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# H.R. 5018, H.R. 4940 & H.R. 1431, LEGISLATION TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

## LEGISLATIVE HEARINGS

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

April 25, 2006, in New Bedford, Massachusetts
May 3, 2006, in Washington, D.C.

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# LEGISLATIVE HEARING ON H.R. 5018, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT; AND H.R. 4940, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT.

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**Tuesday, April 25, 2006**
**U.S. House of Representatives**
**Committee on Resources**
**New Bedford, Massachusetts**

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The Committee met, pursuant to call, at 9:15 a.m., in the Theater of the New Bedford Whaling Museum, 18 Johnny Cake Hill, New Bedford, Massachusetts, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representative Pombo.

Also Present: Representative Frank.

## STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. If I could have everybody stand for the flag and presentation of the Pledge of Allegiance.

[Pledge of Allegiance.]

The CHAIRMAN. I would like to call the Committee on Resources to order. I would like to thank Chapter 499 of the Vietnam Veterans for the presentation of the flag and leading us in the Pledge of Allegiance. I also want to thank Congressman Barney Frank for his invitation to hold this important hearing in the number one seaport in the United States.

Before we begin, I ask unanimous consent that Congressman Frank be allowed to sit with the Committee and participate as if he were a member of the Committee. Without objection, so ordered. The Committee is meeting today to hear testimony on two bills to reauthorize the Fishery Conservation and Management Act, H.R. 4940 and H.R. 5018.

I am pleased to be here today and pleased that Congressman Barney Frank asked us to come to New Bedford to listen to some of New England's views on the Magnuson-Stevens Fishery Conservation and Management Act reauthorization.

As all of you know, Congressman Frank introduced H.R. 4940 which reauthorizes the Act, but also does a number of other things

to go beyond the Magnuson-Stevens Act's current mandates, including fishermen's health care and protection. These are things that generally fall outside the jurisdiction of the Resources Committee, but we are still interested in hearing your views on those very important issues.

I am pleased that while he may not have agreed with every provision in my bill, H.R. 5018, Congressman Frank has also cosponsored that bill to reauthorize the Act.

Having this hearing in New Bedford is appropriate. The connection that New England, and New Bedford in particular, has with the sea is historic.

I understand that New Bedford once again has shown its importance to the nation's seafood industry and has the highest value of seafood landings in the United States.

While New Bedford enjoys this honor, the management of the entire region's fisheries has been marked by litigation and a very complicated management system. New England's fisheries management is often criticized and often used as an example of why change is needed, yet the progress has been made and at a great expense to the fishermen and fishing communities.

It was only 10 years ago that Congress passed the Sustainable Fisheries Act. It was only 10 years ago that Congress mandated that overfishing be identified and stopped and rebuilding plans be put in place. It was only 10 years ago that we told the Councils they needed to identify essential fish habitat. These were not easy tasks, and we recognize that. The Sustainable Fisheries Act was the first major reauthorization of the Magnuson-Stevens Act since 1976.

These were important steps that needed to be taken, but there needs to be a balance. Having abundant fisheries with no fishermen left to harvest this wonderful protein source is unacceptable. Having fishermen with no fish to catch is equally unacceptable. I believe all of the Members of Congress who are interested in fisheries management have the same goals, healthy fisheries and healthy fishing communities. How we get there is the difference.

In addition to maintaining healthy fisheries, we also need to return fisheries management to the experts and remove the courts from managing fisheries. I believe the regional fishery management council system works. It provides stakeholder involvement. It allows for a public process, and it allows for regional solutions to regional problems. The Act needs to maintain a healthy council process and needs to retain flexibility so that the councils can react to problems in a manner that is appropriate for their region.

It is also important that we modify the current system so that we have good, real-time data on how the fisheries are working and the councils are able to react quickly to changing situations. Using three-year-old data to manage fisheries is not a good way to keep the fisheries healthy. Reacting to problems a year after they were identified does not work well, either.

Finally, we need to remove the roadblocks that are created by multiple statutes with conflicting requirements. As an example, the North Pacific Fishery Management Council, which many have identified as an example for all councils to follow, has identified NEPA compliance as the number one problem for them. NEPA is an

important statute, but when the requirements are duplicated by two statutes and the time lines cause compliance problems, it is time to take a look at the conflict.

Congress is now working on legislation that will push fisheries management even further than the Sustainable Fisheries Act did. We need to be able to use emerging technologies to manage our fisheries better, and we need to manage based on sound science that is understandable to everyone. We also need a peer-review system that allows for rigorous review but also allows fishery managers to have information quickly. All of these efforts will require a certain amount of balances or we will end up in the courts again.

I look forward to hearing from today's witnesses and look forward to hearing how these pieces of legislation can be made better. These are both evolving documents, and I hope we can get some good suggestions here today. Thank you again for the invitation to be here.

I would like to recognize Congressman Frank for his opening statement.

[The prepared statement of Mr. Pombo follows:]

**Statement of The Honorable Richard Pombo, Chairman, Committee on Resources**

I am pleased to be here today and pleased that Congressman Barney Frank asked us to come to New Bedford to listen to some of New England's views on the Magnuson-Stevens Fishery Conservation and Management Act reauthorization.

As all of you know, Congressman Frank introduced H.R. 4940 which reauthorizes the Act, but also does a number of things that go beyond the Magnuson-Stevens Act's current mandates including fishermen's health care and fishing wharf protection. These are things that generally fall outside the jurisdiction of the Resources Committee, but we are still interested in hearing your views on those issues.

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Thank you again for the invitation to be here.

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

Mr. FRANK. I begin by expressing my deep appreciation of the City of New Bedford, Town of Fairhaven, fishing communities in general, to Chairman Pombo for bringing this committee here. The subject is a complex one and we have, as we have seen recently, it's not always well understood. For someone with Chairman Pombo's responsibility, to make time to come far from Washington, 3,000 from his own district in California, to listen to the people of the fishing industry and to listen to people who have varying views on this is really quite a point. Part of this was a dinner last night, which, as Steve said, his assistant had with people in the industry. I am deeply grateful to him for this.

To begin, I want to note as one group of legislators to another that I have a State Delegation that will have to leave shortly, Representatives Strauss, Canessa and Quinn are with us. I have a letter submitted by Representatives Canessa, Quinn and Strauss endorsing the Pombo-Frank-Young bill. I ask Mr. Chairman for this to be put in the record if we have it available.

[NOTE: The letter submitted for the record by Mr. Frank can be found on page 60 of this hearing.]

As they say, this bill successfully resolves the dichotomy of taking the fish without irreparably damaging the fish structure and point. They have been valuable advocates for this industry and for doing this in a responsible way. The Mayor certainly, who has joined us, is eager to have them go to the budget base. He will be waiting for them when they come back bearing gifts. We have three of the wise men here. We will see they are dispensed.

I want to take out from the phrase that they did, the dichotomy of taking the fish without irreparably damaging the fish, several years ago we had a situation involving scallops. We had a situation where scientists and the fishermen, who are among the best practical scientists in this regard, argued that the restrictions were excessive. In fact, they had achieved their goals. There were more scallops than were being used as a basis for fishing. Physically that they could be opening of parts of Georges Bank.

I have a letter here that I'll put in the record, January 5, '99, in which a group of us wrote to Secretary of Commerce Daley urging him to reopen the stocks, including myself and Senator Kennedy. It is a letter I think, I don't know if we still have the original. If we have the original, we can probably put it on eBay. The first signer is myself and the last signer is Jesse Helms. It's a joint effort of myself and Jesse Helms.

What happened was we were criticized sharply by the environmentalists. Here's a Boston Globe article from April 15, '99. Environmentalists were unhappy of the reopening of the so-called closed area, arguing that Council was buckling to political pressure for the scallop industry, rather than finishing the job of rebuilding the historic Georges Bank fishing ground. Environmentalists' defense counsel, "I believe we're moving too quickly." Here's a headline in the Globe, "Return to Georges Bank." Another article where they made a big deal. "As scallopers push for reopening of fertile fishing ground, environmentalists warn of the danger." Here's the headline on the continuation story, "Debate Pits Scallopers Versus Environment." They liked that so much they used it again.

The environmentalist community denounced us for pushing for reopening of parts of Georges Bank for scalloping. Secretary Daley was nervous about it. He was being criticized. I had a conversation with them. Let me put this in the clearest possible way. We were right; they were wrong. What was particularly wrong was the notion that we were pitting scalloping against the environment. This assumption that fishing is inherently anti-environmental is deeply flawed. What we are asking for is the kind of balance that my legislative colleagues talked about. The last people in the world who want to see fishing so excessive that the stock is depleted are the fishermen.

Now, it is true, many people in the fishing industry are about my age or beyond. Probably 10, 15 years from now they're not looking forward to continuing to work. A lot of fishermen plan to be fishing another 30, 40 years. A lot of people want to see their children go into this. They want to support this wonderful community of fishing, the economics of fishing. That made it a marvelous community. We're in this whaling museum. They have no interest of seeing fishing down to the point where you can't sustain it.

What we have shown in the scallop case is, in that particular interest, the environmentalists were wrong. Those who thought science would support more scalloping could be right. We had an issue a few years ago with the monk fishery. There are still some problems with monkfish. We got some money to do some better science, and we were able to expand monk fishing. It's not the same shape as scallops. Once again, the environmentalists were far too rigid in their notion.

This is what this bill says. This bill says that if we take some steps and they turn out—this is the major difference in the war that the Chairman put forward. It allows us to look at reality and make adjustments. The current law allows you to make adjustments downward in fishing, but it does not really provide for adjustments to increase fishing.

In '99 when the Secretary did this, he was denounced. There were lawsuits. What this bill says is we will get the best possible

science. We will look at what is happening and to the extent that we can, that we have to restrict, we will restrict. To the extent that we have seen the evidence that we can increase some, we will increase some.

Two other quick points. First of all, while this committee that the Chairman presides over, we do have some important provisions in there for health. I will put into the record endorsements from a wide range of people, including Alaska, endorsing the health plan.

We also have a strong support on safety provisions.

The last point I want to raise is this: I was struck to see some people insist that the economic and social impacts are irrelevant, if they were to always be secondary. Well, that is in error. Yes, we do not want to see fishing to the point where fishing ends, but if the question is, can you reach a goal in 8 years, 10 years, 12 years, why is that irrelevant? Why is the impact irrelevant? Why is harm done to working people, to communities irrelevant? Why is harm done to consumers irrelevant?

The last point the Chairman mentioned, nutrition. I have to say, some of my regular friends who may reflectively decide, "Oh, boy, this is an environmental issue. We have to beat it," one of the things is healthy eating, diminishing obesity, getting food to people and getting the kind of nutrition they need without detrimental health effects. Obviously, among the healthiest food people can eat, the best source of protein that is not going to lead to obesity is seafood. What they are talking about in part is whether or not it could be prudent to drive up the price of seafood. We have a letter here from the people of Legal Seafood. I don't understand why that is irrelevant. Why is raising the price of seafood at the same time telling people to eat better, eat more healthy, why is that not a good idea? I think evidence is strongly on our side that we can be more sensible about this.

I am particularly grateful to the Chairman to give us a chance to do it. We've been joined by the Mayor of the City of New Bedford who has taken, in his few months in office, he took over in January, a very active interest in fishing. He met with our Attorney General about taking some activity on behalf of the fishermen. If you notice, the Attorney General and Mayor talked about bringing a lawsuit to deal with some flexibility in the regulations. The problem is with the law, as restrictively drawn as it is, lawsuits are less likely. Yes, we want to pursue that. We also want to set the legal framework so that when the Mayor takes the initiative he's taking with legal officials, we have a better chance of getting fairness.

I am delighted to now ask the Mayor if he would come to the podium and make a few remarks.

[NOTE: The articles submitted for the record by Mr. Frank has been retained in the Committee's official files.]

**STATEMENT OF SCOTT LANG, MAYOR, CITY OF NEW BEDFORD, MASSACHUSETTS**

Mr. LANG. Good morning. Thank you, Chairman Pombo, Congressman Frank and members of the Committee for the opportunity to testify before you here today in New Bedford. I would also like to thank Congressman Frank, Senators Kennedy and Kerry, and the entire Massachusetts delegation, all of whom have been

staunch supports and have aided us greatly in our consideration of the matter at hand.

My name is Scott Lang. I am Mayor of the City of New Bedford, Massachusetts. New Bedford is a diverse city of 100,000 with a strong backbone of working-class neighborhoods. I want to express my appreciation to the Committee of Resources for holding this legislative hearing on proposals regarding the reauthorization of the Magnuson-Stevens Act here, in the number one fishing port in the United States. The fishing industry, the processing industry, and other shore-support industries employ thousands of our residents, making fisheries a one billion dollar economic engine for New Bedford. As we work to maintain our status in the fishing and processing industry, we are deeply gratified by this historically significant and important occasion in hosting the Committee here in our City.

Regulations that govern the fishing industry need to balance the dual necessities of conserving fishery stocks and minimizing any resultant economic harm within the fishing industry. I applaud the members of the Committee for introducing sensible legislation to meet this objective.

I believe that it is deeply important that those charged with formulating the regulations that govern the fishing industry and its operations fully understand the realities of the industry. In that vein, I would like to publicly extend an invitation to Patricia Kurkel, Regional Administrator of the National Marine Fisheries Service, to visit the Port of New Bedford, to tour the City and its waterfront as our Congressional committee is doing today. I urge Ms. Kurkel to hold hearings in New Bedford, as Chairman Pombo has, to determine the economic impact of regulations on our fishing fleet, our processing industries and our shore-support industries. The economic impact of the regulations need to be weighed along with scientific evidence and data regarding stock levels in order to achieve the balance between conservation of stocks and mitigation of economic harm that is mandated by the Magnuson-Stevens Act.

As decisions are made on regulations that will govern the fishing industry in the coming months and years, I ask that scientific data from the Massachusetts Division of Marine Fisheries and from the University of Massachusetts-Dartmouth, School of Marine Science and Technology, located on New Bedford's southern peninsula be considered alongside with data from the national agency.

As the number one fishing port in the country, the City of New Bedford is the number one source of information regarding the social and economic impact, both intended and unintended, resulting from regulations attempting to conserve our fisheries. I strongly encourage the utilization of the fleet's expertise in the process to determining the balance between the conservation of fisheries and the realities of the measures on the people and families involved in our industry.

The Port of New Bedford, along with Gloucester and many other ports in Massachusetts and the greater New England area, have presented alternatives to the New England Fisheries Council and the National Oceanographic and Atmospheric Administration for their consideration. These industry proposals have put conservation first but have also relied on the fishing industry's experience, as

well as the Massachusetts scientific community, to achieve a proposed regulatory scheme that meets all conservation goals without undue economic harm to our fishing industry families. I urge the Council to carefully study and consider these well-founded industry proposals as they redevelop and craft Framework 42. There is also no justification for the Council not to consider all aspects of these most difficult issues while it attempts to implement the Act.

Let us be clear, our City's greatest concern and our commitment is to the conservation of our stocks.

We must plan for the future to allow for sustainable development within the fishing industry. However, it is essential that we approach conservation efforts in a rational manner based on best-available scientific data so that we do not cause undue economic harm to the industry

As it stands, the threat to the vitality of our fishing industry looms large. Framework 42 regulations could have the effect of making Americans associate seafood only with what comes out of a grocer's freezer. The industry needs to be governed by rational regulations if it is to thrive.

In order to best understand the regulatory economics of the fishing industry, the government should set up an institutional presence in the City of New Bedford to work on these issues on a day-to-day basis. As a nation, we cannot concede supplying fish products to consumers, to the rest of the world simply because we cannot find a way to balance the principles of conservation and the minimization of economic harm to the industry. We also cannot follow international trend which allows excessive fishing to the point of stock depletion. However, we cannot regulate without scientific evidence that moves as the fish do.

On the local level, the impact of regulations that do not adequately consider economic harm are readily apparent and real in our City. The fishing industry is composed of boat owners and fishermen who are crew as well as shore-support providers who are involved with food stores, supplies, fuel, ice, repairs, an extensive processing industry, marketing, and finally, transportation, all of which work in tandem to deliver a final seafood product to the consumer. This symbiotic industry performs a virtual fresh seafood conveyer belt from the ocean to our nation's homes. Any disruption within this series of relationships can cause economic hardships to others in the chain, driving them to unemployment and reliance upon State assistance. This will hurt both the local and regional economies, and once an integral part of the industry infrastructure is depleted or dismantled, it will more than likely disappear forever, thereby changing the industry forever.

As Congress approaches reauthorization of the Magnuson-Stevens Act, I believe it is best served by looking to the Act itself. Regulations that do not fall within the scope of the legislation should simply not be implemented. The bureaucratic arm of the government needs to stay within the true intent and meaning of the Act, with interpretations moderated by scientific evidence and socioeconomic impact studies.

I believe that a melding of the features of Congressman Pombo's proposed legislation combined with the flexible approach of Representatives Frank and Young's proposed legislation will serve the

best interest to the American people. Modern conservation requires constant fine-tuning, both to protect natural resources as well as to ensure the industry is not restricted in an arbitrary and capricious manner. Legislation that combines real conservation achievement with appropriate economic consideration is the original intent of Magnuson-Stevens Act and should be codified in this revision.

It has been an honor to present this testimony to you. I'm anxious to hear the members of our industry. Thank you once again, Chairman.

[The prepared statement of Mr. Lang follows:]

**Statement of The Honorable Scott Lang. Mayor, City of New Bedford, Massachusetts**

Good morning. Thank you Chairman Pombo, Congressman Frank, and members of the Committee for the opportunity to testify before you here today in New Bedford. I would also like to thank Congressman Frank, Senators Kennedy and Kerry, and the entire Massachusetts delegation, all of whom have been staunch supporters of our fishing and processing industry and have aided us greatly in our consideration of the matter at hand.

My name is Scott Lang. I am Mayor of the City of New Bedford, Massachusetts. New Bedford is a diverse city of 100,000 with a strong backbone of working-class neighborhoods. I want to express my appreciation to the Committee on Resources for holding this legislative hearing on proposals regarding the reauthorization of the Magnuson-Stevens Act here, in the number one fishing port in the United States. The fishing industry, the processing industry, and other shore-support industries employ thousands of our residents, making fisheries a one billion dollar economic engine for New Bedford. As we work to maintain our status in the fishing and processing industry, we are deeply gratified by this historically significant and important occasion in hosting the Congressional Committee here in our city. It is an honor to have you here.

Regulations that govern the fishing industry need to balance the dual necessities of conserving fishery stock and minimizing any resultant economic harm within the fishing industry. I applaud the members of this Committee for introducing sensible legislation to meet this objective.

I believe that it is deeply important that those charged with formulating the regulations that govern the fishing industry and its operations fully understand the realities of the industry. In that vein, I would like to publicly extend an invitation to Ms. Patricia Kurkel, Regional Administrator of the National Marine Fisheries Service, to visit the Port of New Bedford to tour the city and its waterfront. I urge Ms. Kurkel to hold hearings in New Bedford, as Congress is doing, to determine the economic impact of regulations on our fishing fleet, our processing industries, and our shore support industries. The economic impact of these regulations needs to be weighed along with scientific evidence and data regarding stock levels in order to achieve the balance between conservation of stocks and mitigation of economic harm that is mandated by the Magnuson-Stevens Act.

As decisions are made on the regulations that will govern the fishing industry in the coming months and years, I ask that scientific data from the Massachusetts Division of Marine Fisheries and from the University of Massachusetts-Dartmouth School of Marine Science and Technology (SMAST), located on New Bedford's southern peninsula, be considered alongside with data from the national level.

As the number one fishing port in the country, the City of New Bedford is the number one source of information regarding the social and economic impact, both intended and unintended, resulting from regulations attempting to conserve our fisheries. I strongly encourage the utilization of the fleet's expertise in the process of determining the balance between the conservation of fisheries and the realities of these measures on the people and families involved in the industry.

The Port of New Bedford, along with Gloucester and many other ports in Massachusetts and the greater New England area, have presented alternatives to the New England Fisheries Council and the National Oceanographic and Atmospheric Administration for their consideration. These industry proposals have put conservation first but have also relied on the fishing industry's experience, as well as the Massachusetts scientific community, to achieve a proposed regulatory scheme that meets all conservation goals without undue economic harm to our fishing industry families. I urge the Council to carefully study and consider these well-founded industry proposals as they redevelop and craft Framework 42. There is also no justification

for the Council not to consider all aspects of these most difficult issues while it attempts to implement the Act.

Let me be clear. Our greatest concern and our commitment is to the conservation of stocks. We must plan for the future to allow for sustainable development within the fishing industry. However, it is essential that we approach conservation efforts in a rational manner based on best-available scientific data so that we do not cause undue economic harm to the industry.

As it stands, the threat to the vitality of our fishing industry looms large. Framework 42 regulations could have the effect of making Americans associate seafood only with what comes out of a grocer's freezer. The industry needs to be governed by rational regulations if it is to thrive.

In order to best understand the regulatory economics of the fishing industry, the government should set up an institutional presence in the City of New Bedford to work on these issues on a day-to-day basis. As a nation, we cannot concede supplying fish products for consumers to the rest of the world simply because we cannot find a way to balance the principles of conservation and the minimization of economic harm to the industry. We also cannot follow international trends of excessive fishing to the point of stock depletion.

On a local level, the impact of regulations that do not adequately consider economic harm will be readily apparent and real. The fishing industry is composed of boat owners and fishermen as well as shore-support providers involved with food stores, supplies, fuel, ice, repairs, an extensive processing industry, marketing, and final transport, all of which work in tandem to deliver a final seafood product to the consumer. This symbiotic industry forms a virtual fresh seafood conveyer belt from the ocean to our nation's homes. Any disruption within this series of relationships can cause economic hardships to other in the chain, driving them to unemployment and reliance upon state assistance. This will hurt both the local and regional economies, and once an integral part of the industry infrastructure is depleted or dismantled, it will more than likely disappear forever.

As Congress approaches reauthorization of the Magnuson-Stevens Act, I believe it is best served by looking to the Act itself. Regulations that do not fall within the scope of the legislation should simply not be implemented. The bureaucratic arm of the government needs to stay within the true intent and meaning of the Act, with interpretations moderated by scientific evidence and socioeconomic impact.

I believe that a melding of the features of Representative Pombo's proposed legislation combined with the flexible approach of Representative Frank's proposed legislation will serve the best interest of the American people. Modern conservation requires constant fine-tuning, both to protect natural resources as well as to ensure the industry dependent on the resource is not restricted in an arbitrary or capricious manner. Legislation that combines real conservation achievement with appropriate economic consideration is the original intent of the Magnuson-Stevens Act and should be codified in this revision.

It has been an honor to present this testimony to you today, and I again thank you for the opportunity. I welcome any questions you may have.

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The CHAIRMAN. Thank you. I would now like to introduce our first witness, Dr. Steven Murawski, Director of Scientific Programs and Chief Science Advisor, National Marine Fisheries Service. I would like to remind the witness that under our Committee Rules they must limit their oral statements to five minutes, but the entire statement will appear in the record. We also allow the entire panel to testify before questioning the witness. Doctor, if you're ready, you can begin.

## STATEMENT OF STEVE MURAWSKI, PH.D., NATIONAL MARINE FISHERIES SERVICE

Mr. MURAWSKI. Thank you, Chairman Pombo and Mr. Frank, for the opportunity to testify on these two important bills.

My name is Steve Murawski. I'm the Director of Scientific Programs and Chief Science Advisor for the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, NOAA, with the Department of Commerce. The Administration welcomes the opportunity to continue to work with Congress on the reauthor-

ization in order to sustain fishery resources, future generations and also to sustain the industries and communities that depend upon them. I would like to take this opportunity to make a few points from my written statement.

First of all, in terms of the Administration's bill on Magnuson-Stevens reauthorization, the reauthorization of the Magnuson-Stevens Act is a high priority of the Administration. NOAA has worked with its constituencies to craft an effective and responsive proposal to the many challenges that we face in federally managed marine fishery resources.

In September 2005, the Administration provided Congress with a proposal to reauthorize the Magnuson-Stevens Act. Over the past year, NOAA has worked closely with Congress on a wide range of issues related to Magnuson-Stevens Act improvements.

Specifically, the Administration's Magnuson-Stevens Act reauthorization proposal seeks to achieve the following objectives: One, promote wider use of market-based fishery management tools; second, improve the operations of regional fishery management councils as well as broaden and balance of constituent interests represented on the councils; three, end overfishing and achieve fishery rebuilding based on the biology of species and the needs of communities, rather than arbitrary time schedules; four, incorporate ecosystem-based approaches in our fishery management process; fifth, strengthen the role of science in the decisionmaking process and increase our access to social and economic information; six, upgrade the collection and use of recreational fisheries data and, seven, conform the Magnuson-Stevens Act regulatory procedures with the objectives of other environmental laws.

Now, in terms of H.R. 5018, the American Fishery Administration and Marine Life Act, the Administration supports many of the provisions of H.R. 5018. We are pleased to see several of the Administration priorities included in this bill. Specifically, the Administration supports provisions including those, number one, establish limited access privilege programs; number two, broaden council membership, and three, authorize ecosystem-based fishery management plans. Each of these provisions is consistent with key Administration priorities, and we are pleased to see these provisions included in the Chairman's bill.

Now, in terms of the provision for limited access privilege program, the Administration believes that council should have every possible fisheries management tool available to them to develop effective and efficient management programs. Limited access programs currently in place have resulted in increases in per-unit product value and decreases in harvest cost for fishermen. These programs have provided fishermen with greater control over when to fish, thus improving safety. The increased flexibility allows fishermen to improve profitability by harvesting fish when prices are most favorable.

In terms of broadening council membership, the councils are a key part of the fisheries management process, and the Administration believes the council process is an effective partnership for sustainable fisheries management. H.R. 5018 helps promote a broader and more balanced representation of constituent interests on the councils by authorizing Governors to nominate council members for

academic or other public interest areas if the Governor determines they are qualified.

For several years, fisheries scientists and managers have advocated using ecosystem approaches to fisheries management, whereby management programs consciously account for and address multiple living resource issues within an ecosystem. Although NOAA and the councils have already begun to integrate this approach into fisheries management, we believe more can be done. We support the reauthorization language that defines ecosystems, authorizes the councils to take ecosystem considerations into account when developing fishery management plans, as we believe that ecosystem-based approaches to management are fundamental to the future of sustainable fishery management.

The Administration supports other provisions in H.R. 5018, including the authorization of a fishery observer fund, which would establish a funding mechanism to help pay for fishery observer programs.

We also believe that provisions addressing cooperative research, identification of marine ecosystems, bycatch reduction incentives and identification of fisheries with excess capacity have merit. Further, the Administration believes the proposed harvest level caps in H.R. 5018 could be a useful tool, provided they are practical to implement and enforce in any fisheries in which they are used.

There are, however, a number of provisions not currently included in H.R. 5018 that the Administration included in its proposal. We would like to continue the dialogue in these issues. Time certain provisions, end overfishing, the Administration believes that a deadline for overfishing and the overfishing is critical to prevent a stock from reaching the overfished status or requiring a rebuilding. We believe that more flexibility in rebuilding times to better reflect species biology and community needs is an ineffective way to achieve conservation and economic objectives.

Now, in terms of H.R. 4940, Fishery Management Amendment Act of 2006, it focuses on measures intended to improve information and amend rebuilding targets as well as the pace at which fishery stocks are rebuilt. H.R. 4940 has a number of provisions that are consistent with the emphasis NOAA places on cooperative research between agency scientists and the fishing industry. Likewise, it emphasizes the importance of vigorous independent peer review of science supporting management. Both of these areas are addressed in the Administration's bill, and we support the intent of the concepts.

The Administration believes H.R. 4940 provides excessive leeway to the councils in the timeframe for eliminating overfishing and the eventual rebuilding of stocks. Many of the stocks in New England became overfished under policies in effect prior to 1996 that repeatedly postponed tough choices necessary for the rebuilding of overfished stocks. New England, and specifically the Port of New Bedford, have shown that ending overfishing is consistent with our goals of sustaining vibrant coastal communities and economies. In focusing on ending overfishing of sea scallops, the value of scallop landings has increased approximately 800 percent over the past 7 years.

Based on the latest NOAA data, New Bedford is the number one fishing port in the United States in terms of ex-vessel revenue, totaling $206 million in 2004. These increases in revenue have been largely due to the cooperative efforts of the fishing industry, the New England Council and NOAA to rebuild stocks, to be innovative in their management strategies, and to maintain stocks at sustainable healthy levels once they are rebuilt. It would be a step backward to allow excessive flexibility in the time allowed both for ending overfishing and achieving stock rebuilding.

In summary, the Administration supports the direction in which these two bills are headed with respect to market-based fishing management, council operations and membership, ecosystem approaches to management, and cooperative science. We welcome the opportunity to continue working with Congress, which is one of the Administration's environmental priorities. Thank you, Chairman Pombo, Mr. Frank. I will be happy to answer any questions.

[The prepared statement of Mr. Murawski follows:]

**Statement of Steven A. Murawski, Ph.D., Director of Scientific Programs and Chief Science Advisor, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce**

Thank you, Mr. Chairman and Members of the Committee for the opportunity to testify on two pieces of legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I am Dr. Steve Murawski, Director of Scientific Programs and Chief Science Advisor for the National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), within the Department of Commerce. In my testimony today, I will review the Administration's goals and priorities in reauthorizing the Magnuson-Stevens Act and comment on the bills introduced by Chairman Pombo (H.R. 5018) and Congressman Frank (H.R. 4940). The Administration will continue to work with Congress to reauthorize the Magnuson-Stevens Act in order to sustain our fishery resources for future generations, as well as the industries and communities that depend on them.

THE ADMINISTRATION'S MAGNUSON-STEVENS ACT PRIORITIES

Reauthorization of the Magnuson-Stevens Act is a high priority of the Administration. NOAA has worked with its constituencies to craft an effective and responsive proposal to the many challenges that face our federally-managed marine fishery resources. In September 2005, the Administration provided Congress with a proposal to reauthorize the Magnuson-Stevens Act. Over the past year, NOAA has worked closely with Congress on a wide range of issues related to Magnuson-Stevens Act improvements. The Administration's legislative proposal provides a broad blueprint, based on the President's U.S. Ocean Action Plan. The Administration's proposal reflects many comments and views from stakeholders. NOAA sponsored a national conference—Managing Our Nation's Fisheries—II"—in 2005 specifically addressing reauthorization. From the input of the over 800 attendees, the Administration developed a list of strategic priorities to address in the reauthorization process.

Specifically, the Administration's Magnuson-Stevens Act reauthorization proposal seeks to achieve the following objectives: (1) promote wider use of market-based fishery management tools, (2) improve the operations of Regional Fishery Management Councils (Councils) as well as broaden and balance the constituent interests represented on the Councils, (3) end overfishing and achieve fishery rebuilding based on the biology of species and needs of communities, rather than arbitrary time schedules, (4) incorporate ecosystem-based approaches in our fishery management process, (5) strengthen the role of science in the decision-making process and increase our access to social and economic information, (6) upgrade the collection and use of recreational fisheries data, (7) conform the Magnuson-Stevens Act regulatory procedures with the objectives of other environmental laws, and (8) enhance the enforcement tools available so penalties become a true punishment and deterrent rather than simply a cost of doing business.

During the 109th Congress, several Magnuson-Stevens Act reauthorization bills have been introduced. For purposes of this hearing, I will focus my comments on

major provisions of the bills before us today: H.R. 5018, sponsored by Chairman Pombo, and H.R. 4940, sponsored by Congressman Frank.

"AMERICAN FISHERIES MANAGEMENT AND MARINE LIFE ENHANCEMENT ACT"
(H.R. 5018)

H.R. 5018 addresses a comprehensive range of domestic management issues that have been debated within and outside Congress for several years. There are many provisions in H.R. 5018 that the Administration supports, particularly, the provisions that:

(1) establish limited access privilege programs, (2) broaden Council membership, and (3) authorize ecosystem-based fishery management plans. Each of these provisions is consistent with key Administration priorities, and we are pleased to see these provisions included in the Chairman's bill. I would like to explain why the Administration supports these provisions and believes they should be included in Magnuson-Stevens reauthorization.

**Limited Access Privilege Programs**

The Administration believes Councils should have every possible fisheries management tool available to develop effective management programs. Moreover, market-based management approaches have demonstrated success in achieving economic benefits and promoting sustainable fisheries. Therefore, the Administration supports an expansion of existing authority to allow the Councils to implement a variety of limited access privilege programs that meet the unique needs of their fishery. The current Magnuson-Stevens Act authorizes two forms of dedicated access privileges (DAPs): individual fishing quota (IFQ) programs, and community quotas (in two specific geographic areas). Limited access programs currently in place have resulted in increases in per-unit product value and decreases in harvesting cost for fishermen. These programs have provided fishermen with greater control over when to fish, thus improving safety. This increased flexibility allows fishermen to improve profitability by harvesting fish when prices are most favorable. For these reasons, the Administration supports granting the Councils expanded authority to implement limited access privilege programs.

**Broadening Council Membership**

The Councils are a key part of the fisheries management process, and the Administration believes the Council process is effective for sustainable fisheries management. It is vital that Councils are comprised of knowledgeable people representing a variety of interests. H.R. 5018 helps promote a broader and more balanced representation of constituent interests on the Councils by authorizing Governors to nominate Council members from academia or other public interest areas if the Governor determines they are qualified. The Administration supports this provision and believes it would allow a wider diversity of interests to be represented on the Councils. The Administration also looks forward to working with Congress to address a potential constitutional concern raised by the bills.

ECOSYSTEM-BASED FISHERY MANAGEMENT PLANS

For several years, fisheries scientists and managers have advocated using ecosystem approaches to fisheries management, whereby management programs consciously account for and address multiple living resource issues within an ecosystem. The Administration supports this vision and believes we must move towards an ecosystem approach to management. Although NOAA and the Councils have already begun to integrate this approach into fisheries management, we believe more can be done. We support reauthorization language that defines ecosystems, authorizes the Councils to take ecosystem considerations into account when developing fishery management plans, and authorizes the Councils to prepare fishery ecosystem plans. The Administration commends Chairman Pombo for his inclusion of a non-mandatory provision for ecosystem-based fishery management plans, as we believe that ecosystem-based approaches to management are fundamental to the future of sustainable fishery management.

The Administration supports other provisions in H.R. 5018, including the authorization of a Fishery Observer Fund, which would establish a funding mechanism to help pay for fishery observer programs. We also believe that provisions addressing cooperative research, identification of marine ecosystems, bycatch reduction incentives, and identification of fisheries with excess capacity have merit. Further, the Administration believes the proposed harvest level caps in H.R. 5018 could be a useful tool, provided they are practical to implement and enforce in any fisheries in which they are used.

While the Administration supports many of the provisions in H.R. 5018, the Administration does have concerns about a few provisions, and we would like the

opportunity to work with you, Mr. Chairman, and the Committee to address these concerns. In particular, we are concerned with the provisions regarding the rebuilding plans for "diminished" stocks; compliance with other environmental laws, especially the National Environmental Policy Act (NEPA); and the recovery of costs for limited access privilege programs. We would also like to work with you, Mr. Chairman, on provisions related to the implementation of limited access privilege programs in New England; the revision of fisheries regulations in National Marine Sanctuaries; and the collection of recreational fisheries data.

The Administration's proposal to end overfishing within a defined timeframe and allow rebuilding timeframes to reflect the unique life history of the pertinent fish stocks provides appropriate levels of management flexibility to achieve sustainable fisheries. H.R. 5018 identifies additional circumstances to be considered in determining rebuilding schedules, which we believe could inappropriately and unnecessarily slow rebuilding times.

The Administration supports study, revision, and updating of relevant Magnuson-Stevens Act procedures to integrate the environmental review processes of NEPA. The Administration supports this approach, rather than an exemption of fishery management actions from NEPA requirements.

While H.R. 5018 outlines the authority to establish limited access programs, it does not authorize the collection of fees necessary to implement these programs. Recent experience suggests that the implementation and monitoring costs of limited access privilege programs may easily exceed the caps proposed in H.R. 5018. This places an unfair burden on the taxpayers to support programs primarily benefiting business. The Administration's proposal would authorize the recovery of a larger share of the costs in all dedicated access privilege programs.

Another concern is that H.R. 5018 mandates an IFQ referendum with a 2/3 majority requirement in New England, but nowhere else. There are many provisions in current law and regulations to ensure an open and transparent debate on the evaluation and choice of management options. Management by IFQ may ultimately be appropriate for some Northeast fisheries but not others. Mandating such a referendum for New England suggests the IFQ option or the New England region requires special attention or a lack of confidence in our current law or the local institutions to fairly interpret them. Such a provision could result in a costly and unnecessary impediment to the implementation of limited access programs in this region. Current law ensures that all stakeholder concerns are addressed in the decision making process, and places control properly with local institutions responsible for fisheries management.

H.R. 5018 requires the review and certification of National Marine Sanctuaries regulations for the conservation and management of fish or essential fish habitat. The Administration firmly believes Sanctuary regulations adequately protect fish and essential fish habitat and does not believe that Sanctuary regulations should meet the Magnuson-Stevens Act national standards in all cases since their mandates differ from the Magnuson-Stevens Act mandates. NOAA is committed to using all its regulatory tools and complimentary authorities to develop comprehensive ecosystem-based management strategies that meet the purposes, goals and objectives for state and federal fishery managers and National Marine Sanctuaries.

Finally, the Administration is committed to a nationally coordinated registry of saltwater recreational anglers that would build on State-administered programs. H.R. 5018 calls on the Secretary to use financial incentives to encourage States to collect recreational data. The Administration and Senate bills approach this in a different way, authorizing the Secretary to collaboratively establish a national registry as recommended by a recent National Research Council review of recreational data collection programs. The Administration believes a comprehensive registration of anglers should be established, as such a registration is an important tool for improving recreational fisheries data collection for management purposes. We look forward to working with you to craft the most effective policy to address this critical need.

I would like to mention one issue not addressed in H.R. 5018 that the Administration believes should be included in the Magnuson-Stevens reauthorization. Unlike the Administration's proposal, H.R. 5018 does not include a provision to accelerate a mandatory end to overfishing. The Administration believes a deadline for ending overfishing is critical to preventing a stock from reaching an overfished status or requiring rebuilding. Management measures that end overfishing have contributed significantly to the rebuilding of many of the Northeast groundfish stocks. Without such strong measures, it would have been difficult, if not impossible, to bring the stocks to status that they are in today.

Again, I would like to reaffirm the Administration's support for many of the provisions in H.R. 5018, and we are pleased to see many of our priorities included in

this bill. We look forward to working with you, Mr. Chairman, as reauthorization moves forward.

Now I would like to discuss the Administration's views on H.R. 4940.

"FISHERY MANAGEMENT AMENDMENTS ACT OF 2006" (H.R. 4940)

H.R. 4940 addresses a more narrow range of Magnuson-Stevens Act issues, concentrating on several measures intended to improve information, and amend rebuilding targets as well as the pace at which fishery stocks are rebuilt. H.R. 4940 has a number of provisions that are consistent with the emphasis NOAA places on cooperative research between Agency scientists and the fishing industry. Likewise, it emphasizes the importance of vigorous independent peer review of science supporting management. Both of these areas are addressed in the Administration's bill, and we support the intent of the concepts.

The Administration believes H.R. 4940 provides excessive leeway to the Councils in the timeframe for eliminating overfishing and the eventual rebuilding of stocks. Many of the stocks in New England became overfished under policies in effect prior to 1996 that repeatedly postponed tough choices necessary for the rebuilding of overfished stocks. New England, and specifically the Port of New Bedford, have shown that ending overfishing is consistent with our goals of sustaining vibrant coastal communities and economies. In focusing on ending overfishing of sea scallops, the value of scallop landings has increased approximately 800 percent over the past 7 years. Based on the latest NOAA data, New Bedford is the number one fishing port in the United States in terms of ex-vessel revenue, totaling $206 million in 2004. These increases in revenue have been largely due to the cooperative efforts of the fishing industry, the New England Council, and NOAA to rebuild stocks, to be innovative in their management strategies, and to maintain stocks at sustainably healthy levels once they are rebuilt. It would be a step backward to allow excessive flexibility in the time allowed both for ending overfishing and achieving stock rebuilding.

**Conclusion**

In summary, when we examine these two bills in light of the Administration's highest Magnuson-Stevens Act reauthorization priorities, we are encouraged in a number of important areas. Specifically, we support the direction in which these bills are headed with respect to: market-based fisheries management, Council operations and membership, ecosystem-based approaches to management, and cooperative science.

We look forward to working with Congress on several issues in Magnuson-Stevens Act reauthorization, such as: (1) overfishing and rebuilding provisions, (2) policies related to limited access privileges, and (3) the best means to improve the collection of recreational fisheries data. Ending overfishing and fisheries rebuilding issues are critical for achieving sustainable fisheries. In the Administration's view, two points are key. First, we have to end overfishing as quickly as possible, and preferably by a date certain; second, rebuilding timetables should be supported by sound science.

As we outlined in our most recent status of the stocks report, 81% of the stocks and stock complexes with known status are not subject to overfishing, and 72% of the stocks and stock complexes with known status are not overfished. We are making progress in rebuilding our Nation's fisheries. As I stated earlier, Mr. Chairman, the Administration believes we share many of the same priorities for Magnuson-Stevens reauthorization. We are close to completing a final bill. In this year, the tenth anniversary of the enactment of the Sustainable Fisheries Act, the Department remains committed to working with Congress as legislation to reauthorization the Magnuson-Stevens Act moves forward.

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The CHAIRMAN. Thank you. Doctor, one of the issues that has come up in H.R. 5018 is the effort to restore flexibility in terms of the decisionmaking and when it comes to rebuilding stocks. I would like you to talk a little bit about that and the impact you foresee with the changes that we would make under that bill.

Mr. MURAWSKI. In terms of both your bill and the Administration's bill, we are trying to strive to get more flexibility. In particular, this is being formed by some of the difficulties in rebuilding stocks in New England. Back in 1996 when the amendments were first put in, 14 out of 18 of the major groundfish stocks is where overfishing was occurring. We have that down to 8 out of 14 where

overfishing is occurring. It's a long and difficult process. One of the things we found is that because of the ten-year requirement for rebuilding, that is hard-wired in the Magnuson-Stevens Act, that leaves us very little flexibility in terms of our realistic time lines and more based on species biology. Of course, we can't trade off everything. We can't trade off ending overfishing because, frankly, as I said in my testimony, that is how we got in trouble in the first place. We put a time certain ending local fishing, but allow more flexibility. Get rid of the arbitrary ten-year requirement and allow the rebuilding to pace itself, you know, with the species biology. We think that is a fair tradeoff. We would be very much willing to working with you on the provisions of your bill that would balance this flexibility and end overfishing.

The CHAIRMAN. But it's not that that flexibility, in terms of a time line, is more realistic in terms of science. Some fisheries may take more than 10 years; some may take less. In talking to Congressman Frank about the scallop fishery here and the success that they have had in that particular instance, that was a shorter period of time. There may be other fisheries that would take longer. Shouldn't that flexibility be built into the law?

Mr. MURAWSKI. That is why the Administration proposal is to eliminate the ten-year requirement and base it more on the regeneration time of species. For example, Georges Bank cod is going to be a very difficult one to rebuild. That should have more time. Scallops are highly productive species. They turned around almost immediately. We need to base this more on the biology of species rather than time.

That being said, the first requirement of rebuilding for long-term sustainability is to eliminate more, more fishing. We did that in sea scallops. We probably have a little backsliding because of the influxive effort that we need to pay attention to. We eliminated overfishing in some of the stocks of groundfish. Some of the tougher ones are going to take more time.

The CHAIRMAN. In regards to framework plans, the Administration requested language regarding the authority to use those plans. Why is that important?

Mr. MURAWSKI. Well, framework authority is important because, I think, both of you testified right now we have a process that takes a considerable amount of time to react to changes in the fishery, changes in the stocks, et cetera. We'd like to streamline that process, particularly for issues where you define the scope of your actions that you want to take, and sort of preload the type of responses that you would do and institute those on a much more timely basis. We think we can have a framework as originally put in place so people understand the potential or scope for environmental, economic impact. The council's system can be more reactive.

The CHAIRMAN. I think we all agree in terms of the need to have public input, regional input in the decisions that are being made. Under the proposed legislation would there be less opportunity for the public to participate in the decisionmaking process.

Mr. MURAWSKI. Under the framework proposal.

The CHAIRMAN. Yes.

Mr. MURAWSKI. No, we don't believe so.

If you have your debate on the provisions of the framework, you should be able to take everybody's concerns into account. Of course, in terms of the specific change under the framework plan we see other places where we there are specifications, there is considerable input. For example, Alaska, every year they reset their quotas based on the framework process. There is plenty of public input.

The CHAIRMAN. In fact, I believe in the case of Alaska there is extensive public involvement from what I've seen. Finally, I just want to ask you a final question about litigation and how does that impact the agency and your ability to fulfill your goals, your mission?

Mr. MURAWSKI. Litigation, of course, is very significant in terms of our, not only the process but also it consumes a lot of resources. It consumes scientific resources. It consumes people that are litigating the case, et cetera. The more we can clarify the provisions in the law, the less we'll have the sort of ambiguous things that are the things that create litigation.

I want to commend you, Chairman Pombo, on the way you approached the ecosystem plans by making it a non-mandatory provision. One of the things we found in terms of looking at central fish habitat, we jumped right in it on that, in terms of a mandatory requirement, that created confusion because we weren't ready. We think with the non-mandatory provision it allows us to get our feet wet. It's probably a very good approach, to have that non-mandatory requirement to begin with.

The CHAIRMAN. On that provision you believe, as I do, that ultimately it will be ecosystem management. It will be within the entire region.

That is what we're working toward?

Mr. MURAWSKI. Yes. I think some of the provisions that were talked about in Mr. Frank's bill, about looking at alternative explanations for declines of stocks, we need to broaden out the kind of information that goes into the fishing management process, for example, issues of climate, issues of in-shore pollution, et cetera. Ecosystem approach allows us to inform fisheries management with a much wider sense.

The CHAIRMAN. Thank you very much.

Mr. FRANK. I just noted, your staff noted while you were talking about litigation, we're told there are currently 110 lawsuits being brought against NMFS. Virtually all of them are from people trying to make it more rigid. We move to flexibility. I, myself, had the conversation with people working in fishing. With the agency we've been told from time to time you have a very good point there, but if we were to act on it, we would be tied up in a lawsuit. I think this is an important point.

The scallop issue, you mentioned that again. We should be very clear that the environmental community, that is denunciatory of this bill, was strongly denunciatory of the decision to open Georges Bank, which you are vindicated by the effects. One of the, I guess you really did, I appreciate this, touch on the central issue. That is the case of the time line versus flexibility. We appreciate your talking about the 10 years. Why does anybody think there is magic to the 10 years? Mr. Pombo and I have been in the legislative process. Somebody said, "Look, we have to come up with something.

What about eleven?'' Finally, you have a consensus on ten. From then on, ten is a genesis. God must have been for ten. Anybody who has been in one of these processes knows there was a little trade there. The notion that having arrived at the new-man process at a particular number, it then becomes a kind of absolute. It's silly, plain silly. The notion that there is the same number for every species is just silly. If I understand what you're saying, you think a time line is important and it would be relevant to the particular species and the conditions of that species?

Mr. MURAWSKI. That's correct.

Mr. FRANK. You would also want to have in the law the ability that as things went forward to monitor the progress. Yes, there will be times and it's currently in the law, sometimes we have to toughen it out, but there are also times when the science suggests we can be more flexible. I think what the Chairman and I are trying to do is say we want to give you the full range of science, the ability to do both, to extend it if it looks like things are doing better and to be tougher if we have to. Is that a reasonable approach that we should be taking?

Mr. MURAWSKI. Again, I think these notions of trying to build time lines more around species, you're capable of doing.

Mr. FRANK. Modifying them as we go forward to get more information. You said something today; you said 10 years. I guess our expertise in how the fish will perform is not so certain that we have to say OK, we can't change it so many years out. I appreciate that. You mentioned the overfishing situation. Where are all these monkfish today? That is a little bit shakier than scallops.

Mr. MURAWSKI. I'm not sure. Monk fishing is occurring.

Mr. FRANK. You have the ability now to cut back.

Mr. MURAWSKI. Well, there is a regulatory change in terms of the number of days at sea devoted to monk fishing.

Mr. FRANK. We did have a situation where we were able to continue monk fishing a few years ago and the species is not collapsed, not been depleted. That is the other point I want to make. These are not endangered situations. We're not talking about endangered species. We're not talking about them disappearing. We're talking about a drop in the stock is what we're talking about. They were correctable.

If you're in one way or another, then you can correct it.

The problem we have is people who look only—I guess I have a linguistic problem. I'm not a great fishing expert. I have this problem of maximum sustainable yield. Frankly, it seems to me the day you caught one fish you diminished the maximum sustainable yield. Tell me if you caught two. I'm baffled by the people who object to any kind of flexibility.

Let me ask one other point, that is, there have been some arguments, you talk about the social and economic impacts somehow degrading the environmental priority. What is the Administration's view of social impacts? It's in the existing law. People act like we invented it. What is your view of the impact, the importance it ought to be given to social and economic status?

Mr. MURAWSKI. Under NEPA and other things, we have to take into account the social and economic impacts of various alternative options.

Mr. FRANK. Does that take into account the greater ability to protect the fish stocks?

Mr. MURAWSKI. Absolutely not. It helps to sort through the options in terms of trying to mitigate the short-term effects. National Standard 8 requires us to look at, for example, impacts to communities. We've been trying to upgrade the amount of social economic data that goes into the management plan.

Mr. FRANK. I appreciate it.

Mr. Chairman, I would like to put in the record the written testimony of Dr. Kaplan who's a Guest Investigator at Woods Hole, and a research scholar at Union College. She is the Chair of Social Science. I also have a letter from Roger Berkowitz who is the President of Legal Sea Foods in which he talks about the importance of seafood as a source of nutrition and expresses his dismay about proposals and things in the law that would seriously interfere with their ability to provide that. Thank you.

The CHAIRMAN. Without objection, they will be included. Dr. Murawski, I appreciate you making the effort to be here to testify. Obviously, this is an extremely important issue. It's very difficult, very complex. As we go forward, I look forward to the opportunity to work with you, continue to work with you in order to provide the best legislation we possibly can.

I would now like to call up our second panel of witnesses. Panel 2 witnesses include Ms. Debra Shrader, President of Shore Support, Incorporated; Mr. David Bergeron, Coordinator of Massachusetts Fishermen's Partnership; Mr. Chris Wright, scallop boat captain; Dr. Andrew Rosenberg, Institute for Study of Earth, Oceans and Space, University of New Hampshire; Dr. Brian Rothschild, Dean, School for Marine Science and Technology, UMass-Dartmouth and Ms. Jackie Odell, Executive Director of Northeast Seafood Coalition. Thank you very much.

## STATEMENT OF DEBRA SHRADER, EXECUTIVE DIRECTOR, SHORE SUPPORT, INC.

Ms. SHRADER. Good morning, Congressman Pombo, members of the Resources Committee. First of all, if I could, I would like to make a couple of comments regarding the last testimony just briefly.

One is on participation of industry people in the process, I can tell you that of late when we sit through a day-long meeting of the New England Fishing Management Council we are told, after we listen to the diatribe of their explanation, we are told that we have two for, two people against. We will sit and listen to eight or ten hours of testimony, then we'll only have the opportunity for two people to go to the table to disagree. I don't think that is an open meeting policy, according to any public law. Also, ecosystem management plans that we are looking forward to, I would hope that people are also included in that ecosystem. I'll just go back to my statement.

I would like to thank you for this opportunity to speak on behalf of the fishermen and their families here in the great port City of New Bedford, and we welcome you to our home port.

As stated, my name is Deb Shrader. I am the wife of Captain Ronnie Shrader, and the Executive Director of Shore Support, Inc./

Fishermen's Emergency Relief Fund, which is a nonprofit organization that has worked for the last 10 years on behalf of fishermen and their families. I applaud you all for taking the time in your busy schedules to come to our home port and to hear us out.

All our men want to do is bring home the freshest, healthiest source of protein-rich food for our citizens to enjoy. Hopefully, this bill will make it possible for us to continue to eat healthful, locally harvested seafood, and export it to others in our great nation that don't have the good fortune to live by the sea.

Part of Shore Support's mission statement is to create a voice for the rank-and-file fishermen with our regulators, so to be here, testifying before this esteemed committee is a bit daunting, but also very important to me.

After reading the American Fisheries Management and Marine-Life Enhancement Act, I was relieved that much of the bill will be a measure that will balance many of the inequities in the prior Sustainable Fisheries Act, and previously the Magnuson-Stevens Act. Our organization fully supports many issues brought into the light with this bill. For example, the ten-year rebuilding strategy being revamped with a great deal more flexibility. The greater flexibility would allow fishermen to pay attention to their safety and economic status. Nowhere in the National Standards does it state that one standard has precedent over the other. Why then have socioeconomic issues been ignored for so long?

At every council meeting when an overhead slide is displayed, you will always see socioeconomic data incomplete. I hope with the concentration on flexibility this bill brings to the table those socioeconomic issues that will be brought out in the open. We also support the charitable donations of bycatch which would not just give us a truer picture of the amount of fish that are out there, but also allow us to feed healthful seafood to the poor, people who otherwise could not afford to make such a healthful dietary choice.

Shore Support has completed one socioeconomic study of a comparison of income and working conditions prior to and since the implementation of the Days at Sea Management Plan. The work was done through a Saltonstall-Kennedy grant to UMD/SMAST, with Professor Dan Georgianna as the principal investigator. We have been recently awarded another grant to continue our work in coalition with UMD/SMAST through the Northeast Consortium. This most recent grant will take a look at the economic effect of Amendment 13 on our groundfish industry. In part, we will be comparing incomes and tracking how many men have left the fisheries, safety issues, et cetera. I feel that the benchmarks that were created in our previous study will give us a clearer understanding of the devastation that has beset an industry who has already had a 50 percent reduction in effort.

We did our interviews for our first study in the spring of 2003. Our interviewers met with 50 percent of the offshore boats in our harbor, both groundfish and scallopers. I can tell you that even then the groundfishermen felt that they could take no more.

The regulations are getting more and more complicated and more difficult for our men to work under. Many of our groundfishermen are Portuguese, from both the mainland and like my grandmother, the Azorean Islands. Many of the men prefer to speak Portuguese

and keep the customs of the homeland. The captains read the new regulations and are not just hampered by the complexity of the regulations but also the fact that nothing is translated into Portuguese for easier understanding.

One thing they can understand is how precarious their futures are. Single boat owners and many fishermen will not be around when the stocks finally rebound, because most fishermen have had their right to harvest fish taken away or diminished to a point where they either support their family or listen to the call in their hearts to continue to work at sea. Please try to picture the single boat owner/operator who has his boat mortgage rolled in with his house mortgage.

I met with a man in that situation and he had to suffer not just the economics of the situation but the social pain of feeling like a failure to his family, knowing that his home would go with the boat and everything he had worked for would soon be gone. This man spoke to me with tears in his eyes, telling me that he felt he will soon lose everything, and he didn't know how he would face his children.

Part of my work is in the Fishermen's Emergency Relief Fund which we started after the sinking of the F/V Northern Edge. Originally developed to help the families suffering from the tragedy of losing their loved ones in the sinking, we then have tried to assist families who have been forced to leave the industry and are seeking retraining or who have been injured in the performance of their duties. This is necessary due to the fact that there is no Workmen's Compensation for fishermen when they are injured, and families in transition often do not qualify for public assistance because of the ownership of a house or car.

The demand for our services has already become more than we can handle and our funds, donated by people from communities as far away as Wisconsin, are nearly gone. How will our government be able to help these families? The unemployment in the fleet is slated to increase markedly due to the lack of days at sea and the consolidation of crews moving from boat to boat. I hope that there will be services and funding made available to help us keep our families in their homes. Our center has been brought to a bare-bones budget at a time when we never needed it more.

My last comment is regarding individual fishing quotas. I realize that the decision of whether or not we will have IFQs is subject to a referendum vote of 2/3 of the community in the fishing region. I would hope that at the very least federally documented captains and first mates would be added to the people eligible to vote. I would prefer to see all fishermen have a voice in the monumental decisions; however, the captains and mates are documented with identification cards, making it easy for the government to validate that person's involvement in the fishery and therefore his/her right to participate in the vote.'

In conversations with fishermen, I have asked them over and over why they continue to fish when things are so difficult. They will most often shrug, I get a little smile and they tell me, "You know how it is? It's what I do, who I am." Please help us through this act of Congress to save our fishery-dependent community and the families who have been the cornerstone of the economic base

of the port city for hundreds of years. They see the whaling museum, then they go down and see our boats. Thank you, again, both of you, and thank you for your time.

[The prepared statement of Ms. Shrader follows:]

**Statement of Debra Shrader, Executive Director, Shore Support, Inc.**

Good morning, Congressman Pombo, members of the Resource Committee, and Congressman Frank. I would like to thank you for this opportunity to speak on behalf of the fishermen and their families here in the great port City of New Bedford, and we welcome you to our homeport.

As stated, my name is Deb Shrader. I am the wife of Captain Ronnie Shrader, and the Executive Director of Shore Support, Inc./Fishermen's Emergency Relief Fund; which is a nonprofit organization that has worked for the last ten years on behalf of fishermen and their families. I applaud you all for taking the time in your busy schedules to come to our home port and hear us out. All our men want to do is bring home the freshest, healthiest source of protein rich food for our citizens to enjoy. Hopefully, this bill will make it possible for us to continue to eat healthful, locally harvested seafood, and export it to others in our great nation that don't have the good fortune to live by the sea.

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but the social pain of feeling like a failure to his family, knowing that his home would go with the boat and everything he had worked for would soon be gone. This man spoke to me with tears in his eyes, telling me that he felt he will soon lose everything, and he didn't know how he would face his children.

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The CHAIRMAN. Thank you.

**STATEMENT OF DAVID BERGERON, EXECUTIVE DIRECTOR, MASSACHUSETTS FISHERMEN'S PARTNERSHIP, INC.**

Mr. BERGERON. Good morning, Chairman Pombo. Thank you very much for coming to New Bedford to listen to us. My name is David Bergeron. I'm Executive Director of the Massachusetts Fishermen's Partnership, Inc. The partnership is an umbrella organization for 18 commercial fishing organizations representing the diversity of the geographic sector that is the Massachusetts fishing industry. We sponsor the Fishing Partnership Health Plan which provides high-quality comprehensive health care coverage for more than 2,000 members. We commend Representative Frank for the health care provisions in H.R. 4049 and wholeheartedly request that this section be included in the final version of the Magnuson-Stevens Act.

Mr. FRANK. I want to make clear they are not in the other bill, because the committee that the Chairman presides over doesn't have this, but it will be our hope to work together when we get out of committee. We understand that is important. That is the only reason it's not in both bills. That can be dealt with under the rules going forward.

Mr. BERGERON. Thank you. Congressman, we need help. Here in the Northeast the multispecies fishery management plan is pushing fishing communities toward the tipping point past which the infrastructure that allows fishermen to do their jobs could fail. We

have found that the well-being and sustainability of both large and small fishing communities of the region are intertwined.

Furthermore, they are all dependent on an industry that is characterized by diversity and flexibility. While as an industry we support management based on science, we believe that improvements should be made in two areas. First, we need to increase confidence and transparency in the sciences. Second, the councils need reasonable discretion for fulfilling their responsibilities.

We are heartened to see the commitment to collaborative research. We believe investment in a broad range of institutions to conduct an outreach to oceans and fish research is critically important to increasing competence and transparency in the science. SMAST independent research has produced vast to the scallop industry. Such research leads to a critical mass of knowledge through independent scientists, organizations and fishing industry participants who can reinvigorate fishery science, tests hypotheses and better inform fisheries management.

H.R. 5018 addresses the power of science and statistical committees. We strongly believe that the composition of science and statistical committees must include both natural and social scientists who are unaffiliated and financially independent of the regulations. In addition, the scientific information employed by this committee must include the results of collaborative research.

My second point relates to the need for flexibility in management. The councils need reasonable discretion to be able to do their jobs properly. As we move toward ecosystem management, it is going to be even more critical to be aware of the interactions of the different fish species, the effects of change on humans and of humans and not to be driven to extreme actions based on one respect.

I do need to note, Mr. Chairman, that since the mission of my written testimony it has come to my attention that there is not 100 percent consensus on, among all of our members, concerning the details of overfishing. Most agreed, however, that it is reasonable to allow councils to phase out overfishing if the stocks are expected to reach their targets in the permitted time period. Phased regulations allow the communities to adjust to change, thereby reducing the probability of tremendous devastation. It is also reasonable for the councils to have discretion in the amount of time allowed to rebuild fish stocks and the targets are doubled or tripled.

Congressman, you can help us. Invest in collaborative research, independent review, grant the council's reasonable discretion and flexibility to extend rebuilding time lines under special circumstances and to phase in the reduction of fishing mortality to avoid devastating things when doing so would not prevent the rebuilding of the stocks.

Again, I would like to thank you for the opportunity to testify, and we are very interested in working with you and your staff. We will move forward with this very important legislation.

[The prepared statement of Mr. Bergeron follows:]

**Statement of David Bergeron, Executive Director, Massachusetts Fishermen's Partnership, Inc.**

My name is David Bergeron. I am Executive Director of the Massachusetts Fishermen's Partnership (MFP). The MFP is an umbrella organization for 18 commercial

fishing organizations representing all gear and geographic sectors of the Massachusetts fishing industry. Our members are:

Boston Harbor Lobstermen's Cooperative
Cape Cod Commercial Hook Fishermen's Association
Commercial Anglers' Association
General Category Tuna Association
Gloucester Fishermen's Wives Association
Gloucester Fishermen's Association
Marshfield Commercial Fishermen's Association
Massachusetts Commercial Fishermen's Association
Massachusetts Bay Ground Fishermen's Association
Massachusetts Lobstermen's Association
New Bedford Seafood Coalition
New England Fish Exchange
Northeast Seafood Coalition
North Shore Community Tuna Association
Pigeon Cove Fishermen's Co-Op
Plymouth Lobstermen's Association
Provincetown Fishermen's Association
South Shore Lobstermen's Association

The MFP was created to promote the common interests and economic viability of commercial fishermen and fishing families. The MFP is sponsor of the Fishing Partnership Health Plan, which provides comprehensive healthcare coverage for more than 2000 members in the fishing community. The MFP also runs a successful collaborative research program that addresses topics that include social science inquiries, seafloor mapping and habitat characterization, species studies and selective gear development.

Thank you for the opportunity to offer testimony concerning reauthorization of the Magnuson-Stevens Act and particularly H.R. 5018 and H.R. 4940. There are many provisions in both bills that deserve serious consideration and which we hope will be included in the final version of reauthorization of the Magnuson-Stevens Act. H.R. 5018 includes several proposals that we support with regard to diminished fisheries, flexibility in rebuilding timeframes, analysis of cumulative social and economic impacts, reconciliation of the National Marine Sanctuaries Act with the Magnuson-Stevens Act, and other matters discussed below. H.R. 4940 also includes some very important proposals concerning healthcare for fishermen, safety, flexibility of rebuilding strategies and timeframes, and collaborative research.

It is wise that the House of Representatives and Congress is moving towards reauthorization of the Magnuson-Stevens Act this year. Medical research continues to affirm the importance of seafood in a healthful diet. While recreational fishing provides important economic and social benefits, it is the commercial fisherman who provides high quality and healthful protein for all American citizens. It is critical that the health and abundance of our fishery resources be safeguarded. It is equally important that the tens of thousands of men and women who go to sea and the people employed in the businesses and industries on shore that support our fishermen are recognized and supported for what they contribute to the national interest. These are the people who provide us with some of our best understanding of the marine environment and the rich abundance of the sea.

**Healthcare for Fishing Communities**

The MFP has a long-standing interest in fishing community healthcare issues and is sponsor of the Fishing Partnership Health Plan which provides more than 2,000 fishing family members with comprehensive high-quality coverage. Our work in connection with the Fishing Partnership Health Plan gives us a unique view into the social dimensions of fishing community life. As such, we wholeheartedly endorse Section 4(e) of H.R. 4940, "Fishing Industry Health Care Coverage Demonstration Program," and request that this entire section be included in the final version of Magnuson-Stevens reauthorization.

Very closely related to our interest in fishermen's health is our concern for fishermen's safety. We support Section 6 of H.R. 4940 "Fishing Safety" and especially endorse its provisions to provide resources for safety training and its requirement that equal emphasis be given in management to fishermen's safety at sea as is given to other National Standards. A NOAA funded project we are currently conducting seeks to promote a culture of safety at sea by building on successful safety training workshops in New Bedford and exploring the potential for developing incentives such as lowering the costs of safety equipment and/or insurance in part through active participation in safety training.

**Collaborative Research**

The MFP operates a successful collaborative research program that addresses a number of research topics relevant to the development and definition of ecosystem based approaches to management. We generally support H.R. 5018's Section 6 "Ecosystem-Based Fishery Management"; however, there needs to be more specific language to describe how to "incorporate broad stake holder participation." H.R. 4940 provides concrete examples of how this may be accomplished in Section 5 "Improvements in Fishery Science and Research" and Section 12 "Fishery Science Education Program."

The MFP has developed a special expertise with regard to social science research through a number of collaborative research projects with researchers from MIT, Rutgers University, and Harvard University. We began this work five years ago with the specific goal of preparing to make recommendations to Congress to improve the quality and usefulness of fisheries social science research. One of our most critical findings is that social science analyses in fisheries must not be limited to impacts of regulations but must be expanded to assess the social dimensions of the science and management processes as well.

*A. Analyzing the Social Dimensions to Science & Management*

Effective management of fisheries demands institutionalized collaboration among fishermen, other community members, social and natural scientists as well as managers at every point, from research through decision-making.

In its introductory "findings," the Magnuson-Stevens Act stresses that "the collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States." The route chosen was "(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States." Despite these participatory goals, fisheries management has achieved the reputation of "top-down" management among many of its stakeholders. Others, however, accuse the Councils of being swayed by too much participation of stakeholders. Measurement and monitoring of the involvement and empowerment of both individuals and organizations could be incorporated into the analysis of the success/failure of management.

The description of the social organization and characteristics of interaction among research and fisheries management institutions and the people who participate through them could be viewed as important social "indicators" in management. Effective outcomes would be defined and monitored by measurable social indicators. That there are fishermen and scientists working together on projects does not mean that the full potential of that collaboration is being realized. Deliberate analysis of the human ecology of collaborative fisheries research is an important step towards understanding what is necessary for success in such research. Meaningful collaboration among scientists and fishermen and their respective organizations is an important contributor to the development of individual and group "capabilities" and expertise and thus provides the social and human capital necessary for effective research and management of ecosystems.

Section 5(d), (e) and (f) of H.R. 4940 provides the best model on how to build upon progress already made in promoting collaborative research and also includes resources for social science collaborative research that would be available to analyze the process and social structure of successful collaborative research and how it can be made more applicable and influential to management.

*B. Community Confidence in Scientific Research*

Our social science research and experience in general with collaborative research projects is beginning to awaken an appreciation of the need to better understand the meaning and social indicators of "collaboration" in connection with scientific research. There is broad recognition of the need for scientists and fishermen to work more closely together through collaborative research, and Congress has invested in this idea. Social sciences need to be applied to learn how to assess and analyze scientific research that produces results that obtain high levels of confidence and as such become implemented more readily in management.

The major complaint we hear is that collaborative research results are not used in management. The reasons for this may not be as obvious as some may believe. It is not simply a question as to whether or not the science is good, the review was

independent, or the information was relevant. There is more to it, and we need to understand it.

Research done by the Ecosystem Management Initiative of the University of Michigan School of Natural Resources and Environment examined the need for collaboration for effective ecosystem management. The group has also focused on "what enables people to work together to address resource issues, resolve conflicts, and build partnerships." (http://www.snre.umich.edu/ecomgt/lessons/index.htm)

The accuracy of natural science research and monitoring results (e.g., fisheries assessments) performed without collaboration is consistently questioned by fishing industry participants. While collaborative projects do not always end with consensus among the collaborators, those who participate in these projects have opportunities to share information and educate each other. Research conducted at the University of New Hampshire has found that collaborative research projects have fostered a greater appreciation among both fishermen and scientists for each other and the knowledge each possesses, as well as the information gained over the course of the projects.

A symposium at the American Fisheries Society Annual Meeting in Anchorage, Alaska (September 2005), "Partnerships for a Common Purpose: Cooperative Fisheries Research and Management", pointed out that "it may be easier to address ecosystem-based management priorities with cooperative research because of the diverse skills of the many individuals involved and the varied perspectives provided by the many stakeholders included in the process." (Fisheries, 31:3:132 (March 2006)

*C. Cumulative Social & Economic Impacts*

In working with fishing community participants through our social science collaborative research, we have learned that the social science needs of fishing communities are not well served by the conventional ways of thinking about socio-economic impacts. Socio-economic impacts of future actions are difficult to measure, but data can be collected and used to scientifically measure the impacts of past management. Current law does not require such an historic perspective. Our research has found this lack of historic perspective to be a serious problem that was noted by every fishing community we studied across the region. These effects have been well documented in our reports linked from our website, http://www.mass-fish.org/communit.htm. Section 10 of H.R. 5018 remedies this problem by calling for the analysis of the cumulative social and economic impacts of regulations on communities. Analysis of the cumulative impacts of past regulations on communities over time will greatly improve the Councils' abilities to estimate the impacts of options for future actions under consideration. This will also greatly improve the Councils' abilities to be more equitable in their decision-making.

*D. Fishing Industry Infrastructures*

Another largely unmet need in fishing communities is the inventory and social science analysis of fishing industry infrastructures and businesses. This information is not only needed to assist Fishery Councils in their decision-making but it is also badly needed by local and state governments and planning agencies in making zoning decisions and economic development plans. Lacking good social and economic information about the fishing business and industry infrastructures places communities at a tremendous disadvantage when it comes time to gauge impacts and to plan for change. This in turn contributes to fear and concerns that make it more difficult for stakeholders to cope and participate in the political process. The MFP has found that it is effective to combine socio-economic analysis of fisheries regulations with helping communities like Gloucester better understand their waterfronts and how to make important long-term plans for their ports. (http://www.mass-fish.org/press%20releases%20current/gloucester—study.htm) The City of New Bedford, for example, is preparing to develop a new harbor plan and would greatly benefit from a thorough inventory and detailed analysis of its fishing industry physical, business, and services infrastructures. The funding specifically set aside in H.R. 5018's Section 4(d) for socio-economic data collection activities is very important and the use of these funds should consider how to better understand cumulative impacts of fisheries regulations as well as the fishing industry's physical, business, and essential services infrastructures.

It would be far preferable, however, to provide this funding for social science data collection to independent research institutions separate from the Councils and NOAA Fisheries. Social research conducted separately from the Councils will gain quicker confidence and cooperation from fishing community participants who will be more willing to share confidential information and collaborate with independent social scientists.

**Diminished Fisheries**

Section 11 "Diminished Fisheries" of H.R. 5018 provides a very useful new approach to defining overfishing and diminished stocks. The substitution of the term "diminished" to replace "overfished" provides latitude to better describe conditions of fish stocks. The definition of "diminished" "with respect to a stock of fish, that the stock is of a size that is below the natural range of fluctuation associated with the production of maximum sustainable yield" represents a solution to a vexing dilemma embedded in current law. Current law does not recognize "natural fluctuation" in the determination of a stock's maximum biomass target and requires that all stocks be managed to their maximum levels simultaneously. This defies reason and biological reality. It is not good government to enshrine a goal in the law that in practice cannot be achieved in the real world. Section 11 of H.R. 5018 offers an opportunity to remedy this flaw in current law. However, we recommend that the approach contained in this definition of "diminished" be applied consistently to the definitions of "overfishing" and of "acceptable biological catch".

We suggest consideration of a definition of "overfishing" such as "a rate or level of fishing mortality that jeopardizes the capacity of a fishery to maintain the stock of fish or a multispecies complex at a size that is within the natural range of fluctuation associated with production of maximum sustainable yield." The intent here is to recognize that the abundance of fish stocks fluctuate based upon natural factors and the definition of "overfishing" be linked to this reality.

Research of the ecosystem structure and function of multispecies fisheries can help us better understand natural fluctuations in populations of individual species within aggregate multispecies complexes. Government scientists have noted that aggregate multispecies stocks in new England have been relatively stable over the past century while abundance of individual stocks within the complex have fluctuated widely. An improved understanding of this aggregate versus individual species issue may help managers better assess the benefits and risks of designing ecosystem-based management measures.

Section 11 also provides for the distinction between stocks that are diminished "as a result of fishing" and stocks that are diminished "as a result of factors other than fishing" such as poor water quality and abnormal water temperatures. This is very important, especially in cases where species are not fished at all.

Section 11 provides for flexibility in the 10-year rebuilding timeframe when "the cause of the fishery decline is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities" or "the Secretary makes substantial changes to the rebuilding targets." We have recently seen our rebuilding targets tripled in New England. This in no way limits the responsibility to manage fishing mortality, but it enables non-fishing factors to be considered.

**Harvest Level Caps**

Closely related to the designations of "diminished" and "overfishing" are the provisions in Section 3 of H.R. 5018 to direct fisheries managers to establish harvest level caps. Various proposals on how to approach this matter have been made, but H.R. 5018 proposes a compromise with some promise.

Section 3 calls for "a mechanism for specifying the total allowable catch or another annual catch limit" that "does not exceed the acceptable biological catch level recommended by the scientific and statistical committee of the Councils."

Further, the Council must "adopt a total allowable catch limit or other annual harvest effort control limit for each of the fisheries for which such a limit can be established, after considering the recommendation of the scientific and statistical committee of the Council, which shall not exceed the recommendation for the acceptable biological catch as recommended by such scientific and statistical committee."

H.R. 5018 does not, however, define "acceptable biological catch." We propose a definition that is consistent with the definition already included in Section 11 for "diminished" stocks. A suggestion could be phrased along the lines as follows: "Acceptable biological catch means an amount of fish that can be harvested that allows a stock of fish to remain at or be rebuilt within the allowed period of time to a size that is within the natural range of fluctuation associated with the production of maximum sustainable yield."

**The intent is to make it as clear as possible that "maximum" is a dynamic amount that fluctuates and regulations may allow fishing to continue provided the stock will be rebuilt by the specified deadline.** In some cases, diminished stocks could be rebuilt within the required time period even if overfishing is phased out gradually rather than ended immediately. If a Council chooses to end overfishing immediately when the target could be achieved within the required time period by phasing out overfishing, the Council should be required to provide a cost/benefit analysis to justify the quicker rebuilding schedule.

**Science & Statistical Committees**

The science and statistical committees must be transparent in how they operate. Moreover, the science and statistical committees would garner greater community confidence if membership included independent experts who are not officials or employees of the Federal Government. Confidence would also greatly increase if information from collaborative research were utilized that has been conducted by high quality collaborations that could be verified through social science assessments of the research process.

**Independent Peer Review**

Independent peer review of scientific information being employed in management is another way to increase confidence in the process. Reviewers need to be truly independent. Section 5(c) of H.R. 4940 provides the best language to ensure transparency by specifying that reviewers are not all employees of the Federal Government and "may include persons who are employed by the fishing industry."

Qualified experts who are truly independent of NOAA to participate on the science and statistical committees and the independent peer review panels will be difficult to find. To help address this shortage, it is necessary for some funding for fisheries and ocean research and education to be appropriated separately from NOAA Fisheries. H.R. 4940 Section 12 would establish a Fishery Science Education Program. Such a program would go a long way toward developing the next generation of fisheries and oceans researchers to work for NOAA Fisheries and other research institutions committed to fisheries and oceans research.

**Review of Fishery Regulations in National Marine Sanctuaries**

Section 10(d) of H.R. 5018 addresses a very sensitive ambiguity in current law concerning the authority of National Marine Sanctuaries Act provisions that permit the regulation of fisheries within the boundaries of national marine sanctuaries by the National Marine Sanctuaries Program rather than NOAA Fisheries and the Fishery Management Councils. This ambiguity has caused a significant amount of confusion in New England.

Some assert that the Stellwagen Bank National Marine Sanctuary must be managed to a higher standard than that which is provided for in the Magnuson-Stevens Act. The National Marine Sanctuaries Act sets a goal of protecting resources while the Magnuson-Stevens Act establishes a different goal of achieving sustainable fisheries. H.R. 5018 clarifies this issue by plainly stating that any proposed regulation under the National Marine Sanctuaries Act concerning fish or fish habitat "shall not take effect unless the Secretary certifies that the proposed regulation—(A) meets the national standards under section 301(a); and (B) is consistent with other provisions of this Act." This language makes it clear that the Magnuson-Stevens Act goal of achieving sustainable fisheries is the goal that applies to any fisheries management actions by any agency in a national marine sanctuary. This is an improvement over current law that contains the apparent conflict of goals between the two statutes.

Thank you for the opportunity to testify today.

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The CHAIRMAN. Thank you.

## STATEMENT OF CHRISTOPHER WRIGHT, CAPTAIN F/V HUNTRESS

Mr. WRIGHT. Thank you for the opportunity to testify before the House Resources Committee, Mr. Chairman. My name is Christopher Wright, and I am from Mattapoisett, Massachusetts. I appreciate the House Resources Committee concern in the rewriting of the Magnuson-Stevens Act and thank you for coming to New Bedford to hear our concerns and opinions regarding H.R. 5018.

I began working in the scallop industry in 1979, working summers to put myself through college until I graduated from Massachusetts Maritime Academy in 1983. I started fishing full time shortly after graduation.

I have been captain of the F/V Huntress for the past 19 years and have witnessed the ups and downs of the scallop industry and scallop resource during this time. Currently, the scallop resource is rebuilt and overfishing is not occurring. We are fishing the

resource conservatively, according to a plan that allows us to vary our fishing effort up or down depending on the condition of the resource.

This does not mean that scallop management is perfect. While we have had some very good fishing years recently, the management process needs to improve if we are to achieve optimum yield of our scallop resource.

I have also been involved in cooperative research. I was the captain of the first vessel to take the University of Massachusetts School of Marine Science and Technology video survey crew to sea, and I have participated in these efforts annually since 1999. The video survey is designed to survey the scallop resource, and it has also been used to provide information about habitat and sediment composition. During these years, we have surveyed the stock from Georges Bank to Virginia.

The Committee should realize the importance and need for the real-time collection and use of scientific information to effectively manage a fishery resource. Fishermen need to be included in this process. We are working hard at cooperative research, and NMFS and the council need to do a better job of using the information we collect and the first-hand experience we have. This information must be incorporated into the management process as quickly as possible. The current practice is unacceptable.

The frustration comes when you know the best scientific information available is not being used, and that the council, despite its efforts, does not have the flexibility to change course gradually when needed. If the data is not used in a timely manner, the industry, and ultimately the resources suffer.

An example I would like to bring to the attention of the Committee is the situation that occurred in the Hudson Canyon scallop access area. As scallops were rebuilding, we started with an area management regime. This mean that areas are closed or otherwise managed when large sets of small scallops are found, so that the scallops can grow out. In the Hudson Canyon, stock assessment surveys from NMFS in 2002 and 2003 determined how much fishing there was to be in the fishing years of 2004 and 2005. What appeared to be a sustainable harvest for the fishing fleet in 2002 turned out to be a bust for many vessels in 2005.

They were not able to reach their quota of 18,000 pounds per trip, because the scallops were actually not plentiful enough to be economically viable. NMFS had estimated the resource of 15 million pounds. Independent research shows approximately 6 million pounds. This was a very large discrepancy.

We knew this was coming. In May of 2005 I took Dr. Kevin Stokesbury and the SMAST video survey crew into Hudson Canyon to get real-time results. Within 3 days of returning from sea, SMAST was able to give a report to the council as to the actual condition of the stock in that area which was much lower than previously anticipated by NMFS. Even with this information the council did not have the flexibility to make adjustments during that fishing year. That year many vessels did not harvest all of their Hudson Canyon allocation. The industry has been working on how to get compensation to these vessels either through additional open access days or access area trips.

This year the Nantucket lightship closed area will be opening up for vessels. This situation is different from the Hudson Canyon closed area, in part because the area was closed for groundfish reasons, not to produce scallops. In the Nantucket area, the time to obtain optimum yield from the scallops there has past. This area is now known to have a very high natural mortality rate since the shell sizes were mostly 110-180 millimeter shell height, up to 50 percent in the dense aggregation in the northeast corner. This total loss is equivalent to approximately 15 million pounds of harvestable resource worth over $100 million at today's price. Again, the scallop industry told the council and NMFS that this was going to happen. Since the /council did not have flexibility, or ignored the best available science of independent researchers, a large portion of our natural resource has been wasted.

The scallop industry has tried to tackle other important conservation issues as well. A few years ago, there was a concern about some threatened sea turtles being encountered in isolated spots in the mid-Atlantic during the summer months. So the industry went to scientists at the Virginia Institute of Marine Sciences, and the industry worked with a noted gear technologist and we all designed and tested a chain mat that could go on the front of the scallop dredge to keep turtles out. During experiments, it was 100 percent effective and the results were statistically significant. Two years ago, the industry asked NMFS to mandate the use of the turtle chains. NMFS has refused, even as it faces lawsuits under the Endangered Species Act to shut scalloping down over turtles.

Likewise, we, as an industry, came forward with an idea to dedicate part of our total allowable catch in the access areas to pay for observers. We did the same thing for cooperative scallop research. On observers, the idea was simple, if you were picked to have an observer, you got to fish a little more so you could pay for the observer. Even though we were able to use this approach for several years, government lawyers got involved. Two years ago, they said this could not be done, but they did nothing to fix the problem. Now Congress has cut back observer funding and environmental groups are telling NMFS they are going to sue to shut us down for not having enough observers.

If you are going to look at the law, please make sure that it is designed to let fishermen come forward with good ideas and also that the council and NMFS have the flexibility to take advantage of these good ideas. I know that you cannot legislate this, but it is also important that the council and NMFS make it a priority to use information provided by the fishing community.

Finally, the law needs to preserve a place for fishermen or someone representing our industry to remain in the management process of the resource. Fishermen and the council have more to offer than simply being asked to make allocation decisions while the scientists and mathematicians tell us how much we can fish.

Thank you, Mr. Chairman, for allowing me to address my concerns to the Committee.

[The prepared statement of Mr. Wright follows:]

**Statement of Christopher Wright, Captain, F/V Huntress, Isaksen Fishing Corporation**

Thank you for the opportunity to testify before the House Resources Committee, Mr. Chairman. My name is Christopher Wright, and I am from Mattapoisett, Massachusetts. I appreciate Congressman Pombo's and the House Resources Committee's concern in the rewriting of the Magnuson-Stevens Act and thank them for coming to New Bedford to hear our concerns and opinions regarding H.R. 5018.

I began working in the scallop industry in 1979, working summers to put myself through college until I graduated from Massachusetts Maritime Academy in 1983. I started fishing full-time shortly after graduation.

I have now been captain of the F/V Huntress for the past 19 years and have witnessed the ups and downs of the scallop industry and scallop resource during this time. Currently, the scallop resource is rebuilt and overfishing is not occurring. We are fishing the resource conservatively according to a plan that allows us to vary our fishing effort up or down depending on the condition of the resource.

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The frustration comes when you know the best scientific information available is not being used, and that the Council (despite its efforts) does not have the flexibility to change course gradually when needed. If the data is not used in a timely manner, the industry, and ultimately the resources suffer.

An example I would like to bring to the attention of the Committee is the situation that occurred in the Hudson Canyon Scallop Access Area. As scallops were rebuilding, we started with an "area management" regime. This means that areas are closed or otherwise managed when large sets of small scallops are found, so that the scallops can grow out. In the Hudson Canyon, stock assessment surveys from NMFS in 2002 & 2003 determined how much fishing there was to be in the fishing years of 2004 & 2005. What appeared to be a sustainable harvest for the fishing fleet in 2002 turned out to be a bust for many vessels in 2005. They were not able to reach their quota of 18000 pounds per trip because the scallops were actually not plentiful enough to be economically viable. NMFS had estimated the resource at 15 million lbs. Independent research showed approximately 6 million lbs. This was a very large discrepancy.

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cil did not have flexibility or ignored the best available science of independent researchers, a large portion of our natural resource has been wasted.

The scallop industry has tried to tackle other important conservation issues as well. A few years ago, there was a concern about some threatened sea turtles being encountered in isolated spots in the Mid-Atlantic during the summer months. So industry went to scientists at the Virginia Institute of Marine Sciences, and the industry worked with a noted gear technologist, and we all designed and tested a chain mat that could go on the front of the scallop dredge to keep turtles out. During experiments, it was 100% effective, and the results were statistically significant. Two years ago, the industry asked NMFS to mandate the use of the "turtle chains." NMFS has refused, even as it faces lawsuits under the Endangered Species Act to shut scalloping down over turtles.

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Finally, the law needs to preserve a place for fishermen or someone representing our industry to remain in the management process of the resource. Fishermen and the Council have more to offer than simply being asked to make allocation decisions while the scientists and mathematicians tell us how much we can fish.

Thank you, Mr. Chairman, for allowing me to address my concerns to the Committee.

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## STATEMENT OF ANDREW ROSENBERG, PH.D., MEMBER OF U.S. COMMISSION ON OCEAN POLICY, AND PROFESSOR, UNIVERSITY OF NEW HAMPSHIRE

Mr. ROSENBERG. Thank you very much, Mr. Chairman and Congressman Frank. Thank you for the opportunity to testify before you today concerning fisheries management and the reauthorization of the Magnuson-Stevens Act. I'm Andrew Rosenberg, Professor of Natural Resources in the Institute for the Study of Earth, Oceans and Space at the University of New Hampshire and a member of the U.S. Commission on Ocean Policy. I was formerly the deputy assistant administrator for fisheries at NOAA, regional administrator for NOAA Fisheries, and a scientist working at NOAA's Northeast Fisheries Science Center.

The Oceans Act of 2000 formed the U.S. Commission on Ocean Policy and directed us to make recommendations for coordinated and comprehensive national ocean policy. The Act set out eight specific objectives for the policy paraphrased here: One, protection of life and property; two, responsible stewardship of ocean and coastal resources; three, protection of the marine environment; four, enhancement of marine-related commerce, resolution of conflicts among diverse users of the marine environment and engagement of the private sector in developing approaches to the responsible use of marine resources; five, expansion of knowledge of the marine environment and the advancement of education in fields related to the ocean and coasts; six, development and improvement in technological capability for ocean-related activities; seven, cooperation among all government agencies to ensure coherent regulations,

appropriate use of funding, efficient operation of Federal agencies and enhancement of partnerships with state and local governments and, eight, leadership by the United States in ocean and coastal activities.

I believe the Commission's recommendations truly meet the spirit and intent of the Oceans Act.

Further, I believe that we must immediately begin to make changes in U.S. Ocean policy to reverse an alarming, widespread degradation in the health of the oceans and coasts, vital living marine resources and coastal communities. While this may sound dramatic, I believe that our ocean environment is at risk and a change of course is needed to reduce that risk.

U.S. Commission on Ocean Policy and the privately funded Pew Oceans Commission identified remarkably similar core priorities and made complementary recommendations in a number of key areas, including the critical need for fisheries management reform. The Joint Ocean Commission Initiative formed to continue to pursue implementation of the recommendations made in the two Commission reports. I am part of a ten-member task force, five from each Commission, that guides the work of the joint initiative.

I have been asked to comment on H.R. 5018 and H.R. 4940, bills to amend the Magnuson-Stevens Fishery Conservation and Management Act. The Joint Ocean Commission Initiative is committed to a set of fundamental principles that are articulated in both reports and that should ground all ocean policy reform. Many of the principles are reflected in the priorities for fishery management and recovery highlighted in both Commission reports, including, (1) moving toward ecosystem-based management; (2) maintaining and enhancing ecosystem services; (3) strengthening the scientific process and basing decisions on science; (4) broadening public participation; (5) enhancing a stewardship ethic; and (6) ensuring adequate funding to support fishery management and recovery. The joint initiative believes these concepts must guide and be incorporated into meaningful and effective fisheries legislation.

I would like to elaborate on these concepts briefly.

Ecosystem-based management means managing human activities within a large marine ecosystem in concert, rather than separately, and considering the cumulative impacts of those activities on the functioning of the ecosystem as a whole. The perspective is that the natural system sets the bounds for management, rather than political boundaries. This is because within an ecosystem, effects on one component can logically be expected to impact other components. Therefore, as we seek to manage across the full range of human activities and mitigate their impacts on the natural environment, we need to consider the interactions between different management actions. For example, coastal development interacts with pollution abatement programs and affects the productivity of the coastal ocean in salt marshes and near-shore areas. In other words, fishery areas affected by more than just fishing and pollution is affected by more than just controlling the amount of discharge. Because humans are an integral part of the ecosystem, social and economic impacts are part of the ecosystem-based management perspective.

Ecosystem-based management does not mean abandoning management activities now underway.

Fishing still needs to be managed to prevent overfishing and restore overfished resources, for example. The management of the fishery should be linked to the management of other sectors to provide a more coherent set of policies. The focus for ecosystem-based management should be to maintain the function of coastal and marine ecosystems, including both their goods and services. We want to maintain the ability to harvest fish as goods for the ecosystem, but we want to ensure the ecosystem services provided by overall productivity and ocean health aren't undermined. In other words, we want to enjoy a healthy ocean for many other reasons than just for fishing.

While we are not suggesting legislatively mandated standards for ecosystem-based management, we would like to see a strong signal in support of the concept within the language of the bill. Reauthorization of the MSFCMA offers an important opportunity to introduce ecosystem-based management as a central concept, especially with regard to providing a framework for improving consistency across government agencies. Language in the two Commission reports could be used to strike the right balance, and the commissioners stand ready to assist you and your staff in any way that would be helpful.

H.R. 5018 calls for research, but no real management action and restricts the focuses to the fisheries sector only. The call for research is important as is the development of regional pilot programs and recommended by the U.S. Commission on Ocean Policy. It would be helpful to ensure that the regional pilot programs build upon the recommendations of the Commissions, not just the Ecosystem Principles Advisory Panel. It is important to note that the advisory panel did not consider ecosystem-based management of the marine environment broadly, but only within the fisheries sector, and this is a serious limitation.

In addition, some of the proposed revisions in H.R. 5018 and H.R. 4940, such as changes to requirements to comply with the National Environmental Policy Act and coordination with the National Marine Sanctuaries Act, would undermine efforts to implement coordinated, ecosystem-based management of the marine environment. There is no reason to set fisheries apart under NEPA, and it would seriously compromise the ability to consider the impact of all sectors jointly on marine ecosystems. I do not believe there is any streamlining of the process obtained by this exemption, but there is the loss of information and opportunity for the public to participate in the management process. With regard to the management of sanctuaries, the provision undermines the ability to consider broader ecosystem goals and, again, inappropriately sets fisheries apart from other marine-related activities.

Strengthening the use of independent science in fishery management decisions, I want to commend the Committee for the inclusion of provisions in H.R. 5018 that requires the Secretary to establish a peer-review process to evaluate the scientific information used by the councils, mandate the Science and Statistical Committees to recommend acceptable biological catch levels and requires the regional fishery management councils to adopt levels that do not exceed these recommended levels. This represents a significant step toward one of the key fishery recommendations of the Joint Ocean

Commission Initiative. It is essential that overfishing be prevented as the basis management.

H.R. 5018 and H.R. 4940 also address the rebuilding provisions of the Act, but these changes do not build on the progress noted above with regard to preventing overfishing. The introduction and usage of the term diminished confuses the issue. If fishery productivity is reduced due to factors other than fishing, fishing pressure must still be reduced. It is not a matter of assigning blame, but of adjusting fishing pressure to a level that the resource can sustain. The proposed changes also allow for extensions of rebuilding timeframes. This also undermines the sound management of the resource. Continue to extend the rebuilding timeframe makes it far more difficult to rebuild overall, causes even greater economic and social impacts and means an ongoing, major loss of resources for the nation. The New England groundfish fishery illustrates the problems resulting from continued delays in implementing strong rebuilding measures.

In addition, the Joint Ocean Commission Initiative recommends that the following areas be addressed. In several cases, I am pleased to see that H.R. 5018 and H.R. 4940 cover some of these issues. I hope those points that are not currently addressed can be taken up by the Committee.

Fallback Provisions. As an incentive toward timely and responsible action to address overfishing and the degradation of essential fish habitat, require fallback provisions to be implemented when management plans are not developed within a required timeframe. In the context of the current proposals, there must be some consequence if the catch limit is exceeded, other than litigation. Proposals such as deducting overages from subsequent year's catches provide such a consequence.

Dedicated Access Privileges. Authorize fishery managers to use dedicated access privileges. Establish national guidelines that allow for regional implementation that is consistent with those guidelines. H.R. 5018 does allow for dedicated access privileges following referendum from the participants. The proposal for the inclusion of regional fishery associations seems to move in the direction of Alaskan-style cooperatives. I view this as a positive direction for many U.S. Fisheries if the associations take collective responsibility for adhering to the conservation and management needs for a fishery.

Enforcement. Expand cooperative fisheries enforcement programs between Federal and state enforcement entities. The programs should clarify the role of the Coast Guard and should emphasize joint training, stronger and more consistent information sharing and increased use of enforcement technology such as vessel monitoring systems. H.R. 5018 promotes the use of cooperative enforcement agreements.

Cooperative Research. Direct NOAA to create an expanded regionally based collaborative research program that involves the fishing community, Federal, state and academic scientists. Research should benefit from linkages to the integrated ocean observing system. Funds for such cooperative research projects should be awarded on a competitive bases. H.R. 4049 calls for provisions in fishery management plans to create cooperative research programs. In my view, the programs should not be explicitly linked to plans

but should be broader based. They should be focused on research, not on immediate management actions.

Bycatch Reduction. Bycatch should be addressed to continuously ensure the sustainability of fisheries and ecosystem services. Bycatch reduction efforts should include accounting bycatch in the level of the total allowable catch, so that all fishing mortality is included. This then means that discarding should be minimized to the maximum extent possible to avoid wastage. This vital concern is not addressed in either proposed bill, though there is a provision for fostering the development of new fishing gear to reduce bycatch in H.R. 5018 and a provision to allow bycatch to be landed for charitable purposes in H.R. 4940. These latter two provisions are not sufficient to deal with the major problems of bycatch over and above the total allowable catch levels.

Training. Require training on a variety of topics relevant to fishery management for new regional fishery management council members and make such training available to representatives from interest groups and industries. I am pleased to see H.R. 5018 requiring training for new council members within 6 months.

Education. Foster formal and informal education efforts, these should include promoting public understanding of ocean resource issues, including the importance of conservation measures aimed at sustaining fisheries and the linkages between human health and the health of oceans. H.R. 4940 creates fishery research networks and fisheries science centers of excellence. Both are interesting ideas but need to be further developed.

International Leadership. Promote adopting and observance of international standards for the sustainable harvest of coral reef and other living marine resources.

The U.S. Commission on Ocean Policy recommended a set of guiding principles for National Ocean Policy.

In particular, I would like to highlight stewardship, resources are held in the public trust for all Americans; ecosystem-based management, understanding and mitigating the cumulative impacts of human activities on the ecosystem as a whole; adaptive management, continuously re-evaluating management as new information becomes available and making adjustments as needed to meet the goals; understandable, clear rules, making the rules that govern various activities coherent for the public; accountability, to ensure that government and the public do what is needed to conserve marine ecosystems; and international responsibility, working cooperatively on ocean issues and meeting our responsibilities for global ocean policy. Using these and the other principles, an overarching ocean policy can be articulated for the nation.

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today. I would be pleased to discuss these and other matters with you further at your discretion. The Joint Ocean Commission Initiative is available to work with you and your staff as you continue to move forward with this important legislation.

[The prepared statement of Mr. Rosenberg follows:]

**Statement of Andrew A. Rosenberg, Ph.D., Member, U.S. Commission on Ocean Policy, and Professor, University of New Hampshire**

Mr. Chairman and members of the Committee: Thank you for the opportunity to testify before you today concerning fisheries management. I am Andrew Rosenberg, Professor of Natural Resources in the Institute for the Study of Earth, Oceans and Space at the University of New Hampshire and a member of the U.S. Commission on Ocean Policy. I was formerly the Deputy Assistant Administrator for Fisheries at NOAA, a Regional Administrator for NOAA Fisheries, and a scientist working at NOAA's Northeast Fisheries Science Center.

The Oceans Act of 2000 formed the U.S. Commission on Ocean Policy and directed us to "make recommendations for coordinated and comprehensive national ocean policy..." The Act set out eight specific objectives for this policy paraphrased here:

1. protection of life and property;
2. responsible stewardship of ocean and coastal resources;
3. protection of the marine environment;
4. enhancement of marine-related commerce, resolution of conflicts among diverse users of the marine environment and engagement of the private sector in developing approaches to the responsible use of marine resources;
5. expansion of knowledge of the marine environment and the advancement of education in fields related to the ocean and coasts;
6. development and improvement in technological capability for ocean related activities;
7. cooperation among all government agencies to ensure coherent regulations, appropriate use of funding, efficient operation of federal agencies, and enhancement of partnerships with state and local governments; and
8. leadership by the United States in ocean and coastal activities.

I believe the Commission's recommendations truly meet the spirit and intent of the Oceans Act. Further, I believe that we must immediately begin to make changes in U.S. ocean policy to reverse an alarming, widespread degradation in the health of the oceans and coasts, vital living marine resources, and coastal communities. While this may sound dramatic, I believe that our ocean environment is at risk and a change of course is needed to reduce that risk.

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I have been asked to comment on H.R. 5018 and H.R. 4940, bills to amend the Magnuson-Stevens Fishery Conservation and Management Act. The Joint Ocean Commission Initiative is committed to a set of fundamental principles that are articulated in both reports and that should ground all ocean policy reform. Many of these principles are reflected in the priorities for fishery management and recovery highlighted in both Commission reports, including: (1) moving toward ecosystem-based management, (2) maintaining and enhancing ecosystem services, (3) strengthening the scientific process and basing decisions on science, (4) broadening public participation, (5) enhancing a stewardship ethic, and (6) ensuring adequate funding to support fishery management and recovery. The Joint Initiative believes these concepts must guide and be incorporated into meaningful and effective fisheries legislation. I would like to elaborate on these concepts briefly.

**Moving toward ecosystem-based management.**

Ecosystem-based management means managing human activities within a large marine ecosystem in concert, rather than separately, and considering the cumulative impacts of those activities on the functioning of the ecosystem as a whole. The perspective is that the natural system sets the bounds for management, rather than political boundaries. This is because within an ecosystem, effects on one component can logically be expected to impact other components. Therefore, as we seek to manage across the full range of human activities and mitigate their impacts on the natural environment, we need to consider the interactions between different management actions. For example, coastal development interacts with pollution abatement programs and affects the productivity of the coastal ocean in salt marshes and nearshore areas. In other words, fisheries are affected by more than just fishing and pollution is affected by more than just controlling the amount of discharge. Because humans are an integral part of the ecosystem, social and economic impacts are part of the ecosystem-based management perspective.

Ecosystem-based management does not mean abandoning management activities now underway. Fishing still needs to be managed to prevent overfishing and restore overfished resources for example. But the management of the fishery should be linked to the management of other sectors to provide a more coherent set of policies. The focus for ecosystem-based management should be to maintain the function of coastal and marine ecosystems including both their goods and services. We want to maintain the ability to harvest fish as goods from the ecosystem, but we want to ensure the ecosystem services provided by overall productivity and ocean health aren't undermined. In other words, we want to enjoy a healthy ocean for many other reasons than just for fishing.

While we are not suggesting legislatively mandated standards for ecosystem-based management, we would like to see a strong signal in support of the concept within the language of the bill. Reauthorization of the MSFCMA offers an important opportunity to introduce ecosystem-based management as a central concept, especially with regard to providing a framework for improving consistency across government agencies. Language in the two Commission reports could be used to strike the right balance, and the Commissioners stand ready to assist you and your staff in any way that would be helpful.

H.R. 5018 calls for research, but no real management action and restricts the focus to the fisheries sector only. The call for research is important, as is the development of regional pilot programs as recommended by the U.S. Commission on Ocean Policy. It would be helpful to ensure that the regional pilot programs build upon the recommendations of the Commissions not just the Ecosystem Principles Advisory Panel. It is important to note that the Advisory Panel did not consider ecosystem-based management of the marine environment broadly, but only within the fisheries sector, and this is a serious limitation.

In addition, some of the proposed revisions in H.R. 5018 and H.R. 4940, such as changes to requirements to comply with the National Environmental Policy Act and coordination with the National Marine Sanctuaries Act would undermine efforts to implement coordinated, ecosystem-based management of the marine environment. There is no reason to set fisheries apart under NEPA and it would seriously compromise the ability to consider the impacts of all sectors jointly on marine ecosystems. I do not believe there is any streamlining of the process obtained by this exemption, but there is the loss of information and opportunity for the public to participate in the management process. With regard to the management of Sanctuaries, the provision undermines the ability to consider broader ecosystem goals and again inappropriately sets fisheries apart from other marine related activities.

**Strengthening the use of independent science in fishery management decisions.** I want to commend the Committee for the inclusion of provisions in H.R. 5018 that requires the Secretary to establish a peer review process to evaluate the scientific information used by the Councils, mandate the Science and Statistical Committees (SSCs) to recommend acceptable biological catch levels and requires the Regional Fishery Management Councils to adopt levels that do not exceed these recommended levels. This represents a significant step towards one of the key fishery recommendations of the Joint Ocean Commission Initiative. It is essential that overfishing be prevented as the basis management.

H.R. 5018 and H.R. 4940 also address the rebuilding provisions of the Act but these changes to not build on the progress noted above with regard to preventing overfishing. The introduction and usage of the term "diminished" confuses the issue. If fishery productivity is reduced due to factors other than fishing, fishing pressure must still be reduced. It is not a matter of assigning blame, but of adjusting fishing pressure to a level that the resource can sustain. The proposed changes also allow for extensions of rebuilding timeframes. This also undermines the sound management of the resource. Continuing to extend the rebuilding timeframe makes it far more difficult to rebuild overall, causes even greater economic and social impacts and means an ongoing, major loss of resources for the Nation. The New England groundfish fishery illustrates the problems resulting from continued delays in implementing strong rebuilding measures.

In addition, the Joint Ocean Commission Initiative recommends that the following areas be addressed. In several cases, I am pleased to see that H.R. 5018 and H.R. 4940 cover some of these issues. I hope those points that are not currently addressed can be taken up by the Committee:

- *Fallback Provisions.* As an incentive toward timely and responsible action to address overfishing and the degradation of essential fish habitat, require fallback provisions to be implemented when management plans are not developed within a required time frame. In the context of the current proposals, there must be some consequence if the catch limit is exceeded, other than litigation. Proposals

such as deducting overages from subsequent year's catches provide such a consequence.

- *Dedicated Access Privileges.* Authorize fishery managers to use dedicated access privileges. Establish national guidelines that allow for regional implementation that is consistent with those guidelines. H.R. 5018 does allow for dedicated access privileges following a referendum from the participants. The proposal for the inclusion of regional fishery associations seems to move in the direction of Alaska style cooperatives. I view this as a positive direction for many U.S. fisheries if the associations take collective responsibility for adhering to the conservation and management needs for a fishery.
- *Enforcement.* Expand cooperative fisheries enforcement programs between federal and state enforcement entities. The programs should clarify the role of the Coast Guard and should emphasize joint training, stronger and more consistent information sharing, and increased use of enforcement technology such as Vessel Monitoring Systems. H.R. 5018 promotes the use of cooperative enforcement agreements.

*Cooperative Research.* Direct NOAA to create an expanded, regionally-based collaborative research program that involves the fishing community and federal, state, and academic scientists. Research should benefit from linkages to the Integrated Ocean Observing System. Funds for such cooperative research projects should be awarded on a competitive basis. H.R. 4049 calls for provisions in fishery management plans to create cooperative research programs. In my view, the programs should not be explicitly linked to plans but should be broader based. They should be focused on research, not on immediate management actions.

- *Bycatch Reduction.* Bycatch should be addressed continuously to ensure the sustainability of fisheries and ecosystem services. Bycatch reduction efforts should include accounting for bycatch in the level of the Total Allowable Catch for that all fishing mortality is included. This then means that discarding should be minimized to the maximum extent possible to avoid wastage. This vital concern is not addressed in either proposed bill though there is a provision for fostering the development of new fishing gear to reduce bycatch in H.R. 5018 and a provision to allow bycatch to be landed for charitable purposes in H.R. 4940. These latter two provisions are not sufficient to deal with the major problems of bycatch over and above the total allowable catch levels.
- *Training.* Require training on a variety of topics relevant to fishery management for new Regional Fishery Management Council members and make such training available to representatives from interest groups and industries. I am pleased to see H.R. 5018 requiring training for new council members within six months.
- *Education.* Foster formal and informal education efforts. These should include promoting public understanding of ocean resources issues, including the importance of conservation measures aimed at sustaining fisheries and the linkages between human health and the health of oceans. H.R. 4940 creates Fishery Research Networks and Fisheries Science Centers of Excellence. Both are interesting ideas but need to be further developed.
- *International Leadership.* Promote adoption and observance of international standards for the sustainable harvest of coral reef and other living marine resources.

The U.S. Commission on Ocean Policy recommended a set of guiding principles for national ocean policy. In particular, I would like to highlight: stewardship, resources are held in the public trust for all Americans; ecosystem-based management, understanding and mitigating the cumulative impacts of human activities on the ecosystem as a whole; adaptive management, continuously re-evaluating management as new information becomes available and making adjustments as needed to meet the goals; understandable, clear rules, making the rules that govern various activities coherent for the public; accountability, to ensure that government and the public do what is needed to conserve marine ecosystems; and international responsibility, working cooperatively on ocean issues and meeting our responsibilities for global ocean policy. Using these and the other principles an overarching ocean policy can be articulated for the nation.

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today. I would be pleased to discuss these and other matters with you further at your discretion. The Joint Ocean Commission Initiative is available to work with you and your staff as you continue to move forward with this important legislation.

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The CHAIRMAN. Thank you.

**STATEMENT OF BRIAN ROTHSCHILD, POLICY ADVISOR TO THE MAYOR OF NEW BEDFORD; DEAN FOR THE SCHOOL FOR MARINE SCIENCE AND TECHNOLOGY, UNIVERSITY OF MASSACHUSETTS-DARTMOUTH**

Mr. ROTHSCHILD. Thank you. My name is Brian Rothschild. I'm the policy advisor to the Mayor of New Bedford and also Dean for the School for Marine Science and Technology at the University of Massachusetts-Dartmouth. I have been active in fisheries science and management for over 50 years, and I have worked on fisheries problems in the Central Pacific, North Pacific and Alaska, Gulf of Mexico, the North Atlantic and the Chesapeake Bay. I was Deputy Director of the Northwest and Alaska Fisheries Center, Director of the Southwest Fisheries Center and Director of the Office of Policy and Planning in NMFS. I was responsible for the national implementation of the Magnuson-Stevens Act, reporting directly to NOAA's first administrator, Robert White. I am the author, or editor, of eight books on fisheries and oceanography and the author of about ninety scientific publications.

Federal fisheries management under extended jurisdiction has been with us since 1976. There have been many successes. At the same time, there have been recurrent problems. I believe the Pombo bill takes the recurrent problems into account and provides reasonable solutions. The bill strengthens fishery management by allowing more flexibility to managers and suppressing scientifically unsupported assertions in the language of the existing statute. Mr. Pombo and Mr. Frank have to be congratulated.

Not everyone will share my view. Fisheries management continues to reflect a struggle in ideologies and values. On one hand, there are those who feel that the amendments offered by Mr. Frank and Mr. Pombo water down the directives of the Magnuson-Stevens Act. On the other hand, there are those that feel the economic and social fabric of fishing communities is more important. Curiously, both sides generally agree that the conservation of the fish stocks is paramount.

At its outset, the initiation of good public policy dictates that legislation should be based on the facts. If legislation is based on faulty or difficult to define premises, then implementation of the legislation is constrained to be arbitrary and lack social good. If we focus on reasonable scientifically acceptable premises, then implementation of the legislation is constrained to be arbitrary and lack social good. If we focus on reasonable scientifically adaptable premises, then we can apply genuine effort to increasing our knowledge so that we can make better decisions.

Some of the great unknowns include the causes of fish stock fluctuations. The causes of fish stock fluctuations are very complex. It isn't true that every decline in a stock is caused by overfishing and every increase in stock abundance is a management success. Because time series of stock abundance are so short, we generally do not know whether an observed decline is truly a decline or simply a return to the stock's normal level of abundance. We do not know whether some environmental factor, such as temperature of the management of some associated species, has affected stock abundance. Our lack of understanding of stock fluctuation leads us to the unsupported assertion that if we just stop fishing, the stock

will increase and that the trajectory of this increase is well known. This is related to the assumption used in management in New England, which is, that if we just reduced fishing that all stocks can be brought to their historical maximum simultaneously, a notion not supported by ecological theory.

Fishery managers often assume that habitat is the bottom, but most scientists would agree that the most important habitat controlling stock abundance is not the bottom but the water column. We have in New England one of the most significant habitat experiments in the world, where 30 percent of Georges Bank has been closed, concentrating fishing into 60 percent of its former area, yet we do not know the effect of this grand experiment.

Focusing on the issue in more detail, our preoccupation with preventing overfishing is curious. One would think that a concept that is deemed to be so important would have a unique and unambiguous scientific definition. This is not the case. There are multiple definitions. For example, growth overfishing has little conservation impact, while stock overfishing has a significant conservation impact. The problem is growth overfishing can be determined immediately, but stock overfishing requires an examination of a long-time series of data that may not be available. In any event, it is difficult to determine whether a contemporaneous data point represents or does not represent overfishing.

Just to exemplify the difficulty, consider a common overfishing definition: "A fishery is overfished if is at or below a level that jeopardized the capacity of the fishery to produce maximum sustained yield on a continuing basis." What does "maximum sustained yield on a continuing basis" supposed to mean? What is the difference between continuing and sustained? What is jeopardized supposed to mean? How do we tell whether the stock is at or below a particular level? Is this based on a single year of observation, 5 years or 10 years?

All of the observations made above are very well known to the scientific community. While we have acquired tremendous amount of information on fish stocks, their response to the environment and fishing, the areas identified above relate to substantial gaps in knowledge.

When these issues of ignorance are raised, we are often given the pat answer that a lack of knowledge should not be taken as an excuse not to make a decision. This is generally true. On the other hand, a lack of knowledge should not be taken to mean that we should take the most conservative or precautionary approach. It is not rational to take the most conservative approach. A classic problem in decision theory involves a starving individual who needs to cross a very busy street to reach a restaurant. The risk-prone individual closes his eyes and runs across the street and is killed by speeding traffic. The risk-adverse individual never crosses the street being afraid of the traffic. This individual eventually starves to death. The rational person, the risk-neutral person, will look both ways, safely cross the street, get something to eat, and live a long and happy life.

When we are in the area of the unknown, which we are in many aspects of fishery management, we have to rely more on the judgment of individuals than on naked mathematical models. It was, in

fact, the intent of Congress in the mid-1970s that the judgment of knowledgeable individuals would be used to make management decisions guided by the national standards of the FCMA. At that time computers and computer techniques were not nearly as available as they are now. As the computer became more and more available, councils have relied more and more on computer output to make decisions. However, understanding and knowledge have not increased proportionately, so the information content, and as a consequence, the utility of decisions have not improved.

As I said above, I like the Pombo bill because it provides more flexibility to managers. It implicitly recognizes the imperfection of scientific data and allocates more decisionmaking accountability to managers, requiring them at the same time to take account of scientific findings.

I visualize some adjustments and technical corrections. I would like to see a better system of checks and balances in fisheries management. At the present time, the checks and balances involve litigation and these are often constraints to process, making it difficult to deal with matters of significant substance. The checks and balances that are implicit in the amendment involve peer reviews at several levels. However, the peer-review process places the accountability system in the hands of individuals who are really not accountable. The present mechanism is further faulty because public input is perfunctory. This is because even small adjustments to fishery management regulations may be associated with thousands of pages of highly technical documentation that even a trained individual cannot easily grasp. To rectify the lack of checks and balances in the fishery management system and to rectify shortfalls and problems in implementation, I recommend we create an agency, possibly within NOAA, to serve as an independent ombudsman, to oversee and to make recommendations on contentious and strategic issues relevant to fisheries management. Such an arrangement could be modeled after the interrelationship between the Federal Aviation Agency and the National Transportation Safety Board. In fact, the issue of organization needs to be taken further, never having been addressed since the advent of the FCMA in 1976. The agency needs to organize into, one, a regulatory entity, and two, a research and data acquisition and archiving entity.

Strengthening aspects of the Pombo bill would parallel these institutional changes. For example, there needs to be an adequately funded, centrally maintained national center for fishery data. Research activities, such as defining ecosystem management; deriving a better understanding of ocean-fish interactions and the cause of fish stock fluctuations; and gear research, require massive support if they are to contribute in a feasible way to improving fishery management. The Act should require major planning studies for each of these areas. The Act should require a plan for a new organizational focus within NMFS that gives NMFS the capability to better discharge the mandate that it has been given by Congress. It is generally agreed that well-trained individuals are not available to support the needs of fishery management, and it is for that reason that Mr. Frank's amendments on education are important.

Increased flexibility and an oversight agency will certainly contribute to improving fishery management.

[The prepared statement of Mr. Rothschild follows:]

**Statement of Brian J. Rothschild, Policy Advisor to the Mayor of New Bedford, and Dean, School for Marine Science and Technology, University of Massachusetts Dartmouth**

My name is Brian J. Rothschild. I am the Policy Advisor to the Mayor of New Bedford and the Dean of the School for Marine Science and Technology. I have been active in fisheries science and management for over fifty years; and I have worked on fisheries problems in the Central Pacific, North Pacific and Alaska; Gulf of Mexico, the North Atlantic, and the Chesapeake Bay. I was Deputy Director of the Northwest and Alaska Fisheries Center, Director of the Southwest Fisheries Center, and Director of the Office of Policy and Planning in NMFS. I was responsible for the National implementation of the Magnuson-Stevens Act, reporting directly to NOAA's first Administrator, Robert M. White. I am the author or editor of eight books on fisheries and oceanography, and the author of about ninety scientific publications.

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When these issues of ignorance are raised, we are often given the pat answer that a lack of knowledge should not be taken as an excuse not to make a decision. This is generally true. On the other hand, a lack of knowledge should not be taken to mean that we should take the most conservative or precautionary approach. It is not rational to take the most conservative approach. A classic problem in decision theory involves a starving individual who needs to cross a very busy street to reach a restaurant. The risk-prone individual closes his eyes and runs across the street and is killed by speeding traffic. The risk-adverse individual never crosses the street being afraid of the traffic; this individual eventually starves to death. The rational person, the risk-neutral person, will look both ways, safely cross the street, get something to eat, and live a long and happy life.

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Strengthening aspects of the Pombo Bill would parallel these institutional changes. For example, there needs to be an adequately funded, centrally maintained national center for fishery data. Research activities, such as defining ecosystem management; deriving a better understanding of ocean-fish interactions and the cause of fish stock fluctuations; and gear research, require massive support if they are to contribute in a feasible way to improving fishery management. The Act should require major planning studies for each of these areas. The Act should require a plan for a new organizational focus within NMFS that gives the NMFS the capability to better discharge the mandate that it has been given by Congress. It is generally agreed that well-trained individuals are not available to support the needs of fishery management, and it is for this reason that Mr. Frank's amendments on education are important.

Increased flexibility and an oversight agency will certainly contribute to improving fishery management.

I thank the committee for giving me the opportunity to share my views with you.

**STATEMENT OF JACKIE ODELL, EXECUTIVE DIRECTOR, NORTHEAST SEAFOOD COALITION**

Ms. ODELL. Good morning, Chairman Pombo and Representatives Frank and Young. Thank you for inviting me to testify at today's hearing on this important legislation you have introduced to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act.

My name is Jackie Odell. I am the Executive Director of the Northeast Seafood Coalition, the largest fishing industry organization in New England that represents commercial groundfish fishermen from all the predominate gear sectors and vessel sizes, as well as many shoreside businesses. Our members are family owned and operate small businesses that really depend upon the health and longevity of groundfish stocks. These fishermen and their many generations of forefathers have been central to the social and economic fabric of New England communities for over four centuries.

The Northeast Seafood Coalition strongly supports this legislation. In particular, we greatly appreciate the inclusion of a critical component of fisheries management, rebuilding flexibility.

As we have experienced in New England, the Northeast multispecies fishery, otherwise known as the groundfish fishery, is among the most complex and dynamic in our nation. This is due to the extraordinary nature of the Gulf of Maine and Georges Bank ecosystems, the unknown and often unpredictable interactions between stocks within the groundfish complex as well as with other fish stocks, and the lack of in-depth scientific understanding. Such complexity has led to scientific stock assessments and projections that have been wildly volatile and, at times, grossly unreliable for any number of the 19 stocks that comprise this fishery. We realize such scientific uncertainty may not exist in other fisheries throughout the United States, but this has been an extremely difficult reality of the groundfish fishery in the Northeast. Our fishery managers must be provided with the maximum degree of flexibility to deal with such complexity and scientific uncertainty in developing rebuilding plans that are both practical and effective for these stocks. We think your bill will both improve our science and preserve this needed flexibility.

Amendment 13 to the Northeast Multispecies Fishery Management Plan, whose foundation is based upon a plan put forward by the Northeast Seafood Coalition, incorporates a combination of phased and adaptive fishing mortality rates. This rebuilding strategy, which contains the phasing down of fishing mortality rates, was a strategy recommended by National Marine Fisheries Services, Northeast Fisheries Science Center and was later approved by a Federal court of law. This strategy was necessary in order to achieve both the rebuilding objectives of the plan and the fundamental Magnuson-Stevens Act objectives to minimize adverse social and economic impacts associated with the rebuilding. Unlike H.R. 5051 introduced by Congressman Gilchrist, the legislation before us not only preserves but would also enhance the flexibility that was needed to implement this plan.

The Northeast Seafood Coalition strongly believes that fishery managers need to be equipped with as many tools as possible to end overfishing and rebuild fish stocks. This legislation clearly

accounts for the profound complexities and realities associated with our groundfish fisheries. The legislation does not hinder the tools afforded to managers, and it ignores the lofty and rather idealistic management theories proposed in other legislation that are not based in the real world of fisheries management.

The Northeast Seafood Coalition is firmly committed to the sustainable conservation of our fishery resources and the need to rebuild overfished stocks. Our work has been dedicated to crafting innovative management solutions to the unique challenges our fisheries present. All our solutions have been mindful of the law and are considerate of the need to balance conservation goals with the needs of fishing communities.

Thank you again for this opportunity to share our views in support of this legislation. The Northeast Seafood Coalition looks forward to submitting a more comprehensive statement on many aspects in the legislation. I would be happy to answer any questions you might have.

[The prepared statement of Ms. Odell follows:]

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The CHAIRMAN. Thank you very much. I thank the entire panel for your testimony. To begin with, Ms. Shrader, in listening to, listening to your testimony reminds me a lot of the number of hearings that we held in different parts of the country when the impacts of decisions that are made by Federal agencies are not taking into account the impact it has on people, whether it's the small businesses that you're talking about, the families throughout this entire area, decisions that are made by these Federal agencies have direct, immediate impact on these people. Listening to you testify reminds me a lot of the hearings that we held throughout the Pacific Northwest. The timber industry was being shut down, and the impact it had there and throughout the Rocky Mountains when the mining industry was shut down and the impact that had. People like you that would come in and testify and talk about the impact this is having and that science didn't back up the decisions that were being made.

In the case of the spotted owl, at the time it was listed as an endangered species. The only place it existed was old-growth forests. Once it was listed, it was found in new growth. They found them nesting in a K-Mart sign. Why the entire industry was devastated by those decisions—one of the things that Congressman Frank and I and others are trying to do is to consider what the impacts are and make sure that before a major decision is made, it shuts down an entire fishery, that because science changes and because that evolves over time, don't make that kind of devastating decision, unless you absolutely know what you're doing. I appreciate greatly you being here to testify and sharing that with this committee.

I do believe that that is an important part of the decisionmaking process, is what the impacts are on people that live in an area.

Ms. SHRADER. How could it be that when it was on part, part of the National Standards were so very clear in the original Act that even in 1996 when the Sustainable Fisheries Act was written, why was there no question then? Was it just that the communities weren't suffering as badly at that point? If maximum sustainable yield was, by definition, optimum yield as affected by circumstance such as devastation of fishing communities, how could they not study people and put that in the equation and say that optimum yield that they established since 1976 is not flawed.

The CHAIRMAN. Well, it is flawed. The decisionmaking process, I am obviously more familiar with some of the West Coast issues and how it's impacted us. I think Congressman Frank is absolutely

correct when he says that the impacts are social and economic impacts. That it has taken a lower value in the decisionmaking process.

Ms. SHRADER. It's a national problem, too. I communicate with fishermen in Alaska that I met in a meeting in Washington a couple of years ago. Their slogans out there are "Buy me back." The fishermen established a viable, valuable entity, be bought back. I really appreciate the fact that you take it seriously, that the people in the industry are really essentially, without any disrespect to the boat owners, because we're all in this together, but if you took the fishermen off the boat, they're tool boxes.

If our fishermen—actually, I consider them noble men, brave, and they're crazy for being involved in this industry with so much duress. That tells you how badly they want to be there.

The CHAIRMAN. Also in your testimony you talked about retraining. I had a, late 50s gentleman who worked in the timber industry who talked to me about being a third-generation logger. They were talking about retraining him and giving him a job in a different industry. In that particular case, very much similar to this industry, you had extremely high unemployment. What are you going to retrain him to do? It just, it's not very realistic when you look at somebody that has been in business, look at their entire lives and it's what their fathers did and grandfathers did. You're going to step in a place where you have 9 or 10 percent unemployment and retrain them to do what.

Ms. SHRADER. They're so used to—maybe truck driving is one thing they go for. Also, the grants are difficult to qualify for. All of our Portuguese people, because they had a second letter (sic), they were not eligible for retraining. The retraining picture needs to be looked at from a broader scope, the bottom-up view of government versus the top down.

The CHAIRMAN. I've been saying that for a long time. It gets a little bit frustrating in dealing with a lot of this, because in my committee, in the Resources Committee we have jurisdiction over so many different resource issues and resource extraction issues. We hear the same, the same kind of frustration coming out from people, whether it's in the fishing industry or the timber industry or raising their livestock, it's throughout the entire country. It's having a big impact on people. A lot of times people in Congress miss that.

Ms. SHRADER. I can assure you that after Framework 42 goes forward and our guys aren't able, from Maine to New York, to harvest fish, we'll all still eat fish. It will be Canadian fish. It will be imports to our country. We'll still be eating fish from countries who have less regulations, smaller mesh size, less Federal regulation. We'll still be eating fish, but our dynamics, our communities will be just like the dinosaurs out there. I really appreciate the fact that you understand that.

The CHAIRMAN. You're absolutely correct, because we still use wood, but the wood is coming from places where they have no environmental regulations.

Ms. SHRADER. You ever call Dell and you get somebody from India? These men want these jobs so passionately. Why would you go out when it's blowing 40 miles an hour and there are 15-foot

seas? I ask the fishermen that. One guy almost made me cry. "You know, when you go to bed at night and it's blowing like crazy. You're all bruised." He said, "There is something about the morning when you wake up and the ocean is calm, the gulls are over the boat." It's who my husband is. I would work with your committee to guarantee my husband gets to continue fishing. It's who they are. They're so passionate. I have great respect for it.

The CHAIRMAN. Like you, my grandfather immigrated from the Azores and came through New Bedford and worked in the fishing industry here for a number of years before he ultimately ended up in California milking cows. Either fishing or milking cows, if you're a Portuguese immigrant. I'm going to recognize Mr. Frank.

Mr. FRANK. Didn't they teach him how to make the St. George cheese somewhere?

The CHAIRMAN. Actually, my grandmother used to make that.

Mr. FRANK. How can this be? Here's the editorial from the Standard Times last week, "Congressman Frank's bill also requires that the economic impact on the fishing community be considered on equal footing as the conservation of marine fish. This principle, although popular, this fishing community will undermine the conservation law in the long term. It will allow short-term economic gains over long-term plans of the fishery, but to the general public that values healthy diverse eco fishing of fish plants, seals, birds, whales and other marine creatures," that is the philosophy. I must say—

Ms. SHRADER. I commented on the local radio to that.

Mr. FRANK. I'm skeptical. The notion that anything our bill is going to hurt, birds or seals or whales, seems to be very dubious. That is the answer. I will put that in the record. On that question, let me get to Mr. Rosenberg. You have constructive spirit. He has a good deal of consensus. The editorial makes the same point Mr. Rosenberg made, this specific nature, that the fishermen's request for more flexibility is in hitting the targets, not in their own interest. How do you account for the fact that the overwhelming regard in the fishing community pursues policy which you and the editorial say are contrary to the interest.

Mr. ROSENBERG. Of course, I don't think people are misguided in that. I think they're looking at a different perspective of the business. Fishermen are making their——

Mr. FRANK. It doesn't make sense.

Mr. ROSENBERG. I don't think it's in their interest. If you look at the history of New England groundfish, if you're rebuilding provisions that were originally designed in 1990, not in 1996, the actual reduction in fishing effort and reduction in catches would have been relatively small due to, you know, we're talking here as if social and economic pressures don't affect the management process. Of course, particularly in New England, that has slowed down the restriction of fishing.

Mr. FRANK. Again, you are saying they don't understand their own interest. You said that specific.

Mr. ROSENBERG. I did not say that. I said a moment ago, of course, they understand their individual business interest. That is different from the overall fishing interest.

Mr. FRANK. Is it against their own individual interest in the long term?

Mr. ROSENBERG. In the long term, it is.

Mr. FRANK. Let me put it this way: If I'm a fishermen, I plan to be fishing for the next 25 years. Are they ignoring their own interest?

Mr. ROSENBERG. No. I think most fishermen want to make sure they make the boat payments, house payment, everything else in the short term. They have to give that priority. That is not an unreasonable thing to do. That is not necessarily the same thing as a long-term interest.

Mr. FRANK. The long-term interest of whom?

Mr. ROSENBERG. Long-term interest for the nation, seafood, for the fishing industry. In fact, it may end up that in many cases people are making decisions. It's because they would rather maintain the flexibility than either trust what the projections are, trust the management process, so on. Again, that wouldn't be a terribly surprising decision to make.

Mr. FRANK. I am struck by what your view is on the question of the economic impact. What kind of weight should that be given?

Mr. ROSENBERG. Enormous weight in the choice of which option for management you choose.

What I don't think should happen is I don't think you should choose a plan that doesn't meet the conservation needs.

Mr. FRANK. What I have trouble with, you're saying flexibility is like almost wrong, or that once you set the time, it should never be extended. What if you set a limit and it turns out that science was too pessimistic? What should we do in cases where we set a time limit or catch limit and after a few years it turns out science was, as it sometimes is, too pessimistic? What should we do with those cases?

Mr. ROSENBERG. Adjust the timeframe but not weaken the management measures.

Mr. FRANK. We should adjust the timeframe. Under the current laws, we have the negotiability to do that?

Mr. ROSENBERG. Yes, it's done repeatedly. Unfortunately, too often.

Mr. FRANK. I ask you, I am struck by that because I've had people tell me, "Oh, no, we can't do that, because the law doesn't give flexibility." You believe the law does and should continue to say that if we set a timeframe and there are, the science turned out to be too pessimistic, we should extend the timeframe? What would be appropriate?

Mr. ROSENBERG. I think the timeframe should be extended but the extent of the measures remain very conservative.

Mr. FRANK. What does that mean?

Mr. ROSENBERG. It means that if it turns out that stocks are not recovering, like cod, let's use a specific example——

Mr. FRANK. I'm asking a case where the science is too pessimistic.

Mr. ROSENBERG. This is a case where science is too pessimistic. You should adjust that timeframe.

Mr. FRANK. Before you tell me what it doesn't mean, you're being so defensive.

Mr. ROSENBERG. You haven't let me finish a sentence yet.

Mr. FRANK. I think you're afraid of conceding anything at all. When you say extend the timeframe, what do you mean by that?

Mr. ROSENBERG. Would you allow me to finish my response and then see if it's coherent? It seems to me that if science has been too pessimistic and it's appropriate to lengthen the timeframe, you do so, but you ensure that you do not begin again or continue to overfish.

Mr. FRANK. What do you mean by lengthen the timeframe? If you say we were to do it in 10 years, it might be OK. To say thirteen, fourteen——

Mr. ROSENBERG. Sure.

Mr. FRANK. Allow more fish to be caught.

Mr. ROSENBERG. No.

Mr. FRANK. You never increase the amount of fish to be caught. What does that mean then, to say 13 years instead of ten, if we're catching the same amount of fish.

Mr. ROSENBERG. More fish to be caught than what? If science is too pessimistic, I don't think you should allow more fish to be caught necessarily, unless you can show that rebuilding has already occurred.

Mr. FRANK. You're being so defensive.

Mr. ROSENBERG. I'm explaining the concept.

Mr. FRANK. You said set a time limit and limits on the amount of catch, and some of the bills counterpoint that. Then it turns out it was too pessimistic. What about the case of scallops? Will you agree the science was too pessimistic in the case of scallops?

Mr. ROSENBERG. No, I won't.

Mr. FRANK. You don't think at no time the opening of Georges Bank, the science restricted the amount of scallops we found in Georges Bank.

Mr. ROSENBERG. Yes, I think it did. In fact, I was the guy who approved the reopening. I was also involved in the closure in the first place. I think it was entirely appropriate to reopen. I don't think it was showing that the science was too pessimistic. I think it was exactly what was expected, understanding that you always predict variation. If science is too pessimistic, you can show it's too pessimistic and rebuilding is occurring, then yes, you should allow those catch limits to increase. Then you would be extending the timeframe. If the science is too pessimistic, you can say we can meet the timeframe. I'm not being defensive. I'm trying to understand what you're asking.

Mr. FRANK. You're reluctant to acknowledge. You do think a time limit would be legitimate to increase the catch.

Mr. ROSENBERG. Sure. I don't think it goes along with extending the timeframe.

Mr. FRANK. The timeframe should be 10 years always? What timeframe do you have in mind?

Mr. ROSENBERG. The current provisions say as short is possible, not to exceed 10 years.

Mr. FRANK. Why would it be wrong to go to 13 years if it turns out we could get there? What is magic about 10 years.

Mr. ROSENBERG. Nothing magical about 10 years. There are two reasons why I think it would be wrong to go 13 years.

Mr. FRANK. In all cases?

Mr. ROSENBERG. Not in all cases.

Mr. FRANK. We should have flexibility to go beyond 10 years.

Mr. ROSENBERG. I assume the flexibility in the law remains there. You can't go beyond 10 years now under the existing law. It says unless you can't do so for biological reasons. The reason is 13 years, shortest period of time possible, not to exceed 10 years. There are no cases, and I just reviewed all of them in the country, have used less than 10 years. They've always gone to the maximum and always the maximum under the exception. If you go to 13 years, we'll also go to the maximum which would be 13 years. The reason I think that is a bad thing is because the longer you continue to either overfish and not rebuild, the more difficult it is to rebuild. You're digging a bigger hole.

Mr. FRANK. As long as you overfish and not rebuild. You may be rebuilding it. Here's where I differ with you. You can be rebuilding. The question is whether you have to finish rebuilding in 10 years and whether it might sometimes make sense to do it a couple of extra years. There's a negativism built into your answer which was not part of the question. You said if you continue, you're not rebuilding. What if you are rebuilding and it turns out, you know, you'll be able to reach it in 13 years instead of 10 years and you get there with less negative social impact.

Mr. ROSENBERG. It seems to me, based on history, your premise is not really borne out. Of course, if you're not overfishing which is the most important thing and you extend it up to 13 years, I don't think there is a big problem. The history is under 45 percent of the existing rebuilding plans that have been in place, many of them for nearly 10 years, we're still overfishing. That is true in New England, too. We have seven or eight stocks where we're still overfishing. If you stop that and you absolutely say well, we will not overfish, then the timeframe becomes less important. I agree with you on that. Unfortunately, that has not been the history. Unless you can hold that to account that you won't continue to overfish and extend out the rebuilding timeframe which has been what has occurred over the last 10 years, this doesn't work in that circumstance when you continue to overfish.

Mr. FRANK. You legislate for failure. I do think part of the problem has been, frankly, thank you for your time. Like a lot of things, this is an area where law enforcement isn't going to work if the people against whom the laws are being enforced are in rebellion. It needs to be, because you have enough people to catch everybody. You need to help the income tax system. The traffic law, you need to have some sense of legitimacy. I think if we had more flexibility in the law that we would have more of a cooperative effort. I think that is why you're looking at the past. There are a number of people, you talk about a lot of flexibility there, but I've been told well, it's not really there. They're afraid of a lawsuit. I do think if people thought the law was more rationally done, there would be less of a problem.

One of the other things the editor of the Standard Times scoffed at was the notion that if the depletion, the overfishing or the lack of fish, if the depletion of the fishery were caused by things other

than overfishing, it would never make any sense to say you could continue to fish. Could you address that?

Mr. ROTHSCHILD. Yes. There is a really good example which is the California sardine which in the '50s it collapsed and there was a moratorium on fishing the sardine. Even in the absence of fishing, it didn't recover for 25 years. So maybe instead of having a moratorium of fishing the sardine it would have been better for the State of California to fish the sardine at a lower level of abundance. So basically I'm not much for rebuilding, period. I favor looking at fishing mortality as often as possible and being responsive to that. You never really know what a stock is going to do in the future. You can guess. It is a probability.

Mr. FRANK. There would be cases where there was a problem, stocks somebody depleted by causes unrelated to overfishing and it wouldn't necessarily make sense to reduce the fishing, if you would.

Mr. ROTHSCHILD. There are many cases where stock, the fluctuation of stock abundance is not coupled with the magnitude of fishing mortality.

Mr. FRANK. Therefore, it would not necessarily be appropriate to reduce fishing?

Mr. ROTHSCHILD. Right. You would moderate it somewhat.

Mr. FRANK. NEPA, and, obviously, the environmental things are important. As I understand the Chairman's bill, what he's saying is if everything called for by NEPA is, in fact, done in the course of some regulation, then there's no need to simply reiterate that under NEPA.

Mr. ROTHSCHILD. Well, the different councilmen around the country got together. They thought that NEPA was unnecessary in the sense that all the process was taken care of and what NEPA did was just extend the delay in taking——

Mr. FRANK. Do you think there is some way you could, in fact, if you're able to do this function, is it necessary to go through the formality.

Mr. ROSENBERG. I'm not sure that you have to go through the formality. I don't want to give a legal opinion, because I'm not a lawyer.

Mr. FRANK. The law is going to change. It's subsequent.

The CHAIRMAN. If I could interrupt you just for a minute. I think the question Congressman Frank is asking you is not the legality of it, but the practicality.

Mr. FRANK. Because we can change the law.

Mr. ROSENBERG. If you meet all the requirements of NEPA, you met all the requirement of NEPA. That is the important thing. It is not clear to me that that is what the council chairman is saying. So I'm concerned about it. There is the interaction with other sectors of human activity that goes to the point you just made, that sometimes things occur due to causes other than fishing, although I don't entirely agree with Brian's answer. By maintaining the NEPA structure for fisheries, you're not taking it out of that process where other sectors have to consider fisheries and the needs of fisheries. There's also some public process issues. If you meet all the requirements, you meet all the requirements.

Mr. FRANK. We would want to make sure.

We don't want other people to disregard the impact we have on fishing. With the fishing prices, if we can meet functionally all the requirements, there would be no need to kind of go through something just for a formality.

Mr. ROSENBERG. Yes. It seems to me that that is already the case. You could do the analysis and create the functional NEPA document and the existing provisions, although I do think the NEPA guidelines should be revised under which, for fisheries specifically. You can already do that without going through a duplicative process, even though the councils don't have to do it. It is available.

Mr. FRANK. It is often the case. There is nothing making clear to people that not everybody has the same opinion. I think where there is agreement that this should be done, it is often a good idea.

The CHAIRMAN. What we actually do in the bill, in the underlying bill, is add into the bill the provisions of NEPA that are not currently a part of that and give the Secretary the ability, if all of those steps are met, give the Secretary the authority to say because they met all of these steps, that is the same as going through a NEPA process, because they already met all of those steps. I think some of the testimony we heard from, from Mr. Wright in terms of being able to react quickly, going through another NEPA process and taking 2 or 3 or 4 years in order to do that does not allow a fishery to react quickly or council to react quickly to what is a problem that they just got.

Mr. ROSENBERG. Two points there, if I may, Mr. Chairman. One is that I don't think, actually think that NEPA is particularly the barrier there. I do think it's important if you allow them to meet the requirements of NEPA, that they're still the focus, only NEPA guidelines which actually is the operative document beyond the statute in terms of how you deal with fishery problems. So the NEPA guidelines created by CEQ are very important. I don't think the delays, actually, of 3 or 4 years are necessarily due to the NEPA process. They're due to difficulty resolving which alternative you should choose. Captain Wright gave, using information from the SMAST Program, because it didn't go through a peer-review process, a year-long peer-review process. That changes the time line. The same with other processes. All of those things extend time, because it's also the time that the public comments, as well as the regulatory process, tries to figure out what alternative to use.

Technically you can go through an amendment process relative quickly. In practice, you can't.

This is speaking as a former regional administrator, and NOAA officials can speak to that as well. It's a matter of getting people to have a say and choosing the alternative to address the particular issue. The scalloping, that was done relatively quickly.

Mr. FRANK. I will tell you this: It took a lot of political pressure. It took political pressure that was denounced. I had to work with Secretary Daley. He was afraid of being sued. I think you're too sanguine about the current law. A lot of things could be possible. You know, there is a distinction in your approach. When I talk about the theoretical possibility of extending the time limit, you say yes, but in practice it hasn't worked that way. In other cases

you tell me theoretically it allows that. I tell you in practice it hasn't worked that way. In fact, the flexibility that you can say is in the law, in practice there have been even more problems with it. One of the things we're trying to do is make that explicit. Empower the administrators to make some of those decisions with less intimidation and less problems.

Mr. ROSENBERG. I was involved in the other side, in the Secretary's office. I'm sure it's a very important one locally here, but also a different perspective as to what was going on at the time. I do think the flexibility is there. It is in practice that I'm concerned about.

Mr. FRANK. I understand. When I ask about the time, you said they've always gone to the maximum. If you're going to take the practical, in effect, as you defend the existing statute, I think you go to a theoretical perspective in one sense and the practical in another. I know in the scallop thing, that the fear that it would be a problem, they would be sued. The Boston Globe said that we politicized the process, me and Jesse Helms. We impurified this decision. Bill Daley responded. Not every Secretary would have done that. What we're trying to say is we should change the law so there is less likelihood of that kind of intimidation.

Mr. ROSENBERG. My comments are colored by what I think would happen in practice. That is true of the rebuilding, true of NEPA as well.

The CHAIRMAN. Well, our efforts are to try to be a little more directed in terms of the way that, I believe, things should work moving forward. Obviously, these are both, Mr. Frank's bill and our combined bill, are works in progress. We continue to hold hearings. We continue to try to listen to people and try to make the changes to the underlying legislation that are necessary, because we don't get an opportunity to change these laws very often.

Having a combined effort, a bipartisan effort to move forward is something that is extremely important. I think that we have the building blocks for a consensus legislation in front of us. I intend on moving forward with it. I know that Mr. Frank does, because it's something that is very important to him.

I think one of the, one of my greatest fears is I watched this happen throughout the West. Once you lose the basic infrastructure, once you lose the boats, ones you lose the canneries, once you lose the people, it doesn't matter what happens to the fishery after that. You don't rebuild them. Now, you know, we've seen the impact of going, decisions that went too far in one direction throughout the West. I don't want to see that happen in this area. I know for sure that Mr. Frank does not want to see it happen.

I want to thank this panel for your testimony. It's been extremely valuable and extremely educational for me to hear all of you give your testimony and answers to the questions. If there are any further questions that we have, they will be submitted to you in writing. If you could answer those in writing so they can be included as part of this hearing, I would appreciate it. Thank you all very much.

Mr. FRANK. I want to thank you again. This community is deeply appreciative of your willingness to do this. Anyone who has written comments that they want to submit, in return they will be made

part of the hearing. We have a couple of days. Anybody who's here, if you want to send in something, we can do that. I want to note, we would have had Rodney Avilla who's a member of the council, a fishermen here in the area. There was an illness in the family he wanted to attend to. He has been our local member of the council. His input, we've listened to it. We would have had him here. This has been a great favor and service that you have done to this community.

The CHAIRMAN. Thank you very much.

[The statement of Dr. Kaplan submitted for the record follows:]

**Statement of Dr. Ilene M. Kaplan, Professor and Chair, Department of Sociology, Union College, New York**

I am Professor and Chair of the Dept. of Sociology and Senior Research Scholar of Marine Policy at Union College in New York State and am also Guest Investigator at the Marine Policy Center of the Woods Hole Oceanographic Institution. In addition, I currently serve as chair of the Social Science Advisory Committee of the New England Fishery Management Council. My research examines socio-economic trends in the New England commercial fishing industry as well as the use of co-management techniques in the development of marine policy. My short CV is also attached.

I am placing in written form important points regarding my support of H.R. 5018. It is important that 1) flexibility and the use of the best available science (including social science), 2) better representation of fishery organizations and community groups and 3) checks and balances regarding development and enforcement of marine regulations become recognized and salient parts of the marine regulatory process.

In particular, it is important that Congress address the following weaknesses in the fisheries management and conservation process:

1. As ecosystem based management procedures are examined and developed, it must be noted that social dimensions and human ecology issues have historic recognition as part of all ecosystems.
2. Social Science research must be included as part of the "best available science" that is used to develop management processes. Unfortunately, an emphasis on fisheries science has often overshadowed socio-economic conditions that are tied very closely to the management process. Management proposals that limit and or change occupational activities without taking into consideration socio-economic impacts can impede community economic growth as well as foster community degradation if unemployment is a result of management proposals.
3. Under the current setup, there are minimally adequate checks and balances regarding the development, implementation and enforcement of marine policies. In addition, peer review of NOAA policies should be conducted whenever possible by researchers and/or research organizations who are not reliant on NOAA funding.
4. Consolidation and efficiency programs and policies need to be viewed in a flexible way so as to incorporate not only economic but sociological implications. For instance, some economically "efficient" proposals may result in fewer people who fish but in increased unemployment. The "trickle down effect" and negative community impacts may result in increased social problems with regard to financial stability of families as well as mental and physical health problems of individuals whose self worth and esteem are threatened.
5. National Standard 8 must be placed on equal footing with other national standards.
6. Better representation of fishing groups needs to be part of the Council process. Research shows that when stakeholder groups are included in the management process, there is greater compliance to policies.

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[Whereupon, at 11:05 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A letter submitted for the record by Roger S. Berkowitz, President and CEO, Legal Sea Foods, Inc., follows:]

LEGAL SEA FOODS, INC.
CORPORATE OFFICES
ONE SEAFOOD WAY
BOSTON, MASSACHUSETTS 02210

APRIL 24, 2006

VIA FACSIMILE 508 999-6468

The Honorable Barney Frank
558 Pleasant Street
Room 309
New Bedford, MA 02740

Dear Congressman Frank:

We at Legal Sea Foods are obviously very concerned with how the re-issue of the Magnuson-Stevens Act will affect our industry. Although we are in the business of selling fish, we are also conservationists at heart. We fully realize and appreciate that if we do not do enough to safeguard the fish supply today. .. there will be no tomorrow. The critical issue here, though, is striking a balance—laws that allow the various stocks to rebuild, while at the same time preserving the industry's infrastructure. Lawmakers must understand that for every fish job on a boat, there are seven jobs on land that support those efforts. The socio-economic impact which is significant.

One element of the debate, which is constantly overlooked, is the role of seafood in a healthy diet. Study after study proves time and again that seafood is perhaps the healthiest of all proteins, providing many benefits which significantly lower health risks in both men and women.

Another aspect of the issue which needs to be addressed is the methodology by which fish is harvested. Day boats are a great example of this. By their very nature, day boats are limited by how far out they travel and by how much they are ale to harvest per trip. This almost primitive method of harvesting provides for a higher quality product plus earns the fisherman more money while better safeguarding the ocean's bottom. Yet much of the legislation currently looming, presents the very real probability of forcing the majority of day boats from Maine to New Jersey out of business. This is counter-intuitive to solving the problem. If we are truly interested in conservation and sustainability, then we need a viable day boat fishery.

A few weeks ago in Washington at the Willard Hotel, there was a lecture by neuroscientist Dr. John Stein of Oxford on the subject of fish as brain food. His conclusion based on years of data, was that seafood was perhaps the most complete food for enhancing brain functions. Given this information, I would implore lawmakers involved with the Magnuson-Stevens Act to consume a bit more fish prior to finalizing any measures which might negatively impact sources of supply and infrastructure.

VERY TRULY YOURS,

ROGER S. BERKOWITZ
PRESIDENT & CEO

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[A letter submitted for the record by Hon. Mark C. Montigny, State Senator, Massachusetts State Senate; Hon. John F. Quinn, Massachusetts State Representative; Hon. Antonio F.D. Cabral, Massachusetts State Representative; Hon. Robert M. Koczera, Massachusetts State Representative; Hon. Stephen R. Canessa, Massachusetts State Representative; and Hon. William M. Straus, Massachusetts State Representative, follows:]

THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

April 24, 2006

Congressman Richard Pombo
2411 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pombo,

We are writing in support of the Pombo-Frank-Young bill which provides a balanced approach to the reauthorization of the Fisheries Management Act.

We first want to applaud the efforts of Congressman Pombo and Congressman Frank for attempting to bring common sense and practicality to the complex area of fisheries regulations and statutes. Too often in the past there has been a narrow minded view of protecting the fish and not the fishermen. While the long term preservation of the fishing stocks is critically important, it can be done so in an even-handed, incremental way that does not have the draconian impacts on the fishing industry and fishing families.

This bill successfully resolves the dichotomy of protecting the fish stocks without irreparably damaging the industry infrastructure and employment. As we are sure you are aware, the fishing industry provides over a billion dollars in economic activity in Greater New Bedford. The city is extremely proud of its ranking as the number one port in the United States for catch value. This bill helps protect its industry while at the same time protecting the long term viability of the fishing stocks.

This legislation also has tremendous protections for the health and safety of the fishermen involved in this high risk industry. The occupation of fishermen is one of the most hazardous jobs in the United States. Recently there have been great strides made under the leadership of Congressman Frank for safety training for those involved in the fishing industry. This bill expands on the safety programs that are already in place.

In closing, we support the Pombo-Frank-Young bill. It is practical, balanced and fair. These three attributes are critically important in any legislation, but particularly important in addressing fishing regulations.

Sincerely,

**Mark C. Montigny**
State Senator
Second Bristol & Plymouth

**John F. Quinn**
State Representative
9th Bristol District

**Antonio F.D. Cabral**
State Representative
13th Bristol District

**Robert M. Koczera**
State Representative
11th Bristol District

**Stephen R. Canessa**
State Representative
13th Bristol District

**William M. Straus**
State Representative
10th Bristol District

[A letter submitted for the record by James D. O'Malley, Executive Director, East Coast Fisheries Federation, Inc., follows:]

# East Coast Fisheries Federation, Inc.

April 25, 2006

Honorable Richard Pombo, Chairman
Natural Resources Committee
US House of Representatives
Washington DC 20515

Honorable Barney Frank
US House of Representatives
Washington DC 20515

Dear Mssrs. Pombo and Frank:

The East Coast Fisheries Federation thanks you for holding this hearing in our nation's foremost port, and we look forward to the improvements that will come to our fishery management process as the result of your visit. The Federation is a trade association of fishermen, vessel owners and processors, with members in New Bedford, Rhode Island and New Jersey.

We believe that the Sustainable Fisheries Act is fundamentally sound, and needs Congressional clarification more than revision. It is obvious to the most casual observer that the law has been badly misinterpreted, and not only are we suffering the consequences, the resource is as well. For example, in the days of very high groundfish abundance, NOAA scientists have said that the entire dogfish biomass was about 200 million pounds. Now we are told that the dogfish resource must be kept at a level five times that amount, 1 billion pounds, and we pretend that there will be no effect on the groundfish species we are working to restore. Congress was aware of this when it said, in the original Magnuson Act, that Councils should take into consideration the place of the fishery in the environment. The Councils have not done so, mostly because they will not stand up to the bullying of the National Marine Fisheries Service. It is that simple.

We have, in the past, commented on the needed changes to Magnuson, and they are appended to this correspondence. There is also a copy of "From Science to Illusion," presented at the Pacem in Maribus conference in Halifax in 1998. It details some of the problems created by our over-reliance on abstract technocracy in fishery management. I hope it helps to guide you and the Committee in their deliberations about the Reauthorization of the Magnuson Act.

Focusing on Groundfish, there is also a package which was presented to Senator Jack Reed of Rhode Island about a year ago. It speaks to some of the reasons why we are in the situation in which we find ourselves. The politicization of science is a crucial part of this, and we hope you will agree that agencies and scientists are as vulnerable to manipulation as any other human creation or human beings.

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But in the final analysis, we must focus on the problem, and avoid the broad-brush hysteria about New England fisheries. This table, detailing landings from 1999 to 2004 is illuminating. While not diminishing the real pain that some sectors are feeling, it is important to note that the value of fisheries in New England continues to grow.

NMFS Landings Query Results
* Year : From: 1999 To: 2004
* Species : all species combined, New England

| Year | Metric Tons | Pounds | $ | subtracting scallops and lobsters | Finfisheries |
|---|---|---|---|---|---|
| 1999 | 264,841.6 | 583,869,804 | 662,086,992 | - scallops and lobsters = | $ 284.8 million |
| 2000 | 261,298.4 | 576,058,430 | 688,376,251 | - scallops and lobsters = | $ 295.3 million |
| 2001 | 286,432.1 | 631,468,143 | 639,326,181 | - scallops and lobsters = | $ 303.0 million |
| 2002 | 267,108.9 | 588,868,291 | 696,366,482 | - scallops and lobsters = | $ 299.2 million |
| 2003 | 299,492.0 | 660,259,969 | 690,631,562 | - scallops and lobsters = | $ 296.3 million |
| 2004 | 321,206.6 | 708,132,059 | 807,878,192 | - scallops and lobsters = | $ 288.8 million |

Because scallops and lobsters are really their own industries with their own participants, these numbers separate them out from the more general finfish fleet. We see that, overall, the value of finfisheries in New England is relatively stable, ranging from $284 million to $303 million over the five years. The total value of all species has grown from $662 million to $807 million in that period, not exactly a desperate condition.

And yet people are suffering much more than strict fishery management and restoration of our groundfish resources would require. Part of that is the fact that costs have risen dramatically, especially fuel and insurance. What can fishery management do about that? Quite a bit, surprisingly. Regulations which make fishing safer and less costly will ease the financial burden faced by many fishermen. Please see attached, "Conservation tax unwisely punishes fishermen," an article from our newspaper of record, *Commercial Fisheries News.* Another attachment is an editorial and an Op/Ed from the *Providence Journal* on the use of "quotas" in fishery governance. Finally, a prediction about the future is made in "What the Groundfish 'B' days really mean," also from *CFN.*

We truly appreciate the fact that you have taken the time to come here and listen to our suggestions. We are a bit embarrassed to ask you to spend further time with all these documents. Nevertheless, as long-time participants in the fisheries and the regulatory process, we hope these observations and suggestions will be of help, and we thank you for your consideration of them.

Sincerely,

James D. O'Malley

James D. O'Malley
Executive Director

JDO/se

[A letter submitted for the record by Richard D. Canastra, President, Whaling City Seafood Display Auction, follows:]

WHALING CITY SEAFOOD DISPLAY AUCTION
62 HASSEY STREET
NEW BEDFORD, MA 02740

APRIL 27, 2006

Congressman Barney Frank
558 Pleasant Street
Room 309
New Bedford, MA 02740

Dear Congressman Frank:

I am writing in regards to the legislation you have proposed to reauthorize the Magnuson-Stevens Conservation and Management Act and to request that the legislation you have proposed (H.R. 4940) and have co-signed (H.R. 5018) consider the impacts they will have on the marketability of multispecies in the northeast, otherwise known as groundfish.

On May 1st, as we begin the start of the new fishing year, the commercial fishing industry is faced with a series of new groundfish regulations, NMFS Interim Measures and Framework 42. These new regulations that are quickly following the severe restrictions under Amendment 13 will have profound impacts on family-owned vessels and shore-side business. While these regulations continue to be vetted through the process, I find myself growing increasingly troubled by the potential market share and infrastructure that will be lost to the imports of frozen whole and finished seafood products.

Since the reauthorization of the Magnuson Act in 1996, the Northeast Multispecies Fishery Management Plan has been amended numerous times to include measures which are mindful of the need to rebuild fish stocks and protect habitat. Groundfish fishermen, along with fishermen across the United States, now find themselves to be the most restricted and regulated fishermen in the world. To name just a few measures: groundfish mesh size has increased from 4.5 to 6.5 inches; permanent year round closures, seasonal closures, and habitat closures have been implemented; the number of DAS that fishermen can fish was reduced by 40% in Amendment 13 and another 30% to 50% is being considered for this fishing year between the interim measures and framework adjustment to Amendment 13. The cumulative impact from these measures is having disastrous consequences to the viability of the infrastructure and will result in a significant loss of market share.

The scientific validity of these newly proposed measures are in serious question. These measures are based upon the results of a recent groundfish stock assessment (GARM 2005) and associated New England Fishery Management Council Plan Development Team analyses. The results require mortality reductions in two stocks, Georges Bank winter flounder and Georges Bank yellowtail, stocks that only two years ago were deemed to be healthy stocks and a "management success story." During the GARM, scientists found their projections of the Georges Bank yellowtail spawning stock biomass to be approximately 70% lower than they originally predicted. Such uncertainty in the science, poor management on behalf of the National Marine Fisheries service of the GB yellowtail total allowable catch (TAC) that has created more uncertainty with associated openings and closures as well as inconsistencies in the trip limits, and now the newly proposed DAS reductions and lower trip limits are going to have irreversible damage on the infrastructure and market for these and other groundfish stocks.

The infrastructure has been forced to process frozen fish because it gives them a constant supply of fish with out the spikes of high pricing. Some companies are sending the whole frozen fish from Alaska directly to China for processing and shipping back the finished product to the states without any import tax because the product was originally from the states. This type of business is making the companies competitive with other imports but in return we are losing our fishermen, skilled labor and infrastructure.

I commend you for all your efforts to allow every United States citizen the benefits of consuming healthy fresh seafood with only one additive, love, respect and prosperity of our resource.

VERY TRULY YOURS,

RICHARD D. CANASTRA
PRESIDENT

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[A letter submitted for the record by Paul J. Diodati, Director,, Division of Marine Fisheries, Commonwealth of Massachusetts, follows:]

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF MARINE FISHERIES
251 CAUSEWAY STREET, SUITE 400
BOSTON, MA 02114
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FAX (617) 626.1509

MAY 9,2006

The Honorable Richard Pombo
Chairman
House Committee on Resources
2411 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Barney Frank
2252 Rayburn House Office Building
Washington, DC 20515-2104

Re: Massachusetts Division of Marine Fisheries' Comments on H.R. 5018, An Act to Reauthorize the Magnuson-Stevens Fishery Conservation and Management Act.

Dear Chairman Pombo and Congressman Frank:

As Director of the Massachusetts Division of Marine Fisheries {MarineFisheries) I greatly appreciate the House Committee on Resources' initiative to strengthen regional management of America's fisheries. MarineFisheries' commitment to improved fisheries management and science is consistent with your efforts to do the same. Being a voting member of the New England Fishery Management Council since its inception, being involved with development of every Council management plan and amendment, and having a major role in development and use of fisheries science, especially for assessments, MarineFisheries has decades of experience and first-hand knowledge of Council/federal management successes and failures and reasons for those outcomes. I take advantage of the Committee's recent hearings, therefore, to share some of that experience and knowledge and to provide some recommendations to help your Committee achieve its objectives.

**Capping Harvest At or Below Acceptable Biological Catch Levels**

Many of the changes to the Magnuson-Stevens Fishery Conservation and Management Act (the Act) proposed in H.R. 5018 are the result of the House Committee on Natural Resources accepting advice and recommendations from the U.S. Commission on Ocean Policy (the Commission) regarding achieving sustainable fisheries. Although on their face those recommendations are attractive, some actually are problematic. For example, an important proposed change is for harvest level caps not to exceed the acceptable biological catch level(s) recommended by the scientific and statistical committee (SSC) of councils (pages 4 and 5).

Councils would be required to adopt those recommendations. I urge the Committee not to make this change to the Act. My logic is as follows.

Requiring Councils and interstate fisheries commissions (an eventual outcome) to adopt SSC science recommendations without debate and influence is ill-advised. I understand the basis for this change to the Act, i.e., the Commission recommendation that scientific and management decisions be separated and for council and interstate fisheries managers not to debate science advice, but to except it in an un-

critical fashion. This would mean managers would receive findings/advice and then be obliged to use those findings - no flexibility to be allowed. The Councils and interstate commissions would allocate and not set catch limits. This is a very significant departure from the current process.

The basis for this recommendation is the Commission's contention that: (1) "social, economic, and political considerations have often led the councils to downplay the best available scientific information, resulting in overfishing and slow recovery of overfished stocks," and (2) "a lack of scientific information has not been the main culprit in most instances of overfishing." This Commission recommendation is not a new idea. It has been debated before during previous SFA reauthorization deliberations. Although there is some truth to this contention, emphasis on these two points skirts the important fact that Councils and especially states must consider socioeconomic impacts and information that is sometimes portrayed as science when in fact it is not science but conjecture and/or technical analyses steeped in assumptions.

My agency and other states' fisheries management/research agencies have staff with scientific expertise that is shared with our federal counterparts. Although fisheries managers continue to heavily rely on science, especially sound science provided by the federal government and other entities (including states) contributing to scientific understanding, there are occasions when there is legitimate disagreement on scientific results such as those from fish stock assessments. Scientists don't always agree. Science is not always certain. In fact, fisheries science frequently is very uncertain and relies on scientists' own science policy assumptions that managers should and must legitimately question.

**Best Available Science**

I suspect your committee has concluded that the issue of "best scientific information available" has been addressed by the proposed use of guidelines from the Secretary of Commerce relying on the National Research Council's Ocean Studies Board report, "Improving the Use of the Best Scientific Information Available, Standard in Fisheries Management" (2004) (page 6). I urge the Committee to examine that report's recommendations and to be wary of enacting a law that gives so much free reign to the Secretary of Commerce for determining what is the "best" science. Secretary of Commerce guidelines will be hard rules for everyone to follow including interstate commissions.

If your Committee decides to retain this proposed change, consider making the choice of "guidelines" to be developed jointly with the Secretary of Commerce (hence NOAA Fisheries) and the interstate commissions (hence, the states). States have a primary and principle role in fisheries management because most stocks are migratory, and states should and must develop complementary management measures. A reason for my wanting this change is my noting that the Ocean Studies Board Report recommends separating allocation decisions from science, i.e., give the SSCs unquestioned authority over science decisions involving "hard-won, consensus science." I suggest you be wary of that description for it indicates scientists arguing for positions and making science policy decisions. I addressed this concern about separating science from allocations above. I know the New England Fishery Management Council also has objected to this separation.

**Science & Statistical Committee Membership**

Regarding the SSCs and their membership (page 6 and 7), I have a few comments. First, your committee' proposal regarding strengthening SSCs incorrectly assumes that councils (and interstate fisheries commissions) now rely solely on their SSCs for scientific advice. Advice comes from many different committees and working groups of scientists from states and academia. In New England, this is especially true. Regardless of the amount of "strengthening" no one relatively small group of scientists can handle the burden of producing "findings" and giving scientific/technical advice on the wealth of complicated fishery management plans and amendments. Experience in New England has revealed this to be true. Your suggested change consistent with the Commission's recommendation although well-intended is too simplistic and unresponsive to needs of New England fisheries managers, especially those in the Commonwealth.

Secondly, it also is inconsistent with the purpose of the Commonwealth's Marine Fisheries Institute created in November 2002 to "promote sustainable fisheries by providing timely information and guidance to protect, conserve, and manage Massachusetts' marine and coastal resources." Advice from SSCs would have greater importance for affecting management decisions impacting the Commonwealth's fishing industry than advice provided by the MFI. The MFI is a partnership between MarineFisheries and the University of Massachusetts' Intercampus Graduate School

for Marine Science and Technology (SMAST), specifically the Department of Fisheries and Oceans. The MFI, notably SMAST, has made significant contributions to sea scallop science and management. That type of input should not be jeopardized through the proposed SSC control over scientific input into the management process.

Furthermore, your proposed new responsibilities and obligations for the SSC will require even more substantial time commitments of SSC members, especially state fisheries scientists (e.g., MarineFisheries scientific staff) who now play a prominent role in council and interstate fisheries commission scientific deliberations. These commitments would stretch and drain state resources even further. Funds are proposed only for SSC members not associated with federal or state governments. Therefore, if you are not dissuaded from moving forward with your proposal, I suggest there be mandates for funds necessary for states to provide SSC support and sustained, productive involvement. If not, then the "best available science" will be far from the "best."

**BAS**

Regarding science, especially the best available, I support the language for "scientific research priorities" (page 7) and "cooperative research authority" (pages 7 and 8). This first proposal addresses the need for NMFS to focus its research agenda on council information needs. This proposal is particularly relevant to the U.S. Commission's concern that NMFS is inadequately addressing questions "that involve interactions among fisheries, habitat, and other protected species, as well as social science and economics." The second proposal for cooperative research is a necessary follow-up; however, I suggest plan provisions for cooperative research definitely be included by the Secretary. Currently, the language indicates the Secretary "may" include the cooperative research using commercial fishing vessels, etc. I also support the language for "preserving fishing privileges." Without this provision, many excellent research opportunities with cooperating fishermen will be lost.

It would be of great benefit to the Commonwealth and cod assessments in particular that industry-based species-specific surveys, such as the cod survey currently performed by MarineFisheries working with commercial fishermen in the Gulf of Maine, be mandated. Considering that the Commonwealth does and will bear the brunt of federal regulations that continue to tighten for Gulf of Maine cod, mandating this survey to provide for improved science and assessments for this stock is warranted and consistent with the thrust of your Committee's emphasis on better science acquired in collaboration with the fishing industry.

For improved science and management, more and better stock surveys will be required. Without question councils have had to increase their reliance on bottom trawl surveys performed with federal research vessels. Therefore, I support the "need for more frequent stock surveys" (page 18), but I encourage you to modify your language so that the "Secretary of Commerce and interstate commissions shall determine..." Fisheries management/science is a partnership between the federal government and states acting through commissions, and this important element of improved science should reflect that partnership.

**Recreational Fisheries, Permitting and Science**

For "sharing of recreational catch data" (page 11) 1 suggest you revise #2 so that "The Secretary shall conduct the program under paragraph (1) (C) in joint collaboration with the principal state officials having marine fisheries management responsibility and expertise." "Consultation" should be replaced with "joint collaboration." Considering that most recreational fisheries occur in state waters especially for "federally-managed species" that are also managed cooperatively with interstate commissions, I'm uncomfortable with consultation.

Furthermore, this language is suggestive. It seems to give the federal government an opportunity to pursue a federal license for marine recreational fishing. That should not be an option. If any license is eventually adopted, it must be established and administered through the individual states. Federal oversight would be distributed to states. This would be inappropriate because the vast majority of recreational fisheries are in states' territorial waters; therefore, states should have the lead role in licensing, and federal involvement should be ancillary and through a strengthened Marine Recreational Fisheries Statistical Survey (MRFSS) with more federal funds being provided to states for improvement in survey coverage and accuracy. Details of license cost and how revenues will be dedicated to improved recreational fisheries opportunities and fisheries management must be decided through respectful treatment of recreational fishermen's concerns about licensing issues. This can best be carried out by states working in partnership with recreational fishermen and their organizations.

I appreciate that you propose to authorize $5 million to assist states develop a license if they chose to do so. That is a good step; however, I suggest you change the "Secretary may" to the "Secretary shall provide financial assistance..."

For confidentiality of information (page 17), I suggest that observer information collected through cooperative research initiatives not be considered confidential. These data are collected through specific research operations using fishermen and their vessels with an understanding that they receive federal or state financial or other types of compensation for their research in the interest of better science and improved fisheries management. There is no need for this information to be confidential.

**Ecosystems**

Your reference (page 29) to the April 1999 Ecosystem Principles Advisory Panel Report to Congress regarding ecosystem-based fishery management is specific to the Councils and Secretary of Commerce defining the terms "ecosystem" and "marine ecosystem." This is a sensible first step although the Report does provide some general definitions. I suggest you include in your section dealing with ecosystems research part of the Panel's Charter regarding "human systems" that "must be included in any ecosystem research and management effort." Including this sort of research is warranted because, as noted in the Charter, "Managers must also understand the complex linkages between natural ecosystems and the economic, social, and political dynamics of human systems. Humans are integral components (emphasis added) of ecosystems, and their interests, values, and motivations must be understood and factored into resource management decisions."

**Limited/Dedicated Access Privileges**

Regarding human interests, values, and motivations, I suggest you consider the following concerns about limited access privilege programs. You propose the Secretary shall "include an effective system for enforcement, monitoring, and management of the program, including use of observers." This is a critical aspect of any privilege program and must have adequate funds for the system to be truly effective. With NMFS recently and dramatically reducing observer coverage due to budgetary problems, I have no confidence that an effective system can be maintained. Before any Individual Fishery Quota (IFQ), etc. program(s) is adopted and sustained, substantial federal funding must be made available to states and management councils to obtain critical monitoring and assessment information to judge program effectiveness. Furthermore, the National Research Council has raised important funding issues such as: "NMFS should significantly expand its routine collection of social and economic data to allow baseline descriptions of fishery users, monitoring of impacts associated with individual quota and other management programs, and an improved understanding of the human dimensions of fisheries."

The Research Council also highlighted: "Concerns about equity of the initial allocation of quota shares is a major obstacle to the implementation of any IFQ program. It is important that the initial allocation process be transparent and perceived to be fair; this requires adequate data... Priority should be given to the question of social, economic, and biological consequences of a proposed IFQ program and alternatives to it. The councils and NMFS must allocate more resources and attention to impact assessments, which are now required by law but often are given inadequate attention." I raise these concerns because hard-and-fast federal dedicated access rules could negatively impact state oversight and influence on management of fisheries in state waters and on our fishermen fishing in adjacent federal waters.

States have no veto power and can only influence Council significant interstate allocations through dedicated access through their one vote as a Council member and their very limited influence with the Secretary of Commerce. Dedicated access privilege programs such as community-based quotas involve allocation of fisheries resources between states with socioeconomic impact. The Commonwealth (and other states) should not be compelled to accept a federal perspective regarding allocation of fisheries resources between states.

Notwithstanding my reservations about the level of detail and complexity of your proposals, I must admire your effort to comprehensively blueprint what must be done for the federal government to embrace and then rule fisheries with very controversial, allocative, dedicated access programs that will fail without effective enforcement, monitoring, and management at state and federal levels.

**National Environmental Policy Act (TSFEPA)**

I support any effort to minimize or remove the impact of NEPA on fishery management plans and their amendments. NEPA review and requirements are excessive, burdensome, and unnecessary. I've had this opinion for many years, and I support your efforts in this regard.

However, I do not support any effort to minimize the authority of Councils or to put them at odds with other marine resource managers. It appears you are proposing to potentially give National Marine Sanctuaries control over fishing in sanctuaries. Your proposed approach (page 61) seems to remove Councils from the process, i.e., Sanctuary proposals for fisheries regulations (conservation and habitat protection) go directly to the Secretary of Commerce for review. If the Sanctuary-proposed regulation(s) meets national standards etc., the regulation "shall take effect." At this time, the process involves a Sanctuary requesting a Council for a specific action. This would not be the case with your reauthorization language. Even though I'm supportive of sanctuary management initiatives dealing with marine resource and habitat protection, I much prefer the current process that doesn't divorce councils from determining what fishery management rules should be in a sanctuary, especially the Stellwagen Bank Sanctuary that encompasses very valuable, historical commercial and recreational fishing grounds.

**Overfishing, Overfished and Rebuilding**

I applaud your efforts to make a distinction between an overfished and a "diminished" fish stock, the latter term describing a condition not caused by fishing but from some other cause such as a changed environment or other ecosystem effect (pages 63-64). Many non-fishing factors of anthropogenic nature reduce environmental carrying capacity such as dredging, desalination, and entrainment. Such factors rarely are introduced when determining recovery levels of fish stocks. This approach does fit well with ecosystem-based management and will certainly challenge scientists to identify effects - a task that has not been well done for decades largely due to an absence of data needed to make the distinction. Your definition of "diminished" also will challenge assessment scientists to define the "natural range of fluctuation associated with the production of maximum sustainable yield."

However, I do suggest that you amend slightly the section on "Duration of measures to rebuild diminished fisheries." Delete references to "the Secretary determines..." Councils, working with interstate commissions when appropriate, should make those determinations. Keep the rest of the proposed text, but change the last paragraph by removing "substantial." "Substantial" is undefined; therefore, I suggest the following text: "(IV) increases to the rebuilding targets are made after the rebuilding plan has been put in place."

I end with just one summary statement. Changes to the Magnuson-Stevens Act should be made with a full awareness that all states are principal players in regional management. State fisheries agencies are voting members of Councils, and just as important, they are members of interstate fisheries commissions that frequently develop joint fisheries management plans with council counterparts. Whether it be for management or research, it's in the best interest of the nation for states' interests and rights to be respected and not co-opted by the Secretary of Commerce. It's a state-federal partnership that should be respected and strengthened especially as the nation moves towards ecosystem-based management and the demands on state fisheries managers and scientists increase dramatically.

Thank you for the opportunity to comment on this important proposed legislation. I appreciate all the effort you and your fellow Congressmen have devoted to improve the way our nation's fisheries are managed. If I can be of further assistance, please call upon me at any time.

SINCERELY,

PAUL J. DIODATI
DIRECTOR

cc: Massachusetts Marine Fisheries Advisory Commission
New England Fishery Management Council

# LEGISLATIVE HEARING ON H.R. 5018, TO REAUTHORIZE THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT, AND FOR OTHER PURPOSES. "THE AMERICAN FISHERIES MANAGEMENT AND MARINE LIFE ENHANCEMENT ACT"; AND H.R. 1431, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT TO MODIFY REQUIREMENTS FOR THE APPOINTMENT AND TRAINING OF MEMBERS OF REGIONAL FISHERY MANAGEMENT COUNCILS, AND FOR OTHER PURPOSES. "FISHERIES SCIENCE AND MANAGEMENT ENHANCEMENT ACT OF 2005"

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**Wednesday, May 3, 2006**
**U.S. House of Representatives**
**Committee on Resources**
**Washington, D.C.**

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The Committee met, pursuant to call, at 10:03 a.m. in Room 1334, Longworth House Office Building, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Rahall, Saxton, Duncan, Gilchrest, Abercrombie, Pallone, Jones, Christensen, Inslee, Gibbons, Napolitano, Costa, Brown, Melancon, and Frank.

## STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The Committee on Resources will come to order.

The Committee is meeting today to hear testimony on H.R. 5018 and H.R. 1431. Under Rule 4(g) of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. This will allow us to hear from our witnesses sooner, and help Members keep to their schedules. If other Members have statements, they will be included in the hearing record under unanimous consent.

I ask unanimous consent that Congressman Barney Frank be allowed to sit on the dais and participate in the hearing. Without objection, so ordered.

I would like to welcome today's witnesses. I know a number of you have traveled across the country to present your views on these two bills. I want you to know that the Committee appreciates your interest in this important reauthorization.

As all of you know, Congressman Barney Frank, Don Young, and I introduced H.R. 5108 in March of this year. Congressman Rahall, from the great seafood producing State of West Virginia, introduced his bill, H.R. 1431, in March of last year. Despite the fact that he does not come from a coastal state, I compliment him on his bill, and want him to know that I have included a number of provisions similar to those in his bill in H.R. 5018.

In addition, a significant portion of H.R. 5018 comes from the Senate Bill, S. 2012. Both the House and the Senate are on the same path on this reauthorization, and we have worked hard to get a bill that we can all be proud of.

Last week the Committee held a hearing in New Bedford, Massachusetts. We heard a lot of good testimony, and had a good debate on a number of the provisions in H.R. 5018, and in Congressman Frank's bill.

I take all of what was said seriously, and I am glad I had the opportunity to go to New Bedford to hear from that constituency.

While there has been a lot of support for H.R. 5018, there have been a few people that have publicly attacked my bill. I do not take those attacks as constructive criticism or view them as a willingness to work cooperatively. Despite those criticisms, I have offered on many occasions to work with members of this Committee to find areas of compromise. In fact, a number of provisions in the bill are already compromises. However, telling me that I need to take out an entire section is not a compromise.

We have heard on a number of occasions that the North Pacific Fishery Management Council's way of doing business is the model that we should follow. While they are not perfect, they have been doing things well for quite awhile and they should be proud of that.

When they tell us that NEPA compliance is a problem and that the conflict between the Magnuson-Stevens Act timelines and the NEPA timelines are a problem, I take them seriously. If Members have suggestions on how to make any of the provisions in the bill work better, I am willing to listen, but so far I have not heard many productive suggestions.

I remind Members and the outside groups, you have to earn a seat at the table. I am open to suggestions, but I do not want to waste my time with those that are unwilling to have productive discussions.

I will repeat what I have said before. Fisheries management requires a balance. Having abundant fisheries with no fishermen left to harvest this wonderful protein source is unacceptable. Having fishermen with no fish to catch is equally unacceptable.

I look forward to having a productive discussion today and look forward to some of the suggestions that our witnesses may offer on how to improve this bill.

[The prepared statement of Mr. Pombo follows:]

**Statement of The Honorable Richard W. Pombo, Chairman, Committee on Resources**

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We have heard on a number of occasions that the North Pacific Fishery Management Council's way of doing business is the model that we should follow. While they are not perfect, they have been doing things well for quite a while and they should be proud of that. When they tell us that NEPA compliance is a problem and the conflict between the Magnuson-Stevens Act timelines and the NEPA timelines are a problem, I take them seriously.

If Members have suggestions on how to make any of the provision in the bill work better, I am willing to listen, but so far I have not heard many productive suggestions. I remind Members and outside groups—you have to earn a seat at the table. I am open to suggestions, but I do not want to waste my time with those who are unwilling to have productive discussions.

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I look forward to having a productive discussion today and look forward to some of the suggestions that our witnesses may offer on how to improve the bill.

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I now recognize Mr. Rahall for his opening statement.

## STATEMENT OF THE HON. NICK J. RAHALL II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Thank you, Mr. Chairman.

Mr. Chairman, as the Committee begins to assert its role in the reauthorization of Magnuson-Stevens Fishery Conservation and Management Act, I would like to start out by repeating an observation made by the author, John Steinbeck, and I quote, "It has always been my private conviction that any man who pits his intelligence against a fish and loses has it coming."

Indeed, that is really what this reauthorization is all about. The fact of the matter is that today roughly 20 percent of our nation's fisheries are already overfished, experiencing overfishing or approaching an overfished condition. At the same time, in 2004, Americans ate an average of 16.6 pounds of seafood per person. This represents a nine percent increase in the last decade.

Meanwhile, our nation's fisheries support a $60 billion contribution to the U.S. economy and provide jobs for more than a half a million America sustaining the economy and fishing communities such as New Bedford, Massachusetts, where the Committee held a hearing recently.

Finally, we must not just be mindful of the commercial fishery interests in this issue. For instance, I know plenty of anglers from my home State of West Virginia who travel to Myrtle Beach each summer to fish for the sheer tranquility of the sport. More than 44 million American anglers generate $116 million a year in revenue.

So there you have it. We have diminished fish populations and increase in the desire of Americans to have seafood on their dinner tables, and the economic factors, both commercial and recreational, that these fisheries represent.

All these factors are tied into how we proceed on the reauthorization of the Magnuson-Stevens Act. So we are, in effect, seeking to pit our intelligence on the decisions we make during this process against the fish, and as Steinbeck said, if we get it wrong, we have it coming to us because the ramifications will be far-reaching, and potentially disastrous to all interests involved.

We have two measures before us this morning, the Chairman's comprehensive reauthorization bill and my more limited legislation aimed at reforming the act's Fisheries Council structure. The Magnuson-Stevens Act delegates much of the responsibility of the management of our ocean fisheries to regional fishery management councils. Yet when we take a close look at the membership of these councils, incredibly we find it of the 72 council members nationwide, 34 are commercial fishermen. And of these 72 members nationwide, only 10 members can be viewed as not representing fishing interests, bringing with them the ability to make decisions in an objective manner.

In fact, on certain councils, the ratio is much higher. On the North Pacific Fishery Management Council, there are six commercial fishermen and only one recreational fisherman on the council. On the New England Council, two-thirds of the seats are taken by commercial fishermen.

In a year when we are witnessing an increase in the number of deaths in our coal fields, I am forced to pause and reflect about how much leadership and oversight imbalances can adversely affect Federal policies and our citizens. Certainly this Administration's policy of placing a coal company executive at the helm of the Mine Safety and Health Administration, the body charged with overseeing safety at mining operations, has demonstrated potential folly of this practice.

While the fox is guarding the hen house in the mine safety world, it appears that its cousin has been guarding our fishery resources.

It is from that perspective that I introduced H.R. 1431, which includes a U.S. Commission on Oceans Policy Recommendations to Congress as they related to the pressing need to reform these fishery councils. For example, it is clear to me that the committees that are charged with providing scientific guidance to these fishery councils should be comprised of impartial members with scientific expertise.

Further, in order to broaden representation on the councils, Governors should be asked to submit to the Secretary a broad slate of candidates for each council vacancy. These are just two examples of what I view as common sense reforms that will enable the councils to function better in terms of meeting the needs of Americans, both current and future generations.

So I thank you, Mr. Chairman, for including my bill on the agenda today. And with that, your legislation also contains many good features, but just like with the news media, it would bore or viewers to just present good news. Folks often want to know the not so good.

While your bill gives a nod to council reform, it does nothing to address the conflicts of interest, to prohibit voting by council members who have not received training or require council memberships from various sectors. I am certain that this was simply an oversight and that we can work to rectify that situation.

Turning to other sections of H.R. 5018, I have serious concerns about its provisions relating to fishery rebuilding requirements in the Magnuson Act, and as should be expected, I must raise concerns over provisions which would waive the application of NEPA and National Marine Sanctuaries Act.

With that, Mr. Chairman, I look forward to working with you and others Committee members. We need to make sure the fishing remains good, and the catching as well. Thank you.

[The prepared statement of Mr. Rahall follows:]

**Statement of The Honorable Nick J. Rahall, Ranking Democrat, Committee on Resources**

Mr. Chairman, as the Committee begins to assert its role in the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, I would like to start out by repeating an observation made by the author John Steinbeck:

> "It has always been my private conviction that any man who pits his intelligence against a fish and loses has it coming."

And indeed, that is really what this reauthorization is all about.

The fact of the matter is that today, roughly 20 percent of our Nation's fisheries are already overfished, experiencing overfishing, or approaching an overfished condition.

At the same time, in 2004, Americans ate an average of 16.6 pounds of seafood per person. This represents a nine percent increase in the last decade.

Meanwhile, our Nation's fisheries support a $60 billion contribution to the U.S. economy and provide jobs for more than half a million Americans, sustaining the economy in fishing communities such as New Bedford, Massachusetts, where the committee held a hearing recently.

Finally, we must not just be mindful of the commercial fishing interests in this issue. For instance, I know plenty of anglers from West Virginia who travel to Myrtle Beach each summer to fish for the shear tranquility of the sport. More than 44 million American anglers generate $116 billion a year in revenue.

There you have it. We have diminished fish populations, an increase in the desire of Americans to have seafood on their dinner tables, and the economic factors, both commercial and recreational, that these fisheries represent. All these factors are tied into how we proceed on the reauthorization of the Magnuson- Stevens Act.

So we are in effect seeking to pit our intelligence on the decisions we make during this process against the fish. And as Steinbeck said, if we get it wrong, we have it coming to us because the ramifications will be far-reaching and potentially disastrous to all interests involved.

We have two measures before us this morning. The Chairman's comprehensive reauthorization bill, and my more limited legislation aimed at reforming the Act's fisheries councils structure.

The Magnuson Act delegates much of the responsibility of the management of our ocean fisheries to regional fishery management councils. Yet, when we take a close

look at the membership of these councils, incredibly, we find that of the 72 council members nationwide, 34 are commercial fishermen.

And of those 72 members nationwide, only 10 members can be viewed as not representing fishing interests, bringing with them the ability to make decisions in an objective manner.

In fact, on certain councils the ratio is much higher. On the North Pacific Fishery Management Council there are six commercial fishermen, and only one recreational fisherman on the council. On the New England council, two-thirds of the seats are taken by commercial fishermen.

In a year when we are witnessing a distressing increase in the number of deaths in our coalfields, I am forced to pause and reflect about how such leadership and oversight imbalances can adversely affect Federal policies and our citizens.

Certainly, this Administration's policy of placing a coal company executive at the helm of the Mine Safety and Health Administration—the body charged with overseeing safety at mining operations—has demonstrated the potential folly of this practice. While the fox has been guarding the henhouse in the mine safety world, it appears his cousin has been guarding our fishery resources.

It is from that perspective that I introduced H.R. 1431, which includes the U.S. Commission on Ocean Policy's recommendations to Congress as they relate to the pressing need to reform these fishery councils.

For example, it is clear to me that the committees that are charged with providing scientific guidance to these fishery councils should be comprised of impartial members with scientific expertise.

Further, in order to broaden representation on the councils, governors should be asked to submit to the Secretary a broad slate of candidates for each council vacancy.

These are just two examples of what I view as common-sense reforms that will enable the councils to function better in terms of meeting the needs of all Americans, current and future generations.

So I thank you, Mr. Chairman, for including my bill on the agenda today.

With that said, Mr. Chairman, your legislation also contains many good features, but just like with the news media, it would bore our viewers to just present good news.....folks often want to know the not-so-good.

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Turning to other sections of H.R. 5018, I have serious concerns about its provisions relating to the fishery rebuilding requirements in the Magnuson Act. And as should be expected, I must raise concerns over provisions which would waive the application of the National Environmental Policy Act and the National Marine Sanctuaries Act.

With that, I look forward to working with you and other Committee Members. We need to make sure that the fishing remains good, and the catching too.

Thank you.

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The CHAIRMAN. Thank you, Mr. Rahall.

Now I would like to introduce our first witness, Dr. William T. Hogarth, Assistant Administrator for Fisheries, National Marine Fisheries Service.

I would like to remind the witnesses that under Committee Rules we must limit oral statements to five minutes, but the entire written statement will be included in the record.

Mr. Hogarth, if I could have you stand and raise your right hand.

[Witness sworn.]

The CHAIRMAN. Thank you. Let the record show he answered in the affirmative.

Dr. Hogarth, welcome back to the Committee. It is great to have you back, If you are ready, you can begin.

**STATEMENT OF WILLIAM T. HOGARTH, ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE**

Mr. HOGARTH. Good morning. Thank you, Mr. Chairman and Members of the Committee.

My name is Bill Hogarth, and I am the Assistant Administrator for NOAA's National Marine Fisheries Service. Thank you for the opportunity to testify today on two pieces of legislation to reauthorize the Magnuson-Stevens Act, the law which authorizes NOAA to manage or nation's fishery resources.

Management of U.S. fisheries resources has improved since the 1996 reauthorization of the Magnuson-Stevens Act. We have made progress toward reducing overfishing, rebuilding overfished stocks, reducing bycatch, minimizing adverse impacts to EFH, and assessing the impacts of fishery management decisions on fishing communities.

In 2005, 80 percent of the stocks in stock complexes with NOAA status were not subject to overfishing, and 74 percent of the stocks in stock complexes with NOAA status were not overfished. However, we believe the number of changes to the Act are appropriate to further strengthen fishery conservation and management programs.

The Administration appreciates the work you have done on the reauthorization of the Magnuson-Stevens Act. I believe the Administration and Congress are moving in the same direction on many issues. I would like to briefly review some of the Administration's goals and priorities in the reauthorization:

First, the Administration believes you should end double fishing and the achievement of fishery rebuilding based on the biology of species and needs of communities;

Two, we believe in the promotion of a wider use of market-based fishery management tools;

Three, we believe that incorporation of ecosystem-based approaches in the fishery management process;

Four, we believe that strengthen the role of science's decision-making process and to increase our access to social and economic information;

Five, improving the operations as well as broaden and balance the constituent interests represented on the councils; and

Six, improving fisheries' data, especially recreational data.

The Administration supports granting the council's expanded authority to implement limited access privilege programs, or LAPPs. We need to treat fisheries more like businesses and allow greater flexibility to fishermen to determine fishing strategies so that we can improve safety and stop the race for fish.

We believe the councils should have the authority to establish LAP programs for sufficient flexibility to address the unique management needs of their fisheries. Limited access programs that are currently in place have resulted in increases in per unit product value and decreases in harvesting costs for fishermen.

The councils are our partners in the fishery management process, and the Administration believes the council process is effective for achieving sustainable fishery management. It is vital that the

councils are comprised of knowledgeable people representing the breadth of interest in their fisheries. H.R. 5018 would help promote a broader and more balanced representation of constituent interest on the councils.

Unlike the Administration proposal, H.R. 5018 does not include a provision to accelerate a mandate to end double fishing. We believe a deadline to end double fishing be included in the Magnuson-Stevens reauthorization and it is critical for two reasons: One, to prevent a stock from reaching an overfished status; and two, to prevent the need to require rebuilding.

For many years, fishery scientists and managers have advocating using ecosystem approaching to fish and management. The Administration supports language that defines ecosystem, authorizes the councils to take ecosystems into considerations and into account, and authorize the councils to prepare fishery ecosystem. The Administration commends Chairman Pombo for the inclusion of ecosystem-based fishery management provision in H.R. 5018.

The Administration is committed to the development of a national register of recreational saltwater anglers in cooperation with their states to improve recreational catch statistics. A recent National Research Council report emphasized moving forward with this provision. NOAA seeks the authority to register anglers of targeted species that are managed under Federal FMP throughout their range. We would like to work with you to craft the most effective policy to address this critical need.

The Administration supports other provisions of H.R. 5018, including the authorization of Fishery Observer Fund, and measures that address cooperative research, provide bycatch reduction centers, and identify fisheries with excess capacity.

We believe several provisions of H.R. 1431 are consistent with the Administration's priorities. The legislation would prepare a program to expand cooperative research, improve data collection, and improve research and reduce bycatch. The Administration supports collaborative approaches to fishery research, and believe that improved data collection is essential.

In summary, we support the direction in which these bills are headed. We look forward to working with Congress on reauthorization of this important Act, and thank you again for this opportunity to express our views, and at this time I would be happy to answer any questions.

[The prepared statement of Mr. Hogarth follows:]

**Statement of William T. Hogarth, Ph.D., Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce**

Good morning, Mr. Chairman and Members of the Committee. My name is Dr. William T. Hogarth. I am the Assistant Administrator for Fisheries in the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce. Thank you for the opportunity to testify today on two pieces of legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the authority of the Magnuson-Stevens Act, NOAA's National Marine Fisheries Service is responsible for managing our Nation's fishery resources.

The Administration appreciates all of the work that you have done over the past months to move forward on reauthorization of the Magnuson-Stevens Act. I believe that the Administration and Congress are moving in the same direction on many issues important to reauthorization, and I will discuss these issues in my testimony

today. First, however, I would like to review the Administration's goals and priorities in reauthorizing the Magnuson-Stevens Act, and then I will comment on the bills introduced by Chairman Pombo (H.R. 5018) and Congressman Rahall (H.R. 1431).

### THE ADMINISTRATION'S MAGNUSON-STEVENS ACT PRIORITIES

Management of U.S. fishery resources has improved since the last reauthorization of the Magnuson-Stevens Act in 1996. We have made progress towards reducing overfishing, rebuilding overfished stocks, reducing bycatch, minimizing adverse impacts to essential fish habitat, and assessing the impacts of fishery-management decisions on fishing communities. Advancements in the natural and social sciences have enhanced our knowledge and understanding of marine ecosystems and enabled us to improve fishery management decision-making. We believe that fishery managers should possess the tools necessary to sustain our fishery resources for future generations, as well as the industries and communities that depend on them.

The Department of Commerce has testified on several occasions on Magnuson-Stevens reauthorization, giving our views on which provisions have merit—most recently, at a legislative field hearing in Massachusetts. In September 2005, the Administration provided Congress with a proposal to reauthorize the Magnuson-Stevens Act. The Administration's proposal addresses the challenges currently facing our federally-managed marine fishery resources and the communities that depend on them. The President's U.S. Ocean Action Plan was central in the development of the proposal. The views and concerns of stakeholders are incorporated in the Administration's proposal. In 2005, NOAA sponsored a national conference, "Managing Our Nation's Fisheries—II," specifically addressing reauthorization issues. Based upon the input of over 800 attendees, the Administration developed a list of strategic priorities to address in the reauthorization process. Over the past year, NOAA has also been working closely with Congress on a wide range of issues related to Magnuson-Stevens Act improvements. In sum, the Administration's proposal was developed in the larger context of future ocean policy and governance, stakeholder concerns, and Congressional input.

### ADMINISTRATION PRIORITIES

The Administration's Magnuson-Stevens Act reauthorization proposal seeks to achieve the following broad objectives: (1) end overfishing and achieve fishery rebuilding based on the biology of species and needs of communities, rather than arbitrary time schedules; (2) promote wider use of market-based fishery management tools; (3) incorporate ecosystem-based approaches in our fishery management process; (4) strengthen the role of science in the decision-making process and increase our access to social and economic information; (5) conform the Magnuson-Stevens Act regulatory procedures with the objectives of other environmental laws; (6) improve the operations of Regional Fishery Management Councils (Councils), as well as broaden and balance the constituent interests represented on the Councils; (7) improve the collection and use of recreational fisheries data; and (8) enhance enforcement tools so penalties become a real deterrent, rather than simply a cost of doing business.

I was pleased to see many of the Administration's priorities reflected in H.R. 5018, sponsored by Chairman Pombo, and H.R. 1431, sponsored by Congressman Rahall. In my testimony today, I will highlight the provisions in each of the bills that address the Administration's priorities.

### "AMERICAN FISHERIES MANAGEMENT AND MARINE LIFE ENHANCEMENT ACT" (H.R. 5018)

H.R. 5018 addresses a comprehensive range of domestic fisheries management issues, and the Administration supports many of the bill's provisions. The Administration believes a few of these provisions are critical in Magnuson-Stevens Act reauthorization, and I will discuss them in detail. These provisions would: (1) establish limited access privilege programs, (2) broaden Council membership, and (3) authorize ecosystem-based fishery management plans. Each of these provisions is consistent with key Administration priorities, and we are pleased to see these issues addressed in the Chairman's bill. At the same time, the Administration has concerns with some of the provisions in H.R. 5018, and we are prepared to work with you and the Committee, Mr. Chairman, to address these concerns.

**Overfishing and Rebuilding Plans**

We believe that a deadline to end overfishing should be included in the Magnuson-Stevens Act reauthorization. Unlike the Administration's proposal, H.R. 5018 does not include a provision to accelerate a mandatory end to overfishing. The Administration believes a deadline is critical for two reasons: 1) to prevent a stock from reaching an overfished status, and 2) to prevent the need to require rebuilding. Management measures that require an end to overfishing have contributed significantly to the rebuilding of many federally managed stocks, such as North Atlantic sea scallops.

The Administration's proposal to end overfishing within a defined timeframe and allow rebuilding timeframes to reflect the unique life history of the pertinent fish stocks provides appropriate levels of management flexibility to achieve sustainable fisheries. H.R. 5018 identifies additional circumstances to be considered in determining rebuilding schedules, which we believe could inappropriately and unnecessarily slow rebuilding times.

**Limited Access Privilege Programs (LAP)**

In working toward ending overfishing, the Administration supports granting the Councils expanded authority to implement limited access privilege programs for a variety of reasons. Secretary Gutierrez pledged to work with the Fisheries Management Councils to double the number of dedicated access privilege programs by 2010. This goal will bring eight new fisheries under market-based management programs. In the eight fisheries where these programs have been implemented since 1990, fishermen have enjoyed higher profits, lower costs, longer fishing seasons and a safer, more stable industry. Therefore, the Administration believes that the Councils should be able to design management programs using the full range of fisheries management tools available. We believe the Councils should have authority to establish LAP programs with sufficient flexibility to address the unique management needs of their fisheries. At this time, the Magnuson-Stevens Act only authorizes two forms of limited access privileges: individual fishing quota (IFQ) programs, and community quotas (in two specific geographic areas). Second, market-based management approaches have demonstrated success in achieving economic benefits and promoting sustainable fisheries. Limited access programs currently in place have resulted in increases in per-unit product value and decreases in harvesting cost for fishermen. They have allowed fishermen greater control in choosing when to fish, and this increased flexibility allows them to improve profitability by harvesting fish when prices are most favorable. Third, these programs have safety benefits for fishermen. Since fishermen can choose when to fish under limited access privilege programs, they can avoid inclement weather and the "race to fish." For all these reasons, the Administration supports expanding the Councils' authority to implement a variety of limited access privilege programs.

**Cost Recovery for Limited Access Privilege Programs**

While H.R. 5018 outlines the authority to establish limited access programs, it does not authorize the collection of fees necessary to implement these programs. Recent experience suggests that the implementation and monitoring costs of these programs may easily exceed the caps proposed in H.R. 5018. We believe this places an unfair burden on the taxpayers to support these programs. Failure to adequately cover the costs of proposed fishery management actions could preclude Secretarial approval, limiting the expansion of these programs. The Administration's proposal would authorize the recovery of a larger share of the costs in all dedicated access privilege programs.

**IFQs in New England**

Another concern is that H.R. 5018 mandates an IFQ referendum with a 2/3 majority requirement in New England, but nowhere else. Many provisions in current law and regulations ensure an open and transparent debate on the evaluation and choice of management options. Management by IFQ may ultimately be appropriate for some Northeast fisheries but not others. Mandating such a referendum for New England could result in a costly and unnecessary impediment to the implementation of limited access programs in this region. Current law ensures that all stakeholder concerns are addressed in the decision-making process, and places control properly with local institutions responsible for fisheries management.

**Ecosystem-Based Fishery Management Plans**

For many years, fisheries scientists and managers have advocated using ecosystem approaches to fisheries management, whereby management programs consciously account for and address multiple living resource issues within an ecosystem. In 1996, Congress mandated a report to assess the extent to which eco-

system principles are used in fisheries management and research, and to make recommendations to further include them in the management of our Nation's fisheries. The Administration supports this vision and believes we must move towards an ecosystem approach to management. Although NOAA and the Councils have already begun to integrate this approach into fisheries management, we believe that more can be done.

We support reauthorization language that defines ecosystems, authorizes the Councils to take ecosystem considerations into account when developing fishery management plans, and authorizes the Councils to prepare fishery ecosystem plans. The Administration commends Chairman Pombo for his inclusion of ecosystem-based fishery management plans provisions, as we believe that ecosystem-based approaches to management are fundamental to the future of sustainable fishery management.

**Compliance with the National Environmental Policy Act (NEPA)**

The Administration supports study, revision, and updating of relevant Magnuson-Stevens Act procedures to integrate the environmental review processes of NEPA. The Administration supports this approach, which was included in our reauthorization proposal, rather than an exemption of fishery management actions from NEPA requirements.

**Fishing Regulations in National Marine Sanctuaries**

H.R. 5018 requires the review and certification of National Marine Sanctuaries regulations for the conservation and management of fish or essential fish habitat. The Administration firmly believes Sanctuary regulations adequately protect fish and essential fish habitat and does not believe Sanctuary regulations should meet the Magnuson-Stevens Act national standards in all cases, since their mandates differ from the Magnuson-Stevens Act mandates. NOAA is committed to using all its regulatory tools and complimentary authorities to develop comprehensive ecosystem-based management strategies that meet the purposes, goals and objectives for state and federal fishery managers and National Marine Sanctuaries.

**Broadening Council Membership**

The Councils are a key part of the fisheries management process, and the Administration believes the Council process is effective for achieving sustainable fisheries management. It is vital that Councils are comprised of knowledgeable people representing the breadth of interests in our fisheries. H.R. 5018 helps promote a broader and more balanced representation of constituent interests on the Councils by authorizing Governors to nominate Council members from academia or other public interest areas. The Administration supports this provision and believes it would allow a wider diversity of interests to be represented on the Councils.

**Collection of Recreational Fisheries Data**

Finally, the Administration is committed to the development of a nationally coordinated registry of saltwater recreational anglers that would build upon current State-administered programs. Knowing more about the recreational fishing sector will advance our understanding of fishery resources, help improve our scientific assessments, including social and economic impact assessments, and lead to better fisheries management. To establish a registry, H.R. 5018 adopted an incentives-based approach, calling on the Secretary to offer financial incentives to States to encourage collection of recreational fisheries data. The Administration and Senate bills propose a different approach, authorizing the Secretary to collaboratively work with States to establish a national registry, as recommended by a recent National Research Council review of recreational data collection programs. The Administration believes a comprehensive registration of anglers is essential for improving management of fisheries resources. We would like to work with you to craft the most effective policy on this critical need.

The Administration supports other provisions in H.R. 5018, including the authorization of a Fishery Observer Fund, to help pay for fishery observer programs. In addition, we support provisions in this bill that were not included in the Administration's reauthorization proposal. Examples include provisions that would: address cooperative research, identify marine ecosystems, authorize bycatch reduction incentives, and identify fisheries with excess capacity. Further, the Administration believes the proposed harvest level caps in H.R. 5018 could be a useful tool, provided they are practical to implement and enforce in any fisheries in which they are used.

**Law Enforcement**

The Administration's Magnuson-Stevens Act proposal contains a number of fisheries law enforcement provisions designed to deter violations through fines and

penalties. We believe increases in fines and penalties provide an appropriate legal response to serious violations of the Magnuson-Stevens Act.—Fines and penalties must be significant in order to prevent potential violators from simply accepting them as a cost of doing business. The Administration recommends that H.R. 5018 include the increase in fines and penalties as outlined in its proposal.

Again, I would like to reaffirm the Administration's support for many of the provisions in H.R. 5018. We are pleased to see many of our priorities included in this bill. We look forward to working with you, Mr. Chairman, as reauthorization moves forward.

I will now discuss H.R. 1431, the Fisheries Science and Management Enhancement Act, introduced by Congressman Rahall.

"FISHERIES SCIENCE AND MANAGEMENT ENHANCEMENT ACT OF 2005" (H.R. 1431)

H.R. 1431 is narrower in scope than H.R. 5018, focusing largely on the role of science in the fisheries management process, Council membership and processes, and ecosystem considerations in fisheries management. These are important issues, and we agree that improvements can and should be made. The Administration agrees with the goals of H.R. 1431, and we believe that several provisions in the bill are consistent with the Administration's priorities. However, we have concerns about the approaches proposed in a few cases.

**Improving Fisheries Science and Technology**

H.R. 1431 would establish a program to expand cooperative research, data collection, and gear modification. The program would identify ecosystem effects of fishing, provide financial assistance to States to improve recreational fishing data, collect information on the status of stocks, develop fishing gear to avoid bycatch, and provide assistance for fishermen to transition to modified gear.

The Administration supports collaborative approaches to fisheries research and believes that improving data collection is essential for advancing our knowledge of fisheries and marine ecosystems. As data collection improves and our knowledge advances, fisheries managers can further incorporate ecosystem approaches into management decisions. Reducing bycatch also remains an important objective in fisheries management, and we believe that the continued development of technological solutions is critical to solving bycatch problems. In the past, collaboration with fishermen has provided essential information for the design, experimentation, and testing of new and modified gear. For example, collaboration with industry led to the successful development of circle hook technology in the North Atlantic pelagic longline fishery to reduce sea turtle bycatch and development of seabird avoidance technology in the North Pacific longline fishery. The Administration is pleased that H.R. 1431 addresses the need to expand cooperative research, improve data collection to enhance our knowledge of fisheries and marine ecosystems, and help reduce bycatch.

**Broadening Council Membership and Council Member Training**

As I stated previously in my testimony, one of the Administration's objectives in Magnuson-Stevens Act reauthorization is broadening Council membership to include representation of the breadth of interests in the management of fishery resources, including those with a commitment to sustainable fisheries. H.R. 1431 would broaden Council membership by requiring that Governors nominate two nominees each from the commercial, recreational, and "fish conservation public interest sector" for Secretarial appointment to the Councils. While we agree with the objective of broadened Council membership reflected in H.R. 1431, the Administration prefers the approach taken in its proposal, which would provide Governors more flexibility in nominating members that reflect the particular needs of each region and Council.

H.R. 1431 would also require training for new Council members as a prerequisite for voting. NOAA supports, and already provides, training for Council members. The Administration is concerned that requiring training as a precondition to voting will create delays in the Councils' ability to take management action to address timely fisheries management issues.

**Strengthening the Role of Science in Fisheries Management**

Several provisions in H.R. 1431 address the importance of science and peer review in fisheries management. The Administration supports authorizing pay/compensation for members of the Councils' Science and Statistical Committees to encourage qualified scientists to participate. We also support the use of peer-reviewed science. However, we prefer the Administration's proposal, requiring the Secretary and Councils to formalize a peer review process, rather than the provision in H.R. 1431 requiring Secretarial review of the Councils' scientific determinations.

H.R. 1431 would establish a Fishery and Marine Science Subcommittee, consisting of fishery biologists and marine ecologists, within the Scientific and Statistical Committees of the Councils. This subcommittee would determine biological catch limits and other management measures necessary to protect habitat and threatened or endangered species. In developing management measures, a Council would be required to adopt measures that are at least as stringent as (or more stringent than) the measures developed by the newly created subcommittee. Although the Administration strongly supports science-based fisheries management decisions, we have concerns with this provision and its implications to decision-making authority within the current Council process. By concentrating decision-making authority in the hands of a small body, this provision would diminish the authority of the Councils and the participatory nature of the fisheries management process. Finally, we are concerned that this provision does not account for social and economic considerations, as required by National Standard 8.

I would like to reiterate that the Administration supports the objectives of H.R. 1431. We would be happy to work with you, Congressman Rahall, and the rest of the Committee to address these important issues as reauthorization of the Magnuson-Stevens Act moves forward.

**Conclusion**

In summary, when we examine these two bills in light of the Administration's highest Magnuson-Stevens Act reauthorization priorities, we are encouraged in a number of important areas. Specifically, we support the direction in which these bills are headed with respect to: market-based fisheries management, Council operations and membership, ecosystem-based approaches to management, and cooperative science. We look forward to working with Congress on reauthorization of this important Act.

Thank you for the opportunity to present our views on this legislation. At this time, I would be happy to answer any questions.

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The CHAIRMAN. Thank you, Dr. Hogarth.

To start with, obviously this is a very complicated issue with a lot of moving parts, but to start with I would like to ask you if you think it is fair or makes sense that if the rebuilding target substantially changed during the rebuilding time period as in the case where the rebuilding targets tripled in New England, there should be some flexibility for the Secretary to adjust those timeframes.

Mr. HOGARTH. I think that there should be some flexibility, and I think we have utilized some flexibility. I think the key to this is do we rebuilt these stocks in a reasonable timeframe, and that is the key.

The CHAIRMAN. But you believe that there should be some flexibility built into the law?

Mr. HOGARTH. Yes, I think the Administration in its bill has talked about the rebuilding by the 10-year rebuilding timeframe we think is arbitrary, and there are better ways to deal with rebuilding.

The CHAIRMAN. Is there a problem with the current disclosure and recusal provisions in the Act? Do you know of any examples where a council member has violated the current rules? Do you know of any examples of why these provisions should be changed, or do you think there are changes needed?

Mr. HOGARTH. Well, I do not know of any examples and I have been working with the councils now for probably about 10 to 12 years. We make sure that in council orientation we discuss the conflict of interest and recusal rules, and the training that we have set up last October, this was part of it, and we make sure that the RAs and attorneys that sit on the councils, you know, sort of talk to the members and make sure that if it appears that it may be that they are coached in, and making sure that they do not.

The CHAIRMAN. The Administration has requested language regarding the authority to use framework plans. Why is this important? Does the language in H.R. 5018 do what the Administration has requested?

Mr. HOGARTH. I think this is an important issue. The time process to get rules in place is—you know, a fishery management plan is probably one and a half to two years. And we go through this process, and things are changing on the water. But also we set up in that fishery management plan sort of the goalpost, and I think that the framework is important to do annual specifications, do NCs and adjustments that are within the fishery management plan already, and I think it is sort of redundant and time consuming, and I do think that H.R. 5018 is very close with just a couple questions we may have, but I think we can work with the staff to work those out, but I think we are very close in H.R. 5018.

The CHAIRMAN. Let me ask you a question on NEPA. Are the timelines under NEPA in the regulations?

Mr. HOGARTH. Yes, sir.

The CHAIRMAN. Do those regulations have the force of law?

Mr. HOGARTH. It is my understanding, yes, sir.

The CHAIRMAN. Does the Senate language require any change to NEPA regulations or will the timelines continue to be conflicting?

Mr. HOGARTH. Well, I think the Senate language sets up a process by which we are—it doesn't change, no. It just sets up a process that we can—to work with CEQ and others to try to work to integrate the two, Magnuson and NEPA, but it does not make changes.

The CHAIRMAN. If the language does not require any changes to the regulation, how does that provision address the fundamental problem between the two acts?

Mr. HOGARTH. It only sets up the process to do it in the future. It does not do it in the Act itself.

The CHAIRMAN. So it sets up a process to do it some time in the future, recognizing that it a problem, but sets up a process of doing it some time in the future?

Mr. HOGARTH. Right, that we can work with CEQ and to integrate and coordinate the two acts. Yes, sir.

The CHAIRMAN. So instead of being specific as to what Congressional intent is, it turns it over to the Administration to carry it out?

Mr. HOGARTH. Yes, sir.

The CHAIRMAN. I am going to recognize Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman.

I just have two questions for Dr. Hogarth, and I appreciate your testimony as well today.

H.R. 5018, as you know, would redefine the term "overfished" and change the name to "diminish". Diminished would be defined as a population that is below the "natural range of fluctuation" necessary to produce a healthy population.

So my two questions are: What effect would this definition change likely have on fisheries? And number tow, what is the Administration's position on the need for a provision to mandate an end to overfishing?

Mr. HOGARTH. First off, we think the key to any of this we believe is to stop overfishing. I think if you look at the history since

1996, and I looked at it this week, where the stocks that were overfishing was taking place in the year 2000, in 2005, they are now overfished.

So I think the key is you have to stop overfishing. If you can stop overfishing, then you can look at the biology and the life history of the stock to rebuild it. But if you don't stop overfishing, then you are going to do, I think, more dramatic type management measures in the future, and so that is the first thing.

The Administration changes the word "overfish" to "depleted," so we want to take into account that pollution and other things may have an impact. It is not all overfishing, and we want to sort of reflect that overfished is a—it is a fishing happening, but not all things are caused by overfishing.

Pretty much the depleted, we want to make sure that it does not reach a level at which the stock cannot reach maximum sustainable yield on a continual, sustainable basis. So we are pretty close, I think, to working with H.R. 5018, but it is the Administration's position that we have to stop overfishing, use the life history aspects to rebuild.

Mr. RAHALL. Thank you, Mr. Chairman. That is all I have.

The CHAIRMAN. I recognize Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

Mr. Hogarth, in the present statute, in the present Act, how easy will it be without any changes in the present Act as far as overfishing is concerned to end overfishing and compare that to the Administration's language, and I believe the Administration's language has a two-year timeframe to end overfishing.

Can you end overfishing with the present Act or how difficult would it be, and is it realistic to say you can end overfishing as a policy in two years?

Mr. HOGARTH. Well, I think the Administration asked for clarification because we don't think it is clear in Magnuson-Stevens Act what timeframe, and we have had some issues with the courts on the timeframe.

But basically we say that the councils should have basically two years to stop overfishing, and we think that is a realistic timeframe, and that is a critical part of it, as I said earlier, that is a critical part is to stop overfishing. So we do think there should be some clarification and further words in Magnuson-Stevens to give us that authority.

Mr. GILCHREST. If you have in the statute, and we have it in H.R. 5051, which is the Administration's language to end overfishing, our timeframe is one year. Ultimately it would be two years. When you look at the statute or the recommendation from the Administration to end overfishing in two years, what impact would that have on the present act's policy for rebuilding?

The second part of that question is do you believe the rebuilding language in the Act as it stands now gives enough flexibility so that when the stocks are coming back faster, then there can be a change in that policy? There can be more fishing.

Do you think we need to change the language for rebuilding?

Mr. HOGARTH. Yes, I think we need greater flexibility. I mean, so much for those stocks that can be rebuilt.

Mr. GILCHREST. You are saying that there needs to be more flexibility in the language?

Mr. HOGARTH. In the language.

Mr. GILCHREST. As it stands right now?

Mr. HOGARTH. Yes, sir.

Mr. GILCHREST. For rebuilding?

Mr. HOGARTH. We think that 10 year is arbitrary. We think it should be based on the life history of the species, and we think we need that flexibility.

Mr. GILCHREST. You need that flexibility. What would happen to rebuilding timeframe—I guess if we adopt the no fishing language that the Administration has, or end overfishing, how would that dramatically change the rebuilding timeframe language?

Mr. HOGARTH. Well, I think the overfishing is separate from the 10-year timeframe for rebuilding. Overfishing is, like I said earlier, is the key to this because if you continue to overfishing you drive the stocks down and then it is much more difficult to rebuild in most instances.

So we think that we should stop overfishing, and then based on the life history, some stocks will be rebuilt based on their life history in probably four to six years. Some of them that live 80 years plus may need a longer timeframe without having very dramatic impacts on the fishermen and the fishing communities, because we think that having more flexibility in rebuilding——

Mr. GILCHREST. You don't think the language as it stands now is flexible enough?

Mr. HOGARTH. No, sir.

Mr. GILCHREST. In the Administration's bill and also in H.R. 5051, you pursue over the course, I believe, it is 24 months to develop criteria for an ecosystem fisheries management plan which then the councils would be required to adopt but not required to implement.

Could you describe the differences between the Administration's language for ecosystem fishery management plans and the bill before us today?

Mr. HOGARTH. The Administration's bill, and by the way we think that the two bills are probably pretty close, but in the Administration's bill we do develop criteria, and we are in the process of initiating that development of these criteria now. But we think that the bill needs to recognize ecosystem management is the tool today, and it is the approach and most countries are going toward managing ecosystems.

But there should be some criteria as to how you are going to look at habitat, how you are going to look at bycatch, how you are going to look at the prey. So we think that should be done in an open process with the councils and with the general public, and so that is why we are trying to move in that direction.

We do think that the councils should be given some leeway and it doesn't need to be required to do ecosystem plans in all instances because I think in some stocks in some instances you would not want to do ecosystem, or would not be able to do it within the budgets that we have today.

Mr. GILCHREST. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Christensen.

Ms. CHRISTENSEN. Thank you, Mr. Chairman.

This issue is one that is of great concern to me and my constituents, and Dr. Hogarth, you have heard from me, from several of them in the past that is of particular concern to our fishing community.

From the point of view of fishing in the Virgin Islands, fishery management as determined by the councils has been uneven at best, and sometimes really restrictive against the Virgin Islands. While we have been able to reach some compromise on some issues with a lot of effort, we have seen some decisions which cover fisheries in the U.S. V.I. and Puerto Rico that have been very restrictive against the Virgin Islands fisheries, even when scientific evidence demonstrates otherwise and sometimes using scientific evidence that our fishing communities says does not come from the territory. It comes from Puerto Rico, may come from somewhere around the Florida Keys.

Most recently, a decision that we must participate in closure of 30 percent of closures in our area, even though we have already closed so many areas due to monuments, and others to restore our fisheries, and we really are very concerned about that. So we are hoping that through these bills one or the other of them find a better way to restructure the operations of the councils so that before they issue fishery management plans the input and consideration of affected stakeholders will be given more consideration.

In the case of the Caribbean Fisheries Management Council, you know, some of the waters around the Virgin Islands and Puerto Rico often yield restrictions in part because the Commonwealth of Puerto Rico has nine miles out, authority over nine miles, and we only have three, and I just want to bring that up because we do have legislation pending before this Committee that would take the Virgin Islands authority out to nine miles as well, and this may in some regard address the concerns and the issues that we have.

But I guess one of the concerns that we have had in the Virgin Islands is whether the decisions of the Caribbean Fisheries Management Council can be effectively appealed. It seems to us that once the council has made a decision to close a particular area from fishing, that that decision is final, and would either of those bills address that concern and allow for a more effective appeal process?

Mr. HOGARTH. Not that I am aware of, but there are processes built in already. For example, if a council member wants to send in a minority report that he disagrees with the decision, he can send a minority report in which will go into the record and will be considered by us when we go through the public process. But there is no new appeal process that I am aware of in this bill, either bill.

Ms. CHRISTENSEN. Well, in part, the problem may be due to the makeup of our fisheries council, and I think H.R. 1431 outlines how those people are to be decided upon, and that may help some of that because we don't currently actually have a Virgin Islands fisherman or fisherwoman on our council. So I think the designation of how to choose the council members will be helpful to us.

My constituents also are concerned that in looking at—I am not sure if both of the bills or one of the bills—that they would give NOAA more power to declare overfishing and to apply the restrictions rather than the council, that it would give NOAA. As a

matter of fact, I don't know if you are familiar with Dr. Olsen, but in his working with the fishermen they are concerned that in this legislation before us it would give NOAA more authority. Do you see that?

Mr. HOGARTH. I don't, and I will check into that and get back to you later, but our own thinking on these bills, or the Administration bill, is that to end overfishing, we already have that authority to notify the councils and they have to take action. We just want to do that quicker.

But we still—the Administration supports the council process. I don't think—I am not aware where we have taken any authority away from the councils. That is not our intention.

Ms. CHRISTENSEN. OK. Do both of those, in your opinion, offer a variety of management approaches or does ending overfishing mean closing an area?

Mr. HOGARTH. I think that to end overfishing you would use the many tools that the council has. It could be primary closures. It could be bag limits, size limits. There are many ways to end overfishing, and I think the council has the prerogative to use any of those tools that they want to.

I think several of these bills and the Administration bill, too, talks a little bit about capacity, because I think the capacity in the harbors, the wild resources today in most, and it not always the case, but in most instances exceeds the ability for the stocks to rebuild, and so the capacity is an issue that we have to deal with for the long term.

Ms. CHRISTENSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Saxton.

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

Mr. SAXTON. Thank you, Mr. Chairman.

I want to begin by thanking you for holding this hearing this morning. The last time we reauthorized Magnuson-Stevens I was Chairman of the Subcommittee on Oceans, Fisheries Conservation and Wildlife, and we used this hearing as a starting point to bring together the stakeholders in the Magnuson-Stevens process, and I believe came out with a better bill because of the collaboration that took place at that time.

So I thank you in that spirit for holding this hearing this morning, and I am hopeful that it represents the beginning of a similar process. But I do have some concerns with the provisions of H.R. 5018, and if you will permit me, rather than to ask a question, I would just like to very quickly run through these.

First, I believe that the rebuilding provisions, particularly when combined with some of the definition changes made in the underlying bill, would make it far more difficult to implement management measures needed to rebuild overfished populations.

Second, the bill contains a section that would place the priorities of the fisheries management councils above the priorities of our national marine sanctuaries managers.

Both of these programs are vitally important, each with their own different mandates, and I would much prefer to see the

National Oceanic and Atmospheric Administration work to develop a system that will ensure both programs are a success.

Third, the bill includes a section virtually identical to the current NMFS guidance on habitat areas of particular concern, only eliminating a key part of that guidance related to the impacts of development. Without coastal habitat, we have no fish, and that has always been something that is on my mind, particularly representing a densely populated district along the New Jersey coast.

Last, I believe that everyone in this room is aware that there have been issues having to do with the implementation of the provisions of Magnuson-Stevens in accordance with NEPA requirements.

NEPA was not designed for dynamic resource management such that is necessary here, but that does not mean that the intent of NEPA should simply be waived. Recognizing the need to develop and implement management procedures in a more timely manner I believe it is important to encourage the Council on Environmental Quality and NMFS to work together to facilitate the fisheries management decisionmaking process in a manner that will comply with both mandates. I believe the Senate bill, as a matter of fact, contains such a provision.

I do also believe that H.R. 5018 contains some very positive elements, particularly in relation to improving the role of scientific and statistical committees and scientific peer review program.

Finally, I must admit I am frustrated, as are many others, that our fisheries management system continues to simply react to one disaster or fisheries failure after another. From New England groundfish to coastal sharks to Red Snapper in the Gulf, our managers are always responding to overfishing rather than acting proactively to prevent it. I see some smiles in the audience because people have heard that speech from my lips before.

Our current approach of employing narrowly targeted management tools to achieve fleet structure in composition often leads to unforeseen consequences for participants, communities, the fisheries resources, and the fisheries resources upon which they depend. The reauthorization provides in this instance a significant opportunity to do something proactive.

A recent White House conference in cooperative conservation highlighted the benefits and successes of using a collaborative process. Such processes are particularly effective and are helping in diverse contending interests reach agreement on implementation decision. We should take this opportunity to specifically authorize the development of guidance in a framework so that our councils can take advantage of such an important tool to create and guide the implementation of the long-term vision for fisheries under their jurisdiction.

Mr. Chairman, thank you for permitting me to make this statement this morning, and I look forward very much to working with you as we move forward.

[The prepared statement of Mr. Saxton follows:]

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

Thank you Mr. Chairman. I appreciate the opportunity to make a statement this morning.

I do have to express my concern and disappointment at having not been included or consulted in any way in the development of either bill under consideration today.

Historically, development of Magnuson-Stevens and other oceans legislation by this Committee has been bipartisan, with significant input from Members representing coastal areas. I thank the Chairman for holding this hearing and I am hopeful it represents the beginning of a similar process.

I do have some concerns with provisions contained in H.R. 5018.

First, I believe the rebuilding provisions—particularly when combined with some of the definition changes made in this bill—would make it far more difficult to implement management measures needed to rebuild overfished populations.

Second, the bill contains a section that would place the priorities of the Fisheries Management Councils above the priorities of our National Marine Sanctuary Managers. Both of the programs are important—each with their different mandates. I would prefer to see NOAA work together to develop a workable system that will ensure both mandated programs are a success.

Third, the bill includes a section virtually identical to current NMFS guidance on Habitat Areas of Particular Concern—only eliminating a key part of that guidance related to the impacts of development. Without coastal habitat, we have no fish.

Lastly, I believe everyone in this room is aware there have been issues implementing the provisions of Magnuson-Stevens in accordance with NEPA requirements. NEPA was not designed for dynamic resource management—but that does not mean that the intent of NEPA should simply be waived. Recognizing the need to develop and implement management measures in a more timely manner, I believe it is important to encourage the Council on Environmental Quality and NMFS to work together to facilitate the fishery management decision-making process in a manner that will comply with both mandates. I believe the Senate bill contains such a provision.

I do also believe H.R. 5018 contains some positive elements—particularly in relation to improving the role of the Scientific and Statistical Committees and the scientific peer review process.

Finally, I am frustrated—as are many others—that our fisheries management system continues to simply react to one disaster or fisheries failure after another. From New England groundfish to coastal sharks to red snapper in the Gulf—our managers are always responding to overfishing rather than acting proactively to prevent it. Our current approach of employing narrowly targeted management tools to achieve fleet structure and composition often leads to unforeseen consequences for participants, communities and the fishery resources on which they depend.

This reauthorization provides a significant opportunity to do something proactive. A recent White House Conference on Cooperative Conservation highlighted to benefits and success of using collaborative processes. Such processes are particularly effective are in helping diverse, contending interests reach agreement and implement decisions.

We should take this opportunity to specifically authorize the development of guidance and a framework so that our Councils can take advantage of such an important tool to create and guide implementation of a long-term vision for fisheries under their jurisdiction—focusing on what fleets should look like when a fishery is rebuilt, taking our communities and resource conservation needs into account.

There are other provisions that provide for cooperative, voluntary approaches to fisheries management challenges contained in other legislative proposals also deserve the Committee's attention.

Thank you again Mr. Chairman for holding this hearing. I do hope this is the beginning of a process in which we can work together to develop a broadly supported bill.

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The CHAIRMAN. Thank you. Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman, and let me also thank you for having this hearing today because it is very important to our district and to fisheries management obviously around the country, or even internationally.

I wanted to ask Dr. Hogarth a few questions, and I am going to try to get them all in here, so work with me if you can.

In your testimony, which of course I missed, I wasn't able to get here until after, you state that the Administration's position on

developing a new recreational data collection system is to establish a national registry of anglers. I wanted to ask two things.

Would such a registry be mandatory? And second, does the Administration intend to impose a fee on individual recreational anglers for the right to fish?

During a Congressional staff briefing last year, your staff cited a figure of $25 to $35 a year for this fee. Is that number accurate?

Mr. HOGARTH. First off, we have had many difficulties with the MRFSS system in collection recreational——

Mr. PALLONE. You know, I could interrupt you and say that my second question, which you can kind of throw in with all this, is whether you believe the MRFSS system is at all appropriate for making stock allocation decisions for the recreational sector.

Mr. HOGARTH. Well, that helps.

Mr. PALLONE. OK, I will throw that in.

Mr. HOGARTH. The MRFSS system was developed to look at long-term trends in recreational fishing, and as we develop quotas it had to go to, you know, management and quotas. That was the only system in place, and so it was not intended to do quota monitoring, but it is the best available science we had to do it.

The industry has become very concerned about the use of this, and so we funded a study with the National Research Council which took a little over a year, about a year and a half, that just made the report back to us in which they had some serious problems with MRFSS system, and one of the biggest one was that in using the MRFSS system, it is sort of a complicated system, you take the telephone book, and you call people to ask them if they had been fishing, you know, all across the country. That is the universe that you deal with, and NRC felt like one of the major problems and some of our recreational fishermen is that the universe should be people that fish, you know, because you go to the dock, and get what is being caught now.

So the recommendation was that we need to go to a type of recreational registry or license, and we call it an angler registration. We want to use the states that have it. If a state has a recreational license or registration, then it would fulfill this responsibility. Then the Federal government would do nothing as long as the states would allow them. The states that do not have a registration we ask for the authority to establish one if the states do not.

Now, the cost is minimal. It is probably around 22 to 25 dollars. The money that comes from that is—we are only allowed collect what is the costs of administering the registration, and then it goes to the general treasury.

As far as I am concerned, I don't care what we charge for or don't charge for. We need a registration so we can get accurate recreational data.

Mr. PALLONE. So would it then be mandatory in a sense?

Mr. HOGARTH. It would be mandatory.

Mr. PALLONE. It would be?

Mr. HOGARTH. Yes, sir.

Mr. PALLONE. All right. Then let me just ask you the third question, and that is all I have. It relates to the same thing. Most of the legislative proposals for Magnuson-reauthorization include what is know as a hard TAC under which the law requires councils

to set firm total allowable catch limits. The differences come in the payback or enforcement provisions included with the hard TAC.

So how is this statutory hard TAC provision different from the council's current practices, but even more important, Doctor, with out more accurate recreational catch data than what we get from MRFSS, which we have already talked about, how can we justify requiring the hard TAC for recreational fishermen?

Mr. HOGARTH. Well, first off, we are going to fix the recreational data. You know, I am committed to it and we got a process started already. We will fix that issue.

The second thing is that I think it cancels set TACs, but the problem is if you exceed it, basically so far there are no teeth in the law that says you subtract it or your overages and things like that. So what we are trying to do is to get Magnuson to really give more guidance and criteria to what the councils can do and what they should do. And so, you know, that is one of the tools. Hard TACs is one of the tools, but it seems to be one of the most effective tools that we found to rebuild stocks.

Mr. PALLONE. In other words, you feel that with MRFSS it would be difficult to justify hard TACS.

Mr. HOGARTH. Right.

Mr. PALLONE. But you feel that you are going to establish this new data collection system, and because that is, in your opinion, going to be an improvement, it would justify the hard TACs?

Mr. HOGARTH. Yes. I think hard TACs in certain instances are the way we have to go. The agency and other type things, it is a whole lot easier to get around. You have to have a limit the fishermen can catch, and hold them to it.

Mr. PALLONE. And I guess I should reiterate, since I have a couple of seconds left here, that there is 100 percent opposition to this recreational fee or license, I guess you know that, in my district and throughout the state, and I won't speak for the rest of the country, but I am probably not telling you something you don't already know.

Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Jones.

Mr. JONES. Mr. Chairman, thank you very much, and I couldn't help but think Mr. Hogarth has come a long way since his days in North Carolina, but I am really pleased and proud to say that I knew you then, and I know you now, so thank you very much for your leadership.

Mr. Hogarth, this is such an important reauthorization act, and where do you see, do you think the commercial fishermen of this country, the American commercial fishermen, are they at a crossroads?

Mr. HOGARTH. I think there are some real tough decisions that have to be made for the commercial industry. I think the commercial industry in this country needs to survive and needs to be a vital part of providing healthy seafood that the Federal government keeps telling me the American public eat, and right now we are importing about 78 percent of that, and I think it is extremely important for us to stabilize our commercial fishing industry.

So I think we are at a crossroads. I think we have to use some of the more modern techniques that are available. We have to learn

from some of the countries like Iceland and others have done to stabilize their fisheries with dedicated access to, you know, processors.

But yes, we have to with the commercial industry. We have to rationalize these fishers to the point where they can fish, they can make some of the decisions. If the weather is bad today, then they can't think, well, I have only got five days to fish this month, so I have to go risk. We have to build into this system ways to—it is a business. We operate—you know, I think the Chairman t his morning said $60 billion. This is a $60 billion industry for this country, recreation and commercial, and while harvest is extremely important to the supply of healthy seafood.

But we are at a crossroads. We have to make some tough decisions, and if we don't make them, we are only hurting the commercial industry's future, but they are not profitable, they do not have the money to buy insurance to maintain, so we are at a crossroads where we need to rationalize the fisheries, make them stable, make them be able to supply the market 12 months a year, not six months a year as we do right now basically with Red Snapper and some of the other stops, so we are at a crossroads, in my opinion. But we are going to make it with you all's help.

Mr. JONES. And so you feel that Mr. Pombo's bill is taking the big step to try to bring some stability to the commercial fishing industry. You feel that this is legislation now or could be added, or are you satisfied with the language?

Mr. HOGARTH. No, I think there are a couple of things that we think we need to do that we have some concerns with, and that is, as I explained earlier. In the Pombo, Congressman Pombo's bill, we think we need to have a more timely and definitive timeline to end double fishing. We think that is critical because we have to stop double fishing.

And it doesn't mention anything about collection of recreational data, and we do have to have good data to make proper decisions, and that is one thing that I think MRFSS has been criticized, and we need to correct that problem.

But I think that this bill in combination with the Senate bill in conference that you can come out with an excellent Magnuson bill from Congress this year that we would all be very happy with.

Mr. JONES. Mr. Chairman, thank you very much.

The CHAIRMAN. Thank you. Mr. Melancon.

Mr. MELANCON. Thank you, Mr. Chairman. I want to apologize being in and out. I have a lot of people from Louisiana, just like the fisheries people, that have been in and out of my office for the last eight months, and I am still meeting with them on a daily basis because of their frustration of what our government is not doing, and fisheries is included in that what they are not doing to help get us back.

I could give you a list of stories of how SBA comes out and tells a shrimper that unless he can produce the records of his catch last year, which he obviously didn't have any to speak of, they can't make him a loan, and, well, can you loan me the money to get my boat off the levee, they are telling him they can't do that because they can't produce the records because there are no records. And if they did have the records, they went with the house. They have

a boat and that is all they can prove that they have that they were a shrimper. So there is quite a frustration there.

You know, the Byrd Act was amended. These shrimpers that were at least having some hope that they might get some monies for the dumping now—I mean, that is going to be, I guess, taken out gradually over several years, but the games have been played there, and now not having that ability to get Byrd from it is just taken out gradually over several years, but the games have been played there, and now not having that ability to get Byrd funded.

It is just putting the fisheries, commercial fisheries particularly, the shrimping industry along the Gulf Coast, deeper and deeper and deeper in debt with no light at the top. It is just getting worse.

I think we need to do some amending of the bill, and I stand ready to do that, and hope that we can find some good compromises on those issues that are sticky, and try and make sure that we keep American fisheries alive.

Thank you. I yield back my time.

The CHAIRMAN. Thank you, Mr. Melancon.

Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman, and thank you, Dr. Hogarth.

My questions might be a little different in direction than the other questions, but I am concerned, I guess, about the ecology in fishery area, particularly, I guess, in reference to the gentlemen from Louisiana.

Have you seen the difference in the reproduction ability in the Gulf with the—with the oil drilling?

Mr. HOGARTH. I don't think that we have the data to separate out. We did sampling after the hurricanes, and we saw most stocks increased about 20 to 30 percent. A lot of that is probably due to the fact that there was no effort, you know, fishing effort at all at the time. But we are trying to work with Congress on money and it is in the President's budget to do more work in the Gulf with what we call SEMAP, to look at the actual small fish that would be impacted by oil and gas, and by the L&G facilities. That is in the President's budget, and we hope to expand that work.

We feel like there is additional work to be done, but to answer you definitively now, we did not have the data to show any impact, though we do not see an impact we can attribute to oil and gas.

Mr. BROWN. OK, which means that you don't really sense a negative impact?

Mr. HOGARTH. No.

Mr. BROWN. OK. I know that some of the agent counterparts are using alternative means of producing super ponds or whatever. Do you sense this could be an opportunity for America?

Mr. HOGARTH. The Administration has an aquaculture bill 2005, it is called Aquaculture 2005. It has been introduced in the Senate. It has not been introduced in the House, and we think there is great potential in this country for aquaculture, and we think it is great potential for also aquaculture potentially to get out of some of the environmental issues and you know, high-price property, and we feel that it has to move in that direction.

We cannot produce the seafood in this country we need from wild harvest. I don't care what you do basically. You cannot produce the

amount of seafood. So we need to do aquaculture in combination with the wild harvest, and some of the fishermen could do both, in our opinion, and we think we could get more self-sufficient in seafood, but it is an important issue for us, and I think this country needs to address it, and I hope that Congress will pass the aquaculture bill this year. It is a top priority of the Secretary of Commerce and the Administration.

Mr. BROWN. Mr. Chairman, if I could just ask one further question.

On the amount of seafood that we actually produce is some 60 billion a year. Do you have a number of exactly how may dollars worth of seafood we consume in—I guess I am trying to find exactly, you know, what is coming out of our domestic resources versus imports?

Mr. HOGARTH. Yes, I would rather get back than give you a number off the top of my head. I know our trade deficit is between eight and nine billion dollars a year, and about $35 billion a year to Gross National Products from the seafood industry, but let me get you exact numbers on what we product and what we import, and I will get back to you on that.

Mr. BROWN. OK, thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Costa.

Mr. GILCHREST. Just two follow-up questions, Mr. Chairman.

The CHAIRMAN. Mr. Gilchrest.

Mr. GILCHREST. Mr. Hogarth, if you end overfishing, does the rebuilding timeframe become less important, and if you don't end overfishing, do you still think that the extra flexibility for rebuilding timeframe, the language for rebuilding timeframe as proposed in the present bill before us today is warranted or will help the stock assessment?

Mr. HOGARTH. I think if you go to flexibility and rebuilding without ending overfishing, you are going back, you sort of go backwards. I think it will be worse than better. I think the key to this again is to stop overfishing and then it gives you more flexibility based on the life history to rebuild stock. It gives you more flexibility.

Mr. GILCHREST. So the fundamentals to the reauthorization is that one single item, end overfishing?

Mr. HOGARTH. It is one of the most important to me, yes, sir, and I think it is to the industry because if you look—like I said earlier, I can give examples. If we don't stop overfishing, the stocks so further down, and then we have to do more dramatic management measures to try to get it rebuilt back up, and it takes longer, and it has more impact on the industry.

Mr. GILCHREST. I think you are correct. I think that is the glue that is going to hold this house of cards together. Without that, I think we are still back with a whole range of difficulties that we will continue battle over for years to come.

I would like you to comment on the need for processing. In your testimony and in answer to some of the questions, you talked about the integration of NEPA with the fishery management plan process, and the review of that in the two bills, H.R. 5051 and the Senate version, basically takes a look, I think it is a year timeframe, to see where there is unnecessary redundancy and integrate that

into the process, and then the administration with CEQ, and certainly Congress would be a part of that process, could understand how we could make it less bureaucratic, less onerous, but not take away from the ecological and the biological necessities of restoring and sustaining fisheries.

I guess my question is would you—what is your comment to having the Secretary be essentially the sole source of that process, the Secretary making the decision that we don't need NEPA in this fishery management plan?

Mr. HOGARTH. Well, I think if the Secretary is given that responsibility, I can assure you that we would do it in combination with other agencies and with CEQ.

The Administration really wants to see the redundancies reduced in the process, and there are some overlaps and redundancy, but we want to make sure that the process considers the environmental effects, and that is I think a key is to consider the environment effects, and we have to maintain some of the NEPA standards, but we do need more efficiencies.

So I think what we would like to see is a process where we look at what other agencies have done, how they worked through this process, and Magnuson is a very thorough process, very public-involved processes. I think Magnuson does a lot, but Magnuson does not require you to look at alternatives and things like that that I think we need to consider these environmental effects.

So totally to delete or put Magnuson or that Magnuson fulfills NEPA, I think leaves some holes, and that is what we are concerned about.

Mr. GILCHREST. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. All right. Well, thank you, Dr. Hogarth. We appreciate your testimony and answering the questions. If there are further questions that this Committee has, they will be submitted to you in writing, and if you could answer those in writing so that they can be included as part of the hearing record.

Mr. HOGARTH. Thank you, Mr. Chair.

I would just like to say one thing to the Congressman from Louisiana. We are and have been working with the state directors, and we are hoping that out of this process going on on the Hill now that we will be able to work further with the industry. It is hurting, and needs help, and we want to do everything we can.

I have used everything I have in my power to help, but we sympathize with the plight of those fishermen.

Thank you, Mr. Chairman, for the opportunity to be here.

The CHAIRMAN. I would now like to introduce our second panel of witnesses. Panel 2 witnesses include: Ms. Wilma Anderson, Executive Director, Texas Shrimp Association; Dr. Don McIsaac, Executive Director, Pacific Fishery Management Council; Mr. Lee Crockett, Executive Director, Marine Fish Conservation Network; Ms. Maggie Raymond, Associated Fisheries of Maine; and Mr. Chris Oliver, Executive Director, North Pacific Fishery Management Council.

If I could just have you all stand and raise your right hand.

[Witnesses sworn.]

The CHAIRMAN. Thank you very much. Welcome to the Committee. Ms. Anderson, we are going to be begin with you.

**STATEMENT OF WILMA ANDERSON, EXECUTIVE DIRECTOR, TEXAS SHRIMP ASSOCIATION**

Ms. ANDERSON. Good morning, Mr. Chairman, Members of the Commission, I am Wilma Anderson, Executive Director of the Texas Shrimp Association, and I hold a seat on the Board of Directors of the Southern Shrimp Alliance, a coalition of eight wild shrimp-producing states from Texas to North Carolina. We are proud of our big part of our nation's domestic fishing and seafood production heritage.

Mr. Chairman, our fishery continues to be well managed, and our shrimp stocks are large and healthy. We are compliance with sea turtle and other mandates. We produce a high-quality, health product for the consumer. Even though we are not overcapitalized, there are many external forces that threaten our industry's survival.

The last time I testified before this Committee, I reported that the gulf shrimp industry was generating about $5.2 billion in economic impact, and 190,000 jobs in 1980. By the year 2000, the total economic output of Gulf and South Atlantic shrimp had grown to $9.95 billion. The NMFS fisheries in the United States report on U.S. shrimp landings indicates our fishery was the most valuable in the U.S. in the year 2000.

However, by 2002, the value of the U.S. shrimp harvest and dockside prices plummeted 50 percent. Shrimp processing sector employment fell over 40 percent. By 2003, the total economic output of the Golf and South Atlantic shrimp had fallen to 5.5 billion, a net annual loss of 4.2 billion since the year 2000.

What was behind this downfall? Illegal imports. In February 2005, in a petition filed by the Southern Shrimp Alliance, the U.S. International Trade Commission finalized its unanimous decision that found six countries guilty of violating the U.S. antidumping law.

Unfortunately, despite the powerful action taken by the ITC, the flood of shrimp imports continues today at a rate of over one billion pounds per year from these six countries alone. The U.S. dockside prices remain artificially depressed.

Last year brought the hurricanes and unprecedented devastation to our communities, our industry, and our fishing grounds. Gulf shrimp landings in 2005 fell another 35 percent from 2004.

We are immensely grateful for the personal attention this Committee and many in Congress have focused on this terrible catastrophe. Mr. Chairman, now we have a fuel price crisis. The cost of fuel is our primary cost of production. We cannot pass this cost on to consumers because our market is artificially controlled by imports.

Mr. Chairman, we certainly have our hands full with these difficult challenges, and so you might wonder why we focus on the Magnuson Act at this point. The reason is that our fishery, along with the other American fisheries, has something very important at stake in this reauthorization process.

We read a lot in the press about how the environmental community is pressing hard to make the Act more narrow and rigid. For those of us who deal with the real world fishery management, we feel their ideas will be counterproductive if enacted. Fisheries are incredibly diverse, and fishery policy must accommodate that diversity. We need better science, more flexibility, and some common sense if we are going to improve this Act.

Mr. Chairman, I have included in my written testimony a number of concerns and suggestions regarding our fishery, including the Gulf Council's action on Red Snapper bycatch which needs serious attention. This morning I would like to address just one of these issues in detail which may have broad implications for a number of provisions in your bill and in the Act.

As fishery goes, shrimp are a bit unusual biologically in that they are an annual specie. They reach harvestable size of maturity within their first year of life, and few live beyond one year. The success of a given year class is driven by environmental conditions, not fishing effort. These biological realities have important management and policy implications that should be incorporated into the Magnuson-Stevens Act.

For example, or fishery is not managed by an annual catch or catch limit or TAC. Instead, it is successfully managed to achieve a minimum escapement of adult shrimp from the estuaries to offshore areas to ensure good production the following years.

Mr. Chairman, we appreciate your apparent recognition of this reality in the provisions that require annual catch limits set forth in Section 3 of your bill. We note the specific language that limits this requirement to those fisheries for which an annual catch limit can be established. We hope the intent of this language is to correctly exclude our shrimp fishery from this annual catch limit requirement.

Still given the political forces we face, particularly on the Gulf Council, we worry that an annual catch limit could be established arbitrarily even though there is no scientific or management justification for it. Perhaps we could work with you and your staff to make certain this provision does not apply to the shrimp fishery.

For the same reason, the basic concept of maximum sustainable yield is not entirely relevant to our shrimp fishery because there has been no demonstrated effect of fishing effort of annual shrimp yield. The fundamental concepts overfished, overfishing, and optimum yield, which all are tired to MSY, may need to be reevaluated in the context of shrimp biology.

In a previous Congress, consideration was given to directing the National Academy of Sciences to evaluate this unique situation and recommend a legislative solution. Perhaps this approach would be useful again.

Mr. Chairman, there is one final point I would like for you and your Committee to take from my testimony today. While the shrimp industry may be down and faced with many tough challenges, we are by no means down and out. We could certainly use a hand and hope that the pending supplemental appropriation bill will provide one, but what we don't need right now is legislation that will hamstring what is already a very difficult management process.

We commend you, Mr. Chairman, and our good friend, Mr. Ortiz, Mr. Young and Mr. Frank, who have sponsored these bills. I think it moves in the right direction. We look forward to working with you and your fine staff on the important issues I brought to your attention.

Thank you, Mr. Chairman. This concludes my statement.

[The prepared statement of Ms. Anderson follows:]

**Statement of Wilma Anderson, Texas Shrimp Association, on behalf of the Southern Shrimp Alliance**

Chairman Pombo, Members of the Committee, I am grateful for the opportunity to speak today on behalf of the Southern Shrimp Alliance, which is an extraordinary coalition of U.S. shrimp fishermen, processors and the associated shoreside infrastructure from all eight of the warm water shrimp producing states, from my home State of Texas to North Carolina.

SSA was formed in recognition of the many severe threats to the survival of the domestic wild-caught shrimp producing industry. Our purpose and commitment is to preserve the long term viability of one of our nation's most valuable fisheries; one that has for decades been a foundation of the economy and social structure of countless coastal communities throughout the Gulf and Southeast regions. We are proud to be a large part of our Nation's domestic fishing and seafood production heritage.

I would also proudly note that warm water shrimp continues to be a well managed and healthy resource. Our fishery is in full compliance with our sea turtle and other bycatch mandates, at great cost, I would note. Our shrimp stocks are large and healthy—well above the overfishing index level, and are not overfished nor approaching a state of being overfished. We produce a very high-quality and healthy product for the consumer. Despite all this good news, our industry is faced with a host of external forces that literally threaten our very survival.

Mr. Chairman, the last time I testified before this Committee in 1999, I referenced the results of a 1989 report by A.T. Kearney that estimated the Gulf shrimp industry was then generating direct and indirect annual impacts of about $5.2 billion in sales, over $2 billion in income, and about 190,000 jobs.

More recently, our analyses indicate that by the year 2000, the total economic output of Gulf and South Atlantic shrimp had reached $9.95 billion. The NMFS "Fisheries of the United States, 2000" report on U.S. shrimp landings cites this as the most valuable fishery in the United States.

Since then, things have really come apart. By 2002, the value of the U.S. shrimp harvest plunged over 50% and the average dockside price for shrimp dropped nearly as much. Employment in the U.S. shrimp processing industry dropped over 40 percent during this same period.

One year later, in 2003 the total economic output of Gulf and South Atlantic shrimp had fallen to $5.5 billion; a net annual loss of $4.4 billion since the year 2000.

What is behind these shocking statistics? The answer is very simple. In February 2005, in response to a petition filed by the Southern Shrimp Alliance, the U.S. International Trade Commission finalized its unanimous decision finding six countries guilty of violating U.S. antidumping laws, and imposed antidumping duties on their imports of farm-raised shrimp to the US. For the record, these six countries are Thailand, China, Vietnam, India, Ecuador and Brazil.

Unfortunately, that is not the happy ending of the story, Mr. Chairman.

Despite the powerful action taken by the ITC, the massive flood of farm-raised shrimp imports from Southeast Asian and South American nations continues today at a rate of over $1 billion per year from these 6 countries alone. U.S. dockside prices to our fishermen remain artificially depressed and are insufficient to sustain a healthy industry.

Last year brought the hurricanes that wrought devastation to our communities, our fleet, our shoreside infrastructure, and even our fishing grounds, which are now strewn with all manner of debris. Consequently, Gulf shrimp landings in 2005 fell another 35 percent from the 2004 level.

I won't go into any further details here and now since you and your Committee, as well as many individual Members, have generously focused a good deal of your time, attention and even hearings on this terrible catastrophe. We are immensely grateful for this. However, I will say that we desperately need the assistance being proposed in the Senate and ask you all to support efforts to pass that legislation and convince the President to enact it.

As if imports and hurricanes weren't enough, now we have the fuel price crisis. To state the obvious, the cost of fuel is our primary cost of production. Like farmers who cannot sustain skyrocketing natural gas costs, shrimp fishermen cannot pass along to consumers the added cost of fuel as prices have gone through the roof. Our market is artificially distorted by farm-raised imports from market and non-market economies that simply do not face the energy, labor or regulatory costs we do. We are trapped under an artificial price ceiling and fuel prices are squeezing the life out of us.

Mr. Chairman, there is no doubt the U.S. warm water shrimp fishery faces some incredible challenges, and the SSA certainly has its hands full. With this in mind, you might ask how and why we even focus on the Magnuson-Stevens Act ("Act") at this point.

One reason is that the environmental community continues its fixation on narrow and simplistic policy goals that make lofty-sounding press releases yet are likely to be counterproductive in actual practice. Fisheries are incredibly diverse and fisheries policy must accommodate that diversity. The proper response to this reality is more flexibility to tailor management measures to reflect this diversity; not less. Congress must give scientists and managers a broadly crafted statute that enables them to produce the best science and to apply common sense in developing measures that achieve both the biological and socioeconomic objectives of the Act. Our fishery along with every American fishery has something very important at stake in this reauthorization process.

We are reading a lot of press these days about the need to incorporate more aggressive and rigid management goals into the Act. For those of us in the trenches of real world, day-to-day fisheries management, however, that kind of talk has no place in this Act. I commend the Chairman, and our old friends Mr. Young and Mr. Frank, for being the ones to "state the case" for improving our science while using common sense and greater flexibility to more effectively manage our diverse fisheries.

With this background and context in mind, we appreciate the opportunity to provide the following specific thoughts and suggestions concerning your bill, H.R. 5018 as well as H.R. 1431. We support your efforts to enact legislation that takes a practical and common sense approach to improving upon the Magnuson-Stevens Act, and we look forward to working with you and your excellent staff on this important legislation.

**Shrimp as an annual species**

Annual species such as warm water shrimp reach harvestable size and maturity within or less than one year of age. They are characterized by very high fecundity (spawning output), and have very high rates of natural mortality; i.e., few live beyond one year.

The success of a given year class is driven by environmental conditions encountered on the nursery grounds. There has been no demonstration that fishing effort in one year affects shrimp availability in the following year.

These biological realities of warm water shrimp fisheries (and other "annual species" fisheries) have important management and policy implications that should be expressly addressed in the Magnuson-Stevens Act.

For example, warm water shrimp fisheries are not managed by annual catch limits such as a Total Allowable Catch (TAC) or other such limits. Similar to salmon in this respect, these fisheries are instead managed to achieve a minimum annual escapement of adult shrimp from estuaries to the offshore areas that ensures adequate reproductive potential for production in the subsequent year. This target escapement effectively serves as a proxy for optimum yield and is an extremely small number of adults relative to the total population.

Mr. Chairman, we appreciate your apparent recognition of this reality in your provisions to require setting annual catch limits set forth in section 3 of your bill. We note the specific language that limits this requirement to those fisheries "for which an annual catch limit can be established". We hope the intent of this language is to exclude our shrimp fishery from this annual catch limit requirement.

Still, given the political forces we face in the Gulf and Southeast regions, particularly on the Gulf of Mexico Fishery Management Council, we worry that an annual catch limit could be established arbitrarily, even though there is no scientific or management justification for it. Perhaps we could work with you and your staff to clarify this provision either in the bill itself or in report language to make certain this provision does not apply to the shrimp fishery.

For the same reasons, the concept of Maximum Sustainable Yield (MSY) as the usual basis for fishery management is not really relevant for the management of

warm water shrimp and other annual species. As I've stated, there is no demonstrated effect of fishing effort on annual shrimp yield.

Given this, we would again ask to work with you and your staff to evaluate the definitions and use in the Act of such fundamental concepts as overfished, overfishing, and optimum yield which are tied to the concept of MSY. When we raised this issue in a previous Congress, consideration was given to directing the National Academy of Sciences to evaluate this unique situation and recommend a legislative solution. Perhaps this approach would be useful again.

Finally, we note that Mr. Rahall's bill, H.R. 1431, also proposes a process for establishing annual catch limits and that our comments and concerns set forth above apply to this legislation as well.

**Overcapacity & buy-outs**

Mr. Chairman, as you and the Committee have certainly deduced from my earlier remarks, illegal dumping of shrimp in our market followed by the hurricanes and rising fuel prices have taken their toll. Simply put, there aren't nearly the numbers of shrimp boats out there today as there were a decade ago. In the 1990's, we had in excess of 5000 shrimp vessels operating. Today less than 1800 permits are active, maybe as few as 1600. Given all that has transpired in the last year, we really don't know where we stand in terms of active fishing effort. It will be some time before the dust settles and we can sort this out.

I ask you to please take particular note of this. Despite the inexplicable insistence of the NMFS leadership to the contrary, our fishery is NOT overcapitalized. I repeat, the domestic shrimp fishery does not have excess harvesting capacity, and does not need or want an industry-funded buyout for the purposes of reducing capacity. For the same reasons, any suggestions for applying effort caps to our fishery at this juncture also make no sense.

It is certainly fair to say that there may be many shrimpers who would now accept an offer from the federal government to exit the fishery, especially those still high and dry after the hurricanes. Still, the reality is that our fleet is probably under-capacity and could not possibly absorb the cost of a buyout.

We also note that any buyout is simply not feasible under our current permit management system. As you may know, we have instituted a moratorium on the issuance of shrimp fishing permits which will expire in 10 years. We do not have a limited access plan in place as contemplated under section 303(b)(6) of the Act. We note your amendment to section 312(b) requiring a limited access system to be in place in order for a buyout to be implemented.

**Gulf Council Imbalance**

Perhaps the threat that has faced the U.S. shrimp fishery longer than any we face today has been the relentless hostility of the recreational fishing industry, particularly in the Gulf of Mexico and South Atlantic Fishery Management Councils. I am not joking when I say that an entire industry and politically powerful subculture have developed in this country purely based on demonizing commercial fishing including our shrimp fishery. Despite our socioeconomic significance in the fisheries and communities of our region, there is only one active shrimp fisherman on the Gulf Council and there are a total of only 3 Council members that are directly and actively participating in commercial fisheries.

Sadly, we have noticed a recent surge in the intensity of these hostilities on the Gulf Council ever since the hurricanes, particularly with respect to the issue of red snapper bycatch. I can only hope this doesn't reflect a deliberate effort by some to take advantage of our fishery while we are coping with the hurricane disaster.

With this in mind, we ask you to consider adding to your bill the provision included in section 103(i) of the Senate Magnuson-Stevens bill (S. 2012), as reported by the Senate Committee on Commerce, Science and Transportation, which would specifically address Gulf Council appointments by requiring an equal balance of commercial and recreational sector representatives. This could prove to be a very helpful provision even as we know some of the State representatives on the Council will remain advocates of the recreational sector.

**Bycatch**

As I mentioned above, one unfortunate consequence of Gulf Council imbalance is the Council's current joint management plan development of Amendment 27 to the Reef Fish Fishery Management Plan (FMP) and Amendment 14 to the Shrimp FMP as well as Amendment 15 to the Shrimp FMP. The Gulf Council has developed and is rushing through the process a number of amendment options to be voted on at the June meeting which would take the unusual (if not illegal) approach of shifting the responsibility for ending overfishing and rebuilding the red snapper stock away

from the directed fisheries and onto the shrimp fishery as a red snapper bycatch fishery.

Rather than comply with the scientific recommendations to substantially reduce the Total Allowable Catch (TAC) in the directed commercial and recreational red snapper fisheries, these measures instead contemplate rebuilding red snapper on the backs of the U.S. shrimp fishery by requiring massive, unjustified reductions in red snapper bycatch. Measures that have been under consideration include vast time-area closures and triggers for shutting down our fishery altogether.

Mr. Chairman, we ask you and your staff to look into this situation. Perhaps there is a need to consider adding a provision to the Act that would prevent a Council from disproportionately shifting the responsibility and conservation burden of ending overfishing and rebuilding an overfished fishery away from the directed fisheries and onto a bycatch fishery.

At first glance provisions in the Act such as section 303(a)(14) would appear to address this basic need to allocate harvest restrictions fairly and equitably among sectors of the fishery. The reality is, however, the Council actions now under consideration would appear to sacrifice the shrimp fishery so that the directed red snapper fisheries can continue to fish at unsustainable levels. Either what the Council is doing is illegal under the current statute, or there is a need to address this in your legislation.

**Better Science**

Mr. Chairman, your bill—as well as H.R. 1431 sponsored by Mr. Rahall—include many provisions designed to improve the collection and quality of fishery science. Perhaps there is no greater need in fishery management today than this. As the demands for ever more precise and complex management strategies increase, so does the need to improve the collection and quality of data as well as the quality and transparency of scientific analyses, including rigorous peer review.

With this in mind, we feel it is critical that the scientific process be integrated with the management process to the greatest degree possible. For science to be useful (understood) and readily accepted by the affected fishing constituencies, it cannot be produced in black box, separate from the Council management process. We strongly support your efforts to focus attention and thought on this critical issue.

Our concern with fisheries science is not limited to its quality and how it is generated. Our concern is at least as strong with respect to how science is used in the management process. A common theme we hear from many fisheries is the concern that science is manipulated or ignored to support the preconceived political agendas of a Council or NMFS. The current actions of the Gulf Council with respect to red snapper bycatch provide an excellent example of our concern that the science on shrimp fishing effort and red snapper bycatch as it relates to red snapper rebuilding is being ignored and manipulated.

Specifically, a reliable estimate of red snapper bycatch in the Gulf shrimp fishery is dependent upon a reliable estimate of fishing effort in the shrimp fishery. However, currently there is no reliable estimate of fishing effort in the Gulf shrimp fishery.

The impacts of illegally dumped shrimp imports, escalating fuel prices, and the hurricanes are thought to have reduced fishing effort in the shrimp fishery substantially and indefinitely. Research funded by Congress is ongoing to determine current Gulf shrimp fishing effort. A reliable estimate of current red snapper bycatch in the shrimp fishery cannot be made until such research is completed.

The Interdisciplinary Planning Team (IPT) of the Gulf Council recently concluded:

> "...a comprehensive effort reduction program is necessary to achieve the large-scale bycatch reduction to end overfishing of red snapper by the Gulf of Mexico shrimp fishery."

Yet, in the same report, the IPT also cites the following scientific reality:

> "However, it will be difficult to understand the effects and tradeoffs of alternative effort controls and reduction programs for a number of years given the damaging effects of the 2005 hurricane season on participation and effort in the shrimp fishery."

Facilitated by the imbalance in membership, the Gulf Council is currently rushing to adopt by its June meeting unprecedented regulatory measures (time-area closures, effort caps, etc) to drastically reduce shrimp fishing effort and red snapper bycatch without adequate scientific justification or understanding of current fishing effort or red snapper bycatch in the shrimp fishery. As the IPT's own background documents conclude, this understanding will take some years to achieve.

As reflected in Council documents, it is not known for certain whether further reductions in red snapper bycatch or shrimp fishing effort are even needed to achieve red snapper management objectives—indeed; there is substantial evidence that they

are not needed. In addition to the shrimp fishing effort reductions that have already occurred, I would also note that the historical fish discard to shrimp ratio has been reduced by 55% from 10.3 to 4.6. Yet, in the face of this scientific uncertainty, draconian measures under consideration by the Council would unnecessarily further damage the already devastated shrimp fishery and fishery-dependent communities throughout the Gulf.

Further, NMFS analyses set forth in the Gulf Council's background documents suggest that even extreme reductions in red snapper bycatch in the shrimp fishery may make a relatively small contribution to red snapper biomass rebuilding as compared to more aggressive mortality reductions in the directed commercial and recreational red snapper fisheries. This small contribution to red snapper rebuilding does not justify the enormous economic impact that would result from draconian management measures proposed to achieve bycatch reduction targets.

Mr. Chairman, the National Standards and Section 303 of the Act would seem to preclude the Gulf Council from ignoring or manipulating the best available science in the manner it is. Again, either the Council action on red snapper is illegal under current law, or there needs to be further attention to this kind of problem in the Act. We would be grateful for your review of the situation.

**Time—Area Closures**

Mr. Chairman, section 5(h)(2) of your bill provides one very important way to improve the use of science in fisheries management. As mentioned above, the Gulf Council is currently considering the use of extensive time-area closures for the shrimp fishery as a tool to reduce red snapper bycatch. Time-area closures are also used extensively in other fisheries throughout the nation, and in some cases to apparent excess.

A common thread in all of these fisheries is that once a time-area closure is put into place, it can be very difficult to scientifically measure its effectives since no one can fish there. Further, there is no mandate for reconsideration and reevaluation in the Act. Consequently, time-area closures tend to stay in place forever—even if the original underlying purpose for the closure may have been achieved and/or is no longer valid. This is unfair to fishermen and counterproductive to the goal of achieving optimum yield from our fisheries.

Mr. Chairman, I just want to express our appreciation and support for your recognition of this problem and effort to correct it. Section 5(h)(2) of your bill would require a sound scientific and cost/benefit basis for establishing time-area closures in the first place, as well as a requirement to subsequently evaluate the performance of the closure in terms of its original purposes. This will be an extremely beneficial addition to the Act.

**Limited Access Privilege Programs**

While we readily accept that Limited Access Privilege programs including individual fishing quota (IFQ) programs and other such management strategies may have great utility for other fisheries nationwide, we are convinced beyond a doubt that this style of management has no place in the shrimp fishery for the foreseeable future. I suppose that day may come, but it is definitely not here now.

In our view, such programs may have their greatest utility in rationalizing overcapitalized fisheries that are managed by hard TACs—especially those in need of rebuilding. As I trust I have made clear, the shrimp fishery is neither overcapitalized and in need of rationalization, nor is it managed by an annual catch limit such as a hard TAC. It is not overfished either.

We appreciate the great deal of attention provided in your bill to creating national standards of policy and procedure for developing such management programs and the need to make sure they do not harm the traditional small business, community-based characteristics of many U.S. fisheries. We also note that your bill correctly recognizes the regional diversity of fisheries by providing New England fishermen with the opportunity to hold a referendum before the New England Council may submit, or the Secretary approve or implement, an IFQ program. We note the threshold for referendum approval is 2/3rds of the voting eligible permit holders.

Mr. Chairman, our concern with the bill as currently drafted also relates to the issue of Gulf Council imbalance, and to the seemingly tireless advocacy of the NMFS leadership for Councils to develop Limited Access Privilege programs. We note that your bill would authorize the Gulf Council to self-initiate the development of a limited access program, including for the shrimp fishery, without the need for an industry referendum. Our concern is that without a referendum, the Gulf Council may act on such a program over our fishermen's objections and beyond their control.

We respectfully request that a provision be added to your bill that, like New England fishermen, also provides Gulf of Mexico shrimp fishermen with the opportunity

to hold a referendum before the Gulf Council is allowed to submit, or the Secretary approve or implement, an IFQ program. We too support a threshold of 2/3rds of the voting eligible permit holders to approve such a plan. We also note that the Senate Magnuson-Stevens Act reauthorization bill (S. 2012), includes such a referendum provision for the Gulf, but at the 50% threshold.

**Ecosystem Management**

Finally, Mr. Chairman, I just want to recognize the approach you have taken with respect to ecosystem management. In my view, there are precious few if any fisheries for which an adequate level of scientific understanding of the entire ecosystem exists to move forward with comprehensive ecosystem management.

Instead, as seems appropriate, each fishery continues to add incrementally to its ecosystem understanding and to apply this understanding to its management, as is provided for by the current statute. Forcing too much too fast will force mistakes and only provide fodder for more lawsuits.

As your bill suggests, ecosystem research is the appropriate focus now coupled with a cautious and thoughtful move towards ecosystem management that is consistent with the current state of ecosystem knowledge for a given fishery.

Mr. Chairman, if there is one thing I want you and the Committee to take from my testimony today it is that while the Shrimp industry may be down and faced with many challenges—we are by no means down and out. We could certainly use a hand—and hope that the pending Supplemental Appropriations bill will provide one. What we don't need right now is legislation that will hamstring what is already a very difficult management process.

Once again, we greatly appreciate the common sense approach taken in your bill and look forward to working with you and your fine staff on your bill including the important issues I've brought to your attention.

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The CHAIRMAN. Thank you.

Dr. McIsaac.

## STATEMENT OF DON McISAAC, EXECUTIVE DIRECTOR, PACIFIC FISHERY MANAGEMENT COUNCIL

Dr. MCISAAC. Thank you, Mr. Chairman and Members of the Committee. Let me start by thanking the bill authors for bringing new ideas to this important legislation that will define the future of marine fishery management and the United States. It appears there has very much thought gone into these bills that is the subject of this hearing, and I would like to commend you on your efforts.

The issue that I will focus my testimony on is fishery regulation and national marine sanctuaries. The essential question here is who should establish the fishing regulations and how should it be done.

On this particular issue, the Pacific Council believes that legislation needs to be clear and unambiguous that this be accomplished through the regional fishery management council process and not under the process described in the current National Marine Sanctuaries Act.

Why is this so important to West Coast marine fishery management? Let me cite five reasons:

First, national marine sanctuaries on the West Coast cover a great deal of geography, and I will speak to that in a moment.

Second, the fishery regulation expertise lies in the council process, not in the sanctuary infrastructure.

Third, the public is now confused as to where fishery regulation occurs. Is it in the council process or is it in the sanctuary process?

Fourth, there is a history of promises that the national marine sanctuaries would not regulate fishing, but now it seems like it is occurring on the West Coast anyway.

Fifth, ecosystem management. Ecosystems don't break conveniently along sanctuary boundaries. Neither should fishery management.

H.R. 5018 contains a commendable effort to solve these problems, but we think it does not go far enough. Let me elaborate on a couple of reasons and offer our recommendations for additions to H.R. 5018, the solutions that are in that.

With regard to the geography question, there are currently four national marine sanctuaries off the State of California. Together, these sanctuaries cover 40 percent of the California coast. Off the State of Washington, the Olympic National Sanctuary covers roughly the northern two-thirds of the coast of the State of Washington. Last, the Governor of the State of Oregon has proposed a national sanctuary stretching the entire length of the Oregon coast and the mouth of the Columbia River to the California/Oregon state line, about 300 miles of coastline.

Together, these areas approximate 55 percent of the United States coastline between Canada and Mexico on the West Coast.

So on the West Coast we are not talking about a sanctuary around a particular isolated reef hear or there or a ship wreck. We are talking about the potential of a huge portion of the West Coast. For those of you representing east coast states, if you could imagine sanctuaries encompassing over half the area from the Maine/Canada border to the tip of Florida, or from the Gulf area from the Mexican/Texas border all the way around to the tip of Florida, over half of that area set aside in sanctuaries. That is a huge piece of geography for us on the West Coast.

The second reason has to do with the fishery management expertise to deal with complex fishery regulation issues. The council process has a proven, open, transparent process that the public knows about, an SSC and other scientific advisory bodies that analyze the effects of fishing regulations, a specialized habitat committee, expert advice from other advisory bodies composed of fishing industry and conservation group representatives; finally, an opportunity for those affected to be heard prior to a final council vote that is taken in front of those people in a public forum.

The current situation on the West Coast whereby fishing regulation goals and objectives are developed in a sanctuary process is confusing to the public as to who is in charge, and can result in bureaucratic duplication and inefficiencies.

As council member Bob Alverson said of the commercial fishermen in his organization, the small boat owners do not want to go to participate in the council process, and then go do the same thing at one or more sanctuary processes to ensure that fishing seasons make sense in total. The public wants one-stop shopping for Federal fishing regulations and they want that one stop to be at the council process.

For all these reasons, legislation needs to make it clear and unambiguous that fishery regulation in Federal waters be accomplished through the council process and not as described in the current National Marine Sanctuaries Act.

H.R. 5018 is commendable and it recognizes the current Sanctuaries Act chain of jurisdiction does not require things like national standards nor to bring to bear the scientific and fishing sector expertise that is in the council process. However, we would reiterate that we don't think H.R. 5018 goes quite far enough to cement a finite solution. It does not unambiguously state that the place for fishery regulations is under Magnuson, not under the Sanctuaries Act.

Mr. Chairman, I see the red light is on there, so let me just say in closing that what the Pacific Council recommends is essentially what the eight regional council chairs recommended last year, and that is, a few more changes in the Magnuson Act, and then also change in the Sanctuaries Act, and those matters are described in writing as part of my attachment.

Last, let me say that I am going to agree in advance with my colleague, Executive Director to the North, Mr. Chris Oliver, with regard to integrating the essential principles of NEPA into the Magnuson Act and providing a technical exemption from NEPA in Magnuson. We think this can create great efficiencies in the pubic process at no loss of intent of NEPA and minimize superfluous litigation opportunities. Let me close at that.

[The prepared statement of Dr. McIsaac follows:]

**Statement of Dr. Donald McIsaac, Executive Director, Pacific Fishery Management Council**

Mr. Chairman and Members of the Committee:

My name is Donald McIsaac, Executive Director of the Pacific Fishery Management Council. I have trained for and worked in fisheries management for the last 35 years, earning a bachelor of science in fisheries biology, a master's degree in fisheries management, and a Ph.D. in salmon ecology. Prior to becoming Executive Director of the Pacific Council, I worked for 25 years for the Washington and Oregon state fishery management agencies with a focus on interjursidictional fishery management matters.

Thank you for the opportunity to testify before you today on behalf of the Pacific Council regarding reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. We appreciate the bill authors bringing in new ideas to this important legislation.

Today I will limit my testimony to three issues, and focus primarily on one issue. The focus of my testimony is the issue of fishing regulations in National Marine Sanctuaries: who should establish such fishing regulations and how should it be done? The second issue is the question of using hard total allowable catch levels in fisheries management and "repayment" of any catch number overages and underages that happen from management imprecision or unforeseeable events. The last issue I want to touch lightly on is an element of the Individual Quota Program legislation.

**Fishery Regulation in National Marine Sanctuaries (H.R. 5018, Section 10: COMPETING STATUTES)**

On the issue of fishing regulation in waters of National Marine Sanctuaries, legislation needs to be clear and unambiguous that fishing regulations be accomplished through a Regional Fishery Management Council process described in a slightly revised Magnuson-Stevens Fishery Conservation and Management Act and not under the process described in the current National Marine Sanctuaries Act.

I would like to mention several reasons this issue is important to West Coast fishery management.

- A considerable portion of the West Coast lies within a National Marine Sanctuary. As you know, there are four sanctuaries in California, The Channel Islands National Marine Sanctuary, the Monterey Bay National Marine Sanctuary, the Gulf of the Farallones National Marine Sanctuary, and the Cordell Bank National Marine Sanctuary as well as the Olympic Coast National Marine Sanctuary off the coast of Washington. Additionally, Oregon Governor Ted

Kulongoski has formally proposed consideration of the entire coast of Oregon for an Oregon Coast National Marine Sanctuary.

- The current status of fishery authority is confusing to public and can impede collaboration between the Regional Fishery Management Councils and National Marine Sanctuaries. I and the Pacific Council have heard frequent public testimony requesting a single fishery management authority, that being the Regional Fishery Management Council where there exists the scientific expertise and open public process intended for this purpose. Mr. Bob Alverson, Pacific Council member and General Manager of the Fishing Vessel Owners' Association, recently commented that "my organization's fishermen are interested in working with a single entity on fishery management issues rather than multiple authorities and jurisdictions."
- Competing authorities and jurisdictions do not facilitate the application of ecosystem-based fishery management principles.
- Pacific Council members and members of the public repeatedly refer to promises originally made during the enactment of the National Marine Sanctuaries Act that, although not formalized in act itself, are remembered by members of the public, "Sanctuaries will not become involved in fishery regulation, that will remain in the sole purview of the Regional Fishery Management Councils and the National Marine Fisheries Service, or the individual States in some circumstances". This common perception of fishing industry participants, coastal communities and Indian tribes on the West Coast is still being put forward today. In a letter to the Oregon Congressional Delegation, Oregon Governor Kulongoski wrote, "I want to emphasize that commercial and recreational fishing will continue within the sanctuary and will continue to be regulated by the Pacific Fishery Management Council and the Oregon Fish and Wildlife Commission based on the management plan for the sanctuary. As you know, a National Marine Sanctuary does not have separate authority to manage or regulate marine fisheries."

The solution: legislation needs to be clear and unambiguous and state that fishing regulations be accomplished through a Regional Fishery Management Council process under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and not under the process described in the current National Marine Sanctuaries Act.

Regarding the competing statutes of the Magnuson-Stevens Fishery Conservation and Management Act and the National Marine Sanctuaries Act, H.R. 5018 represents an important initial step, but additional clarification is needed.

Existing language in H.R. 5018 Section 10 COMPETING STATUTES is commendable its recognition that fishing regulations promulgated under the National Marine Sanctuaries Act are not currently required to conform to national standards under Section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act. Neither does the National Marine Sanctuaries Act bring to bear the scientific and fishing industry expertise that exists in Regional Fishery Management Council processes. However, H.R. does not go far enough in achieving kind of clarity on fishery management authority the public expects.

Without amendment, H.R. 5018 does not clearly identify a Regional Fishery Management Council as the sole fishery authority where public fishery management decisions are made. The existing process under Section 304(a)(5) of the National Marine Sanctuaries Act can be applied in a manner which leaves a Regional Fishery Management Council little more than the task of drafting fishery regulatory language to meet the underlying fishery policies and goals as determined by a National Marine Sanctuary.

The Pacific Council would like to see additional federal legislation which builds on the foundation of H.R. 5018 as introduced. The Pacific Council recommends Regional Fishery Management Councils and their associated public processes be formally brought into the early decision-making phases of the National Marine Sanctuary Act process. In this way, the scientific rationale for National Marine Sanctuary goals and objectives can become fully vetted and developed in a collaborative process.

Recent Pacific Council actions to ban the harvest of krill on the West Coast and to prohibit the use of bottom-contacting gear with th the Cordell Bank and Monterey Bay National Marine Sanctuaries are good examples of Regional Fishery Management Council and the National Marine Sanctuary collaboration. In these cases, habitat and ecosystem concerns, shared by both the Pacific Council and the sanctuaries were addressed through the scientific and public processes of the Pacific Council and were efficiently implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Conversely, fishing regulations in the Channel Islands National Marine Sanctuary have recently been

recommended for implementation under both the Magnuson-Stevens Fishery Conservation and Management Act and the National Marine Sanctuaries Act, a process that has widely been considered to be confusing and inefficient.

Again, the Pacific Council feels legislation needs to be clear and unambiguous that fishing regulations be accomplished through a Regional Fishery Management Council process described in a slightly revised Magnuson-Stevens Fishery Conservation and Management Act and not under the process described in the current National Marine Sanctuaries Act. To achieve this, the Pacific Council stands behind its recommendation to adopt the position of the Regional Fishery Management Council Chairs. This position can be found beginning on the bottom of page 4 of the attached position paper.

This position paper calls for an ecosystem-based approach which broadens Magnuson-Steven Fishery Management authority to cover the full range of species in the marine environment and calls for jurisdictional clarification through specific amendments to the National Marine Sanctuaries Act.

**Total Acceptable Biological Catch Levels—(H.R. 5018, Section 3: SCIENCE-BASED IMPROVEMENTS TO MANAGEMENT)**

The Pacific Council supports the existing language in this section of H.R. 5018 and notes the Pacific Council already implements these management principles. Further, the Pacific Council effectively utilizes in-season manage mechanisms to ensure the adopted acceptable biological catch levels are not exceeded whenever possible.

Unlike H.R. 5018, there have been calls for a "penalty" provision in instances where the catch inadvertently exceeds adopted catch levels. The penalty being a commensurate deduction from the following year's harvest allowance. Others call for a policy to carry both overages and underages into the following year. The Pacific Council disagrees with both of these potential provisions and think they can be unwarranted, disruptive, and dangerous.

Overages should not be deducted from the next year's harvest because the overage could have a minor biological effect if the overage is minimal under an in-season management policy and a new stock assessment has takes the overage into account. It can be risky to rollover uncaught harvest allowance to the next year because one possible reason for the underage is an inaccurate stock assessment, a result that is not often discovered within one year.

**Limited Access Privilege Programs (H.R. 5018, Section 7)**

The Pacific Fishery Management Council is currently in the process of developing an individual quota program for the trawl sector of the groundfish fishery. The Pacific Fishery Management Council strongly recommends that nothing in any MSA reauthorization legislation apply to, or disrupt the ongoing development of potential future amendment of its groundfish trawl individual quota program. Therefore the Pacific Council is supportive of H.R. 5018 proposed language for MSA Section 303A(h) which protects programs under development before the date of the bill's enactment.

**Other Topics**

I agree with my colleague from the North Pacific Fishery Management Council, Mr. Chris Oliver with regard to integration of the National Environmental Policy Act (NEPA) into the Magnuson-Stevens Act to create great efficiencies in the public process at no loss to the intent of NEPA.

On Friday, April 29, 2006, I met with the Pacific Fishery Management Council's Legislative Committee whose agenda focused on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. In a forthcoming letter, I will convey the results of the Legislative Committee's section-by-section review of H.R. 5018 which will provide additional comments on the three topics I have highlighted today together with detailed comments on Pacific Fishery Management Council appointments, ecosystem-based fishery management, funding for observer programs, diminished fisheries, and Joint Fisheries Enforcement Agreements. 2

LIST OF ATTACHMENTS

Disclosure Requirement for Donald O. McIsaac to testify before the House Committee on Resources, May 2006

Positions of the Regional Fishery Management Council Chairs on Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, April 2005

[NOTE: Attachments have been retained in the Committee's official files.]

The CHAIRMAN. Thank you.
Mr. Crockett.

**STATEMENT OF LEE CROCKETT, EXECUTIVE DIRECTOR, MARINE FISH CONSERVATION NETWORK**

Mr. CROCKETT. Good morning, Mr. Chairman, and Members of the Committee. My name is Lee Crockett. I am the Executive Director of the Marine Fish Conservation Network. The Network is the largest coalition dedicated to promoting the long-term conservation of federally managed fish. Thank you for providing us with an opportunity to present testimony on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.

Before commenting on the two bills, I want to strongly recommend that you use the report of the U.S. Commission on Ocean Policy to guide your reauthorization bill. Their recommendations, which are based on the success of the North Pacific Council, should guide any legislation reauthorizing the Magnuson-Stevens Act.

With that in mind, I would like to now discuss how H.R. 5018 and H.R. 1431 follow the U.S. Commission recommendations.

First, the U.S. recommendations are built on and intended to enhance existing law. Unfortunately, H.R. 5018 proposes several rollbacks to current law. I would like to highlight the sections of the bill that we find most troubling.

First of all, H.R. 5018 replaces overfished with diminished, the new term, and defines it as a stock below the natural range of fluctuation necessary to produce a healthy stock. This newly defined term will likely lead to fewer stocks being defined as diminished, which means that needed actions to rebuild these stocks will be delayed or avoided.

The bill also establishes three new exceptions for the requirement to rebuild overfished stocks within 10 years if biologically possible. Extending and rebuilding deadlines serves to increase fishing pressure on weak stocks, threatening their ability to rebuild and delays economic benefits to fishing communities.

H.R. 5018 also contains what amounts to a waiver of NEPA because it allows the Magnuson Act to be used in its place for environmental review and analysis. This is inappropriate because the Magnuson Act does not contain comparable requirements for evaluating cumulative environmental impacts, considering a range of managed alternatives, and allowing adequate public participation.

Finally, the bill exempts fishery observer data from disclosure under the Freedom of Information Act. This severely limits public access to these data. Observer information is critical for the public to evaluate how well managers are implementing legal requirements to minimize bycatch.

I would now like to discuss how H.R. 5018 can be improved to better implement the U.S. Commission recommendations.

The U.S. Commission recommendations are intended to improve the use of science and fishery management, and nationalize the Alaska model of science-based management. H.R. 5018 partially implements a number of the U.S. Commission recommendations.

We would like to commend you for requiring councils to set annual catch limits that are consistent with the recommendations of the science advisors. this is an important first step. However, to be

more effectively the annual limits must have an enforcement mechanism. The bill also needs to improve the independence of the science advisors by limiting the financial ties to the fishing industry and requiring the Secretary of Commerce to appoint them.

The U.S. Commission also made a number of recommendations to improve the operations of the councils, including adding public seats and requiring council member training. Again, we would like to commend you for requiring the Secretary of Commerce to establish a mandatory council member training program. However, we urge you to add public seats to the regional councils.

Finally, I would like to commend you for following the recommendations of the U.S. Commission and including a set of national guidelines to govern the design and conduct of limited access privilege programs. There is, however, one very significant deficiency in the bill's guidelines: No time limit on these programs.

The U.S. Commission and the State of Alaska have called for these programs to have time limits. Time limits are necessary to reenforce the fact that a limited access program are a privilege, not a property right, and to add force to any programs reviews.

I would now like to talk about H.R. 1431. While this is not a comprehensive Magnuson reauthorization bill, it would fully implement some of the most important recommendations made by the U.S. Commission to reform the council system, especially how science is used for making decisions.

The Network strongly supports H.R. 1431. It builds in the strengths of existing management system by broadening stakeholder representation on the council, significant reducing financial conflicts of interest among the council members, providing training for new council members, developing cooperative research, data collection and gear modification programs, and enhancing the use of science in fishery management. This bill should serve as the model as to how to implement the U.S. Commission's fishery management recommendations.

Finally, I would like to say a few words about H.R. 5051, the Magnuson reauthorization bill introduced by Congressman Gilchrest.

Of all the comprehensive bills introduced in the House and Senate, this bill is the one that most closely follows the recommendations of the U.S. Commission, and it does not weaken existing law. Because of this, it enjoys the most support within the Network. However, we do see areas that need improvement.

H.R. 5051 has some of the same problems as H.R. 5018 in that it does not fully implement the U.S. Commission recommendations for council member training, and adding public interest seats to the councils. It would restrict the public's access to fishery observers information, and it fails to include a time limit for limited access privilege programs.

So in conclusion, for almost two decades independent reviews of our fishery management system have yielded similar conclusions. Science-based management is too often compromised by political and economic pressures. The government structure needs to strengthen the role of science and management. Failure to follow scientific recommendations has resulted in ecological deterioration and economic loss.

Recognizing the success of the North Pacific Council in using science, the U.S. Commission propose applying that model nationally. Now it is time for Congress to heed that call for reform.

Thank you, and I would be happy to answer questions.

[The prepared statement of Mr. Crockett follows:]

**Statement of Lee Crockett, Executive Director, Marine Fish Conservation Network**

Good morning, Mr. Chairman and Members of the Committee. My name is Lee Crockett, and I am the Executive Director of the Marine Fish Conservation Network (Network). The Network is the largest national coalition solely dedicated to promoting the long-term conservation of marine fish by pressing for changes in the way we manage our oceans. With more that 180 member organizations—including environmental organizations, commercial and recreational fishing associations, aquariums, and marine science groups—the Network uses its distinct voice and the best available science to educate policymakers, the fishing industry, and the public about the need for sound conservation and management practices.

Thank you for providing us with an opportunity to present testimony on the "American Fisheries Management and Marine Life Enhancement Act," H.R. 5018, the "Fisheries Science and Management Enhancement Act of 2005," H.R. 1431, and other issues related to the reauthorization of the Magnuson-Stevens Fisheries Conservation and Management Act.

Before commenting on the two bills, I would like to provide some context for my comments. When the Magnuson Act was passed in 1976, our view of ocean fisheries was much different. At that time Congress' main concern was "Americanizing" our fisheries. That meant creating a law that phased out foreign fishing, promoted our domestic fishing industry, and gave a large say in management decisions to the fishing industry. Given that intent, who better than fishermen to decide how to promote fishing? But the decades of intense fishing pressure that resulted, have caused the decline and even collapse of many fisheries. These declines and other problems with our oceans led Congress to establish and President Bush to appoint the U.S. Commission on Ocean Policy.U.S. Commission on Ocean Policy Recommendations

After three years of intense investigation into the health of our oceans, the U.S. Commission on Ocean Policy (USCOP) released its final report on September 20, 2004. The Commission concluded that "[o]ur failure to properly manage the human activities that affect the nation's oceans, coasts, and Great Lakes is compromising their ecological integrity, diminishing our ability to fully realize their potential, costing us jobs and revenue, threatening human health, and putting our future at risk." The Commission went on to say, "[t]he message from both experts and the public alike was clear: our oceans, coasts, and Great Lakes are in trouble and major changes are urgently needed in the way we manage them."

Among the recommendations were a series of measures designed to enhance fisheries science and management to ensure the long-term sustainability of marine fish. Specifically, the USCOP report recommended amending the Magnuson-Stevens Act to strengthen the role of the councils' Science and Statistical Committees (SSCs) and require the councils to conform their management decisions to the scientific determinations made by their SSCs. The role of the SSCs, the report explained, should be to determine the allowable biological catch (ABC), and councils should be bound to those determinations. The report also recommended that the Secretary of Commerce provide for an independent review of the scientific information relied on by the SSCs. The model for these recommendations for science-based fisheries management was the North Pacific Fishery Management Council (NPFMC).

**The North Pacific Model**

Unlike most other councils, the NPFMC uses a precautionary science-based, approach to fisheries management.—The NPFMC relies on the recommendations of its SSC to set an ABC and then sets the catch limits for individual fisheries below the recommended ABC. While there is some debate regarding what constitutes a sufficiently conservative ABC, the NPFMC includes a precautionary buffer to account for uncertainty. In addition, the council has made this model a requirement in all of its fisheries management plans. The net effect of this management approach is that none of the North Pacific finfish populations are currently classified as overfished.

Therefore, the recommendations of the USCOP to improve fisheries management, which are based on the success of the North Pacific model of science-based management, should serve as the basis of any legislation to reauthorize the Magnuson-Stevens Act. Unfortunately, the bills currently before Congress range from fully

consistent with the Commission recommendations to the opposite. With that in mind, I would now like to discuss how H.R. 1431 and H.R. 5018 are and are not consistent with the USCOP recommendations.

**H.R. 5018**

First and foremost, the USCOP recommendations do not anticipate any weakening of existing law. In fact, they are built on, and intended to enhance, existing law. Unfortunately, H.R. 5018 proposes several rollbacks to current law. I would like to highlight several sections of the bill that we find particularly troubling.

H.R. 5018 replaces the term overfished with diminished, a new term, and defines it as a stock that is below the "natural range of fluctuation" necessary to produce a healthy stock. While we understand that all fish stock declines are not the result of fishing and a new term may more appropriately describe the stock status, we have serious concerns about the new definition. The phrase natural fluctuation is not defined, and the addition of this phrase into the definition opens a giant loophole for inaction. Based on past experience, we are concerned that natural range of fluctuation will be used as an excuse to never identify a stock as diminished because fishermen will argue, as they frequently do now, that low stock size is the result of nature not man. Moreover, regardless of the cause of the decline, remedial action is necessary to rebuild the stock. This newly defined term will likely lead to fewer stocks being defined as diminished, which means needed actions to rebuild these stocks will be delayed or avoided. We suggest that overfished or diminished be defined as "a stock with a size below the long-term average abundance associated with the production of maximum sustainable yield (MSY) or a size, age, or gender structure that hinders the production of MSY." This is a variation of the definition recommended by the National Marine Fisheries Service in its proposed MSA reauthorization bill.

To further compound the problems associated with the new definition for diminished, H.R. 5018 establishes three new exemptions to the requirement to rebuild overfished stocks within 10 years if biologically possible. The bill allows for extensions in cases where the Secretary determines that the cause of the fishery decline is outside of the council jurisdiction or that limiting fishing alone will not effectively rebuild the stock, the Secretary determines that the 10-year period should be extended, or if the Secretary makes substantial changes to the rebuilding targets after a rebuilding plan has been implemented. This is an extremely dangerous precedent to set, because extending rebuilding deadlines will only serve to increase fishing pressure on vulnerable stocks, threatening their ability to rebuild and delaying the benefits of rebuilt stocks to fishing communities.

The bill also authorizes the Secretary to determine that any management plan that complies with the MSA is deemed to be in compliance with the National Environmental Policy Act (NEPA). This amounts to a waiver of NEPA, because the MSA does not contain comparable requirements. For example, NEPA has very different requirements for evaluating the cumulative environmental impacts of proposed actions, considering a range of management alternatives, and allowing public participation in the decision making process. Therefore, these important measures for insuring sound governmental decision making will be lost. While we understand the concerns expressed by some that the timelines of NEPA and MSA do not fit well together, this legislation is not necessary because NEPA's implementing regulations already provide the flexibility necessary to mesh the NEPA process with other laws. We urge you to drop this section, or if that is not possible, to replace this language with the NMFS proposal for meshing these two procedures because it retains the substantive requirements of NEPA and its implementing regulations.

H.R. 5018 exempts fisheries observer data from disclosure under the Freedom of Information Act (FOIA). This provision would severely limit public access to fisheries observer data. We understand that certain fisheries information should be shielded from the public in order to protect proprietary business interests, but aggregate fisheries observer data should be available to the public. Observer information is critical for the public to evaluate how managers are implementing legal requirements to minimize bycatch. If this section were enacted, only information provided by managers would be available to evaluate their performance. Obviously, this will not facilitate independent oversight. We also find it ironic that data which is collected using taxpayer's dollars would be unavailable for public review.

The bill also authorizes the use of alternative procedures which will allow mangers to develop fishery management plans and amendments quickly but will restrict the public's ability to comment on fishery management measures developed through this process. Public input is a crucial component of developing management plans and amendments, and the public deserves to have a say in the management decisions regarding public fishery resources. However, we recognize that expedited

procedures may be necessary in certain situations and suggest that you add restrictions so that these procedures may only be used in situations where management measures must be implemented quickly. We fear that the current proposal will allow their use to become the practice not the exception.

The final weakening of existing legal or regulatory requirements contained in H.R. 5018 involves the new statutory definition of "habitat area of particular concern," which is a subset of essential fish habitat (EFH) that is eligible for focused protections under the NMFS EFH regulations. The new statutory definition is inconsistent with the NMFS regulatory definition because it does not include habitats that are threatened with development. NMFS and the councils have been implementing the EFH requirements for nearly eight years and creating a new, inconsistent, definition will create confusion and undercut previous efforts to protect EFH. We recommend that you amend this definition to make it consistent with the NMFS regulatory definition.

I'd now like to discuss how H.R. 5018 does and does not implement the fisheries management recommendations of the USCOP regarding the composition, operation, and role of the regional fishery management councils.

**Councils and the use of science**

The most important recommendations of the USCOP are intended to improve the use of science in fisheries management decision-making and nationalize the Alaska model of science-based management. One needed reform involves ensuring the use of independent scientific advice. Currently, each council is required to establish a Science and Statistical Committee (SSC) to assist in the development, collection, and evaluation of the statistical, biological, economic, social, and other scientific information necessary for development of fisheries management plans and amendments. The USCOP recommended a number of changes in SSC member qualifications, compensation, and appointment, which are intended to improve their independence.

H.R. 5018 contains language that partially implements many of the USCOP recommendations, but does not go far enough. By adding the following changes, which can be found in H.R. 1431, the bill will fully implement the USCOP recommendations. Specifically, scientists with financial ties to the fishing industry should not be allowed to serve on SSCs. SSC members should be appointed by the Secretary of Commerce to further ensure their independence. The councils should also be required to pay SSC members a stipend to ensure the participation of independent scientists. The peer review section must contain more detailed standards and criteria for the peer review process, and allow for comment from the public, not just the "regulated community." These changes will not only ensure that the bill conforms with the USCOP recommendations, but help ensure that the councils base management decisions on best independent scientific information available.

While it is very important to ensure that the scientific advice provided councils is independent, it is of little value unless the councils are required to use it. Here H.R. 5018 does a much better job of following the USCOP recommendations. Consistent with the USCOP, the SSCs are required to provide scientific advice for setting catch levels and the councils are required to follow it. In addition, the councils are also required to set annual catch limits based on this scientific advice. The main deficiency in this section is that the councils are not required to deduct amounts that an annual catch limit is exceeded from the following year's limit. Such an accountability measure is necessary to ensure that overfishing is controlled. The bill also does not adequately define the basis for annual catch limits. The councils can also use "other annual harvest effort control limits," which are not as effective as catch limits. H.R. 5018 also only applies the requirement to set annual catch limits to the councils, not secretarial plans, and fails to provide a definition for the scientific recommendation designed to be the benchmark for these limits, i.e., the acceptable biological catch.

The USCOP also made a number of recommendations to improve the councils themselves which are also included in H.R. 1431. Current law requires the Secretary of Commerce to ensure a fair and balanced appointment of the representatives of the commercial and recreational fisheries under the jurisdiction of the council. Since 1985, this requirement has resulted in 80—90 percent of appointed council members representing fishing interests. The USCOP recommended that the governors be required to nominate slates of council candidates that include two representatives each of commercial fishing, recreational fishing, and the general public. The Network believes that the Secretary should also be required to ensure equal representation between commercial fishermen, recreational fishermen, and the public when making council appointments. H.R. 5018 does not contain language to implement this recommendation. The USCOP also recommended that the Secretary

establish a council training program, which should be required for new members, and members who do not take the training should be prohibited from voting until they do. H.R. 5018 does require the Secretary to develop the training program and requires new members to take the training program, but does not restrict voting until the training takes place.

**Limited Access Programs**

The Limited Access Privilege Programs (LAPPs) section of H.R. 5018 contains language that addresses many of the recommendations of the USCOP, most importantly that there be a set of national guidelines to govern program design and conduct. However, there is one very significant deficiency in the bill's LAPP standards: no time limit on these programs. The USCOP and the State of Alaska have called for these programs to have time limits. Time limits are necessary to reinforce the fact that LAPPs are a privilege, not a property right, and add force to program reviews. A time limit allows managers a greater opportunity to make program modifications because LAPP participants know that continued participation in the program is contingent on good performance.

In addition, H.R. 5018 requires a council to develop a LAPP if the Secretary certifies a petition endorsed by 50 percent of the allocation holders in the fishery. This would allow the largest operators in a fishery to force the development of a LAPP despite opposition from the council and a majority of the permit holders in that fishery. Since a LAPP is a fundamental change in the fishery, all fishermen should have an equal voice in deciding to develop a program, not just the largest fishing businesses. Finally, H.R. 5018 exempts programs under development from the LAPP standards. Since there is no definition of under development, this crates a huge loophole which will allow many programs, even those in the discussion stage, to be exempted from the standards. This exception should be dropped from the bill.

**Ecosystem-based Management**

Finally, the major recommendation of the USCOP was to move fisheries management toward ecosystem-based management. While H.R. 5018 does include a section on ecosystem management, it merely calls for more ecosystem research. Twenty years ago the idea of ecosystem management was a novel idea and the research surrounding it was just beginning. Today, we have a better understanding of the importance of ecosystem interactions and the shortcomings associated with single species management. The research in this field has expanded rapidly, and it is time that legislation reflect what scientists have learned and begin the process of ecosystem-based management. This bill should go beyond developing regional research plans and include guidelines and requirements for developing and implementing Fishery Ecosystem Plans. The inclusion of an ecosystem approach into fishery management plans is a critical component to successfully managing our oceans and fisheries.

**H.R. 1431**

While H.R. 1431 is not a comprehensive MSA reauthorization bill, it proposes to fully implement some of the most pivotal recommendations made by the USCOP and would result in a thorough reform of the council system, especially how science is used for making decisions. Because of this, the Network strongly supports H.R. 1431. Building on the strengths of the existing management process, the bill amends the Magnuson-Stevens Fishery Conservation and Management Act to: (1) broaden stakeholder representation on fishery management councils; (2) significantly reduce financial conflicts of interest among council members; (3) provide training for new council members; (4) develop cooperative research, data collection and gear modification programs; and (5) enhance the use of science in fishery management decisions.

The bill strengthens the role of science in the fishery management process by insulating scientific determinations from political and economic pressures. The bill requires the Secretary to appoint and compensate members of each council's SSC. It requires that SSC members must be qualified federal, state, academic, or independent scientists who have no financial interest in any fishery. SSC members must have demonstrated scientific expertise in fisheries science or marine ecology; or economics or social science as it relates to fisheries management. It requires that each council's SSC include a fishery and marine science subcommittee. The subcommittee, drawn from those members of the SSC who have scientific expertise in fishery biological science or marine ecology, is responsible for making scientific determinations that include biological catch and bycatch limits, habitats in need of protection, and additional species protections. Consistent with USCOP recommendations, the bill stipulates that the councils must develop management measures that are consistent with the determinations made by the fisheries and marine science subcommittee, but may provide for greater conservation in order to meet manage-

ment objectives. Furthermore, the bill specifies that determinations made by each council's fishery and marine science subcommittee of the SSC must be periodically subject to peer review by qualified independent scientists appointed by the Secretary of Commerce.

In an effort to broaden representation on the councils, this bill requires each governor to nominate a slate of candidates for appointed council seats that include at least two representatives of commercial fishing interests, recreational fishing interests, and representatives of the public. In order to achieve actual balance on the councils, the bill directs the Secretary to ensure balance between commercial, recreational, and public interests when making council appointments. This bill would also prohibit council members from voting on any matter that would affect a financial interest the council member has disclosed, and it allows members of the public to request that the Secretary review a determination to decide whether a council member voted on a matter that would have an effect on the council member's financial interest. If a council member voted on a matter from which he or she should have recused him/herself, and his/her vote decided the council action, it shall be treated as a cause for invalidating or reconsidering the council action. The bill does not, as some have claimed, prohibit fishermen from sitting on the councils if they have financial conflicts. It also does not prevent fishermen with conflicts from engaging in the debate on matter they have a financial interest it. But, as I said above, they would be prevented from voting on matters they have a financial interest in.

Current law exempts council members from the conflict of interest standards that apply to all other regulatory bodies of the federal government. Instead, regulations implementing the Magnuson-Stevens Act require council members to recuse themselves from a council action if they own or represent more than 10% of a fishing gear type or sector. Even if a council member is found to have voted on a matter in violation of this standard, the vote cannot be reconsidered. A study by the Stanford University Fisheries Policy Project, entitled Taking Stock of the Regional Fishery Management Councils, found that 60 percent of the appointed council members had a direct financial interest in the fisheries they managed and that only two council members had recused themselves during years of the study. The conflict of interest standards in H.R. 1431 are necessary to bring fisheries management up to the same standards as apply to the rest of government.

H.R. 1431 also requires the Secretary to provide newly appointed council members with training, within six months of their appointment, in the following areas: (1) fisheries science and stock assessments; (2) basic ecology; (3) social science and fishery economics; (4) the requirements of the Magnuson-Stevens Act, the National Environmental Policy Act, the Administrative Procedures Act, and other relevant statutes or regulations; (5) conflict of interest policies that apply to council members; and (6) the public process for developing fishery management plans. Additionally, newly appointed members are restricted from voting on any council decision until they have completed the required training.

**H.R. 5051**

Finally, I'd like to say a few words about H.R. 5051, the MSA reauthorization bill introduced by Congressman Gilchrest. Of all the comprehensive reauthorization bills introduced in the House and the Senate, this bill is the one that most closely follows the recommendations of the USCOP and enjoys the greatest degree of support within the Network because it does not contain many provisions that weaken existing law found in H.R. 5018. However, that is not to say that we do not see areas that need improvement. H.R. 5051 has some of the same problems as H.R. 5018 in that it: 1) does not fully implement the USCOP recommendations for council member training and adding independent public interest seats to the councils, 2) would restrict the public's access to fisheries observer information, 3) allows the use of expedited management procedures that restrict public participation, 4) fails to include a time limit for LAPPs, 5) allows large scale fishermen to force councils to develop LAPPs, and 6) exempts LAPPs under development from the standards.

**Conclusion**

For almost two decades, independent reviews of our fisheries management system have yielded similar conclusions; science-based fisheries management is too often compromised by political and economic pressures, thus our progress towards ending overfishing and rebuilding depleted fish populations has been limited. Indeed, the governance structure of federal fisheries management needs to strengthen the role of science in management by separating scientific determinations from allocation decisions. Failure to follow scientific recommendations has resulted in ecological deterioration and economic losses. The NPFMC provides an example of a system that

follows scientific advice in setting catch levels and maintains healthy fish populations. Recognizing the success of the North Pacific management regime, the USCOP outlined a model to apply that success nationally. Now it is time for Congress to heed the call for reform.

I urge this Committee to make the changes I have recommended to H.R. 5018 so that it will advance the use of science in the management process, and most importantly not rollback critical conservation measures in current law. The future of marine fish, commercial fishing, and fishing communities is hanging in the balance and the time to act is now.

Thank you and I would be happy to answer any questions that you may have.

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The CHAIRMAN. Thank you.

Ms. Raymond.

**STATEMENT OF MAGGIE RAYMOND, ASSOCIATED FISHERIES OF MAINE**

Ms. RAYMOND. Mr. Chairman, Members of the Committee, Congressman Frank, good morning and thank you for the opportunity to be here.

My name is Maggie Raymond, and I am here on behalf of Associated Fisheries of Maine. Associated Fisheries is a trade organization of fishing and fishing-dependent businesses. I am also the co-owner of the fishing vessel Olympia, a New England groundfish trawler that provides the primary economic support for my family.

We appreciate the work that you and your staff have done to develop a reauthorization bill that recognizes the delicate and difficult balance managers must strike in order to conserve our resources while preserving our fishing families and communities.

My written testimony addresses several aspects of H.R. 5018 but my comments today will focus on the provision of the law that gets the most attention; that is, the requirement for managers to identify all the fish stocks and to set about rebuilding them.

Associated Fisheries fully supports this mandate. However, we believe that the reauthorization process ought to undertake lessons learned approached when refining this mandate. The New England Groundfish Fishery is comprised of 19 separate stocks of fish. The majority of these are well on their way to being fully rebuilt. During the past couple of years the fishing mortality rate for a few of the 19 has been higher than managers would have liked. As a result, much criticism has been heaped on New England as we struggle with the challenge of managing a multi-species fishery.

What is often left out of the story, however, is the fact that during these last few years the majority of stocks within the New England groundfish complex have been underharvested.

The criticism of New England management has been so severe of late that many have called upon Congress, and especially you, Mr. Chairman, to make the overfishing provisions of the Act more stringent, to the point of demanding that all fisheries adhere to strict levels known as fixed total allowable catch of quotas even if that means closing fisheries and imposing economic hardship on fishing families.

Mr. Chairman, I am now unfortunately compelled to divulge the secret of my age by informing you that I have firsthand knowledge of the quota system for New England groundfish that was used in the late 1970s, and early 1980s. And since I know you will find that hard to believe, I am footnoting my testimony with references

that will support my assertion that the use of fixed quotas at that time was a catastrophic failure, an administrative and enforcement nightmare which caused a race to fish, human safety ramifications, and an unconscionable waste of the resource through premature closures of the fishery.

While many demand that Congress mandate fixed quotas, they fail to point out that fixed quota management is indeed currently in place for three species within the New England complex. As perhaps the most telling example of the so-called success of fixed quotas, one only has to look at the current condition of Georges Bank yellowtail flounder.

In 2003, scientists considered the Georges Bank yellowtail fishery to be rebuilt and a fixed quota was once again imposed on the fishery. In 2004, and for the first time in many years, New England fishermen actually caught the entire quota for yellowtail flounder. I want to stress that the quota was not exceeded. Yet in 2005, an updated assessment asserted that Georges Bank yellowtail was overfished, and overfishing was occurring, begging the question if fixed quotas are indeed the cure for groundfish management in New England, how can Georges Bank yellowtail flounder now be overfished?

The short answer is that fixed quota management in the face of ever-changing conditions that may have nothing to do with fishing is not infallible. Therefore, Mr. Chairman, we ask that you resist the pressure to require that all fisheries be managed using quota systems because we are acutely aware of the failure of this type of system in New England.

We believe it is also important to bring to your attention the fact that some European countries are moving away from fixed quota management toward a days-at-sea system similar to that used in New England groundfish. The Faroe Islands moved to such a system in the 1990s and in 2003 and 2004, respectively, the Royal Societies of England and Scotland strongly recommended moving away from quota management toward a days-at-sea system in closed areas.

Finally, we are pleased to note that H.R. 5018 does not include a mandate to end overfishing within a specific timeframe as has been suggested by the Administration. Last week in New Bedford, Massachusetts, you heard testimony from Miller Fisheries' chief science advisor who described the law's current 10-year rebuilding timeline for overfished stocks as arbitrary.

However, the Administration is now advocating an equally arbitrary timeline for ending overfishing, and we ask that you not include that in H.R. 5018. Again, fisheries managers must be encouraged to consider the impacts of regulations on fishing communities, and to do so they must maintain the flexibility to phase in reductions so long as the rebuilding requirements are ultimately achieved.

Again, Mr. Chairman, please accept the sincere gratitude of Associated Fisheries for your willingness to become well versed in the complexities of fishery management, and your obvious sensitivity to the needs of resource-based communities.

I would be happy to answer any questions you may have, and I do hope that everyone on the Committee will find the opportunity to read my complete testimony. Thank you.

[The prepared statement of Ms. Raymond follows:]

**Statement of Maggie Raymond, Associated Fisheries of Maine**

Mr. Chairman, and members of the Committee on Resources thank you for the opportunity to testify on H.R. 5018, the American Fisheries Management and Marine Life Improvement Act. I am here today on behalf of Associated Fisheries of Maine.

Associated Fisheries of Maine, established in 1956, is a trade association of fishing and fishing dependent businesses. Our membership includes harvesters, processors, dealers of fuel, ice and fishing gear, marine insurers and lenders, and other public and private businesses and individuals with an interest in commercial fishing. Members of Associated Fisheries of Maine are dependent on the sound management of the New England groundfish fishery. I am also the co-owner of the F/V Olympia, a New England groundfish trawler that provides the primary economic support for my family.

Associated Fisheries of Maine appreciates the work that you and your staff have done to develop a Magnuson-Stevens Fishery Conservation and Management Act reauthorization bill that recognizes the delicate and difficult balance fisheries managers must strike in order to conserve our fishery resources while preserving our fishing families and communities.

Associated Fisheries of Maine has a long history of supporting rational management measures for the New England groundfish fishery. I personally have served on several of the New England Fishery Management Council's advisory panels, including many years as Chair of the groundfish advisory panel.

The provision of the Magnuson-Stevens Act that gets most attention is that which requires fisheries managers to identify overfished stocks and set about rebuilding them. Associated Fisheries of Maine fully supports this mandate. However, we believe that the re-authorization process ought to undertake a careful "lessons learned" approach in deciding how to refine this obligation.

The New England groundfish fishery is comprised of 19 separate stocks of fish, most of which are co-mingled. After years of strict conservation measures, the majority of these stocks are well on their way to being fully rebuilt, and there is every indication that these stocks will continue to rebuild over the long-term. What is not so certain is whether in the short term, New England fishing communities will be able to maintain the infrastructure needed to harvest the resource and bring this highly valued seafood to the public.

During the past couple of years, the fishing mortality rate for a few of the 19 groundfish stocks has been higher than managers would have liked. As a result, much criticism has been heaped on New England fishery managers and fishing communities as we struggle with the difficult challenge of managing a multispecies complex. What is often left out of the story, however, is the fact that during these last few years, the majority of stocks within the New England groundfish complex have been under- harvested due to increasing restrictions on a few stocks.

The criticism of New England groundfish management has been so severe of late that many have called upon Congress to make the overfishing provisions of the Magnuson-Stevens Act more stringent and less flexible, to the point of demanding that all fisheries adhere to strict catch levels known as fixed total allowable catch (TAC) or quotas, even within a multispecies complex, and even if adherence to strict catch levels means closing down fisheries and imposing severe economic hardship on fishing communities. You may be surprised to know that most of the harshest critics of New England fishery management are not aware that nearly thirty years ago, prior to and immediately following the enactment of the Magnuson Act, New England groundfish was indeed managed by a quota system under the International Commission for the Northwest Atlantic Fisheries as well as by the New England Council and the National Marine Fisheries Service.

I am footnoting my written testimony with references [1] that will support my assertion that the use of fixed quotas at that time to manage New England groundfish

[1] 1982, Pierce, David E., Development and Evolution of Fishery Management Plans for Cod, Haddock and Yellowtail Flounder, Massachusetts Division of Marine Fisheries. 1985, New England Fishery Management Council, Fishery Management Plan, Environmental Impact Statement, Regulatory Impact Review and Initial Regulatory Flexibility Analysis for the Northeast Multi- species Fishery.

was a catastrophic failure, an administrative and enforcement nightmare, which caused a race to fish, human safety ramifications, and an unconscionable waste of the resource through premature closures of the fishery.

While many critics of New England's fishery management call upon Congress to mandate fixed quotas as the solution, they fail to point out that fixed quota management is indeed currently in operation for three stocks within the New England groundfish complex. As perhaps the most telling example of the so-called success of fixed quotas, one only has to look at the current condition of Georges Bank yellowtail flounder.

For years, New England fishermen under-harvested the target total allowable catch due to large area closures and restrictions on days at sea. In 2003, scientists considered the once heavily depleted Georges Bank yellowtail flounder fishery to be "rebuilt"[2], and in the same year the US/Canada Resource Sharing Agreement (adopted in Amendment 13 to the groundfish plan) imposed a fixed quota once again for cod, haddock, and yellowtail flounder.

In 2004, and for the first time in many years, New England fishermen actually caught and landed the entire quota for Georges Bank yellowtail. I want to stress that the quota was not exceeded, yet in 2005, a "retrospective" assessment of Georges Bank yellowtail asserted that the stock was "overfished" and "overfishing was occurring", begging the question:

> "If fixed quotas are indeed the cure for groundfish management in New England, how can Georges Bank yellowtail flounder now be overfished? How can overfishing be occurring? The short answer is that fixed quota management, in the face of ever changing conditions that may have nothing to do with fishing, is not infallible.

Associated Fisheries of Maine would also like to make the Committee aware that other countries are moving away from quota based systems towards fishing effort controls similar to those used in New England groundfish.

For example, in the 1990's the Faroe Islands moved from a quota based system to a fishing days system. "The system has been credited not only for wholly preventing the problem of fish dumping, but also for striking a sound balance among ecological, social and economical interests in the Faroe Islands".[3] Likewise a 2003 report of the Royal Society of England on fisheries management states: "One achievable action would be to replace the traditional emphasis on methods of controlling catches with controls on fishing effort, a strategy that would also address the cumbersome and costly nature of enforcing current management strategies."[4] In 2003, the Royal Society of Edinburgh Scotland made the following recommendations regarding management of cod in the North Sea: "While we recognize that the exceptionally serious condition of cod stocks requires regulation targeted at cod, we consider that, in a multispecies fishery, there are difficulties in trying to manage a single stock. If the principal aim is to have a sustainable whitefish sector, the better option in the longer term may be to focus on maximizing the harvesting potential from the full range of demersal fisheries in Scottish waters. We consider that illegal landings and discards are always likely to be problems so long as regulation of the demersal sector is based on catch quotas and single species TACs. We therefore recommend that the EU Commission should replace the present system of catch quotas for the demersal sector and Nephrops trawl fisheries with effort control (days at sea) and closed areas."[5]

Therefore, Associated Fisheries of Maine asks that you resist pressure to require that all U.S. fisheries be managed using quota systems, because we are acutely aware of the failure of this type of system in New England; and so that New England can continue to use a variety of tools that are more appropriate to multispecies management.

Associated Fisheries of Maine is pleased to note that H.R. 5018 does not include a mandate to end overfishing within a specific timeline. Last week in New Bedford, MA you heard testimony from NOAA Fisheries Chief Science Advisor who described the law's current 10-year rebuilding timeline for overfished stocks as "arbitrary". However, the Administration is now advocating an equally arbitrary timeframe for ending overfishing, and we ask that you not include that recommendation in H.R. 5018. Again, fisheries managers must be encouraged to consider the impacts of regulations on fishing communities and to do so they must maintain the flexi-

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[2] 2003, Stone, H., Gavaris, S., Legault, C., Neilson, J., Cadrin, S., Collapse and recovery of the yellowtail flounder fishery on Georges Bank, Journal of Sea Research.

[3] 2005, Annual Business Report of the Faroe Islands.

[4] 2003, The Royal Society of England, Environmental Effects of Marine Fisheries.

[5] 2004, The Royal Society of Edinburgh, Inquiry into the Future of the Scottish Fishing Industry.

bility to phase-in reductions, so long as the rebuilding requirements are ultimately achieved. It is precisely these types of indefensible deadlines that provide ample fodder for litigation.

Associated Fisheries of Maine supports the vision of H.R. 5018 to move towards ecosystem-based approaches to fisheries management, and we commend Chairman Pombo for including a non-mandatory provision to move fisheries management in that direction. We believe that before ecosystem principles can be incorporated into all fishery management plans, a great deal of research must continue and be augmented to understand the complex interrelationships within marine ecosystems, and therefore non- mandatory encouragement is the best approach at this time.

Regarding marine protected areas, we do recognize and appreciate the fact that the authority specified for this provision is discretionary. However, we are concerned that the requirements with respect to the closure of a given area to fishing (i.e., requirements for use of best available science, assessment of conservation benefits, timely review of need for a closure, determination of benefits and impacts of closure, etc.") are triggered only if an area is closed to all fisheries. This is problematic in that certain fisheries or gear types or fishing sectors could easily be removed from an area while the requirements normally used to justify the closure would not be triggered since other fisheries might still be allowed to operate in the area. This provision would be acceptable with a small change—that all the requirements currently specified under subsection (h)(16) be triggered if just one fishery is removed from an area pursuant to this provision rather than waiting until all fisheries are prohibited.

Again, Mr. Chairman, please accept the sincere appreciation of Associated Fisheries of Maine for your willingness to become well versed in the complexities of fisheries management, for the common senses approach that is the basis of H.R. 5018, and for your obvious sensitivity to the needs of resource based communities. I would be happy to answer any questions about my written or oral testimony that the Committee may have.

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The CHAIRMAN. Thank you.

Mr. Oliver.

## STATEMENT OF CHRIS OLIVER, EXECUTIVE DIRECTOR, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Mr. OLIVER. Good morning. Thank you, Mr. Chairman, for the opportunity to once again testify before this Committee on critically important changes to the Magnuson-Stevens Act.

Overall, I believe the current version of H.R. 5018 is a very positive, well constructed piece of legislation which appropriately addresses most, if not all, of the most important issues being considered. I have offered specific written comments relative to H.R. 5018 for further consideration, and as requested, also comments relative to H.R. 1431. I am going to move straight in my oral testimony because of time constraints to three of the most critical issues.

In terms of science-based improvements, I believe that H.R. 5018 contains clear direct language regarding the establishment of annual catch limits, including provisions regarding acceptable biological catch levels as recommended by the SSC. This reflects a model that has been used in the North Pacific for three decades, and I believe represents a significant strengthening of the conservation aspects of the Act.

Next, Mr. Chairman, I would move to limited access programs, a very important set of provisions. Overall, overall, the provisions in the bill represent an ambitious and comprehensive framework for future development of LAP programs. Generally, these provisions represent a positive approach to program design, but it does need to be recognized that due to the number of requirements and

provisions the development of LAP programs will be a complex, time-consuming, and costly process.

A couple of key points to stress is maximum flexibility for program design, and I think this draft does grant consideration discretion in that regard. Second is the issue of programs under development, and in the North Pacific we have two large programs and extensive phases of development, and unless these programs are grandfathered, significant revisions would be required, resulting in delays and approval and implementation. I think the phrase "underdevelopment" does that, but I think clarification of that would be good, Mr. Chairman.

Next, I want to move to the issue of competing statutes and specifically speak the rest of my length to the NEPA issue, and note that the comments in this regard are shared by all the regional fishery management councils. I believe this is among the most important issues and it represents the single best opportunity to reduce superfluous litigation and streamline the regulatory process.

I have heard these efforts referred to as red herrings or attempts to evade environmental protections, that the problems are perceived rather than real, and it is simply a matter of different schedules and timelines, and I want to try to clarify some of those misconceptions, Mr. Chairman.

The NEPA process does not and never will fit the dynamic nature of fisheries management, and I would like to pose the essence of this problem with one of the most illuminating examples from the North Pacific, and that is our 7,000-page supplemental environmental impact statement that was prepared to support our groundfish fishery management plans wherein one of the alternatives that had to be fully analyzed under NEPA compliance was a no fishing alternative.

This is a fishery where acceptable biological catch levels total 4 million metric tons where the tot allowable catch is only half that amount. A fishery that supplies half the nation's annual seafood production, and we were required to analyze the no fishing alternative, and subsequently, despite the 7,000-page SEIS, they have been required to prepare an annual NEPA document to support this TAC setting process, including the no fishing alternative.

Finally, we have recently been informed that a full-blown EIS will now be necessary each year with continued inclusion of the no fishing alternative to comply with NEPA.

The letter I have attached from NOAA explaining their rationale for that decision focuses on NEPA litigation avoidance as a driving factor. My point is not to default them for that decision, but to exemplify how NEPA is inappropriately driving the fishery management process.

Mr. Chairman, we made thousands of copies of the 7,000-page document, and I would submit in all seriousness that a more appropriate application in NEPA would have required us to conduct an EIS on the preparation of that EIS with regard to the impacts on all growth forest.

Mr. Chairman, I believe this example is an artifact that the greater underlying issue with NEPA, and that has to do with the timeline and review. We could easily match the timelines of council decisions post-implementation. It is the up-front work on NEPA

that requires the time and compliance with that, and I hope you will read my comments on that.

I want to close by saying, since I am running out of time, that while the current language in H.R. 5018 grants discretionary authority for the Secretary to review compliance with NEPA, that we need a clear and more direct mandate with regard to NEPA application, and confirm that the Magnuson-Stevens Act is the appropriate act guiding fisheries management, and that if done properly, it contains all the measures necessary for environmental protection, and that we should essentially be given a NEPA exemption with regard to Magnuson-Stevens Act.

Finally, Mr. Chairman, in conclusion, I agree with Dr. McIsaac's comments on marine sanctuaries, and I urge you to read my comments with regard to H.R. 1431. We do have serious concerns with some of those provisions, and I would particularly note the proposal to establish an SSC subcommittee, invest that committee with authority that essentially subsumes the council decisionmaking authority.

I will close with that, and be happy to answer any questions. Thank you.

[The prepared statement of Mr. Oliver follows:]

**Statement of Chris Oliver, Executive Director, North Pacific Fishery Management Council**

Good morning and thank you for the opportunity to once again testify before the Committee on critically important changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In previous testimony to this Committee we have provided details on the successful fisheries management program in the North Pacific, as well as comments on several principle issues. Many of my comments today will mirror the written and oral testimony previously submitted by the North Pacific Council, though today I will focus on a few of the most critical MSA reauthorization issues. Overall, I believe the current version of H.R. 5018 is a very positive, well constructed piece of legislation which appropriately addresses most, if not all, of the most important issues currently being considered. I respectfully offer the following specific comments relative to H.R. 5018 for further consideration. As requested, specific comments relative to H.R. 1431 are also offered.

**Section 3—Science-based Improvements**

H.R. 5018 contains clear, direct language regarding the establishment of annual catch limits, including provisions to not exceed acceptable biological catch levels as recommended by the SSC. This reflects the model used in the North Pacific for three decades, and I believe this language represents a significant strengthening of the conservation aspects of the MSA. Adding a specific definition for ABC could provide additional clarity, and such definition could read as follows: "ABC is defined as an annual specification of fishing mortality established for individual fish stocks or assemblages that prevents overfishing and promotes maximum sustainable yield."

Language regarding the membership and function of the SSC is also clear and direct, and provides the necessary clarification to strengthen the role of science in the management process. Regarding the requirement to establish a peer review process for regional stock assessment information (or other information), we hope that such requirement is accommodated by the current process in use in the North Pacific, whereby annual stock assessments are reviewed by scientific Plan Teams, as well as the Center for Independent Experts on a case-by-case basis, followed by additional review and approval by the SSC, prior to use by the Council. We believe that our SSC is the appropriate peer review process for all scientific information used by the Council, and additional peer reviews can be used on a case-by-case basis.

**Section 4—Data Collection**

We support the changes proposed relative to data collection, particularly the clarifications relative to collection of information by observers, or other technologies, and protecting the confidentiality of that information. I also wish to bring to your attention another issue relative to data collection by observers, and recommend language

which would address this issue relative to the North Pacific Groundfish Observer Program. Currently, observer sampling and monitoring duties are described in the North Pacific Groundfish Observer Program Sampling Manual (manual). The 400 page manual details how observers collect information on various vessels and processors, life at sea, safety information, data handling, and annual special projects.

Each year, the manual is revised to meet changing scientific information needs, describe sampling changes incorporated to support North Pacific Fishery Management Council management programs, and address technological and administrative changes. Because North Pacific groundfish observers are not Federal employees and may not be considered agents of the government, observer collected information may be subject to the Paperwork Reduction Act (PRA). In addition, all data forms and observer logbooks could be subject to the PRA.

Under the PRA, the manual, data forms, and logbooks could be required to be published in regulation. If this were to occur, annual changes to the manual or these forms would need to go through proposed and final rulemaking, as well as obtain annual OMB approval of information collection requirements. Engaging in this process on an annual basis would reduce NMFS's flexibility to incorporate changes to sampling protocols designed to meet scientific and management information needs, and could seriously limit NMFS' ability to manage groundfish fisheries of Alaska. In order to address this potential problem, the Committee might wish to consider the following language:

*(b) CONFIDENTIALITY OF INFORMATION*

*(4) Any observer collecting information for the Secretary under this subsection shall be deemed to be a federal employee for the purposes of Chapter 35 of title 44, U.S.C. [Paperwork Reduction Act]*

**Section 5—Council Operations and Authorities**

We strongly support training programs for Council members, but request clarification of the timing of training relative to ability to participate and vote in the Council process. Given that the timing of the training will not be within the control of the Council member, we recommend that completion of training not be a condition for voting.

This section contains a provision relative to observer program funding, which states that "costs for observer coverage that is primarily for enforcement"...or for data collection necessary for the monitoring of a fishery...shall be paid for by the Secretary, and, under a limited access program, may be considered as a cost to be recovered...". My comment in this regard is that it may be very difficult to separate observer duties among sampling for biological purposes, data collection for monitoring, and enforcement related duties. For example, a significant amount of observer duties in North Pacific fisheries could be construed to be related to data collection necessary for monitoring. This may pose a significant, and potentially unrealistic, burden on the agency that is currently being shouldered by the North Pacific fishing industry, recognizing that federal funding of at least some part of increasing observer costs may be necessary in the North Pacific, consistent with federal policy in other observer programs around the country. Further, it will in many cases be difficult to determine what portion of an observer's duties are related to a limited access program vs. duties that would otherwise be performed, coupled with the fact that a 3% fee may not be adequate to cover typical management and enforcement costs for a limited access program and observer costs as well. I do not have a handy solution to these interrelated issues, but wanted to note the critical importance of the observer program to managing our fisheries in the North Pacific, and to urge that whatever legislation is approved ensure continuation of this program through some combination of cost recovery and federal funding.

One other important provision in this section clarifies the Councils' and Secretary's framework authority for certain plan and regulatory amendments. We want to strongly support this clarification of framework authority as it will provide us the ability to craft plan and regulatory amendments necessary for timing implementation of management actions (such as annual specifications for catch limits, or trigger-based management actions that begin at the start of one year, based on previous years' conditions or performance).

**Section 6—Ecosystem-based Fishery Management**

Based on recent discussions within our Council and among all the regional Councils, I believe that the approach taken within H.R. 5018 is the correct approach to ecosystem-based fishery management, it recognizes the ecosystem-based fisheries management already being done, and it is consistent with efforts already underway to better define and understand ecosystems and then identify further, appropriate management measures. It defines an iterative process based on sequential improve-

ments in our understanding of ecosystem factors, and does not impose unrealistic requirements or timelines which would only serve as litigation fodder. H.R. 5018 represents a logical, realistic approach to further implementation of ecosystem-based fisheries management.

**Section 7—Limited Access Programs**

We have commented previously on many of the specific provisions related to this critical MSA reauthorization issue, and many of our comments appear to have been considered in this proposed legislation. Overall, the limited access program (LAP) provisions represent an ambitious and comprehensive framework for future development of LAP programs. Generally these provisions represent a positive approach to LAP program design, but it needs to be recognized, due to the number of requirements and provisions (including, for example, development of criteria for, and evaluation of, community plans and regional associations), that development of LAP programs under these provisions will be a complex, time-consuming, and costly process. Some specific comments are listed below:

- Maximum flexibility for program design is key, and provisions need to be discretionary, rather than mandatory, wherever possible. This draft appears to grant considerable discretion to the Councils in many aspects of program design.
- Regional fishery associations represent an alternative way to recognize and protect a variety of interests when designing an LAP program. We recommend clarification that regional fishery associations may, depending on criteria developed by the Council, be manifested in the form of fishery cooperatives (such as those implemented for pollock under the American Fisheries Act, and potentially include processor and/or regional linkages).
- The North Pacific Council has two LAP programs in extensive phases of development, including Amendment 80 which would establish fishery cooperatives for the non-AFA catcher processor sector and which is pending a final decision by the Council in June, but which will not be formally transmitted to the Secretary until later in the year. We have also initiated an EIS and attendant analyses for the comprehensive Gulf of Alaska rationalization program, though final Council action would not occur until sometime in 2007. Many of the provisions in that program are consistent with the concepts in the current legislation, but likely do not specifically conform with all of the provisions. Unless these programs are "grandfathered," significant revisions would be necessary resulting in delays to approval and implementation. The current language appears to provide for this but I would recommend clarification of the meaning of the phrase "under development" in that section of the bill.

**Section 9—Observer program funding**

The North Pacific Council is in the process of developing alternative funding mechanisms for the (mostly) industry-funded program off Alaska. Some type of across the board fee program is the most likely mechanism, and we need broad legislative authority to provide the necessary flexibility to accomplish this program revision. H.R. 5018 appears to provide this flexibility, though there are some concerns with the current language. Rather than vest sole authority for establishing the funding mechanism with the Secretary, the legislation should specifically include the Councils as part of this process. Also, the language should be clear as to whether and at what level a maximum fee is allowed, and how such a fee program would interact with an LAP fee program and the observer coverage language in Section 5.

**Section 10—Competing Statutes (MSA vs NEPA)**

Mr. Chairman and Committee members, while other provisions of the draft legislation address important science and conservation issues, I believe the NEPA issue to be among the most important issues in the current reauthorization discussion, and it represents the single best opportunity to reduce superfluous litigation and streamline the regulatory process. I have heard our efforts to reconcile this statutory redundancy referred to as a "red herring", as an attempt to evade environmental protections in our fisheries management actions, that the problems are perceived rather than real, that it is simply a matter of different schedules and timelines for review and approval. Nothing could be further from the truth. The NEPA process does not, and never will, fit the unique and dynamic nature of fisheries management, and despite our best efforts to date to comply with that process we will always be vulnerable to process-oriented litigation. And we will continue to expend vast, unnecessary resources in our attempts to bullet-proof everything we do against NEPA litigation, rather than focus our energies on Job 1—which should be effective, timely management of our fisheries resources.

I would like to once again pose the essence of the NEPA problem with two of the most illuminating examples from the North Pacific. The first is the 7,000 page SEIS that was prepared to support our Bering Sea/Aleutian Islands and Gulf of Alaska groundfish FMPs, wherein one of the alternatives that had to be fully analyzed under NOAA GC's instructions for NEPA compliance was a "No Fishing Alternative". In a fishery where the Acceptable Biological Catch (ABC) levels total 4 million metric tons (and have for three decades), a fishery where Total Allowable Catch (TAC) levels are only half that amount (or 2 million metric tons), a fishery which supplies half the Nation's annual seafood production...we were required to analyze a "No Fishing Alternative". This part of the analysis took nearly 300 pages, more than the total noted in CEQ guidance as the standard for an overall EIS. In addition, we have still been required to prepare an annual Environmental Assessment (NEPA document) to support the annual TAC setting process, which continues to include a "No Fishing Alternative". And finally, the agency has recently determined that a full-blown EIS is now necessary for the annual TAC setting process, with continued inclusion of the "No Fishing Alternative", or "no action alternative" as required by NEPA. The recent letter from NOAA Fisheries to the Council (dated April 21, 2006 and attached), explaining the rationale for the decision to do an EIS, focuses on NEPA litigation avoidance as a driving factor in that decision. My point is not to fault NOAA for this decision, but to exemplify how NEPA is inappropriately driving the fisheries management process.

The second example is the Essential Fish Habitat protection measures that were recently approved for the Gulf of Alaska and the Aleutian Islands. The Council action, taken in 2005, would close about 95% of the Aleutian Islands area to bottom trawling or in some cases to all fishing (nearly 300,000 square nautical miles) to protect deep water corals and other fish habitat. Because the specific alternatives analyzed in the EIS for the Bering Sea did not match with the alternative finally developed through the Council process with input from all sides of the issue, we were advised by NOAA GC that we could not pick that alternative without reinitiating the entire EIS process (under NEPA). Therefore, the Council proceeded with action relative to the Aleutian Islands and the Gulf of Alaska, but not the Bering Sea. We are now addressing the Bering Sea EFH measures through an additional, separate process which will involve preparation of similar NEPA analytical documents, additional staff and Council time, and delays (likely years) in implementation of EFH measures for the Bering Sea. If promulgated under MSA alone, the Council could have picked the alternative that made sense, conducted the further, necessary analyses specific to that alternative, and submitted the proposed measure for Secretarial review and approval along with the other EFH protection measures a year ago.

While I believe that these examples are compelling, they are only an artifact of the greater underlying problem associated with NEPA application to fisheries management processes. NEPA has subsumed the MSA as the guiding Act for fisheries management in the U.S., and attempts to apply the letter of NEPA, and to bulletproof all fisheries management actions against litigation under NEPA, have resulted in an extremely cumbersome, overly complicated, bureaucratic process of never ending legal review and regulatory revisions that ill serves the public's understanding of proposed management actions. While the timelines for review and approval of Council recommendations under NEPA could easily be matched with MSA requirements, the real problem lies within the up front development of management measures, and associated analytical documents such as EAs and EISs, prior to getting to a Council decision. Requirements for contrived, often unreasonable alternatives, for the sake of having multiple alternatives to comply with NEPA, coupled with seemingly unending lines of regulatory and legal reviews, often cause even the most simple, straightforward management actions to take years from conception to Council action, and additional years for rulemaking, approval, and finally implementation.

We fully support the development of more complete analyses to support proposed management actions and have been working diligently with our NOAA counterparts in this regard (in fact, in 2003 the North Pacific Council and NOAA Fisheries Alaska Region were jointly awarded the National Environmental Excellence Award for NEPA excellence, from the National Association of Environmental Professionals, for our Steller Sea Lion EIS). However, if we could do so under the authority of the MSA, rather than NEPA, we could develop and implement necessary conservation and management measures more quickly and at far less cost to the public, while still maintaining a focus on environmental protection and public process. Public process would be better served by providing meaningful, understandable analyses of management actions, as prescribed by the MSA, and we could once again devote the majority of our resources to practical fisheries management, rather than devot-

ing those resources to the self-fulfilling prophecy of litigation avoidance in which we are currently engaged.

The current language in H.R. 5018 grants discretionary authority to the Secretary to deem management actions to be NEPA compliant if prepared in accordance with MSA provisions. This appears on the surface to have the potential for vast improvements, but there are three reasons it will be unlikely to accomplish the intent: (1) based on current Department of Commerce (NOAA) policy and NEPA focus, it seems unlikely that the Secretary would in fact exercise the discretion to deem analyses NEPA compliant; (2) analyses would have to be completed under current MSA provisions prior to a discretionary finding by the Secretary, which means that if an analyses were deemed to not be in compliance with NEPA, we would have to start over, resulting in inefficient uses of staff and other resources, and delays in program implementation; and, (3) any actions, even if deemed NEPA compliant, would still seem to be subject to litigation and judicial review relative to NEPA compliance.

We need a clear and direct mandate with regard to NEPA application, and we need that mandate to confirm that the MSA is the appropriate Act governing fisheries management programs, and that compliance with MSA provisions exempts the action from NEPA. Replacement of the word "may" with the word "shall" in Section 315, Line 18 would accomplish this sorely needed statutory reconciliation, or alternative language that clearly exempts such actions from NEPA. With new provisions in the MSA for cumulative impact analysis and consideration of an appropriate range of alternatives, the MSA contains all the necessary provisions to ensure that environmental impacts are clearly assessed, that conservative management measures can be promulgated in a timely fashion, and that the public has ample opportunity, at several stages in the process, to comment on and influence those management decisions. The Councils and NOAA Fisheries could once again focus their limited resources on the real job of managing fisheries, and could do so without sacrificing any conservation and environmental protections or public process.

**Marine Sanctuaries**

H.R. 5018 provides language that strengthens the role of the MSA relative to the National Marine Sanctuaries Act; however, the Councils believe that additional language could clarify that jurisdiction over fishing activities within such sanctuaries is correctly under the purview of the regional Councils vis-á-vis the MSA.

**Diminished Fisheries**

H.R. 5018 proposes to replace the term "overfished" with the term "diminished", in order to correctly recognize the difference fish stocks that are truly overfished and those which are diminished, or depleted, due to other factors. Given that the bill also requires the annual status of stocks report to make such distinctions, we support the proposed change as an appropriate way to address this issue.

**H.R. 1431**

As the Committee requested, I will now address some comments specific to H.R. 1431. This bill proposes significant changes to the Council appointment and voting process, and significant changes to the Councils' authority vis-á-vis changes to the structure, operations, and authorities of the Council's Scientific and Statistical Committee (SSC) and proposed subcommittee. Generally, our Council believes that the current process works very well, and that significant changes in this regard are unwarranted. While our Council has not reviewed and discussed the specific changes contained in this bill, we have discussed the concepts embodied therein, and I am comfortable stating that some of the proposed changes are unnecessary, and would negatively affect, rather than improve, the currently successful process.

**Voting members, term limits, and training (per H.R. 1431)**

Our Council does not believe that major changes are necessary to the Council appointment process. The current Act provides the Governors' authority to make recommendations from a wide range of constituencies which can appropriately reflect the correct balance of representation depending on the region and issues, and mandating additional names from specific groups is unnecessary. It may also be difficult to define what constitutes the "marine fish conservation public interest sector", as individuals from commercial or recreational fishing sectors could easily be construed to also represent the public interest in terms of conservation.

The new legislation appears to restrict Council membership to not only three consecutive terms, but to three terms overall. There does not appear to be a justification for this restriction. There may be cases where the benefits of long-term experience justify re-appointment of a previously seated Council member. Regarding training for Council members, we strongly support the provisions for training, but do not

believe that a Council member should be restricted from voting for up to six months pending such training, particularly where the timing of such training may not be within the control of the affected Council member.

The legislation also appears to prohibit voting by a Council member on any issue which would have an effect on a financial interest that is required to be disclosed. This would appear to greatly alter the existing rules, such that any effect on any financial interest would result in the prohibition on voting. This seems overly restrictive and could hinder Council members' ability to participate and contribute their expertise to the process.

**SSC membership and proposed subcommittee authorities (per H.R. 1431)**

We continue to strongly support the SSC as the bastion of scientific information guiding Council decisions. We support the use of the SSC in establishing the upper bounds for annual catch limits. We support clarification of SSC membership which limits such membership to those without potential conflict or political agendas—we must ensure that the SSC process cannot be politicized. We suggest that the definition of "independent scientist" be clarified to exclude not only those with any financial or employment link to fisheries, but also those with any financial or employment link to organizations engaged in political lobbying related to fisheries. We agree with granting authority for the Councils to pay a stipend to SSC members, but not with a mandate to do so. Budget considerations are a factor in this regard, and we have been able to assemble and maintain a world class SSC without a stipend requirement.

There is no need for a "fisheries and marine science" subcommittee to the SSC to establish catch limits or other biologically related management measures—these fundamental recommendations should be compiled by the entire SSC which represents a diverse range of expertise (economists, sociologists, marine mammal and seabird scientists, oceanographers, ecologists, biologists and stock assessment experts, etc) and is therefore appropriate to make such recommendations taking into account all relevant factors. This model has worked extremely well in the North Pacific.

Neither the SSC nor any subcommittee should be given the authority to usurp the role of the Council. H.R. 1431 appears to replace a Council's authority for major management decisions by granting somewhat open-ended authority to the fisheries and marine science subcommittee of the SSC. If Councils are restricted to establishing annual catch limits within the upper limits recommended by the SSC, as is provided in H.R. 5018, that is the appropriate solution, and is the appropriate application of SSC and Council authorities.

**Required Provisions (per H.R. 1431)**

This section proposes to compel a Council to adopt measures at least as stringent as those developed by the fishery and marine science subcommittee. It is unclear how broad this authority of the SSC subcommittee extends and therefore how broadly this provision could be interpreted, though it appears to be somewhat open-ended. This provision seems unnecessary, particularly given the problems identified with establishment of, and authorities granted to, such an SSC subcommittee in the first place.

**Peer Review (per H.R. 1431)**

Periodic reviews are already conducted by the Secretary (through the Center for Independent Experts for example) and/or by the Councils through independently commissioned panels on a case-by-case basis. We believe a properly constituted and properly utilized SSC represents an appropriate group of qualified independent scientists to review stock assessment information and other scientific information brought to bear on Council decisions. Minor revisions in the Act, such as those contained in H.R. 5018, can ensure that SSCs are properly constituted and properly utilized to perform this and other necessary functions.

Thank you once again for the opportunity to appear before you and offer these comments on these critically important issues.

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The CHAIRMAN. Thank you. Thank all the panel for your testimony.

I think, to begin with, Mr. Oliver, it appears from your testimony that you believe that the NEPA provisions in H.R. 5018 don't go far enough. Is that accurate?

Mr. OLIVER. Yes, Mr. Chairman, I believe it is accurate. I list a couple of reasons why I don't believe they go far enough. I think the intent is obviously there, but as Dr. Hogarth indicated, I am not sure it is likely that the Secretary would exercise that discretion.

Further, that he wouldn't be able to do it until we had actually done the analysis, and we would have to back and start over; and finally, I think it would still be litigatable under NEPA under that direction. I think we need a much more clear and direct remedy, and that is that if the Magnuson-Stevens Act provisions are done properly, with a few additions, would cover all the intent of NEPA, but that is the correct approach.

The CHAIRMAN. Now, in the bill we do expand the environmental provisions so that they do match up with NEPA. Is that what you are talking about?

Mr. OLIVER. Yes, sir, Mr. Chairman.

The CHAIRMAN. I know that we have received testimony saying that this somehow waives NEPA in the past, and I think it is more of a misunderstanding or not understanding exactly what is in the bill in terms of trying to expand the requirements under Magnuson so that it does cover all of the different areas that are in NEPA.

If that were adopted as it is written, you still believe that lawsuits could be filed under NEPA?

Mr. OLIVER. Mr. Chairman, if I understand your question, I think the word "may" still allows for litigation under NEPA. I think you are correct that—my position on this would be different if we didn't have the Magnuson-Stevens Act, but that Act, with the provisions that are also included in your bill, in my mind completely negates the need for NEPA compliance. I think everything is covered under the Magnuson Act, or would be under your bill, sir.

The CHAIRMAN. I want to ask, one of the other issues that we have gone back and forth on is dealing with sanctuaries, and management within those areas. What do you believe is the right way to manage the fisheries within those sanctuaries?

Mr. OLIVER. Mr. Chairman, I agree with the comments of Dr. McIsaac. I think all the regional councils are in agreement, recognizing the authorities of the National Marine Sanctuary Act, that regulation of fishing activities within those sanctuaries should be under the purview of the council process vis-á-vis the Magnuson-Stevens Act.

The CHAIRMAN. Dr. McIsaac, I would like to ask you to follow up on that, because the public comment requirements under the Sanctuary Act are different than under Magnuson-Stevens. Can you comment on that?

Dr. MCISAAC. Yes, thank you, Mr. Chairman.

It is my understanding that they are different and that they are not as encompassing under the Sanctuaries Act as they are under the Magnuson Act. For example, it is my understanding in the sanctuary process that when goals and objectives are finally determined for fishing, that that is not done, that determination is not done in a public forum.

The public process that we are used to has a lot of thorough grinding that gets done by the scientific bodies and the advisory

bodies that representing the fishing communities, the conservation groups, and the rest, and those are written statements that are brought before the council. They are distributed in a multi-meeting process where all the affected public who may not be at the council meetings get a chance to weigh in on the issues.

So it is my understanding that the process under the sanctuaries is not as expansive.

In terms of your former question of how this might be able to work out, I would like to stress that we are intending to be respectful of any of the sanctuary ideas that come forward for their areas, and we have done so on the West Coast in a couple of examples.

Recently a ban on krill fishing off the coast, the sanctuaries came up with an idea to ban krill fishing in the sanctuary waters. They brought it to the council process. We exposed it widely. The council ended up adopting a ban on krill fishing coastwide inside the sanctuaries and outside. This was all done under the Magnuson Act, and it worked quite well.

So I think there are some examples and some evidence that the sanctuaries won't be just left out in the cold, and that we can and do advocate—we can accomplish and we advocate that the sanctuary folks should be allowed to come in and present their options, have them analyzed, but when it gets down to the actual authority of fishing regulations, we feel like the best alternative is that that be focused in one area so the public knows where to go, where the expertise is, and that the proper outcome can always be subject to a secretarial approval, so if the sanctuary folks don't feel like they are getting a fair shake in the council system, the Secretary approval mechanism is there for that correction.

The CHAIRMAN. Thank you. Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman. Mr. Chairman, I would first like to ask unanimous consent to the number of groups' testimony will be made a part of today's hearings, including the Ocean Conservancy, another testimony by a number of organizations, further testimony from the Northwest Atlantic Marine Alliance, and then testimony from the Northwest Indian Fisheries Commission.

The CHAIRMAN. Without objection.

[NOTE: The information submitted for the record by Mr. Rahall can be found at the end of the hearing.]

Mr. RAHALL. Mr. Crockett, let me ask you a question in regard to financial disclosure. Is the financial disclosure requirement in H.R. 1431 an impediment to attracting people from the public interest to serve on the councils, and the scientific and statistical committees? What are you thoughts on that?

Mr. CROCKETT. We don't think so. The language in the law says that it is people who don't derive any of their annual income from fishing or employed by somebody who drives annual income from fishing, and there are obviously millions of people in the United States who fit that category.

It is our view that the council system would benefit greatly by having some additional voices at the table who don't have a financial stake in the decisions that are made.

Mr. RAHALL. Let me ask you further, H.R. 1431 and the U.S. Commission on Ocean Policy would have the Secretary of Commerce instead of the councils appoint members to the scientific and

statistical committees. How would this change, improve the function of the SSCs?

Mr. CROCKETT. Currently the science and statistical committee members, SSC members are appointed by the council, so the objective of that provision is to further insulate them from the councils to improve their independence by having the Secretary of Commerce do that.

Mr. RAHALL. OK. Thank you, Mr. Chairman. I have no further questions.

The CHAIRMAN. Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

Mr. Oliver, it is my understanding that the North Pacific Council currently has no overfished finish. Can you give us some idea as to how you are able to accomplish that on a longstanding basis, and what provisions do you use that you might see that we can understand to be applicable to other councils?

Mr. OLIVER. Mr. Chairman, that is correct, and I think to try to give you a brief answer to your question, one is, the North Pacific system is blessed with abundant stocks. I think, second, for three decades the North Pacific Council has relied on a couple of things. One is relying exclusively on our scientific and statistical committee to make recommendations for acceptable biological catch levels, and to set allowable catch levels at or below those levels.

Third, we have layered on top of that a 2 million metric ton cap, for example, in our Bering Sea fisheries such that regardless of the total of the allowable catches the total allowable catch can never exceed 2 million metric tons, so it is a further reduction below that.

I would note that, again, the primary mechanism I believe is having very good stock assessment. We have some of the best stock assessment in the country coming out of the Alaskan Fishery Science Center, and relying heavily on that.

Mr. GILCHREST. Do you see a counterpart to the science center in Alaska? Is there another science center that other councils have available to them that is similar to what you have up in Alaska?

Mr. OLIVER. I think there are science centers in each of the corners of the country. I can't speak in any detail to the extent to which their stock assessments are conducted on a regular schedule such as ours, or that their stock assessments go through the same rigorous review, multi-level review process that ours do.

Mr. GILCHREST. Given the process that you use, the total allowable catch cannot exceed ABC, and apparently usually it is will under ABC in many circumstances, and this takes into consideration, I guess, your full understanding of the ecological process that is ongoing in the North Pacific.

Mr. OLIVER. Yes, sir.

Mr. GILCHREST. And all the variables, and the natural range of fluctuation from fishing, from other environmental conditions.

My next question is going to deal with NEPA, which other people can ask as well. I share your understanding of the redundancy and the duplication and the bureaucratic and the litigation nightmare that sometimes NEPA imposes on different councils, and we are doing our best to try to understanding that and fix that.

I guess my disagreement with the present bill that we are reviewing here today is that, as you have spoken, the Secretary may

or may not waive NEPA. Would you consider, and I know you want to do this as soon as possible, but would you consider a year review as to how—because it is not just your council we are dealing with, we are dealing with eight councils, we are dealing with national policy—would you consider a year review of the NEPA process as related to the fishery management plan process and see how they can be integrated so that there is less unnecessary redundancy, duplication, litigation, 7,000-page NEPA's documents?

So would a year review, as Mr. Stevens has in his bill, be a consideration?

Mr. OLIVER. Mr. Chairman, I believe that that approach has a tremendous amount of potential to improve the process. However, based on my experience I don't have a tremendous amount of confidence that it will result in an improvement, and I think there is a much more direct solution.

Mr. GILCHREST. Does anybody else want to comment on NEPA? Mr. Crockett?

Mr. CROCKETT. Mr. Gilchrest, yes, I would like to comment on it.

We will have to take a look at the Chairman's bill again, but in our view the Magnuson Act doesn't have comparable requirements. And as I articulated in my testimony, and by making it the sole decisionmaking tool, there are things you are going to lose in the process from cumulative impacts analysis through public participation and that sort of thing.

The other thing that you should think about in this process is there is a whole body of case law that has been developed over many decades on how to do these sort of things. So all of that would be lost, and our view is that you could potentially be increasing litigation, at least in the near term, because some of this stuff is going to be relitigated.

The other thing is we hear the horror stories of 7,000-page EISes. This Committee had a hearing or maybe it was your Subcommittee had a hearing on NEPA, and that is not compliance with the NEPA regulations. That is, frankly, bureaucrats that are overreacting in doing a data dump and just throwing information. They are not doing the analysis that is required to do a proper EIS.

Our view is that there are adequate procedures in the regulations right now. We have accepted the legislation that the Senate has put forward on this as basically a directive to use those existing procedures to harmonize and I think that is a good way to go of the Committee decides it has to do something on this, but making the Magnuson Act the only review procedure is not in our view the way to go.

The CHAIRMAN. I guess I would just, in following up, Mr. Crockett, the two specific areas that you outlined that you are concerned would be lost are included in the underlying bill, and I would encourage you to look at that because they are included in the underlying bill.

Mr. Inslee.

Mr. INSLEE. Thank you.

I wanted to ask about this issue of conflict of interest on the council that has been raised in a variety of the bills, and my sort of take on this is that the North Pacific has been pretty successful, and my take on this is that this sounds a little parochial because

I end up hanging around the North Pacific, but that some of the things that they had success with would be nice if we could replicate it in other places, and on the North Pacific, we have people who served who do have a financial stake in the industry.

I just wondered if any of you can comment on that. Mr. Crockett, you might be a good person to take a shot at that. We seem to have a model in the North Pacific that apparently has success, has people who are involved in the industry. Is that an anomaly, or can that be replicated if we do other things to make sure the science committee is listened to? What are your thoughts on that?

Mr. CROCKETT. As I testified, our view is that how the North Pacific Council handles science, they pay attention to their science and statistical committees. They have actually adopted procedures in their management plans that require the council to follow those recommendations, so from how they handle science standpoint we think that is the model and certainly the U.S. Commission thought that was the model to transfer to the rest of the country.

As far as the conflict of interest standards go, I would say that depending on the issue there is a problem there even in the North Pacific, and I will use the crab rationalization plan that just got implemented this past year.

There are many, many fishermen in Alaska who object to that plan. There are hundreds, seven or eight hundred people I believe who have lost their jobs because of that plan, and somehow that was able to pass the council unanimously, and Senator Stevens was able to get it adopted through a rider a couple of years ago.

So you know, that raises questions to us, you know, how something as unpopular as that was within the crab fishery, I would say close to half the crab fisheries didn't like that plan, but somehow it was able to pass unanimously.

So even in a council that is operating as well as the North Pacific Council, I think there are still problems with conflict of interest.

Mr. INSLEE. Mr. Oliver—go ahead, Dr. McIsaac.

Dr. MCISAAC. Thank you, Mr. Chairman.

In the Pacific Council, we don't believe that we have a problem with conflict of interest. There are 14 votes, six of them are government seats, eight of them are appointed seats. So if you hear about things like there are decisions being made by the council that is overriding the science, or decisions that are to the detriment of conservation, or phrases like "foxes in the hen house", that should be able to be proved up by going back to council votes and taking a look at it, and see if that has ever happened, and in what situations it has happened.

We have had recusals, but in our council we do not see the eight industry-appointed votes ganging up on one side and the government seats on the other side being stampeded by them. We frequently have the unanimous votes. We think it is due to a very thorough process, and we do not have any track record of decisions being made to the detriment of conservation by overriding science or any of these other conflict of interest potential concerns. The record just doesn't prove out.

Mr. INSLEE. Ms. Raymond, did you want to say something?

Ms. RAYMOND. Yes, thank you, Congressman.

I think it is imperative that fishing people serve on our councils. The fisheries managers are obliged by the law to balance all of the national standards which is a very difficult thing to do. Those standards include assessing the economic impact on fishing communities and fishing families as well as the safety implications of any regulations. There is nobody who understands those particular standards better than fishing families.

Mr. INSLEE. Mr. Oliver, why in the North Pacific has the scientific process worked for commissions to, by and large, follow the science on this, and from my observation has not worked in other places with the same set of laws? Why has there been such a different result?

Mr. OLIVER. Mr. Chairman, I guess it is difficult for me to speak to why the process hasn't seemed to work as well in other areas. I think the Act currently contains the tools to make it work. I think with some of the provisions that are included in the proposed bill, I think it becomes more compelling upon other regions to basically use that approach.

I guess the council in the North Pacific has for decades taken that approach, that approach as a matter of standard operating procedure.

Mr. INSLEE. Thank you.

The CHAIRMAN. Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman. Thank you and the Ranking Member for extending me the courtesy of sitting in on this. The gentleman from Washington said that he had a parochial approach here. I equal him in parochialism to some extent. The City of New Bedford, the Town of Fairhaven are very important fishing port, but there are obviously broader implications.

I just want to start with that, and on the conflict of interest rule, I would say this. I do not think there is an occupation in America where the participants in that occupation so completely accept the need for very strict regulation. I have tried to think and fishing is about as regulated an occupation as I can think of. The fishermen in my district are more regulated than taxi cabs. I mean, the cab drivers have to get a medallion, but once they get a medallion they can work as long as they want to.

The fishermen not only get permission, I mean, and I guess there is also—I have been concerned with the notion that fishermen aren't that bright, and that they don't understand that if they are not severely restrained, they will put themselves out of business in about a year and a half.

I don't know many of the fishermen in my district and the fishing families who plan to have this business end in 10 years or 15 or 20, and fishing is in the area that I represent, not simply an economic activity, although it is an important one, and not simply a very important source of protein, and I would remind some of our friends here that we are telling people not to be so fat. Raising the price of fish is somewhat counterproductive to telling people to eat cheap and healthy.

But this is part of a culture that people want to continue, and I do want to stress again, the people who I deal with accept and vote for, as was noted on the crab fishery, these people regularly vote for restrictions on what they can do.

Now, there becomes differences about it, no question. Your position may affect your differences, but those go both ways.

I wonder, Mr. Crockett, are you familiar with the controversy over scallops and the opening of Georges Bank to scallops a few years ago?

Mr. CROCKETT. I have some knowledge of that, yes.

Mr. FRANK. Do you remember this was during the secretaryship of Secretary Daley, which I remember because he had to make a decision. The science seemed to indicate that it was possible—this is in the late nineties, I guess—to reopen Georges Bank to scallops, and there was very heavy opposition from most of the environmental community that deals with fishing.

Do you recall that set of arguments?

Mr. CROCKETT. My understanding of the situation was that there were large closure areas off of New England for groundfish rebuilding, and as a result they banned bottom trawling and scallop dredging, and the scallop resource came back pretty heavily, and some of your constituents, Dr. Rothschild, I believe, went out and did some studies and found that.

Then the council proposed opening it up, and I think the conservation community was concerned not so much about the harvesting——

Mr. FRANK. Concerned or opposed? Let us use real words here. Forget we are in Washington.

Mr. CROCKETT. Their problem was——

Mr. FRANK. Were they opposed or concerned? I mean, I am concerned about a lot of things, but I am opposed to some.

Mr. CROCKETT. All right, they were opposed.

[Laughter.]

Mr. FRANK. Thank you.

Mr. CROCKETT. They were opposed, and the reason they were opposed was that these areas were closed to rebuild groundfish, and scallop dredges catch groundfish as bycatch, and so that was the primary——

Mr. FRANK. But they were reopened. Do you think it was a mistake to have reopened them?

Mr. CROCKETT. Well, as I understand it, the scallops are now NMFS is considering them to overfishing, so——

Mr. FRANK. But do you think it was—yes, but there was a long period of, and they might put some restrictions back on, but there was a long period where they were catching more scallops than they thought there would be. Do you think it was a mistake?

The environmental community said don't do it. Some seemed to argue that you could open it to scallops. You had to deal with bycatch, and we have had a very successful, several years of scallop fishing. Do you think it was a mistake to have reopened the Georges Bank to scallops?

Mr. CROCKETT. I think some of the promises that were made as far as observer coverage to figure out the bycatch of groundfish, the bycatch of sea turtles, the habitat damage of scalloping and that sort of thing, while they stated off at fairly decent levels, the observer coverage is very low now.

So what has happened is you are looking at this just from a scallop standpoint, and scallop dredging has a larger environmental

impact on other fisheries. Where the scallops are found is in an area that is very important to juvenile cod for, you know, rearing and growing.

Mr. FRANK. I don't mean to—I thank you for suggesting a question I didn't ask.

Mr. CROCKETT. OK.

Mr. FRANK. And I am glad to be enlightened about that, but do you think it was a mistake now to have reopened Georges Bank for scalloping? That is not a tricky question, Mr. Crockett. I am a simple man.

Mr. CROCKETT. I mean, I guess the issue is that the cod stocks haven't rebounded, and those areas were closed to assist in the rebounding of cod.

Mr. FRANK. So you think it was a mistake?

Mr. CROCKETT. Well, I think the council has not effectively——

Mr. FRANK. I am sorry.

Mr. CROCKETT.—mortality.

Mr. FRANK. I only have five minutes and I can't wait for the answer.

Mr. CROCKETT. OK.

Mr. FRANK. I will say this. It does seem to me that fielding to science is not always as—a lot of people seem to pick the answer and their fielding to science depends on whether they got—I think that the overwhelming governance is that reopening the scallop fishery makes sense. Not everything was done, you say, completely with it, but I thought basically a good idea.

Let me ask you one other question about NEPA because I agreed with what the Chairman said. Certainly the intention in the bill to cover everything, if you could in fact include all of the elements in NEPA in a process in Magnuson, would you be in favor of that consolidation or do you philosophically believe there has to be a separate NEPA process even if we could pick up the elements that you say were left out and make sure they were in Magnuson?

Mr. CROCKETT. I believe we would be opposed to that because——

Mr. FRANK. Thank you.

Mr. CROCKETT.—of what I said earlier about the case law that would be lost.

Mr. FRANK. I understand. I will be honest with you, I don't really believe that your love of case law, I mean, you don't look like—you don't look like Oliver Wendell Holmes.

Mr. CROCKETT. No, I am a biologist, not a lawyer.

Mr. FRANK. I understand that, and you know, you love case law the way maybe the way someone—I mean, nobody really thinks, oh, we must preserve this old case when in fact the case law is a good reason for rationalizing the process, not for perpetuating the cobwebs. And I think this is a very important issue here. I think there is kind of a distrust of the industry, and frankly, it seems to me, yes, it is important to make sure that the Magnuson process that covers everything in NEPA, and there is a reason for it.

We all agree on science. We also know that the science moves rapidly here. One of the big problems with the science is not that it is inadequate when first done, but that it becomes outdated. And

to the extent that you put more time into this, and you duplicate processes, then the science will inevitably be less good.

I would add to this, and I would close with this, Mr. Chairman, and that is this: I repeat, the fishermen I work with and represent understand the need for restriction, and voluntarily implement more restriction on themselves than most people, but in a free society like America no law will be widely enforced if it is vehemently opposed by the people on whom it is being enforced. You cannot do that in a free society, whether it is the tax code or traffic laws.

If there is not some belief in the legitimacy of the laws, there are just not enough resources in a free society to enforce it, and some of the things we are talking about in this law are in fact to encourage a better degree of compliance among the fishing industry because they understand the need for regulation and restriction, and they don't understand the need for a separate NEPA from Magnuson Act just because there is case law if we can in fact repeat it, and they don't understand why when opening the scallop thing worked out we should interfere with that in the future.

So that is why I think this is useful, and Mr. Chairman, I would again thank you for letting me participate and ask to submit testimony from the strategic advisor to the Port of New Bedford Business Alliance on this subject.

The CHAIRMAN. Without objection.

[The information follows:]

**Statement of Gene Soccolich, Strategic Advisor to the Port of New Bedford Business Alliance**

Having presented testimony to Congressional Committees on issues including commercial fisheries on behalf of the Commonwealth's political leadership some thirty years ago, it is a privilege to present testimony in direct behalf of the commercial fisheries interests of Massachusetts.

Reauthorization of the MSA has been delayed some six years seemingly due to very divergent viewpoints of involved parties. Although I have found those viewpoints most often quite skewed on the issue of appropriate management of the country's marine fisheries, they are at least in the right direction, which requires more cohesive perspective. Of primary note, only one of the major interested parties to the bill has a direct personal stake in its outcome—the commercial fishermen. Everyone else gets to go home to an unaffected family.

The major thrust from NOAA is that the fishing industry needs to become more of a business, a correct perspective especially in a global economy. The management actions of NOAA, with the authority hence responsibility for implementation of the Magnuson-Stevens Act since its enactment in 1977, have proven deficient, culminating first in promoting overcapitalization, and then constant regulatory changes and present day emergency measures in the other direction. No business could reasonably operate under such a barrage on constant regulatory change. NOAA, however, is comprised of government personnel with little direct business experience. Their intentions are good, but perhaps require more in-depth knowledge for more proper perspective

The conservation community of mostly attorneys has fought to preserve our fishery resource, yet has failed to equally fight for the conservation of the fishing community whose complete offshore dependency makes it an integral part of the marine environment. The conservationist major thrust has been to expedite resource conservation by faster curtailment of the fishing industry, yet without portraying any comprehension that the fishermen and their families do not have the financial capability to sustain such imposed hardship. Perhaps the conservationists believe that admitting to such perspective might weaken their case. Such elitist perspective, however, manifests almost no appreciation for the dire business consequences of such abrupt changes. Their ten-year goal to reach maximum sustainable yield is a completely arbitrary number. A truly justifiable timeframe would be one generation of fishermen, thirty-five years, or twenty-five since passage of the Sustainable Fish-

eries Act in 1996. The conservationist intentions are good, but perhaps also require more comprehensive perspective.

The scientific community has provided the best available baseline data which it possesses, and upon which NOAA bases the bulk of its regulations. Although much historical data indeed has been amassed, the scientists themselves also understand that the world's oceans are an extremely complex, dynamic environment. Historical data, in statistical format, mostly lends itself only to theoretical scientific conclusions. Credible predictions are impossible to make without replete, constantly updated, empirical data. Based on best available, albeit old and incomplete data, NOAA is charged with making interpolations and extrapolations down to the specific minute that a fishing vessel can fish. They don't have the tools to make those decisions. One is left with the old saying, "you have lies, damn lies, and statistics." They have done the industry one favor in recognition of their informational shortfall—they have not acted with dispatch for a long time in implementing the regulations. However, environmental lobbying pressure successfully has pushed them to the wall, and they are forced to play hardball, which the House and Senate hopefully will mitigate. Their intentions are good, yet again require more in-depth information for credible perspective.

Both House bills under consideration, and the Senate bill, which recently passed, strive to at least head in the right direction to address some of the shortcomings of these parties to the debate. My specific comments are as follows:

1. The semantic issue of using the words "depleted, diminished, or overfished" should take note that the United Nations FAO uses the word "depleted" based on the knowledge that there are additional possible reasons for the shortfall in commercial fisheries. These reasons include non-point source pollution, coastal commercial development, and even global warming. To negate these other factors presumptively would be an environmental injustice and a gross deficiency in the formulation of an adaptive ecosystem-based management. '
2. Mandating "best available science" should include "and technology", authorizing collaboration with the U.S. Depart of Naval Research, where most undersea technology development is budgeted, could greatly accelerate the process of developing an ecosystem based management program.
3. 1Ecosystem based managers develop very complex models upon which to base the effects of perturbations. The process necessitates an authoritative working consistency with the Marine Sanctuaries Act to complete the models and provide "best available science information". Consistency with NEPA, however, would not be necessary on a scientific basis, and also would only serve to bog down the decision- making process not conducive to such a dynamic environment and its demands for faster resource management adaptation. The same reasoning should apply to the Endangered Species Act.
4. The need for an increase in observers to provide updates to ecosystem based management should be obvious. Today, federal budgetary cuts have caused a shortfall in the number of observers, presently at some 5% of fishing vessels. The Ecosystem based Management Working Group convened by NOAA in 2004 stipulated that number should be at least 20% to make ecosystem based management credible from which to make projections for regulatory purposes. The present low percentage of observers also strongly indicates the tenuous nature of the baseline data from which projections are made today, especially NOAA's emergency actions.
5. Bycatch-in addition to fishing and gear restrictions, a questionable amount of bycatch is still an issue. A pilot program should be considered to resolve a few concurrent issues, and whereby 20% of the vessels would have observers onboard. The vessel owners would pay NOAA to employ the observers, yet instead of discarding saleable bycatch, would be allowed to sell it in port.. Another method for consideration would be for any owner to obtain only a sales receipt instead of payment, which could be used as a tax deduction, and the bycatch donated to a processing plant at another tax deduction, and tor final distribution to the needy. Such process would greatly augment baseline data on bycatch, while concurrently serving a more humane purpose instead of wasting the resource.
6. Given the grossly insufficient, hence equally questionable nature of updated scientific data as noted, hard TACs are difficult to justify with any large degree of credibility. However, also given the world wide nature of the problem of fish depletion, and the generally accepted scientific belief that overfishing is at least a major cause, should hard TACS be mandated, it should be on a pilot project or trial basis first. The Ad Hoc premise would allow for a test market process, which by its nature allows for further change. Such process also would allow for testing the establishment of IFQs. Permanent ITQs could

also be instituted during the test period, but only under the auspices of a Regional Fishing Association or Cooperative whereby only owners of perhaps up to four or five vessels or licenses would be allowed membership to preserve the integrity of the industry's character.

7. NOAA should conduct training programs within each region on forming Cooperatives for fishermen. Today's global economy, especially with government subsidized foreign fishing programs today reaching some $12.6-15 billion, has proven most difficult for a small boat owner to survive without being under the economically protective umbrella of a Fishing Cooperative. Such voluntary Coops would administer IFQs from within their own bylaws, including provisions for Coop repayment of federal loans for vessel buybacks to sustain individual vessel owners who decide to leave the industry. Vessel reduction would be promoted, and the percentage of available resource would gradually increase for those who remain. As the New England Region has a very large latent vessel capacity, only active vessels should be allowed join a Cooperative. Norway's vessel buyback program reduced its fleet by 25%, which reversed depletion of its fish stock.
8. A New England aquaculture training program should be considered in the House bill, similar to the Specific Western Community Development Pilot Program proposed in section 109 of the Senate bill, and with a charge toward deep ocean farms as opposed to a state coastal orientation. Today, the United States imports some 70% of its seafood, half of which is from aquaculture farms, which additionally provides some 40% of the world's supply. Of note is that the Senate Commerce Committee presently is working on a bill toward a fivefold increase in domestic aquaculture farms.
9. The U.S. Capital Construction Fund, which was meant to be used decades ago to offset Jones Act requirements, today is being used to expand fishing capacity by providing huge misallocated tax breaks mostly to large vessel owners and which promotes consolidation in an unfair manner Such funds should be directed toward vessel buyouts, quota purchases or anything that does not increase fishing capacity. Analyses requiring further review and possible action should be conducted within similar provisions under the Small Business Association, Farm Credit System, Economic Development Administration and the Fisheries Finance Program.
10. Fishermen's Impact assistance within the Magnuson-Stevens Act pertained only to natural or uncontrollable human causes. The new bills finally include regulatory changes as a possible cause. However, it should be noted that Canada's Atlantic Groundfish Strategy (TAGS) provided $1.9 billion for east coast Canadian fishermen and processing personnel who lost their jobs as a result of the downturn in groundfisheries from 1994-98, and it did not work. An additional $750 million was provided afterward, yet the overall groundfish harvesting capacity was not reduced. Although over fourteen thousand people left the industry, there still remained a huge latent capacity. Impact Assistance needs much further analysis so as to be effective to provide for the financial assistance needed while better targeting a balance in legal industrial personnel. It also should provide for different yet related economic avenues to pursue, including future aquaculture and other progressive marine ventures.
11. Providing training for new Council members reminds me of the saying, "A little bit of knowledge is a dangerous thing". I never have heard of a newly appointed person to any governing board requiring training first. There should otherwise be a screening process that mandates that only candidates with broad in-depth knowledge could be elected equal to any decision-making capacity.
12. Pubic participation needs to be made more efficient when making decisions within the fishing industry The industry and resource management require more decisive professionalism to work the problems, not unsupported guesses or emotional opinions, which only serve to convolute both efficiency and effectiveness.

I wish to thank the Committee for its consideration of these comments. Respectfully submitted. Gene Soccolich. New Bedford, Massachusetts

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Mr. RAHALL. Mr. Chairman, may I just tell the gentleman from Massachusetts that the Massachusetts scallops at the Democratic Club are delicious.

[Laughter.]

Mr. FRANK. I beg your pardon?

Mr. RAHALL. The scallops from Massachusetts at the Democratic Club are delicious.

Mr. FRANK. I thank the gentleman very much. Eat more.

[Laughter.]

The CHAIRMAN. Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

Oysters at the Republican Club, not that I go that often, are pretty good.

[Laughter.]

The CHAIRMAN. I have actually had the scallops at the Democrat Club. They are good.

[Laugher.]

Mr. GILCHREST. Just a quick comment, Mr. Frank. Back in the middle eighties, we put a five-year moratorium on what we called in the Chesapeake Bay and other areas, but I know about in the Chesapeake Bay, a five-year moratorium on rockfish, striped bass, and as a result of fisheries management plans subsequent to that the rockfish are still plentiful in the Chesapeake Bay, and I think we would all agree that there are ways to reasonably bring people together to understand a public resource that is a benefit to the nation, and while there are a myriad of differences of opinions on how to achieve that end, I don't think there is anyone in this room that would disagree with the fact that this is a resource that needs to be sustained, it needs to be preserved.

I want to compliment each of the witnesses at the table because I know each of you as individuals works very, very hard. No one twisted your arm and said you had to be in your particular position. And so you give your ingenuity and your intellect and your passion to what you believe is right, and you should expect no less than those of us who sit up here on the dais to try to create the regulations that you not only have to follow but you in fact have to implement.

So I think all of us want to do our best to sustain this resource, and Mrs. Anderson, I just want to tell you that the Committee will follow up on the dumping issue, not only with who is dumping it, but who is buying it, and we assure you that that issue will receive great attention.

Ms. ANDERSON. Thank you, Mr. Gilchrest. We appreciate it. We need all the help we can find on the Hill here.

Mr. GILCHREST. Yes, ma'am.

Ms. ANDERSON. Thank you.

Mr. GILCHREST. The question I have for each of you, it seems to me if we look at all of these issues, whether it is rebuilding, whether it is NEPA, whether it is conflict of interest, whether it is using ABC over OY, or whatever the issues are, if we can find a way to end overfishing so the stock can naturally rebuild itself through the various cycles, just about everyone of those other issues, especially the rebuilding issue, will go away. Some of the councils have achieved to a large extent that threshold.

So what I would simply ask you is do you think through existing regulation within a year or two or three working with the scientific community, is it possible for the councils to be able to work through a regulation that says we end overfishing on a particular

stock, we come up with a plan within two years? Is that a feasible thing?

And I do have a daughter that lives in Maine. God bless her. It is a beautiful state. So maybe Mrs. Raymond can go first.

Mr. FRANK. Excuse me. Would the gentleman yield? What about your brother in Massachusetts? Let us not have any partiality here.

Mr. GILCHREST. I have a daughter in Maine, a brother in Massachusetts.

Mr. FRANK. I just want equal time.

Mr. GILCHREST. A brother in New Jersey, a brother in North Carolina, a brother in Virginia, and another brother in New Jersey. Now, my two children live in Maryland, so if there is any—am I losing time on this?

Mr. FRANK. I am glad the gentleman kept some voters at home in case he has another primary.

Mr. GILCHREST. Right.

[Laughter.]

Mr. GILCHREST. Ms. Raymond.

Ms. RAYMOND. Thank you. It is my understanding that the law currently requires a plan to be developed within one year. If that is what you are asking, then I think that is not a problem for a plan to be developed within a year.

To actually end overfishing within one year or two years could be problematic. That could cause severe economic hardship to fishing communities. In New England, in 2004, Amendment 13 to the groundfish plan established a phased-in reduction in fishing morbidity. The longest timeframe for any one of the stocks was five years. Other overfishing ended—was scheduled to be ended earlier, and still the stocks met the timeline.

This was a scientifically justifiable plan. It was held up in a court or law as meeting the law, and we are hoping that plan will actually prove out in the end.

Mr. GILCHREST. Thank you. Yes, Chris.

Mr. OLIVER. Mr. Chairman, I think the short answer, Mr. Gilchrest, to your question is yes; that can happen. But, and I would use the example from the North Pacific. As you pointed out, we have no overfished stocks. That would not necessarily do away with all the other problems, and of course you can probably guess, I am alluding to the regulatory streamlining problem, and I believe that that would still remain.

I believe, frankly, that dealing with the unnecessary regulatory morass is impeding progress in areas like you suggest where we should be spending our efforts.

Mr. GILCHREST. And when you say the regulatory morass, are you talking about NEPA?

Mr. OLIVER. Yes, among others, but particularly that one, sir.

Dr. MCISAAC. Thank you, Mr. Chairman, Mr. Gilchrest.

In the Pacific Council, we have stated many times we do not have a problem with ending overfishing in one year or two. That has been our practice, and it does come with some pain, but it is not a situation that we object to or think there are insurmountable problems to, and it does have a lot of benefits. so we are just fine with that.

Mr. GILCHREST. Thank you very much.

Mr. Crockett.

Mr. CROCKETT. Our view is that ending overfishing as soon as possible should be the goal. Your bill has a one-year limit to end overfishing. That is fine with us, but I think that is not the only thing we need to be doing, and the law envisions a rebuilding plan to rebuilt stocks as quickly as possible. So just ending overfishing is not enough. You are basically talking about stopping the decline, and we think that the existing law about rebuilding as quickly as possible but not more than 10 years, if that is biologically possible, needs to remain in the mix.

Mr. GILCHREST. Yes, ma'am.

Ms. ANDERSON. Mr. Gilchrest, what we have that we have to deal with down there is that annual specie of shrimp. And they try to manage that at the council level as long-life specie product. It is not, and we are in a totally different frame to have to work, and it has got to be looked at that it is a yearly specie, it doesn't apply to a TAC, doesn't go to, you know, ITQs, because it is always six months after the closing of our season before we are even told what is our production that came from the year.

We could have a bumper crop, we could have a low crop, but you are not going to know with that kind of a specie where you are going to be, so I really think we should look at shrimp as an annual specie really closely, and there has to be some guidelines put around it.

I would like to make one statement that I didn't get the chance when they were asking about councils. In the Gulf of Mexico, we would like to see some changes there, but it is where its appointments come down, out of 17 members all we have is three actively commercial fishermen that sits on that council, so naturally we get outvoted quite often. But I think the Secretary will look real close when he makes those appointments that he is balancing, it would help us out tremendously. Thank you.

Mr. GILCHREST. Thank you.

Mr. BROWN. [Presiding.] Thank you, Mr. Gilchrest, and let me say thank you to the panel for your time and for your information that you furnished to us, and we will now call for the next panel.

I would like to welcome the last panel for the day, and as procedure would have it, we would like for you to stand and to raise your right hand and repeat after me.

[Witnesses sworn.]

Mr. BROWN. Thank you very much.

Joining us on the third panel today is Mr. Rod Moore, Executive Director of the West Coast Seafood Processors Association; Mr. James A. Donofrio, Executive Director, Recreational Fishing Alliance; Mr. Ray Pringle, Florida Fishermen's Federation; and Mr. Dave Benton, Executive Director, Marine Conservation Alliance.

Thank you, gentlemen, for coming and being with us today, and we will start the testimony from Mr. Moore.

## STATEMENT OF ROD MOORE, EXECUTIVE DIRECTOR, WEST COAST SEAFOOD PROCESSORS ASSOCIATION

Mr. MOORE. Thank you, Mr. Chairman. For the record, my name is Rod Moore. I am Executive Director of the West Coast Seafood

Processors Association. I am also a member of the Pacific Fishery Management Council, but none of my testimony today is on behalf of the council. This is solely on behalf of our membership.

Mr. Chairman, our members generally support H.R. 5018. We note that there are some provisions in Mr. Rahall's bill that are similar to provisions in H.R. 5018 in regard to peer review, council training, and so forth, although we prefer the way H.R. 5018 addresses those.

We also suggest that there are some minor changes and additions to H.R. 5018 which we think would improve the bill, which are included in my written statement.

I want to concentrate mostly on the rebuilding provisions in Section 11 of H.R. 5081 because opponents of the bill seem to have used these to generate a lot of heat but not very much light.

First of all, in terms of terminology, you know, much has been made in the media of changing the term "overfish" to "diminish". In one respect, it doesn't matter what you call it because the effect is the same. You have a reduced population, and you need to take steps to correct the problem. Where it does matter is public perception.

The average member of the public, or the media for that matter, hears overfished and assumes that the fishing industry, government, managers, scientists are terrible villains in allowing fish stocks to decrease. In fact, under current law and regulation a fishery can be declared overfished when no fishing is occurring. Give you a couple of examples.

The West Coast fishery failure that was declared in the year 2000, to quote the NMFS's press release that declared it, "Our scientists determined that the cause of fishery failure was undetermined but probably natural cases. We most recently had to deal with the Klamath River salmon fishery. The salmon returns this year are not going to meet the floor that we have established for a healthy salmon population. In fact, we couldn't even meet that floor if there was zero fishing."

Now, I don't know how you fix the problem when you have had five years of drought, a parasite and a river system that had so many users subscribe to it that nobody can figure out who is going to get how much water. That is not overfishing. But in fact the way the regulations read, you know, that stock is overfished even if no fishing is occurring.

So I really think that we ought to call things what they are, and concentrate on fixing the problem, not on using misleading terminology.

As far as rebuilding is concerned, the law already provides exceptions to the 10-year baseline, and the changes that are proposed merely codify existing national standard guidelines. For the West Coast, the change is essentially meaningless because none of the seven diminished species we have can be rebuilt in 10 years. Some don't even start spawning until they are eight to 10 years of age. In fact, we did one rebuilding analysis on the codshield rockfish that showed that the rebuilding time was infinity. You couldn't rebuild it.

As was noted by another witness, and by Dr. Murawski from NMFS last week in New Bedford, the 10-year figure was arbitrary.

It has nothing to do with what is going on. And let us make clear that rebuilding requirements have substantial effects. On the West Coast, dealing with the seven diminished species out of 82 has resulted in a 53 percent decline in commercial landings in the last eight years, and a 40 percent decline in X-vessel revenue. That is a lot of money and a lot of fish that aren't being caught. That difference in value, by the way, is about twice what we spend on groundfish research on the West Coast.

The need for the West Coast is really to change that portion of the rebuilding requirements that says you have to rebuild in a shorter time as possible. We recently went through a court case—went through the Ninth Circuit Court where the court was trying to figure out how you balance a shorter time as possible with the needs of the communities, and the best the court could come up with was, well, OK, we don't mean zero fishing, but we still mean it has got to be a short time, but we can't tell you how short a time that is going to be.

So what we are now in the process of doing is looking at what the rebuilding timeframe is with zero fishing. Then adding on a couple of years and seeing what the impact is going to be on all the communities on the West Coast, adding on another couple of years, so forth and so on, all the way through. If we had some sort of standard that said let us rebuild in as short a time as practicable, and balance that with the needs of the communities, we would be able to develop a suite of regulations that we could regulate ourselves, make sure those stocks are rebuilt, and not destroy the West Coast communities.

We all want to see healthy fish stocks, but they really don't mean much if there are no communities left to enjoy them, and that is what we need to be concerned about.

Finally, I want to cover very briefly a couple of other West Coast issues that are specific to the West Coast. Mr. Gilchrest's bill includes an extension of the current ability of the three West Coast states to manage the Dungeness crab resources. We would suggest that that same extension be added into H.R. 5018, but not the additional reporting requirements that are included in that.

Unfortunately, those reporting requirements cannot be met. They call for data that doesn't exist, so you wouldn't have an extension and you wouldn't have a management system if we had to meet those.

We also would hope that the Committee would consider removing the arbitrary term limit on the tribal seat on the West Coast. The tribal seat represents tribal governments. They are co-managers with us on fisheries. Other government seats are not term limited so the tribal seats shouldn't be either.

I will now wrap up, Mr. Chairman. Appreciate the time to testify, and again, commend Mr. Pombo, Mr. Young, Mr. Frank, and others for introducing H.R. 5018. Thank you.

[The prepared statement of Mr. Moore follows:]

**Statement of Rod Moore, Executive Director, West Coast Seafood Processors Association**

Mr. Chairman, members of the Committee, for the record my name is Rod Moore and I serve as Executive Director of the West Coast Seafood Processors Association, a non-profit trade association representing shore-based seafood processors and asso-

ciated businesses in California, Oregon, and Washington. Our members range in size from two of the largest seafood processing companies in the United States to three of the smallest, including one owned and operated by two generations of women. Collectively, our members process the majority of Pacific groundfish, pink shrimp, Dungeness crab, and Pacific whiting landed in the three West Coast states, along with substantial amounts of salmon, Pacific sardines, albacore tuna, and other species. All of our members are privately owned, U.S. citizen companies that in many cases go back for several generations. Our members are integral parts of their communities and actively participate in the fisheries management process at the state and federal level.

I am also a member of the Pacific Fishery Management Council but my testimony reflects solely the views of my members, although we agree with many of the comments that will be presented by the Council's Executive Director who is also testifying today.

Before talking about specifics in the bills before the Committee, I would like to offer some general comments on the Act and how it has evolved. When the Fishery Conservation and Management Act was passed in 1976, it established a unique cooperative partnership among scientists, managers, resource users, and the public through the regional Council system. Users gained the benefit of having a voice in decisions that affected their lives and livelihoods. At the same time, they assumed the responsibility of conserving and managing the fisheries under science-based guidelines. Equally important, the Congress recognized that there were significant differences in the ecological, economic, and social factors that affected fisheries around the country. What works in the Gulf of Mexico may not work on the Pacific coast. Thus the Act provided for over-arching science-based principles and standards, while allowing room for flexibility so that each region could make the most practical choices in ensuring that management of our fisheries provides a net benefit to the nation. As we consider changes to the law, we should make certain that these basic principles—science, cooperative partnership, and regional flexibility—are not lost.

On the whole, we support H.R. 5018 although we suggest some minor modifications and additions be made. We also note that some of the same general themes in H.R. 1431, such as Council member training, peer review, cooperative research, and fishing gear development are contained in both bills, though we prefer the way these issues are handled in H.R. 5018 because they provide the flexibility that the Councils need. Following are our comments on some of the major issues.

**NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

We have seen numerous comments in the press claiming that section 10 of H.R. 5018 somehow denies public participation by melding NEPA with the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA). Nothing could be further from the truth. The MSFCMA provides one of the most transparent, exhaustive public participation processes that we have ever seen. There are numerous opportunities for public comment at all stages of regulatory development. In fact, at our April Council meeting, we had nearly 300 witnesses testify before the Council on a single agenda item. We also reviewed hundreds of written comments on the same issue, along with the reports from local meetings held for the benefit of the public that could not afford to travel to the Council, and three separate Council committee reports. I fail to see how the public was not heard.

In fact, what NEPA adds to the Council process is more work for Council staff and fisheries managers, more paper, more cost, and more confusion to the public. The sheer volume of paper that a member of the public has to be familiar with has become so large with the addition of NEPA documents that we regularly need to bring a second suitcase to meetings to avoid overweight luggage charges on airplanes. Advisory panel members spend hours of preparatory time trying to wade through the documentation; it gets even worse for a fisherman who has to get off his boat to go to a Council meeting. Management actions are delayed because of time needed by NMFS staff to ensure we are complying with NEPA. And if we goof, we are slapped with a lawsuit alleging inadequacy of an environmental impact statement. In the past 4 years, our members have spent over $100,000 to intervene in such lawsuits, just to protect the interests of our industry. Think how much better our fisheries would be if all that time, money, and effort were spent on resource surveys, stock assessments, and gaining better understanding of our fish stocks.

We believe that the blending of requirements of NEPA and the MSFCMA as will be accomplished when H.R. 5018 is enacted represents an excellent method of resolving these issues.

**NATIONAL MARINE SANCTUARY ACT vs. MSFCMA**

We are unique in the Pacific region in having a significant portion of our coastline—and fishing grounds—included in National Marine Sanctuaries. Unfortunately, this unique state of affairs has led to significant problems with efficient fisheries management.

The difficulty lies in the fact that the National Marine Sanctuary program has its own ideas of how resources should be managed and in some instances have been pretty blunt about insisting that we do things their way or else things will be done to us. Unlike the very public process inherent in the MSFCMA, as noted above, the Sanctuaries have a very tightly controlled, bureaucratically top-heavy decision system. They also have little to no expertise in fisheries management and the effects of regulations on resource users. While the Pacific Council has tried to accommodate resource concerns in Sanctuaries—and has done so quite well in several instances—there is continued insistence by the Sanctuary program that they intend to take charge of everything, even though this will require a complete rewrite of the regulations establishing the Sanctuaries.

While section 10(d) of H.R. 5018, in combination with section 5(h)(1), is a good step in the right direction towards resolving the conflicts, we would prefer a more straight-forward approach that makes clear that the Councils, not the Sanctuaries, have jurisdiction under the MSFCMA process over activities that affect fisheries. Again, the MSFCMA provides transparency and easy public input; the National Marine Sanctuary Act does not. At the very least, we urge inclusion in section 5(h)(1) of the phrase "(including the water column)" after the word "habitat". One of our most vexing issues at the moment is an effort to provide protection for certain areas in the Channel Islands National Marine Sanctuary, only to be told by the Administrator of NOAA that we cannot because we don't have authority over the water column, just the ocean floor. While that change would help us resolve a current issue, we still would like a more clear resolution to the larger problem.

**REBUILDING AND OVERFISHING**

Without doubt, the issue of how to address rebuilding of a small number of species in the context of a multi-species fishery is the biggest problem faced by the West Coast in the last 10 years. Our Pacific Groundfish Fishery Management Plan covers 82 species, none of which are harvested individually. Of those, 7 have been classified as "overfished", primarily due to low productivity as a result of ocean conditions. We have reduced catches, terminated at least one fishery, instituted total catch limits, required carriage of electronic monitoring systems, instituted a trawl vessel buyback program, and closed off tens of thousands of square miles of productive fishing grounds from Canada to Mexico. We have also dealt with a continuing series of lawsuits claiming that we aren't doing enough.

The results are sobering: in 1997, our non-whiting groundfish landed catch totaled 56,209 metric tons with an estimated ex-vessel value of $72.7 million; in 2005, those same species' landings totaled 26,586 metric tons with an estimated ex-vessel value of $43.4 million. That is a roughly 53% reduction in landings and a 40% reduction in ex-vessel revenue in 8 years. That difference in value is also equal to about twice what we spend on groundfish research and observer coverage on the West Coast every year.

Let me emphasize that these reductions don't come about because of massive declines in stocks. In fact, most of our stocks are healthy and all are managed conservatively. Rather, what we are facing is the inability to access the 75 species that are in good shape because we are trying to prevent harvest of the 7 species that are being rebuilt under the provisions of existing law.

Further, keep in mind that species can't simply be brought above the "overfished" level; we are required to maintain restrictions until species are brought all the way to our maximum sustainable yield proxy, which is 40% of calculated virgin spawning biomass. So a species like Pacific ocean perch, which most likely was a fringe population off the northwest coast and which was severely fished down by foreign fleets prior to 1977, may never rebuild and harvest restrictions may be in place for generations to come.

To make matters worse, stock assessments are done using computer models that require huge amounts of largely unavailable data. It is no coincidence that the 7 species are all in the group known generally as "rockfish", because they live in rocky habitat that is inaccessible to standard trawl surveys. In fact, we have not been able to use trawl survey data for widow rockfish for years because it is essentially meaningless. The result is that these species will in all likelihood not be considered rebuilt until their populations have grown so large that they are forced out of their natural habitat and can be captured by a trawl survey. In the meantime, we will continue to forgo harvest of other healthy stocks and increase bycatch and discards.

Please understand that we are not interested in fishing any species to commercial—or real—extinction. But with a multi-species fishery such as we have on the West Coast, we need to find some way to balance rebuilding with access to healthy stocks that can sustain our coastal communities.

With this in mind, we believe that section 11 of H.R. 5018 goes a considerable way towards addressing the problem. We would ask that you consider one important addition in light of a recent 9th Circuit Court ruling: modify section 304(e)(4)(A)(i) by replacing "as short a time as possible" with "as short a time as practicable".

Under the ruling in the case of NRDC v. NMFS, the court tried to figure out the balance between rebuilding in as short a time as possible with meeting the needs of communities. The resulting guidance that we have received from NMFS—and for the record, WCSPA was a defendant intervener in the case and does not necessarily interpret the court direction the same way as NMFS—is that we have to start with rebuilding plans that assume zero harvest, calculate the date by which a stock will be rebuilt, then gradually allow some harvest in consideration of community needs but not stray too far from the zero- harvest rebuilding date. Thus in 2007, we again anticipate harvests being reduced as we comply with this latest direction, on top of everything else that we have done. With a late start to the crab season due to weather and restrictions on salmon fishing (also to meet rebuilding requirements), fishermen are not going to have much to fall back on when the new restrictions come into play in 2007. We need the relief that section 11 and the additional change we are suggesting will provide.

**CATCH LIMITS**

On the West Coast, we have operated under catch limits for many years. In the groundfish fishery, we have annual limits that are established on the basis of recommendations from our Scientific and Statistical Committee and the technical experts of our Groundfish Management Team. We also have bi- monthly cumulative limits designed to ensure a year-round fishery and avoid early closures. Unless a stock has been assessed and known to be healthy, the annual catch limits are set below the ABC level. And, they are total catch limits so any discards are accounted for in determining total mortality.

We would, however, oppose rolling over catch limits to the following year as has been called for in other bills. For the most part, our annual catches from all fisheries are below what is provided for. However, because we have extensive recreational fisheries for some species, we do not have landing reports to rely on for all harvest. Recreational catches are modeled at the beginning of the year and then models are reconciled through post-season surveys. The survey methodology, while improving, is still not exact and we had a case several years ago where recreational effort was far greater than anticipated and the resulting post-season survey indicated total recreational catch for two species was higher than we thought. Had there been a requirement to roll over this assumed catch overage, we would have had no commercial or recreational fishery the next year.

We spend a great deal of time at each Council meeting dealing with in-season management adjustments to keep our catch levels within the annual framework. In fact, it is often the commercial and recreational fishermen who suggest harvest constraints to the Council in order to stay within limits. Because we are cautious in setting annual limits we are able to accommodate these infrequent miscalculations without doing damage to fish stocks.

**DATA COLLECTION**

We strongly support the definition of "confidential information" in H.R. 5018 as we believe it strikes a good balance between the need to acquire economic data in support of fisheries management and the need to protect proprietary business data which, if revealed, could cause problems for small businesses operating in a highly competitive industry. We would suggest that you make a conforming amendment in section 303(b)(7) of the MSFCMA by replacing "(other than economic data)" with "(other than confidential information)". This would ensure that there is no legal conflict in data collection.

We also agree with provisions ensuring that the Scientific and Statistical Committee (SSC) provides on-going scientific advice, with cooperative research provisions, with developing guidelines for best scientific information, with recreational data collection, and with requirements for peer review. Sound science and reliable data are the underpinnings of good fisheries management and should be supported.

We do not agree with paying an additional stipend to SSC members. In order to provide the best science, the SSC needs to be somewhat independent of the Council. Paying a stipend to SSC members simply makes them beholden to the process rath-

er than to the science. The Pacific Council has had no problems attracting well-qualified individuals to serve on its SSC, even without a stipend.

We also support the observer funding program in section 9 of H.R. 5018 but suggest that you include potential funding mechanisms for electronic monitoring as well as observers. Canada has been using a camera-based monitoring program with a high degree of success. On the West Coast, we have introduced a camera observation system on the shore-based Pacific whiting fleet, also with success. Camera programs, while expensive, can allow enhanced observation of fishing activity and discards on a larger percentage of a fishing fleet without having to find trained observers to cover the same percentage of activity. However, camera systems are not cheap and we hope that electronic monitoring devices can be covered under the funding program.

We also hope that you can resolve the multiple requirements for electronic monitoring using vessel monitoring system (VMS) units and the Coast Guard's latest requirement for vessels to carry automatic identification system (AIS) units. All of the vessels in our groundfish fleet on the West Coast now carry, or shortly will carry, VMS units. These are required by regulation and paid for by the vessel owner. They provide a generally reliable way to determine whether a vessel is fishing in areas that have been closed. AIS units have no fishery management use and are designed to prevent collisions. However, the Coast Guard's own data on fishing vessel casualties shows that the number of collisions that would be prevented by AIS is so small as to be statistically zero. Further, the anti-terrorism value of AIS units is questionable given the way the system operates. We are already carrying the financial burden of conservation; anything the committee can do to keep from adding to that burden would be appreciated.

**COUNCIL OPERATION AND AUTHORITY**

We support the idea of Council member training as envisioned in H.R. 5018 and generally in H.R. 1431. We oppose forbidding a Council member to vote until he or she has completed training. At the training session I attended last year after my appointment to the Pacific Council, there were two of us who began dealing with the Council process when the instructor was still in elementary school. Councils are diverse enough and have enough staggered terms of appointments that a voting prohibition is unnecessary.

We would also suggest that the bill clarify that training is required after a member is "first" appointed. Since members can serve up to three terms, there is not much to be gained by sending them to Council training at every re-appointment.

We support clarifying that the Council has authority to establish closed areas and establishing standards to do so, but note that the standards only apply if an area is to be closed to "all fisheries managed under this Act." There may be times when a Council wants to close areas to just certain fisheries, as for example both the Pacific Council and North Pacific Council have done with bottom tending gear to protect habitat, and it would seem to make sense to apply the same scientific rigor to such partial closures.

**LIMITED ACCESS PRIVILEGE PROGRAMS**

We support establishing general standards for limited access privilege programs (LAPPs) but want to note some particular problems with the provisions of section 7 of H.R. 5018.

First, we suggest a general editing process to ensure that references to LAPPs are clear. In several areas, different terms are used and it is difficult to determine what exactly is meant.

Second, we note that communities and regional associations can only develop proposed LAPPs if the Council establishes criteria to do so. Unfortunately, the workload facing Councils can be so exhaustive that no time is allotted for issues that aren't urgent. If communities or regional associations have to wait for Council criteria to be established, they may be effectively prevented from developing reasonable and useful LAPPs.

Third, one of the prerequisites for establishing LAPPs is that they contribute to rebuilding overfished (which should probably read "diminished") fisheries. Since LAPPs have as their basis economic efficiency and don't necessarily affect rebuilding times, this requirement seems almost impossible to meet; we suggest it be removed.

Finally, the bill authorizes LAPPs to be held, acquired, or used by a limited category of entities. Under current law, if a Council can justify allocating harvest privileges only to right-handed fishermen of Irish descent under 6 feet in height (an example chosen so I can qualify), then it can do so. As written, the bill seems to unintentionally remove some of the flexibility that a Council has in designing a program appropriate for its fisheries.

**SPECIFIC WEST COAST ISSUES**

We would like to call your attention to certain issues specific to the West Coast that are not fully addressed in either H.R. 1431 or H.R. 5018, in the hope that you would add appropriate provisions when the Committee takes action.

First, while we fully support H.R. 5018's provisions on joint enforcement agreements, we hope the final bill will make clear that state enforcement agents operating under a joint agreement have full access to VMS data for use in state court cases. On the West Coast, states generally adopt federal regulations for fisheries management, so when an enforcement action occurs involving a state officer, the case is often prosecuted in state court. Unfortunately, without access to VMS data, some of these cases cannot be made. We want to make sure that enforcement can be carried out.

Second, we ask that the Committee extend the existing provision for limited state management of Dungeness crab within the exclusive economic zone. Such authority has been in place since 1996 and has been previously extended. The nature of the crab resource and the crab fishery lend themselves to state, rather than federal, management and the existing system has been both successful and cost-effective. We would not support the additional data reporting requirements accompanying extension of state authority as provided for in H.R. 5051 because the data required simply does not exist, making the entire management program moot and forcing a successful multi-state management program to be pushed into the federal process.

Finally, we request that the Committee exempt the designated tribal seat on the Pacific Council from the term limit requirements imposed on public—but not governmental—Council seats. Tribal governments are essentially co-managers of certain fisheries with the states and the federal government. The tribal seat was established to ensure a cooperative working relationship between treaty tribes with rights to fish in their usual and accustomed areas and the Council. The arrangement has worked well since its establishment over 10 years ago. However, because treaty tribes are essentially government entities, they should be treated equitably with other non-federal government entities on the Council. We believe that inclusion of the tribal seat was inadvertent when Council member term limits were adopted during the course of several different re-authorizations of the MSFCMA and urge the Committee to correct this mistake.

Mr. Chairman, that concludes my testimony. I appreciate the opportunity to present WCSPA's views and comments on the legislation you have introduced. I look forward to continuing working with you and your staff as the bill progresses and would be happy to answer questions or provide additional information as needed.

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Mr. BROWN. Thank you, Mr. Moore. Thank you for your testimony.

Before we go to the next witness, Mr. Gilchrest would ask that we insert in the record his statement, and he had to leave and he apologizes for not being able to continue with the hearing.

[The prepared statement of Mr. Gilchrest follows:]

**Statement submitted for the record by The Honorable Wayne T. Gilchrest, Chairman, Subcommittee on Fisheries and Oceans**

Thank you, Mr. Chairman, for your leadership and interest in our nation's ocean fisheries and the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. As you know, this has been a long, thoughtful, and sometimes contentious process, which began during the 107th Congress, when it culminated in a bill being reported out of this Committee. There were many diverging views on the proposed reauthorization legislation at that time, and then, as now, we were fortunate to have a chairman who was capable of successfully leading and managing those views so the committee could report out a viable and progressive product for House Floor consideration. I want commend both you and Ranking Member Nick Rahall for putting forward proposals to reauthorize or amend the Magnuson-Stevens Fishery Conservation and Management Act, and both bills contribute a great deal to this discussion. It is my hope that all proposed Magnuson-Stevens legislation before the Resources Committee in the 109th would also receive a fair hearing.

Senators Stevens and Inouye have crafted an elegant compromise on many of the most contentious Magnuson-Stevens issues. I believe we all recognize that and want to preserve the momentum this bill has earned through its thoughtful and collegiate drafting, so that a great fisheries management bill can be signed into law by the President this year. As the Committee has worked to produce a House reauthoriza-

tion bill, you and I have met on a number of occasions over the past few months to discuss our views on Magnuson-Stevens reauthorization, and we know that we agree on many issues and that we differ on a few. Your consideration of these differences is certainly the kind of inclusiveness I would expect from our Committee chairman. From the august list of witnesses before us today, I can see that we are here today to continue that inclusive process.

Because H.R. 5051 has not been included in Committee hearings on Magnuson-Stevens reauthorization to date, I would like to briefly describe it to the Committee and to you. I introduced H.R. 5051 on March 30, 2006, and am pleased to report that it now has a strong, bipartisan group of cosponsors. It takes much of its text from Senator Stevens' and Inouye's bill, but is focused on fisheries conservation, including ecosystem-based management, catch limits, and regional management of fisheries. There are many other facets to fisheries management—and I know you have worked extensively with many stakeholders to explore them in order to capture their perspectives in H.R. 5018. The changes made to the Senate bill in H.R. 5051 have a more narrow focus, but I believe it contributes vitally important fisheries conservation concepts for this debate.

First, I want to commend the Regional Fishery Management Councils for the excellent work they do. It is difficult and complex, controversial and really consequential—the health of one of nation's greatest natural resources lies in their hands, and they are responsible for crafting policy that directly affects our fishermen. As the public has become more interested in and informed about fisheries, the Councils have begun to broaden their membership and have expanded their efforts, with limited resources, to encompass an expanding range of issues. The truth is, we are managing fisheries for fishermen and for the public, and fisheries have both direct and indirect, or "existence" economic value to our constituents. Different constituencies have sometimes conflicting expectations for fishery resources and their use. Rep. Rahall, in crafting H.R. 1431, has pioneered a policy discussion about our Councils and how they could evolve to meet this challenge. I am carefully studying this issue, including perceived and actual conflict of interest, Council configuration, and Council member training, and look forward to hearing testimony and dialogue about these issues today. This policy is evolving, and I would be pleased to work with Rep. Rahall on it as we move toward the House Floor with Magnuson reauthorization.

H.R. 5051 currently would require the Governors of each state to put forth a slate of candidates for each appointed vacancy on a Regional Fishery Management Council that includes two candidates from the commercial fishing sector, two from the recreational fishing sector, and two from the general public larger public. Because our fisheries are a public trust, it is essential that all points of view are voiced and considered when deciding how the capital in such a trust is utilized. It also requires NOAA to develop a training program for newly appointed Council members, which may be available to existing Council members and the public. It requires Councils to develop Science and Statistical Committees (SSCs), requires NOAA and the Councils to develop a peer review process for science used to make fishery management decisions, and requires NOAA to pay Science and Statistical Committee members a stipend. It also requires representatives of the SSCs to be present at all Council meetings.

Second, H.R. 5051 includes language, similar to that proposed by the Administration and supported by the Joint Ocean Commission Initiative, requiring NOAA to draft guidelines to integrate ecosystem principles into fisheries management and to authorize the Regional Fishery Management Councils to draft Fishery Ecosystem Plans. While many uncertainties remain about how to manage fisheries or other living resources on the ecosystem scale, our scientific understanding about the interrelationships among fish species has greatly increased over the past decade. In fact, the Communication Partnership for Science and the Sea sponsored a scientific consensus statement on ocean ecosystem-based management signed by over 200 scientists, and emphasizing that this approach is necessary to ensure the continued flow of natural resources from the sea. This information can be applied, and must be applied, to fisheries management.

Third, H.R. 5051 also would require overfishing to end by a date certain—within one year of the completion of a Council plan to rebuild an overfished stock. Our oceans are resilient, but not infinitely so. Currently, 20 percent of our nation's fish stocks are considered overfished or depleted. And these are the fisheries that we know about—there are an additional 55 fish stocks with unknown status. By quickly ending overfishing, stocks will rebuild, and the rebuilding time frame becomes less important. By quickly ending overfishing, we will reverse the loss of large, predatory fish in our oceans and the trend of fisheries toward harvesting species further and further down in food chain because these more valuable, large, predatory fish are

disappearing. We can then be sure that there will be fish to support both coastal and fishing communities and the growing worldwide demand for seafood.

To prevent overfishing, we must set the annual catch limits that are grounded in science. I commend the Chairman for including in his bill such provisions that require catch limits to be set and adhered to by each Regional Fishery Management Council's Science and Statistical Committee. However, we must devise a system where there is accountability if such limits are surpassed. H.R. 5051 requires that if catch limits are exceeded in one year, that overage must be deducted from the next year's allotment of fish. This language is from the introduced version of S. 2012, which I understand is being adjusted to accommodate certain regional concerns expressed in the Senate. I look forward to reviewing the final product of negotiations in the Senate, and to discussion about it at today's hearing.

Finally, I believe challenges faced by the Councils in reconciling the Fishery Management Plan process in Magnuson to the National Environmental Policy Act (NEPA) are immense. NEPA is the means by which the public can monitor federal activities that have an impact on the environment, and as such, it is a critical conservation policy tool. It is far from perfect, as the Chairman knows, and he has made a particular study of its imperfections. Until we work out a more perfect instrument to serve its purposes, I believe it must not be abandoned. H.R. 5051 adopts Senate language requires the White House Council on Environmental Quality and NOAA to generate an alternative process for Fishery Management Plans.

Again, I would like to thank the Chairman for holding this hearing. Our oceans have much to lose if we do not ensure that they are adequately protected, and I am confident that testimony we are about to hear will help us shape strong legislation to conserve our living ocean resources.

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Mr. BROWN. Mr. Donofrio.

## STATEMENT OF JAMES A. DONOFRIO, EXECUTIVE DIRECTOR, RECREATIONAL FISHING ALLIANCE

Mr. DONOFRIO. Thank you, Mr. Chairman, and Members of the Committee.

My name is Jim Donofrio. I am Executive Director of the Recreational Fishing Alliance. The RFA is a national 501(c)(4) nonprofit grassroots political organization whose mission is to safeguard the rights of saltwater anglers, protect marine, boat and tackle industry jobs, and ensure the long-term sustainability of our nation's marine fisheries.

I appreciate this opportunity to appear before you today to comment one on H.R. 5018, and H.R. 1431. Mr. Chairman, the RFA supports your bill and looks forward to continuing to work with you, members of the Committee and your staff to make improvements to it. The RFA is also pleased with the process your staff has used to receive input from affected stakeholders such as our organization.

H.R. 5018 proposes a new recreational data collection system. The RFA appreciates the Chairman's acknowledgment that the current system is broken, a view that is also held by the National Research Council. However, we are concerned that H.R. 5018 will push states that do not currently have recreational saltwater fishing licenses and may not want them to implement new license programs.

In states where there is currently a license, the results of the associated data collection system had been buried at best. We suggest that the Committee consider language included in the Senate bill as introduced. It would create a registry program for recreational fishermen and would require the Secretary to make improvements to the marine recreational fishery statistical survey.

The April 2006 NRC report found that the design, sampling strategies, and collection methods for recreational fishing do not provide adequate data for management and policy decisions. Furthermore, the NRC findings indicate that reliance on fishing licenses is not a means of improving the current flawed system.

Data collection improvements outlined in Section 201 of the Senate bill as introduced are consistent with recommendations presented in the NRC report, and we respectfully request that they be included in the House version.

Improving the Federal government's ability to collect data is an important goal and one that we support enthusiastically. However, we do not believe that individual anglers and boat owners should bear the cost of correcting a fatally flawed system created by NOAA. Consequently, we urge this Committee to include language as the Senate did when it introduced its bill. That would prohibit any new fees on anglers and boat owners associated with the recreational registry.

If Congress were to remain silent on this angler fee, it is clear the Administration would implement one similar to the proposed in the Administration bill. If Congress were to allow this to happen, it would amount to nothing less than an unfair, unnecessary, and new tax on anglers and boat owners.

H.R. 5018 provides in limited cases needed flexibility in the existing timeframes to rebuild fisheries. RFA supports this proposal and believes that its use would be the exception and not the norm. These provisions will provide fisheries managers with an additional capability to tailor specific solutions to complex challenges related to particular fish stocks.

Other legislative proposals require the establishment of a hard TAC and immediate payback for any overage. There may be a perception among some that the recreational fishing sector is not currently required to pay back overages. This is inaccurate. If the recreational sector exceeds a specified annual catch limits, councils and/or the Secretary already require a pay back by reducing the future catch limits, shortening the length of seasons, increasing minimum size, and reducing bag limits or all the above.

In the instance of summer flounder, the stock has been successfully rebuilt to levels of abundance not recorded since the 1960s. However, if the hard TAC and payback provisions were imposed on top of the current law requirements, it would likely result in an immediate and long-term closure of summer flounder, one of the largest recreational fisheries on the east coast.

I will briefly say that the RFA supports the provisions on science-based catch limits, streamlining NEPA, and managing fisheries in the national sanctuaries. The RFA is concerned with the application of the Limited Access Privilege Program and IFQs to the recreational fishing sector. The RFA also believes that Congress should recognize the nine million anglers, the 350,000 jobs and the $30 billion we generate as part of the fishing community as defined in this Act. The RFA encourages the Committee to consider our views on all these important issues.

Regarding H.R. 1431, Mr. Rahall's bill, there are several proposals included in H.R. 1431 that would move the decisionmaking process in the right direction. RFA is supportive of the training re-

quirements for new council members contained in the bill. However, RFA believes that the criteria for the nomination of council members should not be changed.

This bill attempts to provide additional opportunity for members of the conservation community to be appointed to regional councils. There is nothing in the current law which prevents members of the conservation community from being nominated by Governors or appointed by the Secretary.

Finally, the RFA believes that the provisions related to the cooperative research and peer review are proposals with merit and should be considered thoroughly by the Committee as the legislation move forward.

Mr. Chairman, thanks again. I would be happy to answer any questions.

[The prepared statement of Mr. Donofrio follows:]

**Statement of James A. Donofrio, Executive Director, Recreational Fishing Alliance**

Mr. Chairman and Members of the Committee, I am Jim Donofrio, the Executive Director of the Recreational Fishing Alliance (RFA). The RFA is a national 501(c)(4) non-profit grassroots political action organization whose mission is to safeguard the rights of salt water anglers, protect marine, boat, and tackle industry jobs, and ensure the long-term sustainability of our nation's marine fisheries.

I appreciate the opportunity to appear before you today to discuss the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. In particular, I will discuss two bills: H.R. 5018, the American Fisheries Management and Marine-Life Enhancement Act and H.R. 1431, the Fisheries Science and Management Enhancement Act of 2005.

The RFA commends you, Mr. Chairman, and the other members of this Committee who have been actively involved in this debate. The changes that the Committee and the Congress will make to the Magnuson-Stevens Act will have a profound impact on angler access and the jobs and economic future of our industry. From the individual saltwater angler to the many small businesses that comprise the marine, boat, and tackle industry, our members are optimistic that Congress will take the right steps to improve the way our fisheries are managed.

**H.R. 5018**

Mr. Chairman, the RFA supports your bill and looks forward to continuing to work with you, Members of the Committee, and your staff to make improvements to it. The RFA is also pleased with the process your staff has used to receive input from affected stakeholders, such as our organization.

**Recreational Data Collection**

H.R. 5018 proposes a new recreational data collection system. The RFA appreciates the Chairman's acknowledgment that the current recreational data collection system is broken—a view that is also held by the National Research Council. However, we are concerned that H.R. 5018 will push states that do not currently have saltwater licenses—and may not want them—to implement new license programs. In states where there is currently a saltwater license the results of the associated data collection system have been varied at best. We suggest that the Committee consider language that was included in sec. 201 of the Senate bill, as introduced. It would create a registry program for recreational fishermen in each of the eight fishery management regions. It would also require the Secretary to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey by including: (a) an adequate number of dockside interviews to accurately estimate recreational catch and effort; (b) use of surveys that target anglers registered or licensed at the State or Federal level to collect participation and effort data; (c) collection and analysis of vessel trip report data from charter fishing vessels; and (d) development of a weather corrective factor that can be applied to recreational catch and effort estimates. The April 2006 National Research Council report (Review of Recreational Fisheries Survey Methods) found that the design, sampling strategies, and collection methods for recreational fishing do not provide adequate data for management and policy decisions. Furthermore, their findings indicate that reliance on fishing licenses is not a means of improving the currently

flawed system. Data collection improvements outlined in sec 201 of the Senate bill, as introduced, are consistent with recommendations presented in the NRC report to improve recreational data accuracy and should likewise be included in the House version.

Improving the Federal government's ability to collect data is an important goal and one that we support enthusiastically. However, we do not believe that individual anglers and boat owners should bear the cost of correcting a system the Federal government broke. Consequently, we urge this Committee to include language—as the Senate did when it introduced its bill—that would prohibit any new fees on anglers and boat owners associated with the recreational registry. If Congress were to remain silent on an angler fee, it is clear that the Administration would implement one similar to what is proposed in the Administration's own bill. If Congress were to allow this to happen, it would amount to nothing less than an unfair, unnecessary, and new tax on anglers and boat owners.

**Rebuilding Fisheries**

H.R. 5018 provides, in limited cases, needed flexibility in the existing timeframes to rebuild fisheries. RFA supports this proposal and believes that its use would be the exception and not the norm for the Secretary. The rebuilding requirements in current law were written over 10 years ago. As with other provisions, RFA believes that minor adjustments are necessary and appropriate. In this case, injecting a modest amount of flexibility into the rebuilding requirements will provide fisheries managers with an additional capability to tailor specific solutions to complex and different challenges related to the nature and circumstances of particular fish stocks.

Other legislative proposals have included language to require the establishment of a "hard" total allowable catch (TAC) and an immediate "pay-back" for any overage. There may be a perception among some that the recreational fishing sector is not currently required to "pay-back" overages. This is inaccurate. If the recreational sector exceeds a specified annual catch limit, Councils and/or the Secretary already require "pay-back" by reducing the future catch limits, shortening the length of seasons, increasing minimum size limits, and reducing bag limits. Under current law, fishery managers have a minimal ability to prevent this "pay-back" from resulting in a total and immediate shut-down of entire fisheries. The proposed language in the Senate bill and others eliminates such capability and would result in immediate and long-term fisheries closures.

In the instance of summer flounder, the stock has been successfully rebuilt to levels of abundance not recorded since the 1960's. However, managers are forced to implement more restrictive measures upon the recreational sector due to the inflexibility in current law. If the hard TAC and "pay-back" provisions were imposed on top of the current requirements, it would likely result in an immediate and long-term closure of summer flounder—one of the largest recreational fisheries on the East Coast. We believe that Congress can and needs to inject flexibility into the current law in a manner which will prevent immediate closures of fisheries without compromising conservation results.

**Science-Based Catch Limits**

H.R. 5018 requires each regional Fishery Management Council to set annual catch limits at or below the acceptable biological catch level as recommended by the Council's Science and Statistical Committee (SSC). It also requires the SSC to make such recommendations based on sound science. The RFA believes that this is an appropriate framework for councils to set annual catch limits.

**Streamlining NEPA**

H.R. 5018 also proposes important changes to streamline a burdensome regulatory process. Currently, regional councils, the National Marine Fisheries Service, NOAA, the Department of Commerce, the Office and Management and Budget and other Federal agencies are required to wade through a morass of time-consuming regulatory requirements to amend an existing or adopt a new fishery management plan. H.R. 5018 requires regional councils to meet two new requirements under the Magnuson-Stevens Act similar to requirements under the National Environmental Policy Act (NEPA). It also provides discretionary authority to the Secretary of Commerce to consider such requirements as meeting the NEPA requirements. RFA believes these provisions will reduce current time-consuming and overlapping regulatory steps while at the same time ensuring that conservation requirements under NEPA and the Magnuson-Stevens Act are properly considered.

**Managing Fisheries in a National Marine Sanctuary**

H.R. 5018 restores the balance between two conservation laws—the Magnuson-Stevens Act and the National Marine Sanctuaries Act. H.R. 5018 requires the Secretary to review any regulation proposed under the National Marine Sanctuaries Act which would regulate fishing in a sanctuary. Such a regulation could not take effect unless the Secretary certifies that the proposed regulation meets the criteria of and is consistent with the Magnuson-Stevens Act. RFA believes this proposal will reduce historical tension between fisheries managers and sanctuary managers and promote better decisions with regard to fishing regulations in national marine sanctuaries.

**Limited Access Privilege Programs**

Like other legislative proposals to reauthorize the Magnuson-Stevens Act, H.R. 5018 proposes a limited access privilege program. It is clear from H.R. 5018, the Senate bill, the Administration bill, and prior Administration testimony, that these proposals are designed primarily to address challenges in managing certain commercial fisheries. For instance, past Administration testimony in support of limited access privilege programs focuses on ending the "race-to-fish", decreased harvesting costs, increased product quality, and increased profits. RFA believes that all of these are laudable goals and limited access privilege programs should be available tools to manage commercial fisheries. However, the recreational industry does not suffer from "races-to-fish" and has never needed to contemplate reducing harvest costs nor increased product quality because these issues do not exist in the management of recreational fisheries. Therefore, RFA recommends that the limited access privilege programs be confined to the management of commercial fisheries and that any allocation associated with such a program be made only after the initial commercial/recreational allocation is established.

Before I turn to H.R. 1431, I would like to address one issue which is not included in H.R. 5018. The RFA believes that the definition of "fishing community" should be revised to include the recreational fishing industry. Nine million anglers generate a recreational fishing industry which supports 350,000 jobs and drives a $30 billion industry. The RFA believes that Congress should recognize our industry as part of the "fishing community" for the purposes of this Act and that it should be properly considered as such in the federal regulatory decision-making process.

**H.R. 1431**

RFA appreciates the goals of improving the fishery management decision-making process embodied in H.R. 1431. There are several proposals included in H.R. 1431 that would move the decision-making process in the right direction. For instance, RFA is supportive of the training requirements for new council members contained in the bill. However, the RFA believes that the criteria for the nomination of council members should not be changed. H.R. 1431 attempts to provide additional opportunity for members of the conservation community to be appointed to regional councils. There is nothing in the current law which prevents members of the conservation community from being nominated by governors or appointed by the Secretary. Finally, the RFA believes that the provisions related to cooperative research and peer review are proposals with merit and should be considered thoroughly by the Committee as the legislation moves forward.

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Mr. BROWN. OK, thank you very much.

Mr. Pringle.

## STATEMENT OF RAY PRINGLE, FLORIDA FISHERMEN'S FEDERATION

Mr. PRINGLE. Good morning, Mr. Chair, and Members of the Committee.

My name is Ray Pringle, and I am President of the Florida Fishermen's Federation. Thank you for providing me with an opportunity to present testimony on H.R. 5018 and H.R. 1431 and other issues related to the reauthorization of the Magnuson-Stevens Act.

I am from the historic fishing village of Cortez located at the north end of Sarasota Bay in Florida. I have been a fisherman for over 40 years. My granddaddy and my dad were fishermen. As you

can see, fishing is not just an occupation for me, it is a family tradition.

For over 150 years, mom and pop fishermen were the backbone of Cortez, but times have changed, and commercial fishing is no longer characterized by historical villages like the one I grew up in. Our culture of small boat fishing communities and way of life is dying off while fisheries council ignore good science, then instead go with history of short-term fishermen and catching most of the fish in these gigantic corporate boats.

For fishermen like me, fishing is generational, and there is a huge vested interest in protecting fish populations for generations to come. Basing management decision on good science is the key to achieving successful management of our fisheries. Mom and pop fishermen know and understand that following good science is the best way, the only way to protect fish stocks.

But I have seen time and time again politics and anecdotal science weighing heavily on management decisions, and they usually win. I am not here to point fingers or lay blame, but it is time that we made a serious move toward reforming our management system, not business as usual or what my granddaddy used to call "just going through the commotions."

Congress has a real chance this year to reauthorize the MSA, and it is imperative that they get it right. Unfortunately, H.R. 5018 contains some provisions which really concern me and I fear that if this bill without some tweaking will not fairly protect the fish, the mom and pop fisheries, or historic fishing villages.

It is crucial that the council set annual catch limits at the levels based on the science, and this bill does include a provision to ensure this, and I thank you for it. I firmly believe that setting a limit and providing an accountability measure for defining the limit are an essential part of ending overfishing.

I am concerned with the IFQ programs that could be established under this bill. Without consolidation limits, these IFQ programs could lead to big corporate interest putting the mom and pop businesses like me out of business. I would entreat Congress to make sure that standards are in place that will result in fair allocation of a quota, prevent too much consolidation, and protect the voice of crew and small mom and pop boat fishermen. To exclude small boat fishermen from a fishery would not only cause the further collapse of historic fishing communities, but would also be a loss for conservation efforts.

As I have said before, mom and pop fishermen truly believe in the long-term sustainability of fish stocks, and therefore have been and will continue to be stewards, good stewards of the resource. The reauthorization of the Magnuson-Stevens should strengthen current law and make progress toward fixing our on-the-fritz management system.

H.R. 1431 is not a comprehensive MSA reauthorization bill, but it does address the important issue of reforming the councils. The councils play a central role in the management of our nation's fisheries, and it is time to spruce them up. This bill strengthens the role of science in the fishery management process and requires the councils to base their catch limits on good science.

The oceans are vast and the more we know about them the better we will be at managing fisheries. Cooperative research is a great way to involve the fishermen in research and maintain a viable fishing fleet. I highly recommend this.

In conclusion, I am here today to ask Congress to take action and I urge this Committee to make the necessary changes to strengthen H.R. 5018. Making the needed changes will result in a bill that advances the use of science in the management process. The MSA reauthorization bill that incorporates these provisions would make significant progress toward protecting the mom and pop fishermen, revitalizing our disseminated historic fishing villages, and improve our ability to effectively manage our nation's fisheries.

As a lifelong fisherman, with a family history of fishing, and hopefully a future, I have a deeply vested interest in the sustainable management of our fisheries. Thank you for inviting me to testify before this Committee, and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Pringle follows:]

**Statement of Ray Pringle, President, Florida Fisherman's Federation**

Good morning, Mr. Chair and Members of the Committee. My name is Ray Pringle and I am a lifelong fisherman and President of the Florida Fisherman's Federation. My love of fishing inspired me to found the Florida Fishermen's Federation, an organization that represent mom and pop fishers and serves not only as a lobbying and support group for fishermen, but also as a community service organization. We have provided fish and grits meals to the victims of several different disasters along with tractor trailers full of ice. We have also been instrumental in helping the Boy Scouts fund fish fries, church building fund fish fries, and helping elect many of our political leaders, including our President and his brother with fish fries. Thank you for providing me with an opportunity to present testimony on the "American Fisheries Management and Marine Life Enhancement Act," H.R. 5018, the "Fisheries Science and Management Enhancement Act of 2005," H.R. 1431, and other issues related to the reauthorization of the Magnuson-Stevens Fisheries Conservation and Management Act. Reauthorization of this Act comes at a critical time.

I am from the National historic fishing village of Cortez, located at the north end of Sarasota Bay in Florida. I have been a fisherman for over 45 years, and my Grandad, Dad were fishermen and my brother is a fisherman; as you can see fishing is not just an occupation for me, it's a family tradition. Since the late 1700's small boat family fishermen were the backbone of Cortez, but times have changed, and commercial fishing is no longer characterized by villages like the one I grew up in. Our culture of small boat fishing communities is dwindling as we see our oceans' resources decline, and the current management system continually ignore the science in favor of protecting the financial interest of faceless big boat fishermen who for the most part have no long history of fishing and who don't care much about a future. The most important concern of big boat fishermen lies in the immediate economic gain, and far too often economic concerns outweigh the conservation of fish. For fishermen like me, fishing is generational and there is a huge vested interest in protecting fish populations for generations to come, but this is not possible if we continue to poorly manage our fisheries.

The regional councils were established when the Magnuson Act was originally enacted in 1976. The challenges facing our fisheries were much different then. The government was concerned with phasing out foreign fishing and promoting the U.S. industry. But the decades of intense fishing pressures in our Federal waters, have resulted in the decline and even collapse of many fisheries because of the Gold Rush mind set of the big boats. The big boat attitude is like the saying I saw on a bumper sticker, "Kill'm all and let God sort them out." Basing management decision on science, good science, is the key to achieving successful management of our fisheries. Mom and pop fishermen know and understand that following good science is the best way, the only way, to protect fish stocks, but I have seen it time and time again; politics and anecdotal science weighing heavily on management decisions and usually winning. You would think we would have learned our lesson by now, yet we continue to make poor decisions and disregard the science, and therefore we con-

tinue to have declining and overfished fisheries. I am not here to point fingers or lay blame, but it is time that we made a serious move towards reforming our management system so that we can once again have healthy fisheries and viable fishing fleets.

**H.R. 5018**

Congress has a real chance this year to reauthorize the Magnuson-Stevens Act for the first time in 10 years, and it is imperative that they get it right. Unfortunately, H.R. 5018 contains some provisions which really concern me, and I concerned that if this bill was to pass we could find ourselves in a bigger predicament.

One of the most important issues any reauthorization bill must address is putting an end to overfishing. If we don't stop overfishing how are we ever going to rebuild fish stocks? It seems pretty common sense. This bill, though, would make it easier to extend the rebuilding time frames. This is a risky scenario, because extending rebuilding deadlines will only serve to increase fishing pressure on vulnerable stocks threatening their ability to rebuild and delaying the benefits of rebuilt stocks to fishing communities, like Cortez. This bill also changes the definition of overfished, and the new definition would allow managers to continue to allow overfishing if fishing is not found to be the primary cause of the stock depletion. It shouldn't matter how an overfished status was achieved, to continue overfishing on dangerously low stocks is too risky and will most likely result in irreversible damage and the continued decline of fish stocks. This is exactly what we should be putting an end to.

As far as catch limits are concerned, it is crucial that the councils set annual catch limits at the levels based on the science, and this bill does include a provision to ensure this. However, the bill does not include an accountability measure to force the councils to abide by the limits they set. If there is no consequence for overfishing, what is the incentive to obey the catch limits? I firmly believe that setting a limit and providing an accountability measure for defying the limit are an essential part of ending overfishing.

I am concerned with the IFQ programs that could be established under this bill. The way IFQ programs are set up in this bill could result in a further demise to small boat fishing communities. Without consolidation limits, these IFQ programs could lead to big corporate interests putting the mom and pop fisherman like me out of business. Congress needs to make sure that standards are in place that will result in fair allocation of the quota, prevent too much consolidation, and protect the voice of crew members and small boat fishermen. To exclude small boat fishermen from a fishery would not only cause the further collapse of historic fishing communities, but would also be a loss for conservation efforts. As I have said before, mom and pop fishermen truly believe in the long-term sustainability of fish stocks and therefore have been and will continue to be good stewards of the resource. Any IFQ program must also contain a review, and if necessary modifications resulting from the review are not incorporated into the program then the quota needs to be revoked from the fisherman. This will reinforce the notion that the quotas are a privilege, and add force to program reviews, and encourage all fishermen, big and small, to be good stewards.

The reauthorization of Magnuson-Stevens should strengthen current law and make progress towards fixing our fragmentary management system. This bill contains too many provisions that would be setbacks to current law, and my experience tells me this is not a good direction to move.

**H.R. 1431**

H.R. 1431 is not a comprehensive MSA reauthorization bill, but it does address the important issue of reforming the councils. The councils play a central role in the management of our Nation's fisheries, and as decades of experience have shown us they are in disrepair and it is time to spruce them up. This bill strengthens the role of science in the fishery management process, and requires the councils to base their catch limits on good science. It also includes provisions that will help diversify representation on the councils, and address the problems regarding council members and their financial ties to the fishing industry. The councils are currently heavily weighted with big industry folks. How can we expect people with a direct financial tie to the industry to make decisions that favor conservation over immediate economic gain? The conflict of interest situations that exist in the current councils impedes their ability to effectively manage the resource, and has resulted, more often than not, in council members voting for economic gain over conservation. I strongly support these long overdue reforms to the council system. We need to keep the fox out of the hen house.

This bill also requires the establishment of a cooperative research program. The oceans are vast, and the more we know about them, the better we will be at managing fisheries. There is a lack of data on most fish stocks and an abundance of fishermen that are in need of more work, and a cooperative research program is an innovative way to address both of these issues. It would go a long way to increase our data and knowledge of fish stocks, while helping out the fishermen. Cooperative research is a great way to involve the fisherman in research and maintain a viable fishing fleet. It seems like a common sense solution that would benefit everyone involved.

**Conclusion**

All too often science-based fisheries management is compromised by political and economic pressures, thus our progress towards ending overfishing and rebuilding depleted fish populations has been limited. Failure to follow the science has resulted in the decline of numerous fisheries resulting in the collapse of fishing economies all over the country. It is time for Congress to take action, and for the first time in 10 years there is a real chance to get it done. I urge this Committee to make the necessary changes to strengthen H.R. 5018, because as it is right now the bill would be like my granddaddy used to say, "Just going through the commotions." Making the needed changes will result in a bill that advances the use of science in the management process, and most importantly a bill that will not result in business as usual. The future of marine fish, commercial fishing and fishing communities is hanging in the balance and the time to act is now. We can no longer afford to make lukewarm attempts to reform our policies regarding the management of our Nation's fisheries. An MSA reauthorization bill that incorporates some of the provisions from H.R. 1431 would make significant progress towards protecting the mom and pop fishermen like me, and improving our ability to effectively manage our Nation's fisheries. As a lifelong fisherman, with a family history of fishing and hopefully a future, I have a deeply vested interest in the sustainable management of our fisheries, and as you can see the current system is gone haywire and in need of a serious facelift. For many years we have erred on the side of short-term economic gain over the long-term health of the oceans fish, now its time to try something new and err on the side of good science.

Thank you for inviting me to testify before the Committee and I would be happy to answer any questions you may have.

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Mr. BROWN. Thank you, Mr. Pringle.

Mr. Benton.

## STATEMENT OF DAVID BENTON, EXECUTIVE DIRECTOR, MARINE CONSERVATION ALLIANCE

Mr. BENTON. Thank you, Mr. Chairman.

For the record, my name is David Benton. I am the Executive Director of the Marine Conservation Alliance in Juneau, Alaska. Our organization represents about 80 percent of the seafood production off of Alaska.

Mr. Chairman, I have sat through this hearing today and I am very impressed with the breadth of testimony and the kinds of questions we have gotten. I want to point out a couple of things that I heard in response to some of the issues that have surfaced, and I think it is important to start with putting it in perspective.

We have heard a lot about the Alaska model and how Alaska has been successful in the management of its fisheries. I think we are reasonably proud of that record. Other councils have had successes, and I think Dr. Hogarth pointed out that there has been real progress made in recent years all around the coast, and I think that is an important perspective to keep in mind.

The Sustainable Fisheries Act did not fail. That doesn't mean it is perfect and it doesn't mean there are ways to improve it, and I want to tell you that H.R. 5018, in my view, incorporates all the key elements that make the Alaska model a success, and I think

H.R. 5018 is a good place to start and improving upon what the Sustainable Fishing Act started back in 1996.

Alaska produces roughly half the nation's seafood. We do that with no overfished groundfish stocks. We have a couple of stocks of crab that are listed as overfished, and this gets to the problem that Mr. Moore was raising earlier, and others have raised about the definition of overfished and overfishing.

Those crab stocks declined in the late 1970s and early 1980s due to oceanographic conditions, changes in oceanographic conditions. There have been no fishing on most of those stocks for the past eight, nine, ten years. We have strict rebuilding programs. We have program to restrict bycatch on those stocks. We have done everything we can to eliminate fishing mortality. Those stocks are not rebuilding, and they are not going to rebuild until the conditions that lead to reproduction of those species improves.

Nonetheless, they are classified as overfished and overfishing. Potentially it is a violation of the Magnuson Act because of having an arbitrary 10 year deadline to have these stocks rebuilt. To look at ways of providing some flexibility, I think is reasonable, and that is just one example of imposing an artificial standard on a situation where it will do no good.

Mr. Chairman, H.R. 5018 adopts the kinds of principles for incorporating science into the management process that we have used in the North Pacific for almost 30 years. The way that it is put together in the bill we believe is the correct way to set up the relationship between the scientists and the councils. We do not support provisions to split the science process further or divorce it further from the council process. We think building stronger institutional arrangements require cooperation between managers and scientists is the way to go. H.R. 5018 does that.

Some of the provisions in Mr. Rahall's bill, we believe, could actually put roadblocks in that process, and so we do not support those provisions.

One improvement that could go into H.R. 5018 would be a definition for acceptable biological catch. It would make it clearer. I think the North Pacific Council has recommended language in that regard. Certainly it would be willing to work with the Committee on what that definition might look like, but we think that would be a place to strengthen the bill.

I want to talk just very briefly about NEPA and the conflict with Magnuson. Obviously, there has been a lot of back and forth here today. It is a real problem. NEPA was never meant to deal with dynamic fishery management kinds of situations. It needs to be solved.

The question that was asked by a number of members of the Committee about looking at maybe a one-year review and a process to resolve that conflict I don't believe will solve the problem. It has been around a long time. We brought it to the attention of multiple administrations. It has not gotten resolved. I think it is time for us to take some action and get this put in perspective.

That doesn't mean undercutting the public process and it doesn't mean undercutting the analytical process. It means doing what H.R. 5018 is doing now, and that is, incorporating key NEPA provisions into the bill and making one process that is consistent so

that the public knows where to go, what the information is, and how to participate. We think that is a fair and good way to go.

Our organization also supports the provisions about resolving the conflicts within national sanctuaries, and the councils, and I would like to associate our remarks and support with those of Dr. McIsaac earlier.

I want to close, Mr. Chairman, since the clock has run out, by acknowledging our gratitude for the way that the bill deals with cooperative research and bycatch research, and its description of seabird avoidance measures. Our membership has worked in the North Pacific to reduce seabird interactions, and mortalities by 80 percent in the last few years. It has been voluntary measures, and we appreciate the way that this bill deals with that issue.

I conclude my remarks.

[The prepared statement of Mr. Benton follows:]

**Statement of David Benton, Executive Director, Marine Conservation Alliance**

**Introduction.**

Thank you, Mr. Chairman, for this opportunity to testify before you today on H.R. 5018, the American Fisheries Management and Marine Life Enhancement Act.

My name is David Benton. I am the Executive Director for the Marine Conservation Alliance. The MCA is a coalition consisting of seafood harvesters, processors, coastal communities, Community Development Quota organizations, and others interested in and dependent upon the groundfish and shellfish fisheries off Alaska. Taken together, the membership of the MCA represents about 80% of the harvesting and processing of groundfish and shellfish off Alaska.

I want to take this opportunity to provide you with information regarding Alaska's fisheries, and to touch on some of the key aspects of H.R. 5018 that I believe will further the role of science and conservation in the management of the nation's marine resources.

First, let me provide you with some information regarding Alaska's fisheries.

Alaska produces roughly half of the nation's commercial fisheries landings by volume. Fisheries account for about 35,000 jobs in Alaska, and are valued at over $1 billion dollars in ex-vessel value. In 2004, the ex-vessel value of groundfish alone was $593M with $123.6M from the Gulf of Alaska and $469.0M from the Bering Sea and Aleutian Islands.—The gross value of the 2004 groundfish catch, after primary processing, was approximately $1.7B (F.O.B. Alaska).—In addition to groundfish, halibut and shellfish generated $176.5M and $208.5M ex-vessel values respectively.—In 2004, roughly 1000 vessels caught Alaska groundfish.

Most importantly, the majority of Alaska's coastal communities are built around a fisheries based economy, and without a stable fishery resource base many of these communities would not exist. It is because of this dependence upon the sea and its resources that Alaskans work hard to ensure that conservation comes first, and that fishery resources are managed for their long term sustainability.

The record speaks for itself. There are no overfished stocks of groundfish in Alaska. Fisheries are managed under hard caps and close when harvest limits are reached. Federal observers, electronic Vessel Monitoring Systems (VMS), and U.S. Coast Guard patrols monitor the fisheries to ensure compliance with closures and bycatch limitations. Over 380,000 square nautical miles are closed to bottom trawling to protect marine habitat. Ecosystem considerations are taken into account in fishery management plans. For example, fishing on forage fish species is prohibited. And, for the two Bering Sea crab stocks rated as "overfished" aggressive rebuilding plans have been in place for many years. Most scientists believe that these stocks are depressed because of oceanographic changes that happened in the late 1970's, and that these stocks will not rebound until oceanographic conditions become more favorable for these species.

It is this record that led the U.S. Commission on Ocean Policy to cite Alaska as a potential model for the rest of the nation. MCA concurs with that view.

**MCA Supports Provisions in H.R. 5018 to Strengthen the Regional Fishery Management Council Process.**

Alaska is remarkably fortunate, in that we have robust fish stocks and a long and successful record of producing healthy seafood on a long-term sustainable basis. For fisheries conducted in federal waters, this success story hinges on the regional fishery management council system embodied in the Magnuson Stevens Act (MSA). We believe that this system has all the characteristics that are required for developing and implementing science driven, conservation oriented management regimes while at the same time providing the public, affected user groups, communities, academics, scientists, and other interested parties with unprecedented access to the decision-making process.

The MCA strongly supports the regional council system because it recognizes the remarkable diversity of issues facing the different regions of the country, and because it provides the public access to a transparent and science-driven fishery management process. We support the broad inclusion of state and federal fishery managers as well as expert stakeholders as council members. The MCA supports the current MSA appointments process whereby each Governor consults with the public, ensures that each nominee is experienced and knowledgeable on the region's fisheries, and nominates at least three individuals. In order to ensure that top quality individuals continue to serve on the councils, the appointments should continue to be made by the Secretary of Commerce, with input from other Commerce officials as necessary.

The transparency of the MSA fisheries management process is unique in the federal government. It is a rare instance where the public has the level of access to the decision making process that is present in the regional fishery management council system. Council members sit through hundreds of hours of public testimony, receive voluminous reports and analyses, have the opportunity to receive scientific advice from experts through presentations, and in the end have to state their rationale for a decision on the record and vote. All of this takes place in the public eye. The complexity of fisheries management requires Council members with deep knowledge and experience in a region's federal fisheries. Training can build a common knowledge base among Council members to encourage understanding of the issues and efficient communication with each other and with the public.

MCA is pleased to note that H.R. 5018 recognizes the basic principles underlying the Regional Council process, and includes measures to build on the strengths of the existing MSA system.

The MCA supports provisions in H.R. 5018 requiring that each new Council member receive training before taking a seat on the Council. Such training should include the list of topics identified in H.R. 5018, with an emphasis on meeting the requirements of the Magnuson Stevens Act, the regulatory process (e.g., NEPA, Regulatory Impact Review, etc), and the rules for recusal and financial disclosure. The MCA supports continuation of the current requirements to disclose all financial interests relating to fishing and for recusal from voting in instances as defined in regulations.

Some argue that Council members with any financial interests in a fishery be barred from sitting on a Council or from voting on management decisions related to that fishery. Congress decided in 1976 to take a new approach to a regulatory system—establishing a Regional Council system that meets close to where the fisheries occur, opening all meetings to public scrutiny, and inviting those with hands-on experience to be part of the process that seeks to protect the sustainability of the resources they depend on. In 1996, as part of the Sustainable Fisheries Act, Congress reaffirmed this approach while at the same time strengthening the MSA recusal provisions to be functionally equivalent to those applied in other federal advisory boards. These provisions, coupled with the advisory role of the councils whereby the Secretary makes the final decision is a robust system of checks and balances that prevents misuse of authority by Council members.

Arguments have been made to require appointment of Council members from particular interest groups, rather than building Councils with important fisheries expertise. Designating specific seats for particular interest groups will lead to continuing battles for representation of specific interest groups such as recreational fishers, a longline seat, a trawl seat, a tangle net seat, etc. This would seriously undermine one of the strengths of the council system, inclusion of knowledgeable persons from a broad spectrum of interests. Although many current Council members have interests in either commercial or recreational fisheries, the largest group of seats goes to professional fisheries managers from NMFS and the states. Supplementing their broad expertise with private citizens with specific expertise in the fisheries being managed is the best method for promoting rational fisheries

management. In the North Pacific, this discretionary process has led to the appointment in recent years of a wide variety of members from diverse backgrounds.

**H.R. 5018 Takes Important Steps to Strengthen the Role of Science in Management.**

The MCA strongly supports strengthening the institutional role of science in the Regional Council decision-making process. MCA believes that the policy of the North Pacific Fishery Management Council to set harvest levels at or below those recommended by their science advisors should be applied nationally. In the case of the North Pacific, the Council does not set Total Allowable Catch for any species or stock of fish higher than the Acceptable Biological Catch recommended by the Council's Science and Statistical Committee (SSC). The result is that no stocks of groundfish are overfished in the Bering Sea, Aleutian Islands, or Gulf of Alaska. That high degree of success is achieved within the existing Magnuson Stevens Act (MSA) structure and procedures.

A similar position was endorsed by the Chairs of the eight regional fishery management councils last year in comments on MSA reauthorization. The Chairs position states: "Councils shall adopt acceptable biological catches (ABCs) within limits determined by their Scientific and Statistical Committees (SSCs) (or appropriate scientific body) and shall set total allowable catches (TACs) and or management measures, such that catch would be at or below ABC."

The MCA supports amending the MSA along the lines recommended by the Chairs, and incorporated into H.R. 5018 in Section 3. H.R. 5018 establishes the correct relationship between the SSC and the Council for developing catch specifications by including the new paragraph (7) to Section 302 (h) of the MSA (p. 5 lines 3-11). This provision closely follows current practices in Alaska.

However, we also recommend that H.R. 5018 be amended to include a definition of Acceptable Biological Catch. This definition should identify ABC as an annual specification of fishing mortality for individual fish stocks or multi-species stocks of fish. It should be based on the best scientific information available, and be designed to prevent overfishing and promote maximum sustained yield. Including such a definition will strengthen this section of H.R. 5018, and most closely track successful practices employed by the North Pacific.

We are also pleased to see that H.R. 5018 has several provisions to improve the SSC process, including paying stipends to non-government SSC members and requirements for the SSCs to meet in conjunction with the respective Council. Some groups have called for a more formal split between the scientists and the councils. MCA does not support proposals to split the science process and the SSCs from the Regional Fishery Management Councils. Such an arrangement would serve to politicize the scientific process, and further remove the science from the overall decision-making. MCA believes that it will be more effective to forge stronger ties through closer working relationships between the science advisors and the councils, instead of creating additional institutional barriers.

The excellent conservation record in the North Pacific demonstrates the benefits of maintaining and strengthening this important partnership. The MSA currently provides that each Council appoints the members of its SSC, a process which should continue. The regional nature of the Council's work is key to a regulatory process that is transparent, available to all stakeholders, and that provides opportunities to participate and understand the scientific basis for decisions. A strong Council-SSC relationship is central to that process.

**H.R. 5018 Strengthens Science Through Peer Review of Stock Assessments.**

H.R. 5018 would improve the scientific process by requiring the Secretary and each Council to establish a peer review process. MCA supports this provision. The stock assessment process is the foundation of a successful science-based fishery management system. In the North Pacific, NMFS assembles top scientists for each Plan Team, with input and appointment by the SSC. The Plan Team assessment process is tied closely to the SSC-Council schedule for setting TACs, ensuring that the most recent scientific data is available and used. Plan Team meetings are open to the public and occur in the region.

Increased peer review would ensure that the methods used for stock assessment in each region are up-to-date and can withstand tough scrutiny, providing confidence in the stakeholder community. Each Council and its SSC should cooperate in selecting methods, models, etc. for outside peer review and, in consultation with NMFS, select the reviewers. The MCA recommends that time-sensitive work, such as annual stock assessments, be reviewed either on a periodic basis or after implementation with the objective of improved methods for future work.

One issue that is not addressed, however, are the requirements of the "Data Quality Act" and OMB guidelines for implementing that Act. MCA recommends adding a provision under this section of H.R. 5018 to clarify that each Council, in conjunction with the Secretary, may establish a scientific peer review process to meet OMB requirements. It should specifically identify each Council's SSC as qualifying as the peer review body for that Council and that review by the SSC is deemed to satisfy Data Quality Act requirements.

**H.R. 5018 Takes Appropriate Steps Towards Building an Ecosystem-based Approach to Fisheries Management.**

Ecosystem-based management is an approach that seeks to balance the uncertainties of our knowledge regarding the workings of the marine environment with the better known science of single-species management. The goal of an ecosystem-based approach to management is to protect the long term sustainability of marine resources while providing a source of healthy food, jobs, economically viable communities, and recreation. The MCA supports ecosystem-based management as an important goal for the nation's federal fisheries management system. We agree with others, including the Chairs of the regional fisheries management councils, that the MSA currently allows for an ecosystem-based approach to fisheries management and that incorporating ecosystem considerations into management can be strengthened with increased research funding and enhanced collaborative efforts among fishing and non-fishing regulatory bodies.

However, we are not in favor of establishing statutory requirements for ecosystem-based management in the Magnuson Stevens Act or other law. Our knowledge base regarding the structure and functions of marine ecosystems is in its infancy. Marine ecosystems are dynamic and driven by climate, biological abundance and human-induced factors. Climate and ocean currents and biological conditions such as plankton production and predator/ prey dynamics change from year to year. Human-induced factors such as pollution, coastal development, shipping traffic, recreational uses and fishing do also influence marine ecosystems. While the United States Commission on Ocean Policy (USCOP) recommended moving towards an ecosystem-based approach to management, the Commission also recognized that our knowledge of these forces and their interrelationships is limited. The Commission recommended moving towards an ecosystem-based approach to management in a careful and deliberate manner, using voluntary programs, and taking into account these uncertainties. The Commission did not support mandating an ecosystem-based management regime.

The Ecosystem Principles Advisory Panel (EPAP) identified in H.R. 5018 also recognized these limits. The challenge, according to the EPAP, is to "rebuild and sustain populations, species, and biological diversity, so as not to jeopardize a wide range of goods and services from marine ecosystems, while providing food, revenue and recreation for humans." The EPAP proposed eight specific criteria to be used in development of an ecosystem-based approach to management.

In the North Pacific, the Council's precautionary approach to fisheries management incorporates measures consistent with these eight recommended guidelines. Extensive habitat protection, prohibition of fishing on forage fish, controls on bycatch, protections for seabirds and marine mammals, strict catch accounting and hard caps on harvest levels are all part of the program. This strategy has sustained the nation's richest marine resources, producing more than half of all seafood harvested in U.S. waters. The record is 25 plus years without a single groundfish species classified as overfished. This success has come about within the existing framework of the MSA.

More recently, the Pacific States Marine Fisheries Commission (PSMFC) convened a panel of internationally recognized experts to look at current practices of the North Pacific and Pacific Councils, and to evaluate steps to improve the role of science and ecosystem-based approaches to fishery management. The report, entitled "Strengthening Scientific Input and Ecosystem-Based Fishery Management for the Pacific and North Pacific Fishery Management Councils' identified practical steps that fishery councils can take to move towards ecosystem-based fishery management in a deliberate and responsible manner. The report is available from the PSMFC at h and is currently in press for publication in the Canadian Journal of Fisheries and Aquatic Science.

Most importantly, this panel of experts rightly concluded that no new statutory authorizations are necessary. They pointed out that the major limiting factor is adequate scientific information on the interactions of numerous ecosystem functions, and that funding for research programs to address these data needs is the most important action that could be taken today to meet these challenges in the future.

All of these considerations lead MCA to conclude that the Councils already have the authority they need to incorporate ecosystem considerations into fishery management, and no new statutory language is required. However MCA generally supports the language in H.R. 5018 at p. 21 lines 6-14 providing discretionary authority for ecosystem-based management plans as it is consistent with existing authorities. MCA would not support similar provisions as mandatory requirements for fishery management for the reasons stated above.

In addition, MCA recommends modifying the provisions of H.R. 5018 to explicitly acknowledge that human beings are an integral component of the marine ecosystem. As such, we recommend amending the policy statement on ecosystem-based fishery management (page 28 lines 18-19) to read "understand the interactions of species in the marine environment, the role of humans as part of the ecosystem, and the development of"." And, while H.R. 5018 charges the Secretary with developing a definition of "ecosystem" and "marine ecosystem", we believe that H.R. 5018 could provide important guidance by incorporating a simple definition of ecosystem-based fishery management that recognizes all of the components of the marine ecosystem including people.

We would suggest a simple definition that explicitly states that ecosystem-based fishery management will be based on the best available science, and considers the physical, biological, economic, and social interactions among the affected components of the marine ecosystem when developing fishery conservation and management measures. Such a definition is consistent with the work of the EPAP and the results of the panel convened by the PSMFC. It recognizes the use of best available science, and explicitly acknowledges that social and economic considerations are factors to be considered along with the physical and biological characteristics of the marine environment. It does not give preference to any one factor, thereby preserving the role of the Councils and Secretary of setting management goals and priorities through the public process.

Some have proposed to empower the Secretary of Commerce, in consultation with the Councils, to develop national guidelines to "standardize" the criteria used to develop an ecosystem-based approach to fisheries management. MCA does not support statutory language charging the Secretary with development of national criteria for ecosystem-based management. In the past, such mandates, though appealing on the surface, have led to lengthy administrative processes and unnecessary litigation to interpret the intent of Congress with regards to such language. Instead, MCA believes that we must recognize that one-size may not fit all, and that national criteria are not appropriate. The other regions of the country, as part of the established council-driven process under MSA, should consider and adopt their own sets of management policies to balance the uncertainties of marine ecology with the better known science of single species management as they incorporate ecosystem considerations into regional fishery management plans.

**Flexibility is Needed When Using Limited Access Privileges to Support Conservation.**

The MCA is supportive of quota-based and/or cooperative rights-based management systems, now being referred to as Limited Access Privilege Programs (LAPP). We support the availability of this important management tool to all regional management councils. Any such systems should be developed consistent with the National Standards and other provisions of the Magnuson Stevens Act.

H.R. 5018 establishes criteria and procedures for LAPPs. MCA supports the use of LAPPs, but believes that Councils need to have the tools to develop such programs and the flexibility to address regional concerns. We believe that a minimalist approach is best, and that there is no need for elaborate criteria or standards in the MSA. If the language from H.R. 5018 is used, then MCA believes that the criteria and provisions need to be discretionary throughout.

H.R. 5018 also modifies the existing fee structure of the present MSA. MCA supports retaining the 3% annual cap on cost recovery fees. MCA strongly supports the language on page 51 lines 19-23 directing that fees shall be devoted to the fishery from which they are collected.

MCA is concerned that the 1% initial allocation fee may cause undue hardships for small vessel operators who may not have anticipated this surcharge and may not have the funds saved to meet this obligation. A provision could be added under the Limited Access Privilege Assisted Purchase Program section of H.R. 5018 to address this matter.

**The Observer Program Requirements of H.R. 5018 May Undermine Existing Programs.**

MCA is a strong supporter of observer programs to improve fishery monitoring and management. We are concerned about the effects of some of the provisions of H.R. 5018 on existing programs as well as costs to industry participants. For example, the observer cost provisions under Section 5 of H.R. 5018 require the Secretary to pay for observers that are necessary for "the enforcement of a fishery management plan or for data collection necessary for the monitoring of a fishery". MCA is concerned that this may have the unintended consequence of significantly undermining the existing observer program in Alaska.

The observer program in Alaska is paid for by industry, with the observers reporting only to NMFS. It is the largest program in the country, and perhaps the world. NOAA does not have the funding to support this program. Even if all of the agency's observer funds were pooled and devoted to this one program, it would not be sufficient. And, obviously, if this were to occur then there would be insufficient funds for observers elsewhere in the country.

Under Section 9, H.R. 5018 sets out a fee-based funding mechanism for observer programs. MCA is concerned that this section of H.R. 5018 is overly broad, and provides the Secretary with too much latitude to develop funding mechanisms for observer programs. In this section, there appears to be an open-ended authority to set fees at whatever level the Secretary determines is appropriate. While it is important to be able to pay for necessary fishery monitoring, MCA believes it is also important that there be reasonable limits on the Secretary's authority to raise fees.

We suggest that H.R. 5018 require that observer costs be set out under a plan adopted by a Council and approved by the Secretary. The intent of our suggestion is to leave it up to each individual Council to determine how best to meet observer requirements for fisheries in their region, including the question of who pays. Providing a role for the Councils to develop a plan for observer coverage and cost recovery ensures that the public and the industry have the opportunity to review and comment on any such program. This should include the definition of "fishery" that is used to develop the fee structure.

In addition, we suggest that H.R. 5018 should clarify that fees to the observer fund are under the 3% cap, or some other upper limit be placed on observer fees. The original North Pacific Research Plan section of the MSA had a 2% cap for observer fees.

**H.R. 5018 Resolves Conflicts Between MSA and NEPA While Protecting the Public Process.**

H.R. 5018 correctly attempts to resolve the conflicts between the NEPA process and the MSA process. Anyone with practical, hands on experience in fisheries management knows that this problem is real, and that it is causing unnecessary bureaucratic delays in implementing effective conservation measures for our nation's fisheries. Having two competing processes has not resulted in better analysis or more effective conservation measures. Instead, it has led to confusion by the public, and numerous procedural lawsuits that only waste time and staff resources. The paramount example of efforts to address this unnecessary problem is the 7000 plus page Programmatic EIS developed by the North Pacific Council. A related example of how these competing statutes distort the management process is the perverse result that, because of the differing timelines, the North Pacific Council may be required to use outdated stock assessment data in setting catch levels, instead of the most up-to-date and best available science.

MCA therefore supports the provisions in Section 10 of H.R. 5018 to resolve the issue. However, MCA believes that H.R. 5018 can be strengthened by amending the language on page 60 line 18 from "may" to "shall". This would clarify the procedures to be used and eliminate any future uncertainty.

For example, MCA is concerned that the "deeming" by the Secretary set out in this section could be after the fact. This could lead to the situation where a Council has acted in good faith, employed the process set out in H.R. 5018, but finds itself in the position of the Secretary making a determination that the Council action was not in compliance with NEPA after months or years of work. MCA strongly supports reconciling the differences between NEPA and MSA. Such reconciliation should be clear, and remove the potential for unnecessary procedural confusion or litigation.

An alternative would be to require the Secretary to specify in regulation the substantive requirements for compliance and the process used to make these determinations before they are applied by the Councils in their procedures.

**MCA Supports Language in H.R. 5018 To Clarify the Relationship Between MSA and National Marine Sanctuaries.**

MCA strongly supports the provisions set out in H.R. 5018 to require the Secretary to review sanctuary regulations to ensure compliance with MSA national standards. We believe that this is consistent with the intent of the National Marine Sanctuaries Act. Unfortunately, application of the NMSA has been inconsistent around the country, but this provision would ensure that the original intent is followed. MCA also believes that this review should include the relevant Council as well. Although the NMSA sets forth a role for the Councils in Sanctuary management, the practical effect has been for the Sanctuary Program to downplay the MSA national standards in making NMSA management decisions. This provision would ensure that Sanctuary resources are protected, but also that MSA provisions are given appropriate consideration.

**MCA Supports the Grant Program Established Under Section 15 Bycatch and Seabird Interactions.**

MCA strongly supports the cooperative research provisions of H.R. 5018, including those under Section 3 as well as Section 15. MCA believes that cooperative research between agency scientists, academics, and industry can be a cost effective tool to achieve practical results in fishery conservation.

With regard to seabirds, MCA believes that, like marine mammals, seabirds are best dealt with under existing law and should not be included in the MSA. However, MCA can support the language in this section to establish a grant program for gear research and modification. We are particularly pleased that H.R. 5018 correctly refers to "seabird interactions" as a separate issue from fisheries bycatch. MCA has long been concerned that seabird interactions might be labeled as bycatch, when in fact this is a different type of management concern, with solutions unique to the problem. Our members have long been involved in research and gear modification to address seabird interaction issues. In the North Pacific avoidance measures developed by industry working in cooperation with the Council, academic researchers, and federal agencies have resulted in an 80% reduction in incidental mortalities. Because of these successes, MCA supports the language calling for cooperative work between the Councils, the agencies and the industry to further seabird conservation.

**Conclusion.**

MCA wishes to conclude by emphasizing that the regional council process currently established under the Magnuson Stevens Act plays a vital role in the health of our communities, our fisheries, and in the conservation of the rich marine resources off Alaska's shores. We urge you to carefully consider the successes we have had in Alaska when others ask you to change this system. Adding new statutory requirements or new layers of bureaucracy to this system would, in our view, undermine what is widely regarded as one of the worlds more successful management systems.

Mr. Chairman, that concludes my testimony. I am prepared to answer any questions the Committee may have.

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Mr. BROWN. Thank you very much, Mr. Benton.

Can you fish in the waters around Alaska, how many months of the year?

Mr. BENTON. How many months of the year?

Mr. BROWN. Yes.

Mr. BENTON. If you have the guts, anytime you want.

Mr. BROWN. OK, thank you very much. Thank you very much for being here today.

Mr. BENTON. You are welcome.

Mr. BROWN. We have been joined by Ms. Napolitano from California. Do you have a question for the panel?

Ms. NAPOLITANO. I have several questions, Mr. Chair.

Mr. BROWN. Sure.

Ms. NAPOLITANO. I am sorry I was at another hearing which I was sitting on with Subcommittee on Water and Power, so I was

delayed and could not be here for most of the testimony, but I do have some questions to Mr. Pringle and mr. Benton.

Mr. Pringle, on page 3 of your testimony you state that H.R. 5018 does not include an accountability measure to force the councils to abide by the limits they set. What is your recommendation and what should be the consequences for overfishing?

I have a little bit of background on it, very minimal, through some of my contacts in California, and I am hearing that we are depleting our ability for our small mom and pop, as you say, fishermen to succeed because the conglomerates are coming in and tapping out, and we are not going after enforcing the laws that would prohibit those individuals from coming in.

But here we talk about the accountability measure. What do you recommend?

Mr. PRINGLE. I highly recommend the involvement of all fishermen. The problem is as I have faced in Florida where some of the fishermen that I represent, there has been votes made. They say, well, there are 50 percent of these people, 51 percent have said that they catch this many of the fish, so they exclude a lot of the others, and they don't send in the small mom and pop, don't give them a chance to even have a voice in anything because the people that catch the most fish are the ones that are heard the most, and any of the things that are going on in the fisheries, they will go and say, well, we have 51 percent of the votes of the people that catch the fish.

Well, the mon and pops are left out of that. If they have a 5,000 pound limit, they are not even asked about when these people that have a 50,000 pound limit have already said this is what we want.

To have it fair and equitable, and I face this in a lot of the issues personally myself in things that they say, well, we don't want you catching anymore of this, or we are going to put you in this stone crab industry or the blue crab industry or some of the others, and say you can go here. And then when we move to that, they say, oh, there are too many people here. We are going to take your license, and they have.

So these people caught more crab so they have the right to be here and you don't because you are a Johnny come lately. Well, we were forced out of this fishery into this one, and so then I have nothing.

There are several instances that I have personally experienced this, and it is something—and raised up in the historic commercial fishing village of Cortez. I have a home still there and it is dying, and there is no real reason for it. It is because the small mom and pops have been left out of the mix, and we need to be back into that and see something in Congress to revitalize these communities that have been disseminated, not just in Cortez. I am talking little Cortez and every place in the United States

Ms. NAPOLITANO. Any other comments from any of the panel?

Mr. MOORE. Congresswoman, I apologize. I don't know exactly where in California your district is.

Ms. NAPOLITANO. Southern California.

Mr. MOORE. OK. You tend to have a smaller boat fishery down there. On the Pacific Coast, we have a whole mix of things, from large boat fishermen to small boat fishermen. I have processors in

my membership. One of my favorite members is three generations of women who have been running a small processing plant in San Francisco for all that time.

On the council on the West Coast, we have representation in the advisory bodies of fishermen of all sizes, recreational and commercial, and we are very careful about when catch limits are it that we do something about it in the succeeding year, and actually I know you missed Mr. Donofrio's testimony, but he kind of alluded to it, the situation on the east coast.

We had a similar situation on the West Coast where actually the recreational fishery in California, I am sorry to say, went higher than expected on a couple of very sensitive species by a considerable amount, and if we had followed the strict guidelines that are being called for of you have to pay it back fish for fish the next year, you would have had no recreational fish or commercial fishery on the entire West Coast the next year.

What instead we did is we adjusted the seasons, the bag limits, and so forth for the California recreational fishery to make sure we got it back in balance. And what we try to do on the West Coast is set our catch limits below the biologically acceptable levels so we have some room for fudge, if you will, if this sort of things happens. You know, we try to be cautious about what we are doing.

Ms. NAPOLITANO. How many shore-based processors exist on that West Coast and the percentage of the market share do they process?

Mr. MOORE. On the West Coast, I can't tell you how many total processors exist on the West Coast because the way the state license processors, for example, if you have been to San Francisco and been to Scoma's on Fisherman's Wharf, they actually are licensed as a processor under California law because they buy some fish occasionally.

But in our association right now we have 13 members, there is soon going to be 12 because one member bought out another. But they are both large and small, and our members, as far as groundfish, pink shrimp, and Dungeness crab process over 50 percent of it in varying amounts.

Ms. NAPOLITANO. How many of those are shore-based?

Mr. MOORE. All of them. Every single one of my members, ma'am, is a——

Ms. NAPOLITANO. Would you provide a list of those to this Committee, please?

Mr. MOORE. I would be happy to. I want to point out they are all citizen and family owned, and have been for many generations.

Ms. NAPOLITANO. Thank you, Mr. Chairman. I will wait for another round.

Mr. BROWN. Thank you.

Mr. Pallone.

Mr. PALLONE. Thank you. I want to apologize to the panel. I did the same thing with Dr. Hogarth, just coming in after the testimony. But there is another hearing that I have to go to so I am going back and forth.

My questions are of my friend, Jim Donofrio, and my constituent, our New Jersey guy. In your testimony, which again, Jim, I didn't hear but I know what was said in writing, you express your opposi-

tion to a saltwater recreational license. You were here when I questioned Dr. Hogarth, I had the same questions essentially.

In your testimony, you expressed your opposition to a saltwater recreational license, and a fee associated with any recreational angler registry. It is obviously a sentiment that is widely shared amongst my constituents and by me. So I just wanted you to—a couple of questions, we will lump them together.

Could you explain what you believe to be the difference between a license, which you mentioned frequently, and a registry as proposed by the Administration? Why would a saltwater recreational license with a fee be unfair to recreational anglers? And how could NMFS implement a saltwater recreational registry without charging anglers a fee?

Then I am going to get into the hard TAC after you get through this.

Mr. DONOFRIO. Thank you. Thank you, Mr. Chairman, Mr. Pallone, thank you for the question here.

First of all, let us note that the National Research Council dug into the whole MRFSS system, which is a whole data collection system for the recreational industry, and those that are proposing are proponents of a saltwater license, even from our own sector here, are claiming in press releases that we are going to get better data from a license. Yet the National Research Council findings indicate that that is not true.

So, we are not going to get better data that amounts to a tax. There is a system already, the MRFSS system has a budget within NOAA. We say, NOAA, you created the problem. You have the budget. Fiscal responsibility tells us that you take that existing budget and create a registry which can be free. We have computers. We have people that will comply, and use the improvements that are incorporated into the Senate language, which are recommendations that the National Research Council has put forward, and that would be a simple system that can be done without additional fee.

Dr. Hogarth today testified somewhere around 20 to 25 dollars, but we have heard as much as 30, and you know what that would mean to a lot of recreational fishermen. It would be similar to the HMS permit, Mr. Pallone.

As you know, the HMS permit goes into a general fund and we see no benefit from that at all. We don't get better science on bluefin tuna or other tuna-like species. We get nothing from NOAA fisheries with that fee. It is another tax. Thank you.

Mr. PALLONE. I appreciate it, and let me just get into the second one, and it is again the same thing I asked Dr. Hogarth.

As you mentioned again in your testimony, there has been considerable discussion of legislating a hard TAC with a payback provision, and the series of questions, I will lump them all together.

Is the recreational sector currently subject to hard TAC with payback management? What would a legislative requirement do to recreational fisheries such as summer flounder? How would recreational fishermen react to such a requirement while the MRFSS system is still in use? And how could managers and NMFS better communicate with recreational anglers without management practices? And last, are recreational anglers willing to participate in a

new recreational data system designed along the lines of the NRC's recent recommendations? Take a crack at it.

Mr. DONOFRIO. OK, I will give a general—thank you, Mr. Pallone, Mr. Chairman. Thank you.

Currently the recreational sector does have a payback system, and that payback system works when the council decide what is going to happen with the fishery. When they do their plans, they will set their seasons, size limits, bag limits. They will give us either a shorter season or a bigger fish or less catch, sometimes all, they implement all. So that is a payback.

Hard TAC would just mean an absolute end of some of our fisheries. They would just shut our fisheries down, shut our coastal communities down that depend on these fisheries. More importantly, you have to look at this whole thing under the flexibility that we need because those in the environmental community want to hold us to this gold standard of exact science and fishery science, and it is not. This is not medical science. We need flexibility. There are so many nuances and environmental concerns and other factors in marine fisheries, like a virtual population analysis.

Mr. Pallone, you remember this one. You remember the council said there was no bluefish off the New Jersey coast, and the Mid-Atlantic Council wanted to restrict us. And what did they find? Because of environmental factors, the bluefish were 40 miles offshore where we were not fishing. So we need the flexibility. We can't have hard TACs because of the ambiguities in science. We really need to stay away from that. Thank you.

Mr. PALLONE. OK. All right, thank you very much, and thank you, Mr. Chairman.

Mr. BROWN. And I thank you, and I thank the panel for their valuable testimony this morning. And if the members have further questions, they may submit them in writing, and I hope you would respond to them as early as possible. The hearing record will be held open for those responses until May 17, 2006.

If there is no further business, the Chairman again thanks the members of the Committee and our witnesses, and without objection the Committee stands adjourned.

[Whereupon, at 12:50 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[The prepared statement of Mr. Pallone follows:]

**Statement of The Honorable Frank Pallone, a Representative in Congress from the State of New Jersey**

Mr. Chairman, thank you for holding this hearing to begin the important process of reauthorizing the Magnuson-Stevens Act.—I think almost everyone here agrees that it has been far too long since we've seriously tackled this issue.

Thirty years ago, when Congress first passed the Magnuson-Stevens Fishery Conservation and Management Act, the major problem we faced was foreign fishing fleets operating off our shores.

That's why we passed the initial Magnuson bill—to make sure that fish in American waters were available only to American fishermen.

Ten years ago, Congress revisited this issue by passing the Sustainable Fisheries Act during an era of serious concern about overfishing and collapsing stocks as commercial fishing operations got bigger and bigger.

Now, as we consider what to do next with respect to the nation's core fisheries management law, Congress needs to strike a balance between keeping individual

stocks and overall marine ecosystems healthy on the one hand and ensuring that we protect anglers' rights on the other hand.

The collapse of the North Atlantic cod is just one of many cautionary tales that we should heed as we move forward here. There is still much we do not know about the science of fisheries management, but we do know that without adequate caution we can easily slip into overfishing—which is bad both for the environment and for fishermen.

The U.S. Commission on Ocean Policy issued several more warnings when it released its report in September of 2004. The report stated that, "the last thirty years have witnessed overexploitation of many fish stocks, degradation of habitats, and negative consequences for too many ecosystems and fishing communities." Commissioners went on to state firmly that "fishery management must be improved."

As we do our best to resolve the problems laid out by the Commission and to achieve the goal of improved fisheries management, however, we must remember the human component of what we are doing.

It's well-known that commercial fishermen make a living off the sea, and stock allocations have a direct impact on their ability to earn money.

I'll be honest, Mr. Chairman, most of the fishermen in my district are recreational anglers. But while they may be referred to as "recreational" or "sport" fishermen, what they do is much more than a hobby. Recreational fishermen are a significant part of my state's $16 billion tourism industry. Their activities mean jobs and revenue for tackle and bait stores, marinas, boat shops, and a host of related businesses.

Unfortunately, it seems that fisheries managers don't seem to understand this concept. We see repeated stock allocation decisions that come down hard on the recreational sector, as if new restrictions would simply be an inconvenience to anglers. These decisions are often based on a recreational data system that everyone agrees is flawed and inappropriate for stock allocations.

So I look forward to hearing from the witnesses what they think we can do to improve recreational data collection systems, especially in light of the recent report on this topic from the National Research Council.

I also look forward to hearing from the Administration about possible plans to require recreational fishermen to pay for the right to fish. I am opposed to a recreational saltwater license that would require anglers to pay for the right to fish.

I'm also curious to hear the witnesses' opinions about the idea that we would legislate a hard TAC on the recreational sector before we come up with an accurate data collection system that would give us a realistic idea of how large the recreational catch actually is.

Finally, I hope we can explore, even at a very general level, the notion that we might need broader ocean and coastal governance regimes to address some additional issues that affect the health of fisheries stocks, such as human impacts on marine ecosystems, including pollution from off and onshore sources and global warming.

Again, Mr. Chairman, thank you for holding this hearing. I look forward to hearing the witnesses' testimonies and to working with you as the reauthorization process goes forward.

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[A statement submitted for the record by the American Cetacean Society, Natural Resources Defense Council, The Ocean Conservancy, Sierra Club, World Wildlife Foundation, et al., follows:]

**American Cetacean Society * The Baum Foundation * Cabrillo Marine Aquarium * California Coastal Protection Network * Clean Water Network of Florida * Coral Reef Alliance * Defenders of Wildlife * Environmental Defense * Farallones Marine Sanctuary Association * Florida Federation of Garden Clubs, Inc. * Friends of the Sea Otter * Hawaii Audubon * KAHEA: The Hawaiian-Environmental Alliance * Lumigenic Media * Marine Conservation Biology Institute * ManaSota-88 * Monterey Bay Sanctuary Foundation * National Marine Sanctuaries Foundation * National Garden Clubs Inc. * Natural Resources Defense Council * The Ocean Conservancy * The Otter Project * Russian Riverkeeper * Save Our Shores * Sierra Club * Seaflow * Stewards of St. Johns * Surfrider Foundation * U.S. PIRG * World Wildlife Foundation**

APRIL 25, 2006

Dear Member of Congress:

On behalf of our 3.8 million members and volunteers, we are writing to express our concerns about one provision in the American Fisheries Management and Marine-Life Enhancement Act (H.R. 5018) introduced by Representatives Pombo, Frank and Young to amend the Magnuson-Stevens Fishery Conservation and Management Act. Subsection 10(d) of the bill would require all management of fisheries within sanctuary waters to be subject to the Magnuson-Stevens Act. This would provide an unnecessary change to a system that is currently working, adversely affect the protection of special ocean areas afforded by the National Marine Sanctuary Act (NMSA, or Sanctuary Act), and undermine the current sanctuary system. Any potential changes to NMSA should be considered and made in the context of Sanctuary Act reauthorization, not through reauthorization of the Magnuson-Stevens Act.

**The Sanctuary Program**

The National Marine Sanctuary Program serves as a trustee for a system of 13 marine sanctuaries and a coral reef reserve. These include New England's Stellwagen Bank, the U.S.S. Monitor off North Carolina, Gray's Reef off Georgia, the Florida Keys, Flower Garden Banks off Texas and Louisiana, Michigan's Thunder Bay, California's Channel Islands, Monterey Bay, Gulf of the Farallones, and Cordell Bank, Washington's Olympic Coast, Hawaii's Humpback Whale, American Samoa's Fagatele Bay National Marine Sanctuaries, and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. In order to be designated as a National Marine Sanctuary, NMSA requires that the Secretary of Commerce first determine that the area is of special national significance due to, among other things, its conservation, ecological, scientific, and educational qualities. Although the system currently encompasses less than 20,000 square miles, it contains some of our most unique and precious marine habitats.

**The Legislation Would Undermine the Sanctuary Program**

H.R. 5018 states that no regulation concerning fish and fish habitat proposed under the Sanctuaries Act will take effect unless the Secretary certifies that the proposed regulations are consistent with the Magnuson Act's goals and requirements. This introduces a significant procedural roadblock to adoption of sanctuary-related regulations and puts the goals of the Magnuson-Stevens Act (fishery yield) above the goals of National Marine Sanctuaries (protection of special marine areas). This would effectively remove or greatly reduce the special protection mandate for national marine sanctuaries. Protection of the unique and valuable resources covered by the National Marine Sanctuaries system should not be impeded or compromised by making them subject to the requirements of the Magnuson-Stevens Act, which has another purpose entirely.

By significantly impairing the ability of the Sanctuary Program to restrict or prohibit fishing within individual sanctuaries, Subsection 10(d) would undermine this important, 34-year-old program.

**Practical Experience Demonstrates the Current Approach Works**

Since its initial enactment, NMSA has provided the Fishery Management Councils (Councils) with adequate opportunities to participate in sanctuary designation processes, but their role was strengthened and made more explicit after much debate in the early 1980s. The approach established under NMSA at that time to develop sanctuary-specific fishing regulations when and where necessary remains in place and reflects a carefully-crafted compromise. This compromise has been in place for more than two decades, is not broken, and does not need fixing at this

time. As discussed below, it affords the Councils a full and fair opportunity to participate in the sanctuary designation process. At the same time, it ensures that the standards used to judge the adequacy of any draft regulations, including those impacting fishing, achieve the purposes of the Sanctuary Act and each sanctuary's goals and objectives.

Under current law, the Councils can and often do play an active role in the initial designation and management of our national marine sanctuaries. NMSA specifically directs the Secretary to consult with Councils that may be affected by a proposed sanctuary designation. In addition, section 304(a)(5) of the Sanctuary Act requires that the Councils be given an opportunity to draft fishing regulations. Ultimately, however, the Secretary must decide whether or not those draft regulations fulfill the purposes and policies of the Sanctuary Act and of the particular sanctuary designation.

For the 13 existing sanctuaries, the Secretary of Commerce has nearly always accepted draft sanctuary fishing regulations proposed by the Councils or, more frequently, their decision that sanctuary-specific fishing regulations were not necessary. Consequently, sanctuary-specific fishing regulations remain rare. However, in some cases they are necessary in order to protect sanctuary resources. In the Florida Keys, NOAA worked collaboratively with two Councils, the State of Florida, and the National Park Service to develop sanctuary-specific fishing regulations that all supported. Similarly, in California, NOAA has worked collaboratively with the State of California and the regional Council to develop a network of marine reserves for the Channel Islands and other California sanctuary-specific fishing regulations. In California, it appears that much of what the Council has proposed will be approved, though the implementation mechanism for some of the regulations may be changed. The only instance in which the Secretary rejected a Council's recommendations occurred very recently with respect to the Northwestern Hawaiian Islands. In that case, the Secretary found that the draft fishing regulations prepared by the Western Pacific Fishery Management Council did not meet the Sanctuary Act's requirements.

Once a sanctuary is established, the current approach ensures that the Councils play a vital role in determining how fisheries should be managed. If and when a disagreement arises, the Sanctuary Act gives the Secretary of Commerce ultimate decision-making authority. In cases when there has been a dispute, the NOAA Administrator has wisely exercised his discretion and judgment to make case-by-case determinations as to how fisheries should be managed within individual sanctuaries.

Even if changes to the current approach were needed—which we dispute—we do not believe that this issue should be addressed in a bill to reauthorize the Magnuson-Stevens Act. Instead, the appropriate context to address this issue is reauthorization of NMSA, after Congress has had an opportunity to fully consider the unique role of sanctuaries in managing and conserving our nation's ocean ecosystems and resources.

In conclusion, we urge you to reject this provision of H.R. 5018 when it comes before the House Resources Committee. Thank you, in advance, for considering our views.

Should you have questions or need further information, please contact Julia Hathaway of The Ocean Conservancy at 202-351-0456.

Carol Maehr, Conservation Chair
Monterey Bay Chapter
American Cetacean Society

April Bucksbaum
Executive Director
The Baum Foundation

Susanne Lawrenz-Miller, Ph.D.
Director
Cabrillo Marine Aquarium

Susan Jordan
Executive Director
California Coastal Protection Network

Linda L. Young
Director
Clean Water Network of Florida

Brian Huse
Executive Director
Coral Reef Alliance

Wm. Robert Irvin, Senior Vice President, Conservation Programs
Defenders of Wildlife

Stephanie Fried
Environmental Defense

Linda Hunter
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Government/Agency Liaison
Florida Federation of Garden Clubs, Inc.

D'Anne Albers
Executive Director
Friends of the Sea Otter

Linda Paul
Executive Director
Hawaii Audubon

Cha Smith
Executive Director, KAHEA:
The Hawaiian-Environmental Alliance

Marc Shargel
Sealife Photographer
Lumigenic Media

Bill Chandler
Vice President
Marine Conservation Biology Institute

Glenn Compton
ManaSota-88

Dennis Long
Executive Director
Monterey Bay Sanctuary Foundation

Lori Arguelles, Executive Director
National Marine Sanctuaries Foundation

Marion Hilliard
Legislative Chairman
National Garden Clubs Inc.

Sarah Chasis
Director of Ocean Initiative
Natural Resources Defense Council

Steve Shimek
Executive Director
The Otter Project

Don McEnhill
Russian Riverkeeper

John Chamberlain
Chair, Board of Directors
Save Our Shores

John Swingle, Chair, National Marine Wildlife and Habitat Committee
Sierra Club

Mary Jo Rice
Executive Director
Seaflow

Don Loop
Stewards of St. Johns

Jim Moriarty
Executive Director
Surfrider Foundation

Michael Gravitz
Ocean Advocate
U.S. PIRG

Mike Osmond
Senior Program Officer
World Wildlife Foundation

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[A statement submitted for the record by the Northwest Indian Fisheries Commission, follows:]

**Statement of Billy Frank Jr., Chairman, Northwest Indian Fisheries Commission**

Mr. Chairman, honorable members of the Committee, I appreciate the opportunity to provide written comment on this proposed legislation on behalf of the twenty treaty tribes in Western Washington that comprise the Northwest Indian Fisheries Commission.

Our comments are focused on seven issues that bear on the reauthorization of the Magnuson-Stevens Act.

**Tribal Seat**

We request that the sponsors of these bills consider including a modification to address an issue regarding the designated tribal seat on the Pacific Fishery Management Council. The tribal seat should be allowed designees, as are the other designated governmental seats. Currently, other government agencies represented on the Pacific Council do have designees for their seats. This is effective and useful because it allows individuals with specific expertise on regional or stock-specific issues to be part of the Council deliberations. It also allows a representative to have a stand-in when workload demands the representative to attend ancillary meetings while the Council is in session.

**Fishery Regulations in National Marine Sanctuaries**

We support the proposed modifications to require the Secretary of Commerce to review any regulation proposed under the National Marine Sanctuaries Act under the criteria and national standards within the Magnuson-Stevens Act. The Northwest tribes are concerned about the lack of specificity governing fishery regulation development under the National Marine Sanctuaries Act. We encourage additional language to ensure coordination with the affected regional councils as fishery or essential fish habitat regulations are being developed under National Marine Sanctuaries Act.

**Harvest Levels**

We support the intent to require the development of a mechanism for specifying annual catch limits in fishery management plans. The annual federal fishery regulatory cycle would benefit from having a more open and transparent decision making process. However, the current language relies upon undefined terms (e.g., acceptable biological catch) and is vague on how this new requirement relates to a stock's maximum sustainable or optimum yield levels. Our suggestion is that the language be modified to provide a mechanism for specifying annual catch limits in fishery management plans based on the best scientific information available, and at a level that does not exceed the optimum or maximum sustainable yield identified for the stock.

**Scientific and Statistical Committees**

We support strengthening the role of the Scientific and Statistical Committees (SSC) within the regional council process, but not to the extent that they become the final arbiter of "acceptable biological catch." The setting of annual harvest limits is a policy decision, where social, economic and biological factors all must be considered. The regional fishery management councils already are required by law to use the best available science, but are also charged with making decisions regarding optimum yield. These decisions are bound by existing federal guidelines and constraints. The proposed modification would make the regional fishery management council's and tribal/state co-managers' decision making authority subservient to the SSC's decision processes, without guidance as to how allowable biological catches are to be determined. The perceived deficiencies in the current process could be remedied by the uniform application and enforcement of existing rules and procedures prescribed by the current language within the Magnuson-Stevens Act (e.g., the upper bound for the Total Allowable Catch or Optimal Yield cannot exceed Maximum Sustainable Yield, estimates which already are provided by the technical committees).

The proposed specification of SSC membership needs to be expanded to include tribal employees. Fishery scientists under the employ of Northwest tribes have long served on the Pacific Fishery Management Council's SSC, as well as the Salmon Technical Team, Groundfish Management Team and the Habitat Committee. Tribal staff currently chairs the SSC and Habitat Committees of the Pacific Council. A strict interpretation of the proposed language in H.R. 5018 and H.R. 1431 would prohibit future tribal staff participation and this should be avoided by modification of the proposed language.

The Northwest tribes support the modification to establish stipend payments to members of the SSC who are not employed by the federal government or a state government agency. Consideration should be given to expanding stipend payments to cover all technical committees of the regional councils. Currently, only the state and federal agencies receive compensation for providing technical support. The Northwest tribes provide staff for all the Pacific Council's technical committees and only receive compensation for travel expenses. We would welcome this change.

**Compliance with National Environmental Policy Act (NEPA)**

We support the determination that any fishery management plan, amendment to such a plan, or regulation to implement such a plan that is prepared in accordance

with applicable provisions deemed to be in compliance with the NEPA. The streamlining of the current plan development and plan amendment process of the regional councils is long overdue. This determination must come with the establishment of a standard plan development and amendment process which incorporates the appropriate timelines for review and approval, as well as the necessary social, economic and environmental impact analysis.

**Diminished Fisheries**

We support the proposal to replace the term "overfished" with one that better depicts a stock condition or abundance level that warrants further management consideration and action. The term overfished more often imparts the wrong connotation. Fishing is not always the sole cause of low or depleted stock abundance.

The Northwest tribes also support the clarification that the term "overfishing" refers to the rate or level of fishing mortality. However, it is a rate or level of fishing mortality that jeopardizes the capacity of a "stock," not a "fishery," to produce the maximum sustainable yield on a continuing basis. This clarification should be noted in the proposed language and we believe is more in keeping with the conservation intent of the Magnuson-Stevens Act.

**Rebuilding Guideline**

We support the retention of the 10-year rebuilding guideline for stock recovery efforts. Deviations from the 10-year rebuilding time frame requirement are appropriate if the deviations are tied to the biological characteristics of the species. The proposed modifications are necessary as there should be an accounting for natural variability and the acknowledgment of the role that non-fishing factors have in the declines of stock abundance.

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[A statement submitted for the record by Sally McGee, Oceans Advocate, Environmental Defense, follows:]

**Statement of Sally McGee, Oceans Advocate, Environmental Defense**

**INTRODUCTION**

Thank you for inviting me to provide testimony on behalf of Environmental Defense's Oceans Program.

Environmental Defense is a leading national nonprofit organization representing more than 400,000 members. Since 1967, we have linked science, economics and law to create innovative, equitable and cost-effective solutions to society's most urgent environmental problems. Working in a concerted effort with business, government, and the public, we have set the following goals for our Oceans Program:

- Plentiful seafood from vibrant U.S. fisheries: Within five years, a minimum of three major domestic fisheries with a combined wholesale value of $300 to $400 million will be firmly on the road to recovery. Equally important, each fishery will function with strong economic incentives for conservation.
- Recovering coastal ecosystems: Restoration efforts in four river and reef systems, including the Louisiana delta, North Carolina's estuaries and Florida's reefs to enhance fishery production, bring life back to the "dead zones," and serve as models for science-based management innovations with local partners.
- Energized voices for ocean conservation: Powerful constituencies in business, ocean industries, and the public will engage with us in modernizing laws, policies and business practices to save our oceans.

I am based in Mystic, Connecticut and work throughout New England, in support of sustainable marine fisheries. I am also a member of the New England Fishery Management Council (NEFMC), serving on the groundfish and sea scallop committees, as well as a joint bycatch committee with the Mid Atlantic Fishery Management Council. I chair the NEFMC's habitat committee which is currently developing an omnibus habitat amendment to update all fishery management plans in the region. I also hold a 100-ton U.S. Coast Guard merchant mariner's license, which I have put to use in New England, the Mid-Atlantic, Caribbean and north and south Pacific waters.

**OPPORTUNITY**

There have been major advances under the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for conservation and management of fish stocks. The 1996 amendments helped New England begin down the path to recovery from decades of overfishing, leading to numerous severely de-

pleted stocks. As a whole, the groundfish complex has significantly increased in biomass in recent years. However, individual species within that complex, like Gulf of Maine Cod still suffer from severe overfishing.

The scallop resource has finally shown signs of stability after years of severe overfishing. By chance, groundfish closed areas had the unintended consequence of benefiting the scallop fishery as well. Scallop beds within the groundfish closed areas have had years to rebuild and are now managed under a rotational management scheme that allows higher yield per unit of effort as a result of closing areas long enough to allow the scallops to grow in highly productive areas to market size. However, a portion of the fishery remains open access, allowing significant increase in capitalization in the "general category" portion of the fishery. While the NEFMC has begun to address this added pressure to an important resource in the region, the Magnuson-Stevens Act does not require the council to do so. Hopefully, the region will see the benefits of conservative management, limit access to this open fishery and apply a fixed quota across the board in the scallop fishery. Because the Magnuson-Stevens Act currently does not require these actions, there is a continued threat to the sustainability of the most valuable fishery in the region. Relying on chance, unintended results of tangential management actions and input controls can no longer be the primary means of managing these public resources.

Reauthorization of the Magnuson-Stevens Act provides a much needed opportunity to build on tenuous advances to end overfishing and rebuild stocks. Generally, Environmental Defense supports Congress's efforts to fully reauthorize and update the MSA. We have worked closely with the Senate to help improve S. 2012. We support S. 2012 because it maintains current protections and provides new tools to improve conservation and management of fisheries.

I have been asked to comment on H.R. 5018 and H.R. 1431, bills that would amend the Magnuson-Stevens Act. I focus my detailed comments to areas within these bills that are especially important to Environmental Defense. On the whole, we support H.R. 1431 because it enhances the role of science in fisheries management and improves the regional fishery management councils. While there are several good provisions in H.R. 5018 that would help align economics and conservation, we cannot support this bill until rollbacks to key conservation and management measures are improved. As currently drafted, the benefits do not outweigh the costs.

**ALIGNING ECONOMIC INCENTIVES WITH CONSERVATION**

- Capacity Reduction

Another important tool for aligning economics and conservation is providing incentives for reducing fishing capacity. H.R. 5018 includes provisions that authorize the Secretary of Commerce to conduct a fishing capacity reduction program that ensures a sustained reduction in capacity by requiring the vessels to be scrapped and the permits associated with vessels to be relinquished. Environmental Defense also supports the requirement in H.R. 5018 for a Secretarial report on the most severely overcapitalized fisheries in the U.S. with recommendations on ways to reduce capacity in these fisheries.

- Limited Access Privilege Programs (LAPPs)

LAPPs—catch shares - have proven to be environmentally and economically effective in Alaska, British Columbia, and other regions of the world. Under this system, fishermen are allocated shares of the annual catch, which they can buy and sell with other fishermen.—Unlike government mandates limiting fishermen's flexibility, catch shares allow fishermen to work year-round when market and weather conditions are most advantageous. LAPPs help fishermen cut costs, improve the quality of their fish, maximize dockside prices and prevent the waste of millions of fish each year that must be discarded. Just as shares of a company become more valuable if the company is well-managed, fishermen's shares gain value when fish populations increase through a well managed fishery.—The fishermen now have a financial interest in conservation measures that protect the ocean.——

The recent U.S. Commission on Ocean Policy recommended LAPPs as a key management tool. In September, the Administration explicitly called for doubling the existing number of these programs and establishing standards to govern their implementation.

In order for these market-based tools to work and benefit both fishermen and the environment, they must be set up properly. Legal standards should provide the guidance to ensure that programs are fair and equitable, and consider important societal goals for the communities in which they operate, but also be flexible enough to allow regional, fishery, and other differences to be addressed. Environmental Defense has been working with other stakeholder groups and the fishery management councils in several regions around the country to help design appropriate LAPPs for many fisheries, including red snapper in the Gulf of Mexico and Pacific groundfish.

A major lesson we have learned through this work is that there is no one size fits all approach for LAPPs.

The New England Council has approved two harvesting cooperatives in the past three years—one for demersal longline gear and one for gillnetters. These groundfish "coops" include fishermen who voluntarily joined together and demanded a fixed quota for their portion of the groundfish fishery. Fixed quotas are an anomaly in the New England groundfish fishery. However, the fishermen who spearheaded these coops recognize that a fixed quota is a sure way to guarantee that overfishing does not occur, at least in their portion of the fishery. In exchange for adopting conservation based quotas, the coops were granted freedom from many of the regulations governing the rest of the groundfish fleet. Now, the coop fishermen are able to determine amongst themselves when they fish, how much they catch as a fleet and individuals (within the limits of the coop's quota) and how best to respond to market forces.

The major limiting factor preventing these coops from being more effective is the fact that the rest of the groundfish fishery is still operating using input management measures including restricting the number of days fishermen can fish, trip limits on certain species, area restrictions, gear restrictions, and myriad other ways the Council has devised to hinder their efficiencies. Under these antiquated, overly complex and largely ineffective rules, fishermen outside the coops find ways to continue circumventing the intent of the rules, and thereby continue to overfish.

Defining limited access privilege programs in legislation is a difficult—but important—balancing act, as the need for sufficient guidelines in program development to ensure proper design and execution should be balanced with the need for flexibility to encourage innovation and address diverse goals (e.g., regions, fisheries, sectors). H.R. 5018 includes dozens of national standards requiring that LAPPs meet conservation and safety goals, and includes some important design features that affect whether a system will be fair, equitable and promote good stewardship of our nation's fisheries. These features include methods for determining who gets initial allocations of catch shares, how shares can be traded and the nature of conservation and other safeguards.

Environmental Defense is pleased that H.R. 5018 does not include a "sunset" on LAPPs, which would require that all quota shares expire on a date certain. We fully recognize and agree that LAPPs should have accountability to ensure that they meet program goals and objectives of the MSA. However, a sunset would likely do more harm than good since it could have the perverse effect of undermining conservation and management objectives, by decreasing the willingness of privilege holders to make short to medium term sacrifices to restore stocks to healthy levels. Regional fishery management councils should have flexibility in determining an appropriate accountability mechanism of LAPPs that suits the biological and economic characteristics of the particular fishery.

In order to ensure a competitive market and compliance with U.S. anti-trust laws, Environmental Defense suggests including a provision in H.R. 5018 that would establish a process overseen by the Department of Commerce, the Federal Trade Commission, and the Department of Justice for collecting information regarding activities of anti-competition, anti-trust, price collusion or price fixing. Such a provision is currently included in the Senate Commerce Committee's bill, S. 2012.

H.R. 5051 requires that before an individual fishing quota (IFQ) plan in the New England Council can be sent to the Secretary for approval, 2/3 of eligible participants voting in a referendum must have approved the plan. Environmental Defense is concerned that requiring a supermajority vote provides a disproportional voice to the minority and recommends changing the requirement to approval by a simple majority (50%) of eligible participants. While intended to protect small boat fishermen, this requirement would cut both ways and hurt them. For example, small boat fishermen may want to pass an IFQ program that addresses their concerns and suits their needs, but the large boat operators—even if in the minority—could stop the plan from being implemented.

In addition, this could prevent the scallop fishery from pursuing a LAPP, even though it is in dire need of a more rational approach to management. Many limited access scallopers currently own more than one scalloper and permit, in part due to the input management measures designed to make the fleet inefficient enough to achieve the target Total Allowable Catch (TAC). Because their "days-at-sea" have been limited to less than 60 days in recent years, one boat remains tied to the dock while the other is at sea. Once one vessel expends all of its days the captain and crew move to the next boat. This waste of capital investment in multiple vessels, maintenance, insurance and other related expenses would be eliminated with an IFQ program.

Environmental Defense commends the Committee for not authorizing processor quotas that set up a "two pie" system in which, much like a sharecropping system, a harvester's quota shares are tied directly to a processor's quota shares. Opposed by the States of Alaska and Washington, as well as the U.S. Department of Justice, such a system undermines important environmental, equity and economic objectives of a properly designed LAPP. Unfortunately, a proposal in the Senate—S. 1549—would trump 3 years of work by the Pacific Fisheries Management Council to develop an appropriate catch share system for the groundfish fishery and would mandate a two-pie system for the Pacific hake or "whiting" fishery on the West Coast. This could result in severe anticompetitive practices, limiting the markets for whiting fishermen and increasing current consolidation trends, possibly resulting in more hardships for fishermen in California, Oregon and Washington, as well as reducing opportunities for seafood processing companies currently not dominant in the whiting fishery. Implementing a "two pie" system on the west coast would set a very bad precedent for other fisheries across the country.

**THE ROLE OF SCIENCE IN MANAGEMENT**

A key recommendation of the U.S. Commission on Ocean Policy in its report, entitled "An Ocean Blueprint for the 21st Century," is to strengthen the role of science in fishery management. Specifically, the report recommended amending the Magnuson-Stevens Act to strengthen the role of the councils' Science and Statistical Committees (SSCs) and require the councils to conform their management decisions to the scientific determinations made by their SSCs. In addition, the report recommended that the Secretary of Commerce provide for an independent review of the scientific information relied on by the SSCs.

Environmental Defense supports provisions in H.R. 1431 that strengthen the role of science in fishery management. These include: a) requiring the Secretary to appoint and compensate members of each council's SSC; b) requiring that SSC members must be qualified federal, state, academic, or independent scientists who have no financial interest in any fishery; c) requiring SSC members to have demonstrated scientific expertise in fisheries science or marine ecology; or economics or social science as it relates to fisheries management; d) requiring that each council's SSC include a fishery and marine science subcommittee that makes scientific determinations, including biological catch and bycatch limits; and e) requiring that these scientific determinations be subject to peer review periodically by qualified independent scientists. Drawing from the U.S. Commission's recommendations, the bill also requires councils to develop management measures that are consistent with the determinations made by the fisheries and marine science subcommittee, but may provide for greater conservation in order to meet management objectives.

H.R. 5018 partially addresses some of the U.S. Commission's recommendations regarding strengthening the role of science in fishery management, but the bill could be strengthened. Environmental Defense supports including a provision that requires the councils to pay SSC members a stipend to ensure the participation of independent scientists. In addition, we support including detailed criteria for peer review, and allowing for comment from the public, not just the "regulated community" in the peer review process.

The U.S. Commission also recommended that fisheries be managed under science-based catch limits. Establishing catch limits with a meaningful system of accountability if those limits are exceeded is a key element to maintaining healthy fish populations and allowing depleted populations to rebuild. A catch limit is a maximum number of fish that are allowed to be caught within a certain timeframe. This type of system has proven successful in multispecies fisheries in other regions, such as Alaska and the West Coast, and can help protect species that are generally caught as bycatch in multispecies fisheries. Many of New England's chronically overfished fisheries currently lack this mechanism, and could substantially benefit if such changes were made.

Environmental Defense is pleased that H.R. 5018 requires setting science-based catch limits that do not exceed acceptable biological yield. However, we are concerned that without an accountability mechanism for ensuring that the limits are adhered to, that many fisheries will continue to be business as usual: continued overfishing. We suggest including a provision that requires that any amount exceeding the catch limits be deducted from the next year's limit. Such an approach has been proposed in S. 2012 and H.R. 5051. In addition, without a definition in H.R. 5018 of acceptable biological yield, we are concerned that limits could bet set at levels exceeding maximum sustainable yield, and could jeopardize stocks.

**WEAKENING CURRENT CONSERVATION AND MANAGEMENT MEASURES**

• Delayed Rebuilding of Fisheries

H.R. 5018 would significantly slow the restoration of our fisheries by undercutting a key conservation requirement in the Magnuson-Stevens Act—to rebuild overfished stocks. The bill would provide three new broad exceptions to the current requirements, which would lead to significant delays in rebuilding. Environmental Defense suggests removing this provision in order to maintain the conservation and management requirements gained in the 1996 Magnuson-Stevens Act amendments.

• Reduced Environmental Review

The bill would also limit environmental review and public participation by circumventing the National Environmental Policy Act (NEPA) in fisheries management. NEPA is critical to ensuring the consideration of reasonable alternatives, direct, indirect and cumulative impacts of the proposed action and providing for public input and review of the environmental impacts of the decision. Other Magnuson-Stevens Act proposals, including one offered by the Bush Administration, address concerns that NEPA and Magnuson-Stevens Act processes be better integrated without fully exempting fisheries from the environmental review under NEPA.

• Fewer Protections for Special Ocean Areas

H.R. 5018 also rolls back protections for special ocean areas. The bill would put the goals of Magnuson Stevens Act—fishery yield—above the goals set out for our national marine sanctuaries—our nation's marine parks. National marine sanctuaries are an important tool in protecting unique marine areas and recreational opportunities. Changes to the program would better be addressed through reauthorization of the National Marine Sanctuaries Act.

• Weakened Habitat Protections

The essential value of rigorous coastal habitat protection to the future production of America's fisheries was clearly emphasized in the 1996 amendments to the Magnuson-Stevens Act. This has been affirmed by hundreds of scientific research articles, before and since the almost unanimous consensus of both the commercial and recreational fishing communities, and throughout the final report of the U.S. Commission on Ocean Policy. For example, "habitat areas of particular concern" (HAPCs) are critical to our nation's economy: in South Florida alone, HAPCs such as coral reefs are alone documented to generate over US$ 2 billion total sales and to support over 19,000 jobs annually (Hazen and Sawyer 2001). In addition, these areas are important for a wide variety of recreational activities. Sportsmen and conservationists have volunteered time and provided resources to assist in their restoration.

H.R. 5018 contradicts this user-group, scientific, and policy consensus by statutorily redefining HAPCs—a subset of essential fish habitat (EFH) that is eligible for protections under the National Marine Fisheries Service EFH regulations. The new statutory definition is inconsistent with the regulatory definition because it does not include habitats that are threatened with development—a major criterion within the original HAPC definition and a long-term threat to many coastal fishery-based economies. Based on the overwhelming public and governmental interest in not degrading coastal habitats or fisheries, Environmental Defense recommends that the initial definition not be modified, or if so, amended definitions should be entirely consistent with the NMFS regulatory definition.

**CONCLUSION**

The 1996 amendments to the Magnuson-Stevens Act made important advances for recovering healthy fish stocks. Environmental Defense looks to Members of the Committee to maintain these protections while providing updated tools for conservation and management, including catch shares and catch limits. H.R. 5018 includes some new tools, but also rolls back key conservation and management measures that could reduce the economic and social benefits that healthy fish stocks provide. We look forward to working with the Committee and others in the House of Representatives to achieve these goals.

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[A letter submitted for the record by Craig A. Pendleton, Coordinating Director, Northwest Atlantic Marine Alliance, follows:]

May 1, 2006

The Honorable Richard Pombo, Chairman
The Honorable Nick Rahall, Ranking Member
The House Resources Committee
Washington, DC

Dear Committee Members,

My name is Craig Pendleton. I have been directly involved with the commercial fishing industry for 37 years. My family and I currently own the 54 foot bottom trawler *Susan & Caitlyn* which is named after my wife and daughter and operates out of Portland, Maine. My hired Captain, Michael Stinchfield, has worked with me for eleven (11) years. Included with my testimony is a current resume that will provide you with more details regarding my background.

In 1995, during a period full of extreme frustration with the way decisions were being made, I, along with several fishermen, educators and conservation representatives met in Portsmouth, New Hampshire. We were introduced to Mr. Dee Hock, CEO Emeritus of Visa USA and International. Little did we know that this meeting would change our lives. Mr. Hock spoke to us of new organizational design, inclusiveness, embracing diversity and principles by which our organization would be run. And so, I stepped ashore in order to become involved in the creation of a new organization we called Northwest Atlantic Marine Alliance (NAMA). Two short years later, I was chosen to be the coordinating director, the position I still hold today.

At Northwest Atlantic Marine Alliance, our purpose is to restore and enhance an enduring northwest Atlantic marine system, which supports a healthy diversity and abundance of marine life and human uses. Our objective is to generate a new voice and institutional presence that is centered on ecological and economic stability, personal responsibility and accountability, resource protection and distributed power and authority.

I appreciate the opportunity to submit written comments to you today. Reauthorization of Magnuson-Stevens has been a subject that has occupied a significant portion of my time recently as I have been discussing the legislation with several colleagues as far away as Alaska.

As you all are well aware, New England has a serious problem with its fish stocks. For years, we have tried to deal with the declining populations with what are known as input effort control measures. Input controls refer to indirect measures of controlling mortality on a depleted fish stock such as limiting the number of days at sea, gear restrictions, and area closures. In New

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England, we currently have a significant amount of area closed to fishing and we have cut allowable days at sea to below break even for many businesses, particularly smaller boat owners. Furthermore, starting on May 1, 2006, emergency measures developed by the NOAA regional office adds differential counting of days at sea for all of us that fish in the Gulf of Maine. (1day =1.4 days) Sadly, a majority of fishermen, scientists and conservationists agree that these emergency rules will likely *increase* fishing mortality on our stocks of concern.

Something must be done. Steadfast leadership and guidance from Congress is welcomed, needed and greatly appreciated.

We would like to comment of some specific measures of importance.

1. New England remains concerned over measures such as Individual Transferable Quotas, Limited Access Privilege Programs, Dedicated Access Privilege Programs; all of which historically have rewarded individuals and corporations who have *caught the most*. In a time of depletion and required conservation-how does that make sense? Corporatization and consolidation remain high on our list of concerns. Let us remind you, limited access privilege programs, and the like, are *economic* tools not conservation tools. The inherent objective of any kind of free market program is to increase efficiency and profitability of the industry. While the advantage to programs like this is that it *may* add incentives to sustain the resource, without limits, it will also lead to massive consolidation that can change the social and cultural fabric of our fishing communities. Historically around the world, small boat owners have been railroaded out of the industry by larger "more efficient" boats that often do more damage to the environment, and have the added access to capital to pool lobbying power and exert more influence over managers and law-makers. Therefore, we strongly urge Congress to add language as suggested in the Fishing Quota Standards Act of 2005, originally drafted and sponsored by Congressmen Tom Allen of Maine and William Delahunt of Massachusetts. If common belief is that quota management with hard fast catch limits are the panacea, then let's build in accountability and goals for success along with access for a new generation. Economic incentives does not ensure stewardship so we must challenge everyone involved to be much more accountable for their actions and their decisions should we move toward any kind of limited access privilege program. We support a 7 year sunset provision as a measuring-stick for accountability and an assurance that a public resource is not being sold off to private interests. Now more than ever, we must make progress in rebuilding our fish stocks. We can no longer tolerate best guesses or management measures that have less than a 50% success rate. This suggestion also maintains focus on the fact that quota assignment is not a property right. It is important to recognize that if we are not meeting biological, economic and social goals under a quota management system – assigned quota may very well be repealed in favor of a new fishery management plan.

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We support the most stringent language possible to make very clear that the assignment of quota is NOT a property right in perpetuity.

2. We strongly urge Congress to determine and clarify consolidation caps to avoid the corporatization and ownership of quota into the hands of a few wealthy holders.

3. We support a New England referendum vote of a 2/3rds majority of permit holders. We feel strongly that it is important to develop a good plan- one that is supported by an overwhelming majority as a way to ensure its successful implementation and outcomes.

4. We support keeping the current language in Magnuson-Stevens stipulating a strict ten year rebuilding period. This includes language for flexibility for extension of that provision due specifically to the life cycle of a species or other scientific conditions.

5. We strongly support a change in terminology from *"overfishing and overfished"* to either *"diminished or depleted"*. The connotation and implication that all problems associated with low abundance are directly linked to only commercial fishing is a misleading suggestion. *Diminished or depleted* more closely identifies the stock status rather than assign blame. We recognize that the act of overfishing is a major contributor to stock depletion and ultimately, those who harvest from the sea will be managed, yet at the same time, we want to ensure that scientists will be looking at items such as recruitment and other environmental factors that may have a detrimental effect on stocks. However, while we agree with the change in the term for overfishing, in no way can we afford to create loopholes or distractions that will allow the prolonging of our resource problems. We see the terms in Chairman Pombo's draft legislation regarding *"natural variability"* one such area that could create a problem. For years, fishermen, including myself, have used the idea of natural cycles and tied it to our criticism of the science used in management. While we support using fishermen's local knowledge in the development of fishery management plans, we see this line item as far to loose and will be used to procrastinate rebuilding.

6. We strongly support language that creates and promotes goal setting, visioning and environmental conflict resolution as a way to enhance Council decision making. All too often, individual sectors refuse to participate; or worse, refuse to admit that their sector is part of the larger problem. Legislation that promotes collaborative problem solving and creates situations where a diversity of stakeholders are gathered together to face the harsh realities in our opinion would strengthen the regional council process.

7. We strongly support the language that promotes collaborative research. Most importantly we must fix two major sources of conflict. First, the requirement of the usage of a "day at sea" in order to participate in collaborative research must be removed and second, we

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believe that the permitting associated with collaborative research can and should be clarified and streamlined. Second, we suggest that credible scientific institutions, NGO's and fishing vessels with history of participation in collaborative research be given a "research permit" which can only be revoked in the case of that institution or individual being convicted of violating a fisheries rule. Rather than treat everyone as guilty until proven innocent, lets be a bit more flexible and promote collaboration and see what we might learn from such partnerships.

8. We strongly support broadening the diversity of interests and representation on regional management councils. We support training for new council members.

9. We support furthering our understanding and designing of ecosystem approaches to fisheries management. We would like to see clarity in regards to how an area, a distinct community or a collaborative partnership can develop an ecosystem pilot project. We would like to see funding attached to this section as well.

10. We support the promotion of gear technology partnered with the study of fish behavior to reduce discards. Regulatory discards remain one of our greatest concerns.

11. We would like to see provisions that discourage absentee ownership. This differs from owner operator provisions put forward by other groups. We support owners who remain directly connected to their geographic community, participate in the management of their chosen fisheries, participate in collaborative research and maintain a close working relationship with their vessel(s). Ownership that promotes the removal of financial capital from an area to another more remote area should be discouraged.

12. We adamantly oppose processor shares or any reference to a two pie system.

Thank you for taking the time to consider our comments. We must rebuild the fish stocks we as fishermen and the coastal communities we live in so dearly depend on. Failure in this case is not an option. We at NAMA will continue to work at crafting solutions that make sense, promote collaborative research and seek a brighter future for the next generation of marine resource users to enjoy.

Respectfully submitted,

Craig A Pendleton

Craig A Pendleton
Coordinating Director

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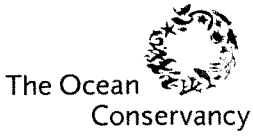
[A letter submitted for the record by Roger T. Rufe, President, The Ocean Conservancy, and Elliott A. Norse, President, Marine Conservation Biology Institute, follows:]



May 3, 2006

Dear Member of Congress:

The Ocean Conservancy and the Marine Conservation Biology Institute oppose House Resources Committee Chairman Richard Pombo's "American Fisheries Management and Marine Life Enhancement Act" (H.R. 5018) as introduced. Subsection 10(d) of the bill would undermine the mission of the National Marine Sanctuary System to protect the ecological integrity of special places in our oceans.

H.R. 5018 would override the authority of the National Marine Sanctuaries Act (16 U.S.C. 1431, Sanctuaries Act) by requiring the Secretary of Commerce to certify that any regulation proposed under the Sanctuaries Act for the conservation and management of fish (whether or not such fish are managed under a fishery management plan) or essential fish habitat is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, MSA): *even provisions that could be incompatible with the goals of the sanctuary designation.* This language would severely hinder the ability of the National Oceanic and Atmospheric Administration (NOAA) to regulate fishing in marine sanctuaries.

Last week, the House Resources Committee held a field hearing in New Bedford, Massachusetts, focused on H.R. 5018. There, the Bush Administration spoke against subsection 10(d) of H.R. 5018. Dr. Steve Murawski, Director of Scientific Programs and Chief Science Advisor for the National Marine Fisheries Service within NOAA, testified:

> H.R. 5018 requires the review and certification of National Marine Sanctuaries regulations for the conservation and management of fish or essential fish habitat. The Administration firmly believes Sanctuary regulations adequately protect fish and essential fish habitat and does not believe that Sanctuary regulations should meet the Magnuson-Stevens Act national standards in all cases since their mandates differ from the Magnuson-Stevens Act mandates. NOAA is committed to using all its regulatory tools and complimentary authorities to develop comprehensive ecosystem-based management strategies that meet the purposes, goals and objectives for state and federal fishery managers and National Marine Sanctuaries.

The Administration recognizes that it takes a cooperative process to make decisions on how fishing should be regulated within sanctuaries. Each sanctuary is unique, and the regulatory options under the Sanctuaries Act and MSA are currently evaluated and utilized by NOAA on a case by case basis, with input from fishery management councils and user groups, to meet the goals and objectives of individual national marine sanctuaries. We believe that this current balance is the correct one and should be retained.

While we will continue to work with Members of Congress to develop a reauthorization bill that will sustain our fishery resources for future generations, we cannot support legislation that would undermine the National Marine Sanctuary System. Please support the removal of subsection 10(d) from H.R. 5018.

Sincerely,

Roger T. Rufe
President

Elliott A. Norse
President

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