overfished," leading many to believe—wrongly—that simply by removing fishing effort, stocks would rebound. In developing its own "mini-Magnuson" act, California wrestled with the definition in its 1998 Marine Life Management Act, and developed its own language for a depressed fish stock, which includes under it overfished stocks (see ¶90.7 and ¶97.5 in the attachment). I worry, however, with the change in the overfished definition proposed in the discussion draft that it may become an excuse for regional councils or the National Marine Fisheries Service to attempt to blame oceanographic or some other conditions for the cause of stock declines and not address excess fishing effort or develop stock rebuilding plans.

Finally, I would recommend to the Subcommittee the language in H.R. 2570 calling for the elimination of overfishing where it exists. Addressing overfishing, and enacting cutbacks in quotas, reducing days fished and other fishing restrictions can cause severe economic and social hardships in the fishing industry. However, if overfishing is not addressed promptly, the remedy, though delayed, will be even more painful. The hardships that may befall fishing families and communities when overfishing is addressed can be ameliorated in part, I believe, depending on the fishery, with buy-backs (where there is overcapitalization), short-term disaster relief, and engaging fishermen and their vessels in fishery research or restoration programs.

Section 9. Bycatch

The discussion draft improves current law by enacting a one-year deadline to begin enacting a standardized catch reporting system. The concern I have is that the language also provides the regional councils an exemption if they publish a report explaining why they can't comply. The discussion draft also includes seabirds under the definition of bycatch, which really brings makes the law consistent with current practices which treat the hooking or netting of seabirds as bycatch. Indeed, considerable and laudable efforts have been made by longliners in the North Pacific and gillnetters in the Pacific Northwest to modify their deployment or use of the fishing gear to avoid an incidental take of seabirds. In both of these instances, it was the fishermen's associations that led the effort to protect the seabirds.

The language in H.R. 2570 also strengthens the bycatch provisions of the current law. The one area that is of concern to my organization is how bycatch is defined and addressed. Specifically, some fisheries take non-target fish/shellfish in the course of the fishing operation (female Dungeness crabs in traps, undersized salmon on barbless hooks are two examples) and release them live back into the wild and their survival is high. Some distinction must be made between those types of operations where there is very little mortality associated with the take and release of non-target species and those where most of the bycatch is either dumped dead or will soon die. It is this latter form of bycatch that is problematic and must be reduced.

The discussion draft also acknowledges the need for research and development on fishing gear that will minimize bycatch. I appreciate Congress' attention to this matter and would recommend incorporation of some of the language in H.R. 2570, specifically the utilization of Saltonstall–Kennedy Act monies to help fund this research and development, in the Subcommittee mark-up of Magnuson–Stevens Act reauthorization amendments.

Section 10. Essential Fish Habitat

Of all the provisions in the Magnuson–Stevens Act, the section on habitat is probably the most important to the PCFFA. PCFFA had begun calling for inclusion of habitat language in the FCMA shortly after its passage when both the Pacific Council and NMFS refused to consider the impacts of habitat destruction on salmon stocks. I am concerned therefore with what I read as a constriction on essential fish habitat (EFH) in the Magnuson–Stevens Act proposed in the discussion draft. This

language in the draft, I fear, would reverse the progress that has been made in identifying and protecting EFH, as part of finally considering ecosystems in the conservation and management of our fisheries. My organization has been outspoken, and rightfully so, in its efforts to protect fish habitat from many non-fishing impacts. If we do not have strong language to prevent the damage to habitat by fishing gear, how can those of us in the fishing industry argue for protection of habitat from non-fishing impacts? Weakening EFH language in Magnuson-Stevens does not make it easier on the fishing industry by allowing the destruction of the very ecosystems that are critical for abundant fish stocks, and it makes it much more difficult for us to advocate the protection of habitat affected by non-fishing activities. I think the language in H.R. 2570 is preferable here to that in the present discussion draft, Mr. Chairman.

Section 11. Demonstration for Oyster Reproduction Sites

Mr. Chairman, I applaud your effort here to develop a program for the design, construction, and placement of oyster reproduction sites in the Chesapeake Bay. I urge you to expand this program, however, to also establish a similar West Coast program for San Francisco Bay. San Francisco Bay, as you may know, is the most important estuary on the west coast of North and South America. This bay is not simply the pathway between the Sierra streams and the sea for chinook salmon, nor simply a spawning or nursery area for Pacific herring and Dungeness crab, it is also habitat for a once significant oyster population. Prior to World War II, San Francisco Bay had a large and thriving oyster fishery. Some native oysters are still found in the Bay, but are currently at such low levels that they may warrant listing under the Endangered Species Act. Rather than waiting for a listing, or the extinction of these remnant populations, I suggest an aggressive program, similar to that being proposed in the Chesapeake, be established for restoring San Francisco Bay native oyster populations. Funding, in part, for a San Francisco Bay program might be achieved by redirecting some of the existing CALFED restoration funds. I would be happy to discuss this matter further with you, Mr. Chairman, and your staff.

Section 12. Individual Quota Limited Access Programs

Despite the hype from a lot of free-market theorists, as well as a few environmental groups and bureaucrats looking for easy fixes, PCFFA has found most individual fishing quota (IFQ) systems in place in the U.S. and around the world to be unmitigated disasters—mostly consolidating ownership of the fisheries into a few corporate hands and relegating fishermen to sharecroppers. They have had virtually no conservation benefit (over and above normal limited entry programs) and the safety aspects touted for them soon disappear as shoreside interests scoop up the quotas. For that reason, PCFFA supports the continued moratorium on the implementation of IFQ systems in the U.S. fishery.

If, however, the IFQ moratorium is lifted, then specific standards must be imposed, to assure the systems are not abused. NMFS and the regional councils cannot be given carte blanche in developing IFQ systems. The discussion draft provides a start on setting out guidelines to the councils for establishing IFQs, however, it does not go nearly far enough. The standards proposed by the Marine Fish Conservation Network, of which PCFFA is a member, we fully support. The following elements, we believe, are critical for IFQs if the moratorium is lifted:

1. Referendum. Prior to any IFQ program being established a referendum must be conducted among those individuals, who participated in the fishery considered for an IFQ system, with documented landings in that fishery during one of the past three or more years, and who are still eligible to participate or have permits to participate in the fishery in question. A 60 percent approval, as proposed in the discussion draft, is the minimum that should be required for an IFQ system to proceed. The rules for a referendum cannot be left up to either NMFS or the regional councils.

2. Eligibility. Eligibility for an initial grant of quota in an IFQ fishery should be open to all those individuals or vessels with landings, no matter how small, who participated in the fishery during one of at least three previous years and who are still eligible to participate in that fishery or who have permits to the fishery in question. If free markets are to work then allow those who are eligible trade and sell quota among themselves to determine what amount they need for an economically viable fishery.

3. Ownership. Ownership of quotas should be limited to individuals holding fishing licenses and who are on board and engaged in the fishery for the quota. Where companies own vessels and may be eligible for quota share based on a vessel's catch history, they should be "grandfathered" in, but any lease or sale thereafter of their quota could only be to an individual licensed and on-board fishing for the quota.

4. Quota Caps. Any IFQ system must have in place an effective method for controlling the amount of quota owned by any one individual, family unit, partnership or corporation.

5. Program Duration. Finally, any IFQ system established should be for not longer than five years duration, after which point it may be abandoned or renewed following a review of its achievements for improving fish conservation, safety, product quality, and individual vessel ownership.

Let me also emphasize my organization's, and most fishing organizations, adamant opposition to granting quotas to fish processors. Fish processors who own vessels engaged in fisheries should be considered for eligibility for quota for those vessels, however, with the clear caveat that any subsequent sale or transfer of any or all of that quota can only go to a licensed fisherman operating a vessel in the fishery for which the quota is for. Moreover, the idea of splitting the overall quota for a fishery and giving a portion of it to processors is unacceptable. Mr. Chairman, many of our fisheries in this nation are in horrible shape. Making fishermen sharecroppers or permitting fish processors a cartel controlling a public resource, will just make a bad situation far worse. I strongly urge the Subcommittee and the Congress to reject the issuance of fish quotas to processors, except for those owning vessels that have a catch history in a fishery.

Section 13. Cooperative Education and Research

In addition to that proposed in the discussion draft, I would also urge the Subcommittee consider the language in H.R. 2570 promoting cooperative fishermen-science research programs.

Section 16. Council Membership

Membership on the regional councils is an issue, like habitat, that has been of concern to PCFFA and other fishing groups. In the 1986 reauthorization our organization worked to include language that council members had to be knowledgeable regarding fisheries. What is important to us is not that the public members of regional councils be simply those from the fishing industry, but the individuals, wherever they are be knowledgeable about the fisheries. Fishermen—commercial, recreational and tribal—provide valuable expertise on the councils. But I question whether the lobbyists, the lawyers or the executive directors of those associations have such first hand fishing experience and whether they simply should be prohibited from serving. Moreover, I also believe it is time to examine closely the conflicts of interests that may arise not just among commercial or recreational fishing representatives, but among other interests with an economic stake in a council vote (a promotion or continued employment, for example), including the state fishery directors.

Additional Issues

Mr. Chairman, there are three additional issues, not included, in the discussion draft, that I believe may merit consideration in this reauthorization of Magnuson-Stevens. They are:

Precautionary Approach. I believe a definition of the precautionary principle is needed in the Act and a directive to begin implementing it. H.R. 2570 (Section 11) contains such language. I say this not so much because I believe its implementation now can undo what has been done when we threw caution to the wind and built up, following passage of the FCMA, a fleet with a greater catch capacity than there were stocks to support. But, because I worry greatly about NMFS' and some of the state's fascination with new forms of coastal and open ocean aquaculture that I believe may be the next great threat to our native fish stocks if caution is not adhered to. Proposals for open ocean aquaculture could lead to harm to both ecosystems and endanger the very stocks we are now trying to rebuild. Making matters worse is the biotech industry's push for genetically-modified fish for aquaculture operations. We are working hard to rebuild damaged fish stocks, the nation is spending millions to prevent and control marine invasions, are we going to throw that all away now, because someone has bit into the hype of more fish to feed the world's starving masses. We need, I believe, a precautionary principle, not to correct previous mistakes but to make sure we don't make more mistakes with our fisheries in the future.

Professionalization. A study not included in the discussion draft, but one that I believe is needed, is to examine whether a professionalization program is needed for our nation's fishing fleet. Canada is currently embarking on such a program and other nations have them in place as well. Should we not examine whether and how a program for the education and training of those engaged in the harvest or our nation's fishery resources could or should be established?

Funding Fishing Programs. Last some method needs to be considered to provide for a financial contribution from the industry to help pay for many needed fishery programs that are not adequately funded. Whether it should come in the form of an ad valorem tax on all seafood sold in the U.S. or some other means, I don't know, but part of the reason for the crisis we're in is due to our failure to fund the research, stock assessments, and enforcement needed for the proper conservation and management of our fisheries.

Mr. Chairman and members thank you again for your invitation to testify here today. I will be happy to answer any questions you may have.

ATTACHMENT

CALIFORNIA MARINE LIFE MANAGEMENT ACT

DEFINITIONS

<http://www.dfg.ca.gov/fg-comm/mlma/appendix/a.html>

§90.1. "Adaptive management," in regard to a marine fishery, means a scientific policy that seeks to improve management of biological resources, particularly in areas of scientific uncertainty, by viewing program actions as tools for learning. Actions shall be designed so that even if they fail, they will provide useful information for future actions. Monitoring and evaluation shall be emphasized so that the interaction of different elements within the system can be better understood.

§90.5 "Bycatch" means fish or other marine life that are taken in a fishery but which are not the target of the fishery. "Bycatch" includes discards.

§90.7. "Depressed," with regard to a marine fishery, means the condition of a fishery for which the best available scientific information, and other relevant information that the commission or department possesses or receives, indicates a declining population trend has occurred over a period of time appropriate to that fishery. With regard to fisheries for which management is based on maximum sustainable yield, or in which a natural mortality rate is available, "depressed" means the condition of a fishery that exhibits declining fish population abundance levels below those consistent with maximum sustainable yield.

§91. "Discards" means fish that are taken in a fishery but are not retained because they are of an undesirable species, size, sex, or quality, or because they are required by law not to be retained.

§7090(b) "Emerging fishery," in regard to a marine fishery, means both of the following:

A fishery that the director has determined is an emerging fishery, based on criteria that are approved by the commission and are related to a trend of increased landings or participants in the fishery and the degree of existing regulation of the fishery.

A fishery that is not an established fishery. "Established fishery," in regard to a marine fishery, means, prior to January 1, 1999, one or more of the following:

A restricted access fishery has been established in this code or in regulations adopted by the commission.

A fishery, for which a federal fishery management plan exists, and in which the catch is limited within a designated time period.

A fishery for which a population estimate and catch quota is established annually.

A fishery for which regulations for the fishery are considered at least biennially by the commission.

A fishery for which this code or regulations adopted by the commission prescribes at least two management measures developed for the purpose of sustaining the fishery. Management measures include minimum or maximum size limits, seasons, time, gear, area restriction, and prohibition on sale or possession of fish.

§93. "Essential fishery information," with regard to a marine fishery, means information about fish life history and habitat requirements; the status and trends of fish populations, fishing effort, and catch levels; fishery effects on fish age structure and on other marine living resources and users, and any other information related to the biology of a fish species or to taking in the fishery that is necessary to permit fisheries to be managed according to the requirements of this code.

§45. "Fish" means wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any part, spawn, or ova thereof.

§94. "Fishery" means either of the following:

One or more populations of marine fish or marine plants that may be treated as a unit for purposes of conservation and management and that are identified on

the basis of geographical, scientific, technical, recreational, and economic characteristics.

Fishing for or harvesting of the populations described in (a).

§8100. "Limited entry fishery" means a fishery in which the number of persons who may participate or the number of vessels that may be used in taking a specified species of fish is limited by statute or regulation. (Note that limited entry is a type of restricted access. See Appendix D.)

§96. "Marine living resources" includes all wild mammals, birds, reptiles, fish, and plants that normally occur in or are associated with salt water, and the marine habitats upon which these animals and plants depend for their continued viability.

§96.5. "Maximum sustainable yield" in a marine fishery means the highest average yield over time that does not result in a continuing reduction in stock abundance, taking into account fluctuations in abundance and environmental variability.

§8586(a) "Nearshore fish stocks" means any of the following: rockfish (genus *Sebastes*) for which size limits are established under this article, California sheephead (*Semicossyphus pulcher*), greenlings of the genus *Hexagrammos*, cabezon (*Scorpaenichthys marmoratus*), scorpionfish (*Scorpaena guttata*), and may include other species of finfish found primarily in rocky reef or kelp habitat in nearshore waters.

§8586(b) "Nearshore fisheries" means the commercial or recreational take or landing of any species of nearshore finfish stocks.

§8586(c) "Nearshore waters" means the ocean waters of the state extending from the shore to one nautical mile from land, including one nautical mile around offshore rocks and islands.

§97. "Optimum yield," with regard to a marine fishery, means the amount of fish taken in a fishery that does all of the following:

Provides the greatest overall benefit to the people of California, particularly with respect to food production and recreational opportunities, and takes into account the protection of marine ecosystems.

Is the maximum sustainable yield of the fishery, as reduced by relevant economic, social, or ecological factors.

In the case of an overfished fishery, provides for rebuilding to a level consistent with producing maximum sustainable yield in the fishery.

§97.5. "Overfished," with regard to a marine fishery, means both of the following:

A depressed fishery.

A reduction of take in the fishery is the principal means for rebuilding the population.

§98. "Overfishing" means a rate or level of taking that the best available scientific information, and other relevant information that the commission or department possesses or receives, indicates is not sustainable or that jeopardizes the capacity of a marine fishery to produce the maximum sustainable yield on a continuing basis.

§98.2. "Participants" in regard to a fishery means the sportfishing, commercial fishing, and fish receiving and processing sectors of the fishery.

§98.5. "Population" or "stock" means a species, subspecies, geographical grouping, or other category of Fish capable of management as a unit.

§99. "Restricted access," with regard to a marine fishery, means a fishery in which the number of persons who may participate, or the number of vessels that may be used in taking a specified species of fish, or the catch allocated to each fishery participant, is limited by statute or regulation. (Note that there are several types of restricted access, including limited entry and individual quotas. See Appendix D.)

§99.5. "Sustainable," "sustainable use," and "sustainability," with regard to a marine fishery, mean both of the following:

Continuous replacement of resources, taking into account fluctuations in abundance and environmental variability.

Securing the fullest possible range of present and long-term economic, social, and ecological benefits, maintaining biological diversity, and, in the case of fishery management based on maximum sustainable yield, taking in a fishery that does not exceed optimum yield.

Mr. GILCHREST. Does anyone else have to leave within 15 minutes?

I guess we can start with you, Mr. Grader. The essential fish habitat versus—some have recommended that we put in the Magnuson habitat areas of particular concern to define that. And

I understand essential fish habitat—the provisions that are contained in Magnuson you feel have not caused a problem in the fishery in any particular way. What NMFS has begun to do, which some people have asked us to do, is to look at habitat areas of particular concern. Is that something that should be clarified, put in the Act in some form, or can we just deal with essential fish habitat language that is in there now without weakening it?

Mr. GRADER. I think my preference would be for the latter, to stay with the existing definition. Some have complained that we don't want to begin changing definitions again. We are just now getting acclimated to what is in the SFA. I would see where we are. I think as we learn more about these ecosystems, as we learn more about the habitat's environment, we will be able to define that; and in many cases it will probably become narrower, because we will determine that the fish really don't use habitats. And in other cases we may find that we define habitats too narrowly. But I would be hesitant right now to retreat from that, and I think if we do begin retreating from that, we are going to see a lot of other nonfishing interests here at the table clambering also for retreating in their areas.

Specifically, I dread to think what is going to happen, those that are affecting wetlands. If we start retreating now, they are going to be right here demanding exemptions or, you know, what they are doing to wetlands not be considered. And as we all know, wetlands are critical to our coastal fish stocks.

Mr. GILCHREST. So you feel that the provisions that are in existing law and the way NMFS is dealing with that, we will allow NMFS a little more time to work on an issue and resolve any problems that they have, and don't have any language in dealing with habitat areas of particular concern.

Mr. GRADER. My feeling is only that making sure they stay on some sort of time line, that we hold them to that. But I think right now, let us try to enforce what we have there now, see how well it works. We may have to revisit in a couple of years, but right now I would be really hesitant to try to retreat at all from any of that or constrict in any way that existing language. On the West Coast it is absolutely critical to us that we protect some of these habitats. We have lost so much already. In the salmon habitat, in some cases we have lost up to 90 percent of the spawning habitat for some of these critical fish. We can't afford to lose any more. Likewise, we have lost 90 percent of our wetlands, and likewise we ought not to be damaging with our fishing gear critical habitats. It is not in our best economic interest. It is foolhardy to be damaging that habitat.

Mr. GILCHREST. And we are going to try to save that habitat.

Mr. GRADER. Thank you.

Mr. GILCHREST. The other issue that you raised was over capitalization and the buyback provisions. The Wyden bill that you mentioned, it is my understanding that based on the criteria they use, and I think it is estimated it would cost \$50 million in that one fishery, would be under the jurisdiction of Resources, Transportation, and Ways and Means Committees. So we would have our work cut out for us under that. But your comment, which is eminently logical and reasonable, that we spend billions of dollars in agriculture, versus how much money we spend to try to deal with

the fisheries, is pretty enormous. So we will make an extra effort to look at those areas as expeditiously as we possibly can.

Mr. GRADER. Thank you, Mr. Chairman. I should add, I greatly appreciated your section there on oysters, and hope we could do a similar oyster rebuilding plan for San Francisco Bay as well. And in fact, I think we have identified the source of funds for it. All we need is the language to kind of tweak it to make it happen. But the oyster restoration is critical, and I appreciate the work you have done in the Chesapeake Bay, and I would hope we could do the same thing in San Francisco Bay, which also at one time had a huge oyster fishery.

Mr. GILCHREST. Apparently, according to Mr. Hayes, we only need a little bit of tweaking to make this one go. As long as there are grass-roots contributions to the protected areas around those oyster reefs, we could make that happen.

One last question before I let you go, Mr. Grader, and that is I am going to ask Mr. Houde if he has some type of timeframe for an expedited ecosystem fisheries management—whatever you want to call that—approach. We don't have a time line in our bill. In your testimony, you made a comment that there is a lot of information out there already. We need to continue to study it, but we have to hold—these are my words—Councils' feet to the fire and begin some type of deadline for an ecosystem fisheries approach.

Do you have some type of recommendation for a deadline or how we should proceed with that, or is there a Council that might have a pilot program in the next year or 2, 3, that could institute a pilot project?

Mr. GRADER. Actually, I was thinking when you asked that question to earlier witnesses, I think we could do salmon fishing, which I am most familiar with, on the West Coast. We could probably do it there. We know what a lot of the ecosystem needs are of those fish. We have had to in order to save them. So that one would lend itself very well to it.

Groundfish, on the other hand, would be far more difficult because there is a lot that we don't know about those resources, but certainly the salmon could be a good one for a pilot project on that. It is a little bit different than most marine fish, but I think it would be an interesting one to do because we do have so much information on it.

Mr. GILCHREST. So, have the Pacific Council do a salmon ecosystem fisheries management plan just for salmon?

Mr. GRADER. I think it would be an interesting one to try. Keep in mind, I don't dare go back unless I can get some assurance that we could get some funding to do it as well, but I think there are probably some others around the coast where we do have good information and we could use them on a trial basis and see how they work. But in other words, to get moving, not just talking about it, but let us do something.

Mr. GILCHREST. Thank you, Mr. Grader, and it is about 20 of, so if you feel you have to depart we certainly appreciate your traveling this distance, giving us your testimony.

Mr. GRADER. Thank you very much Mr. Chairman.

Mr. GILCHREST. And we will do our best to include your recommendations into the heart of the bill.

Mr. LeBlanc, you mentioned in your testimony the unfunded and the unachievable, which is understandable because we don't want to have the Councils or NMFS do things that they can't do with money they don't have. No one is going to be successful. But you also made a comment about the application of the precautionary approach.

And I would like to ask you if you could be a little bit more specific on why you would be opposed to what it seems to me has been a scientific principle for a century or two, which in essence is the principle of uncertainty when dealing with a whole range of issues and the principle of uncertainty dealing with one of the most uncertain aspects, the fisheries. I would assume that the principle or the precautionary approach would benefit the fishery plus the commercial fishing industry, and certainly the recreational fishing industry, when you understand the huge range of the dynamic east-bound and flow that these fisheries go through.

And also if we look, and it seem to me we are moving in the direction of an ecosystem approach, which means there is more than just fishermen that impact the fishing, there are a whole range of things, and nature itself is dynamic; but in a precautionary approach, it tries to assure that in that one aspect that is not dynamic, which is the steady impact of the fishery—you used a precautionary approach in all the other arenas that affect that stock—would be beneficial to the fishery and to the industry.

Mr. LEBLANC. Mr. Chairman, I think everyone agrees in general with the idea that the more uncertain you are, the more cautious you need to be. So in general, I think everyone agrees that you should take a precautionary approach to fisheries management. The problem becomes when you attempt to define what you mean by precaution, and just how cautious is cautious enough. And I think from my perspective, you have to look at this in the context of risk assessment essentially.

Scientists don't come to Fishery Management Councils and say, you can catch this many fish. They come to Fishery Management Councils and say, if you catch this many fish, you have this probability of overfishing the resource; and if you catch that many fish, you have that probability of overfishing the resource. And you have to weigh those risks against other risks, and those risks are social and economic impacts, and make a decision that is not a purely scientific one but a scientifically informed social decision. So in that context, a precautionary approach is appropriate. But what we are told the precautionary approach means is worst-case scenario management. That is, you want to reduce any probability of overfishing a resource, which is simply not practical and could have devastating social economic impacts.

There is no right answer. Is a 75 percent chance of not overfishing appropriate, or is a 50 percent chance of not overfishing appropriate? And how you choose between those numbers may depend, at least in part, upon what the relative social and economic costs are of making those two different decisions.

Mr. GILCHREST. So is the term or concept "precautionary approach" a relative term, depending on whose interpretation you are using, or is there in fact a definite definition for precautionary approach which can be applied in a myriad of circumstances?

I guess I would like to ask Dr. Houde to comment on Mr. LeBlanc's statement about precautionary approach.

Dr. HOUDE. I think precautionary approach is the present expression of the ethic that we have had for 100 years. That is true. Before precautionary approach was popular, we talked about risk-averse management. So it is a way to avoid risk.

But where I disagree with Mr. LeBlanc is that it is not an open-ended, hard-to-define approach for any particular fishery management plan. What you wish to be precautionary can be easily defined. It could be that 75 percent, or it could be that 50 percent, and I would argue that this is the kind of language that we need to see in the Act.

There are examples in recent years, for instance, with one of our fisheries on the East Coast where NMFS in their stock assessment gave the probability of overfishing as 50 percent if a certain fishing mortality rate were applied. The Council chose a rate that was much less than that, and then the final agreement was somewhere in between 50 percent and something like 3 percent. And that went to court and the NMFS and the Councils lost. Had there been a definition, the plan that said 50 percent probability was the precautionary rate that one would accept, a lot of trouble would have been avoided.

Mr. HAYES. Mr. Chairman, I think there are a couple of things here that are important. One, a precautionary approach is defined. It exists in an annex to the Straddling Stock Convention which the United States has signed and is a party to. It is the application of the precautionary approach, as Mr. Houde suggested, Dr. Houde suggested, that is the difficulty. And what I believe Mr. LeBlanc was referring to was his concern that the Farr bill defines the precautionary approach in a way that is overly conservative. Frankly, I don't think that definition is consistent with what is in the Straddling Stock Convention, and maybe other people do—

Mr. GILCHREST. Would you suggest that we use the definition from that Convention in the Magnuson Act?

Mr. HAYES. I would suggest that that is already domestic law and it is unnecessary to apply it to the Magnuson Act.

Mr. GILCHREST. If it is unnecessary, would it be overly burdensome if we are already complying it with and then put it in the Magnuson?

Mr. HAYES. The definition—I haven't read it in maybe 6 or 8 months, but the definition that is in the Straddling Stock Convention is not exactly a precise statement, as Dr. Houde would suggest. In other words, it doesn't suggest to you that 50 percent probability is the right level of probability. What it gives you is a series of criteria that you should look at in order to make a conservative judgment with respect to the application of scientific data when you are doing it in a fishery context.

Mr. GILCHREST. So, Mr. Hayes, you are saying it is not necessary to put a definition or any type of criteria defining the precautionary approach in the Act at this time?

Mr. HAYES. What I am suggesting is that Fishery Management Councils are already obligated to apply the definition in the Straddling Stock Convention to the thing that they are doing, and that

that definition is probably adequate if in fact they would go ahead and apply it.

Mr. GILCHREST. Would you agree with that, Dr. Houde?

Dr. HOUDE. I can't argue with Mr. Hayes with respect to whether it is already incorporated into domestic law. I can tell you that in fishery management organizations, agencies, and institutions around the world, it appears repeatedly over and over. I think that the precautionary approach definition appeared before the Straddling Stock Conventions that were held. It came out in Food and Agriculture Organization papers back in 1995. I think it comes out of the Rio Convention in 1992, where I believe it was first discussed.

Dr. HOUDE. So it appears, and it strengthens the management language in many fisheries, agencies, institutions around the world, and I think it would be a good thing to have in Magnuson-Stevens.

Mr. GILCHREST. Why do you say that, Doctor? What advantage would there be to including that in the Magnuson Act, since it is so widely understood?

Dr. HOUDE. Well, I am not so sure that it is widely understood in its application, but if language were in the M-S Act that said that the precautionary approach will be taken, and then some language that defined what was meant by precautionary approach in terms of risk assessment and analysis, as Mr. LeBlanc has suggested, this might require that each Council specifically address the issues of risk and what an acceptable risk is.

Mr. GILCHREST. Mr. Leape.

Dr. HOUDE. I guess I wouldn't be tied to saying that the precautionary approach is exactly the wording that has to be in the Magnuson-Stevens Act. As I said, it is the present expression of an ethic that has been around for a long time.

Mr. LEAPE. Well, it has been our experience. It is great hearing this discussion about the precautionary approach, because that is part of getting to where we need to be. We feel it wouldn't be redundant to have it mentioned in the Act, and people may disagree. But in the Farr bill we attempted to have some manifestations of what an interpretation of the precautionary approach could be in terms of buffers when you are setting quotas to account for the potential that scientists are wrong, when they are setting their allowable biological catch levels, and in beginning to shift the burden of proof to fishermen who want to introduce new gears, because the burden really should be on those who would benefit from the new activity to prove that it is not going to increased detriment to that fishery.

It shouldn't be the burden of the public, and the Councils are already overburdened by themselves, and so that is why we felt it was appropriate to put in elements like that to at least have an effort at implementing the precautionary approach.

Mr. GILCHREST. Yes. Mr. LeBlanc.

Mr. LEBLANC. Thank you, Mr. Chairman. I just wanted to—this has been an interesting discussion regarding the application of the precautionary approach.

I think one of the other concerns that I have certainly heard from a number of folks in the commercial fish and seafood industry is,

I guess for lack of a better term, what I call the redundant application of precaution. And that is, as you move through the system of analysis, and you go through the scientific process and the modeling process, and you apply precaution to the variables you apply to your model, and then you apply precaution to the output from that model, and then you apply precaution when the Fishery Management Council has to make a TAC based upon that stock assessment, at what point have you applied precaution enough; and that gets, again, into the vagueness of its application. That raises, I think, a lot of concerns. And where is the appropriate level and do you have to do it multiple times?

Mr. GILCHREST. Mr. Hayes.

Mr. HAYES. I just wanted to make clear that we are not opposed to the application of the precautionary approach. In fact, I think CCA in 1998 testified in this room, asking for it to be included in the Magnuson Act, because, at the time, there was no FAO definition and there was no attachment of that definition to the straddling stocks convention.

I think something in this bill that simply says that it has to be applied, and, as Mr. LeBlanc might suggest, that it has to be applied at a specific level, i.e., has to be applied by the Secretary prior to implementing fishery management regulations, might be an appropriate spot. It is a perfectly acceptable way to do it. The problem with the precautionary approach is that—this is just like Justice Stewart's problem with obscenity: Everybody knows it when they see it, but it is very difficult to define it. And when you begin to define it, you get very controversial questions about what it is. And that is why I suggest it is already defined. It may be defined in a way in which it is subject to some interpretation, but it does exist in its domestic law.

Mr. GILCHREST. Well, we will take a closer look at that and see what we can do, at least with some range of—it seems to me the maximum sustainable yield, when you take a look at that, you have a range of high, middle or low, as far as the allocation is concerned. And I would think that a precautionary approach would be to stay on the low end of that allocation, within the range but on the low end of that range. And to me, a layman, that is the precautionary approach.

Getting back to ecosystem approaches for fisheries, Dr. Houde, you mentioned an incremental approach to the—you used the term “incremental.” could you give us—I think you used the term “incremental approach” to an ecosystem-based approach. Can you give us some idea of what the first increment would be, the second increment, the third increment?

Dr. HOUDE. I think that some of the language already written into the discussion draft to me implies increments. One could just look at the bycatch language, for instance. Reducing bycatch, to me and to many fish ecologists, is an ecosystem-based approach. You talk about understanding species interactions in the discussion draft. Species interactions are primarily predator-prey relationships. Most of us who worry about bycatch and the impact of bycatch on marine ecosystems, it is because we are concerned about the effect that bycatch has on predator-prey relationships in the marine ecosystem. So solving the bycatch problem would be an in-

cremental step toward implementing ecosystem-based management.

Defining essential fish habitat into specific kinds of habitat, perhaps HAPCs, is another incremental step for individual fisheries, so that we can categorize those habitats that are critical for certain life activities of species; and those that aren't, this is an incremental approach. The bycatch issue of whether birds should be included as bycatch, identifying birds as bycatch, and by doing that implying that we are no longer going to catch birds while we are fishing, to me is an incremental step toward—

Mr. GILCHREST. Would you include marine mammals? Would you suggest the inclusion of marine mammals in the Act? Is that necessary?

Dr. HOUDE. I would include them. In fact, before this discussion took place, I in my mind had always assumed that anything not intended to be caught was bycatch. We certainly in a trawl fishery aimed at groundfish, for instance, consider the crabs and lobsters and squid bycatch. They are not fish.

Mr. GILCHREST. Mr. Leape?

Mr. LEAPE. Now, the Marine Fish Conservation Network doesn't have an opinion on marine mammals, but I do. I have been through many tortuous negotiations around section 118 of the MMPA, which is the exemption for commercial fisheries. They should be brought in. In those cases where there are interactions with commercial fisheries, let us treat them holistically. We are bringing in sea birds. Let us bring in marine mammals as well, because this is all part of moving toward dealing with this as an ecosystem and stop dealing with this as separate parts, let us deal with it holistically, and including marine mammals would be a step toward that.

Mr. GILCHREST. So that would be an incremental step—the incremental steps would be improving bycatch, including sea birds and marine mammals, certainly. Both you and Dr. Houde said—and Mr. Grader as well—have stressed that there is a good deal of information out there about ecosystems and that we aren't moving fast enough to implement that approach, and there is no firm language as to what is going to happen after 5 years. So is there a suggestion on a possible—like Mr. Grader made a comment about the salmon being a part of the pilot project. Do you have any recommendations, or is it incorporating the recommendations in 1275?

Mr. LEAPE. 2570.

Mr. GILCHREST. 2570.

Mr. LEAPE. No. I think the idea of doing a pilot program is a laudable one, if it can be done within the timeframe of the authorization. What the message we have been trying to get across is let us not let this new authorization of MSA expire without having a deadline at the end of the game requiring the Councils to act. Certainly a necessary part of that is to say let us try this out, but we should endeavor to try and do that within the first 2 to 3 years. So when we get 5 or 6 years down the road, we can have the Councils on the road to getting this be the rule rather than the exception for fisheries management.

Mr. GILCHREST. Mr. LeBlanc.

Mr. LEBLANC. Thank you. I just wanted to comment that with regard to marine mammals, I think they are adequately protected by the Marine Mammal Protection Act and the quote-unquote exemption for commercial fishing isn't exactly an exemption. It is more of a scheme for dealing with the interaction of commercial fishing with marine mammals. But I have suggested to the extent that we are going to include marine mammals in bycatch, we may—and we are moving toward ecosystems-based management—that has profound implications for how we manage marine mammals and their interactions with fisheries, salmon being a notable one on the West Coast. And to the extent that we want to begin to factor in marine mammals into fisheries management under the Magnuson Act, I think we would have to look at how we deal with ecosystem-based management and interaction of what may be argued as overabundant marine mammal populations and their interaction with other components of the marine ecosystem.

Mr. GILCHREST. It just gets more complicated the more you talk about it.

I would like Mr.—or Dr. Houde, you mentioned marine protected areas, MPAs, as a possible—how would you like to see marine protected areas included in the Magnuson Act, in the policy of the Magnuson Act, in the national standards? Is there some way that we can include that in the Magnuson Act in a way that it hasn't been?

Dr. HOUDE. I don't think we want—or at least I don't think that a national standard is appropriate at this time, but I think that the Act should recognize that we can move effectively toward using spatially explicit management more in marine fisheries—now, we have used closed areas and some kinds of spatial management for hundreds of years in fishery science and fishery management, so it is not entirely new; but we haven't used it as effectively as we can, because we have been—it seems bound by the traditional approach of controlling catch and controlling fishing effort rather than considering how to effectively manage by using space.

Part of this relates to the history of open access to marine areas, particularly in zones that are more than 3 miles away from the coast of nations. But there are many ways that we can effectively manage fish stocks by using space and time better than we do, and marine protected areas are one expression of this.

Now, I think that some people in the environmental community in particular look at marine protected areas, of course, as permanently closed; no fishing areas. But there are lots of models for marine protected areas. Some stocks could be fished, some not. Some protected areas could be open sometimes, not at others. Also there can be time limits on marine protected areas.

I think many in the environmental community would disagree strongly with me on this, but marine protected areas are again a part of this uncertainty in marine ecosystems that we have right now. If we were going to institute them, it would seem to me to be prudent to put some time limits on many of these marine protected areas for fishery management. There are a lot of models. I think that the Act ought to recognize this. It ought to advocate research on them, at the very least, and implementation where appropriate. We have seen some implemented. The Georges Bank

closed areas for scallops, for instance. That is a good example. There are some others.

Mr. GILCREST. In your testimony, Dr. Houde, you talked about the full spectrum of human activities and need to protect ecosystem structure and function in talking specifically about what you would recommend as part of an understanding of marine protected area. Could you explain, since the Magnuson Act would not—I think would just control the fisheries, it wouldn't have anything to do with the oil and gas industry—could you explain what you meant by the full spectrum of human activity?

Dr. HOUDE. Well, I think that I might not have been expressing myself as critically as I should have, now that you have, you know, brought this to my attention; but I was referring to all of the kinds of activities that can take place and that one would choose an area to be protected based upon the spectrum of activities that might take place. For instance, there are a lot of areas one might not want to designate as marine protected area for managed fisheries, because of some of these other activities that we are talking about, or because of activities that are taking place upstream a ways. For instance, the sewer outflow a mile upstream might make an area downstream not suitable.

Mr. GILCREST. Does anyone else want to comment on marine protected areas as concerning the Magnuson Act, and we would possibly put some language in the Magnuson Act to recommend at least to the Councils that that be a consideration in their toolbox? Mr. LeBlanc.

Mr. LEBLANC. Thank you, Mr. Chairman. I was just—borrowed Bob's copy of the Act to double-check my thinking, but section 303(b)(2) already provides the Councils with the authority to establish no fishing zones and time and area closures or gear restrictions. So it has a broad discretion to design at least the no fishing component of the marine protected area under the council's jurisdiction already.

Mr. GILCREST. So then in that section 303 of contents of fishery management plans, we can be more specific in the language for marine—for marine protected areas? More so than it is already? Just a suggestion.

Mr. Leape.

Mr. LEAPE. I am here on behalf of the Marine Fish Conservation Network, which, as you know, has both fishing organizations as well as environmental groups. And so we basically have folks who are ardently in favor of these things and folks who are ardently against. So similar to what I have heard my friend Justin on behalf of NFI, the Network doesn't have a position on marine protected areas. So I should probably stop there.

Mr. GILCREST. Mr. Hayes.

Mr. HAYES. The Coastal Conservation Association does have a position. We think that there are a couple of things that ought to be done here. Marine protected areas ought to be aired both by their scientific value, what they are, and I think ultimately we ought to develop some guidelines as to how one would use them. The economic impacts and the social impacts of excluding the American public from a public resource is pretty significant. And so when someone says we are simply going to take area X, and for

whatever good other reason they may have, exclude the public from that, that has got a pretty significant impact on the public. And I think it is incumbent upon the people that are doing that to have a great deal of certainty as to the scientific validity of why they did it, to ensure that when that scientific purpose, be it a conservation measure or whatever it is, when it is achieved, that the public regains access to that resource, that there is a significant amount of public participation in that decision so that you can get people to buy in to the answer.

Now, that is not to suggest that you couldn't ultimately put one in place; but it is to suggest is that you can't do it on a whim, it can't be done just arbitrarily—to exclude a commercial activity or a recreational activity. And as I think Dr. Houde has pointed out, MPAs may well be a better tool, a more effective management tool, than the tools that are now being used. CCA is certainly not opposed to time and area closures.

Mr. GILCHREST. You give excellent recommendations, and that is the process that should be followed.

I happen to believe in MPAs and ecosystem approaches. I think we have reached a level of our understanding about how things function in the natural world. I think we should be a part of that process and not degrading that process. Whether it is the Chesapeake Bay with phytoplankton and zooplankton and menhaden and rockfish and sea grass and oysters and crabs and the whole range of other things that are a part of that ecosystem approach, I think marine protected areas are one aspect that can be a very valuable tool.

I think the problem, though, in some areas, especially, to some extent, my good friends in DNR in Maryland, but other areas as well; that is, they aren't looked at seriously or with as much vision as they need to be looked at, because people are worried about the political ramifications. And so some entity needs to take a position to allow a better ebb and flow of ideas in all of the various aspects of these management tools that we will deal with when we are dealing with marine ecosystems and the fisheries and the commercial industry.

I think you mentioned something about the Sassafra River before. The Sassafra River, the northern shore has some beautiful tidal basins off that estuary, and basically that is what the Sassafra River is, is a large tidal basin. But they have these tidal ponds where, for almost an arbitrary reason, there was some human activity backed off a couple of them, and the grass came back, and the rockfish started to spawn there and the turtles came back and the eagles are teaching their young how to catch fish. Well, bingo, just like that, there is a whole lot of human activity in there, that in a short period of time if that little sensitive tidal pond is not protected, will disappear again. And I have asked my wonderful State DNR to begin considering about not allowing in certain areas motorized craft, or no fishing, because I think maybe the bald eagles to some extent have—besides the fact that they are beautiful, and to watch them and the osprey and the blue heron, their places are continuing to be diminished. So if we don't have a plan to protect those areas, that is at this point somewhat aggressive, albeit intelligent and with a grassroots support and with

everybody's full knowledge that this is what we are doing, we just begin losing all of these little pieces that, as a result of a number of acts, the Clean Water Act, the Clean Air Act and so on, have started to come back to life.

So in my way of thinking, we have got to move forward with a sense of patient urgency on a lot of these issues and raise the concern and begin talking about them. And when we start doing that—and Maryland and Mr. Hayes, I will ask you to come along and be our partner with all of these astonished DNR folks.

Mr. HAYES. I would be happy to join you.

Mr. GILCHREST. Thank you very much. I know the hour is late, and if I could just get a couple of quick comments on some other quick issues.

Gerry, you mentioned you had some concerns about our definition of "overfished" and how we broke it out. Would you not want to see the two distinctions, "overfished" and "overfishing"? Do you have a recommendation or a clarification for us?

Mr. LEAPE. Certainly, Mr. Chairman, and I appreciate the opportunity to clarify that for you. Our concern is not the separation of the two definitions. We understand the need for that. It was the inclusion of the phrase "natural fluctuation." It is that clause that we fear could encourage more fishing in already stressed fisheries, and that we could see a continuation in some areas of using it beyond—you know, as an excuse to hide the fact that there actually is overfishing going on.

Mr. GILCHREST. If I can give you my perspective on natural fluctuation; that is, there could be a lot of reasons and there are a lot of reasons for a fish stock falling. And we want to know what they are besides just the fishing pressure.

Mr. LEAPE. Right.

Mr. GILCHREST. And if there is—if it is caused by some habitat problem nearby or some other human activity or some other natural activity, that doesn't mean that because it wasn't caused by the fishing industry, that we shouldn't reduce the quota and understand that it is overfished across the board regardless of who does it. But your concern would be that that would not be interpreted that way?

Mr. LEAPE. Well, it was trying to figure out really what problem we were trying to fix, and we are sympathetic to the idea that overfishing is not always, the primary cause in many of the fisheries that up to now have been classified as overfished. That is why we suggested that if you are interested in a third definition to clarify for folks that it was actually depleted and not overfished, then we could understand that and could accept that, as long as it was tied to that affirmative obligation to implement a rebuilding program that might involve, as you said, a lower level of fishing, but also was very clear that the primary blame for the continuing decline on the stock wasn't fishermen.

Mr. GILCHREST. OK. I think we are on the same track with that. We can probably work the language out.

Dr. Houde.

Dr. HOUDE. I don't disagree with anything that Mr. Leape has said, but I also looked at the language of the definitions and came away with much the same impression that the definition as now

given confuses the state of the stock with respect to fishing and natural fluctuations, and I think a firmer definition is needed. I can tell you that historically the word “depletion” is associated with fishing. I think in more recent literature in the last 20 years, we have got away from that, but there is a classic paper that defines depletion, and it says it is the result of overfishing and only overfishing. And I teach this to my students.

Mr. GILCHREST. So should we use or not use “depleted”?

Dr. HOUDE. You know, historically, depletion is related to overfishing. If depletion is defined very carefully in the Act, it might serve in this case.

Mr. GILCHREST. All right. Thank you. Mr. LeBlanc.

Mr. LEBLANC. Thank you, Mr. Chairman. I am a little bit perplexed. I strongly agree with the idea that, one, we need to separate the definitions of “overfished” and “overfishing.” I also think it is appropriate that a fishery that is classified as overfished should be at its low level of abundance relative to some high because of fishing activity. Other fisheries that are low abundance due to other causes are not overfished, they are of low abundance, and you need to manage to that level of abundance in a sustainable manner. But to call them overfished is inappropriate.

My other concern is that if the stock is of low abundance because of something other than fishing, it is not clear to me how regulating fishing is going to bring that stock back. It wasn't the cause of the decline. And so you have to sustainably manage the fishery, but you may not have to implement a rebuilding plan to achieve a goal that is unattainable.

Mr. GILCHREST. I think that the goal we have is to understand what there is out there depleting the fish stocks so that we can manage the fisheries in a much more whole way: Corrective sewage treatment plan, correct dredging somewhere for a port, correct whatever needs to be corrected. Or understand that it was El Nino. But if the fish stock is down, then we have to manage that in a way that we don't want to further deplete it. So I think that—

Mr. LEBLANC. I absolutely agree. You have to manage to the level of abundance. You have to sustainably manage that fishery relative to its variable abundance, but that is different from calling it overfished and implementing a rebuilding plan.

Mr. GILCHREST. I think that is why we wanted to make a distinction between overfished and overfishing.

One of the last items dealing with IFQs, we have been here a long time, so I can't remember what any of you said, but I can reread your testimony, I guess. Is there anybody here that would be patently opposed to the concept of ITQs, IFQs?

Gerry, you made a comment that we need national standards before we lift the moratorium. The language in the draft doesn't reach the level of significant criteria in your mind?

Mr. LEAPE. We appreciate a lot of your effort here. First, you have included conservation as an important standard. You also have included equity standards in the draft and those are all good things. One of our primary concerns is the way you have characterized this review and how it would work. You have a review at 5 years, but there is currently no requirement in the draft for a fishery to pass the review. The review just has to be undertaken.

Second, there is no consequence at 5 years if a fishery's participants fail that review? There is a sunset at 10 years in your draft, but it is not keyed to the review.

Mr. GILCHREST. You don't feel that NMFS has the authority now to deal with someone that has violated a fisheries management plan?

Mr. LEAPE. Well, I think they would appreciate the reinforcement related to IFQs if you would spell it out in the terms needed, you know, in the terms of establishing these programs, so there are no surprises. One thing we hear all the time is where did that come from, where did that regulation come from? There would be an understanding up front that each program was going to be reviewed at 5 years, and if you passed the review, you could expect to be renewed. If you didn't pass it, you wouldn't be renewed. So, from the outset, there would be that incentive that the good fishermen obviously wouldn't need, however, some might appreciate a little sort of extra incentive to do even better than they had been doing within that period prior to being subject to that 5-year review.

Mr. GILCHREST. OK. Mr. LeBlanc.

Mr. LEBLANC. Thank you again, Mr. Chairman. I think from NFI's perspective, a moratorium needs to be continued unless the Act is modified to provide for, again, equitable treatment of both the harvesting in the primary processing sectors. I want to be clear that that doesn't mean you give processors harvesting quota, and you don't create indentured servants out of fishermen under that kind of framework, what is generally referred to as a two-pie quota system in which total allowable catch is allocated out in both harvesting shares and processing shares.

With regard to Gerry's comments about the sunset, I think obviously reviews are appropriate and making sure that an IFQ program is meeting its objectives is appropriate, but you have to keep in mind that sunsets—the intent of an IFQ, of course, is to rationalize a fishery by creating an economic value system. Sunsets are going to inherently devalue what you are creating, and it is going to affect the willingness of participants to make the kinds of investments we want them to make in order to rationalize the fishery or to get out of the fishery or other things. So sunsets are going to have a dramatic impact on how quota shares are valued within that fishery.

Mr. GILCHREST. Do you feel that the ITQs in the clam industry in Maryland are successful?

Mr. LEBLANC. That is a difficult question, sir, given the diversity of some of our membership. I would say that it is certainly rationalized—

Mr. GILCHREST. Well, sometimes Gerry says this is my personal opinion, so you can feel free to give us your personal opinion.

Mr. LEBLANC. The IFQ plan in administering quahog has certainly rationalized that fishery. It has certainly reduced excess fishing capacity, and it has certainly allowed for sustainable management. In fact, they are looking at increases in abundance in those resources, such that they are slowly ratcheting up the total allowable catch for those species.

However, there have been primary processors that have been seriously harmed, seriously economically devalued, their capital assets and their general business plan have lost millions and millions of dollars because they were not included in that initial allocation. Most of the folks in that fishery, of course, don't want to roll things back and have adjusted to it one way or the other. But certainly many of the primary processors in that fishery, had processor shares been an option when that fishery was developed, would certainly have opted for them.

Mr. GILCREST. Gerry.

Mr. LEAPE. Another point. And I also wanted to make sure that—to convey this very clearly from the Marine Fish Conservation Network, that unless Congress really is able to enact the standards or the safeguards covering those areas that I detail in my testimony, that we really don't—prior to expiration of the moratorium these mandatory safeguards—that we would be opposed to having them be transferrable; because without these safeguards, we think transferability can result in many of the concerns that have been raised to you, Mr. Chairman, about consolidation and lack of equity. And certainly we feel it would have an impact on conservation.

Mr. GILCREST. I think one of the major issues with us as far as ITQs are concerned or IFQs is that they shouldn't be concentrated in just a few hands.

Are there any other comments from the witness?

Mr. Hayes.

Mr. HAYES. I would like to say one thing about ITQs, if I could. I spent the morning with the Minister of Fisheries from Iceland, and it was a very—but in that discussion we began talking about ITQs. The Icelandic fisheries are about the size of our North Pacific fisheries without the crab stocks, so the finfish stocks, the pollock stocks, the Pacific cod stocks the Sable fish stocks, largest stock in the United States, worth billions of dollars. That is about the size of the Icelandic fishery. So they have a significant economic value. They manage all of their stocks through ITQs. They have taken care of the small boat problem. They have taken care of the concentration problem. They have taken care of the processor preference problem. They have found a way over the last 15 years to—

Mr. GILCREST. We should have had them testify here this afternoon.

Mr. HAYES. I suggested that to them, quite frankly. But they have found a way to manage their fisheries in a way that—and this is—I found stunning. Their biologists basically designate what the tact will be, and he used the cod stock as an example. They have a rebuilding plan for their cod stock, which is to rebuild it to 350,000 metric tons. Compare that to ours. Ours is 5 to 10 metric tons of 10,000. But it is considerably slower. It is considerably lower than what the Icelanders are talking about. In order to do that, they had to reduce the annual take by about 40 percent for the last 2 years. They simply went to the people who now own the fishery, had a vested conservation interest in rebuilding it, and a clear economic interest, went to them, explained it and they are in the process of doing that.

Now, that is a little different story than we are getting played out in the United States. What he told me about the difficulties in putting ITQ systems in place was exactly the discussion that I just heard here, which was one side having great fear about what might happen saying, gosh, we have got to control this in every conceivable way, and another side having an economic interest in the outcome and basically saying I have got to protect those economic interests.

Basically what they did is they gave the authority to do that to a group of people, in this case the fisheries ministers, by statute to go ahead and implement systems on a case-by-case basis. And that brings me back to what our suggestion was, which is to give this authority, without great limitations, to the Fishery Management Councils and let them apply it in the ways that are appropriate in each of the fisheries around the country.

Mr. GILCHREST. Thank you, Mr. Hayes.

Dr. Houde, Mr. Hayes, Mr. Leape, Mr. LeBlanc, thank you all very much. You have made a great contribution here this afternoon. Thank you for coming. The hearing is adjourned.

[Whereupon, at 6:23 p.m., the Subcommittee was adjourned.]

