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REAUTHORIZATION OF THE MAGNUSON–STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

NOVEMBER 16, 2005

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ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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REAUTHORIZATION OF THE MAGNUSON–STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

WEDNESDAY, NOVEMBER 16, 2005

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m. in room SD–562, Dirksen Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

The CHAIRMAN. I think our Co-Chairman will be along in just a minute, so we will open the hearing. I thank you all for being here today.

This is a Full Committee hearing to discuss the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act and specifically the legislation to reauthorize the Act that Senator Inouye and I introduced yesterday. The bill is co-sponsored by Senators Snowe, Cantwell, Vitter, and Boxer. This Act was last reauthorized in 1996 with the passage of the Sustainable Fisheries Act. The authorization of appropriations for the acts expired in 1999. Our bill will authorize the Magnuson-Stevens Act through 2012 and provides some adjustments to the law to improve national compliance with the Act.

Our bill represents, I feel, a true bipartisan effort based on the recommendations from the Administration, regional councils, states, industry, including fishermen, processors, and suppliers, environmental groups, recreational interests, members of the U.S. Commission on Ocean Policy, and the Pew Ocean Commission, and numerous listening sessions this Committee held over the last year, which several members attended.

Over the August recess, Senator Inouye and I put out a draft for comment and review and received over 700 comments that our staff has worked on and, through that, evaluated many items for possible inclusion in the bill.

Over the last year, we received a considerable amount of information and generated a great deal of dialogue on the reauthorization of this Act. The intent of this bill is to build on some of the sound policies enacted in the Sustainable Fisheries Act and to continue the successes we have achieved under these acts to provide for the sustainability of the resources.

The Committee will hear testimony from a panel of witnesses representing the Administration, ocean policy experts, and a State representative: James Connaughton, Chairman of the White House Council on Environmental Quality; John Dunnigan, Director of the Office of Sustainable Fisheries, the National Oceanic and Atmospheric Administration; Admiral James Watkins, retired, Chairman of the U.S. Commission on Ocean Policy; and George Lapointe, Commissioner of Resources for the State of Maine.

We want to thank the witnesses for being willing to come speak with us today.

I see we have been joined by Senator Lott.

This is, I think, a most important step in continuing the policies that were set down in the original Magnuson Act.

Senator Lott, do you have an opening statement?

STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. Mr. Chairman, let me listen to the panel. I might have statements and questions after that. Thank you very much, though, for having this hearing.

The CHAIRMAN. Thank you. We will reserve a place in the record for the Co-Chairman's opening statement.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

I would like to thank our Chairman for holding this hearing today on the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005. I am extremely proud to be an original co-sponsor of this bill, and recognize I am the latest in a long line of bipartisan partners on fisheries issues with Senator Stevens.

This notable history began when our former Chairman from Washington, Senator Warren Magnuson, worked side-by-side with Senator Stevens to Americanize our fisheries in 1976. In fact, the Chairman's work has been so closely in step with Senator Magnuson's legacy over the past 30 years, the Act was renamed the Magnuson-Stevens Act in 1997, after enactment of the Sustainable Fisheries Act in 1996 which he co-authored with Senator Kerry.

This bill is one of the most significant pieces of legislation this Committee will consider this Congress. The breadth and complexity of the issues we seek to address is significant. While we are justifiably proud of the legislation, we know that it can be fine tuned, so I thank this distinguished panel of witnesses for joining us today and for sharing their insight.

Our Nation has always relied on the bounty of our oceans for sustenance and trade. This has not changed over the years, as certainly we in Hawaii are well aware. Our Nation's commercial and recreational fisheries currently bring in over $60 billion of direct revenue to our economy each year. In many regions of our country, fishing is not just the major industry, it is the only industry.

Our fisheries importance to our Nation both economically and culturally is indisputable. They are a living resource and must be treated as such if they are to sustain communities today and remain viable for future generations. Our task therefore, as the title of the bill makes plain, is to both manage and conserve.

As the U.S. Commission on Ocean Policy has already reported to us, the Magnuson-Stevens Act is a landmark statute that requires some strengthening but not a major overhaul. It is among the most conservation-minded national fisheries management laws in the world, but it is not perfect. The bill takes steps to improve the Act and make it both more effective and more responsive to community needs. The bill also takes steps toward exporting our management approaches internationally.

One of the greatest threats to global fish stocks today is illegal, unreported, and unregulated fishing. Those who engage in this illegal activity—whether under national flag or as rogue agents—have no regard for the future consequences of their actions. This bill includes provisions to strengthen international fishery management and puts teeth into our efforts to end rogue fishing and wasteful bycatch. These provisions are based on successful measures used to combat high seas

driftnets. They will not only help us sustain our shared resources, but also aid the U.S. fishing industry by leveling the playing field in terms of regulation and responsibility.

For example, our Hawaiian longline fleet, which operates on the high seas, accounts for very little of the total Western Pacific tuna catch, yet it is the only officially recognized nation fishing on these stocks that is subject to conservation and management requirements to both conserve shared tuna stocks, and reduce bycatch of endangered sea turtles. Additionally, rogue, unregulated fleets are driving our bigeye tuna stocks down, and there is very little that our small fleet of fishermen can do to mitigate the impact. Nor should they be asked to. Our bill takes steps to ensure that they do not have to shoulder this burden alone.

I am also happy to say that we have included a number of community based initiatives for the Pacific, including a provision to strengthen development of marine conservation plans in the Pacific insular areas that could potentially be included under foreign fishing agreements. We also establish a marine education program in the Western Pacific with the goal of increasing education, and training in marine resource issues, especially among indigenous Pacific islanders, Native Hawaiians and other underrepresented groups.

This Committee's members represent a variety of coastal communities and interests. I believe that we should be able to pass a bill reflecting this diversity and experience. Engaging all of these stakeholders in a productive process is no easy task, and I would like to commend my friend for his leadership and willingness to work in a bipartisan manner. I look to him and his considerable experience in this area to help us shepherd a bipartisan bill out of Committee and toward final passage.

The CHAIRMAN. I would be pleased to call first on Mr. Connaughton.

Senator LOTT. Mr. Chairman, I do just want to add that I appreciate very much the work you have been doing on this important legislation and that you have been willing to work with me and those of us from the Gulf region to get some important language in there. I just want that to be on the public record, as well as my private expressions of appreciation that I always give to you. Thank you.

The CHAIRMAN. Thank you very much.

Jim?

STATEMENT OF JAMES L. CONNAUGHTON, CHAIRMAN, PRESIDENT'S COUNCIL ON ENVIRONMENTAL QUALITY

Mr. CONNAUGHTON. Thank you, Mr. Chairman, Senator Lott. I appreciate the opportunity to appear before the Committee today to discuss reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. Mr. Chairman, it is a great pleasure to be here with you again and to talk about an act that bears your name and your legacy.

President Bush is committed to providing the American people with healthy fisheries and an economically vibrant fishing industry, a source of both nutritious food and recreational enjoyment.

The Administration looks forward to working with the Congress to ensure the long-term sustainable use of our marine resources. It is a very important objective. We recently had the U.S. Department of Agriculture and FDA tell Americans that they, for their good health, should increase their consumption of seafood. At current levels of consumption, which is about 7 million metric tons a year, the FDA and USDA have called for us to double that to 14 million tons a year. And yet, the current U.S. supply of fish to the U.S. economy is about 1 million tons a year and the rest is from imports. If we want to meet the health goals of America for the long-

lasting good care of American citizens, further improvement and discipline in our fisheries process is essential.

Now, to achieve this objective, the fundamental target needs to be to rebuild our fish stocks and end overfishing once and for all.

Let me put this effort into its broader context. At the President's direction, the Administration is working with every level of government and the private sector to advance the next generation of ocean policy. This effort flows from the 2001 appointment of the U.S. Commission on Ocean Policy chaired by Admiral Watkins, who is with us here today. The Commission began their work and, over the course of 3 years, produced a report that provided to the Congress and to the Administration and the states 212 recommendations in September of 2004. President Bush responded to this report 3 months later with the release of the *U.S. Ocean Action Plan,* which incorporates key recommendations of the Commission.

Our most important priority under the plan this year is the improved stewardship of our fisheries resources. On September 19, 2005, President Bush submitted to the Congress his vision for the reauthorization of the Magnuson-Stevens Act which contains essential elements to implement the President's Ocean Action Plan. Mr. Chairman, I commend you and your bipartisan co-sponsors for your introduction yesterday of Congress' proposals.

For centuries our national fisheries have been a source of prosperity and abundance. U.S. commercial and recreational fisheries contribute $60 billion to the economy annually, and they employ more than 500,000 Americans. The Magnuson-Stevens Act, signed over 30 years ago, has clearly stood the test of time and has made great strides in improving the management of our fisheries resources, most particularly with the amendments in 1996.

Now, the Administration has proposed that we can build on this strength and harness the changing landscape of both consumer need and the industry, as well as our expanding scientific capability and knowledge. Commercial and recreational fisheries serve an important role in our country and our leadership on this issue here at home will provide an important model internationally.

I would like to highlight just a few of the most important features of the Administration's priorities which should be part of any final legislation. We have about 10 elements. I will highlight several.

First, our proposal sets a hard deadline to end overfishing practices within 2 years, and it also incorporates stock life history into rebuilding requirements. We maintain our commitment to balancing conservation and use of fisheries resources and to continue to rely on scientists, fishermen, and expertise at the local level to guide fisheries management.

Similar to the bill you introduced yesterday, Mr. Chairman, our proposal would specifically authorize the councils to use dedicated access privilege programs as proven, highly-effective market-based tools for fisheries management, while ensuring that the councils have the flexibility to tailor these programs to local circumstances. Under existing dedicated access privilege programs, commercial fishermen have ended the race-to-fish. As a result, fishermen have benefitted from a significantly safer and more stable industry, de-

creased harvesting costs, improved compliance with catch limits, increased product quality, and as a result of all of that, increased profits. This proven mechanism provides an individual fisherman, cooperative, or community the exclusive privilege to a share of the total catch allowed. It is time that we replicate these successful management systems in regions across the country. Reauthorization of the Magnuson-Stevens Act is essential to achieving the greater use of these proven tools.

Additionally, the NEPA analytical framework provides important benefits to our resource agencies, the councils, the fishing industry, and the general public, as we do fisheries management planning. However, it is essential that we do a better job of ensuring that the NEPA process is more timely and, hopefully, fully integrated with the fisheries management planning process so that we can achieve a much more efficient and well-informed outcome.

The Administration's proposal also describes an ecosystem-based approach to further ecologically sound resource management decisions. Our approach establishes broad policy direction and would give clear authority to the councils to design their approaches. Because fishery scientists and managers have advocated ecosystem approaches to fisheries management, NOAA and the councils are already beginning to integrate this approach into fisheries management, and more can be done. But we also need to be sure that the ecosystem approach does not just become another process for delay, inaction, and conflict. We really need to find a path in which ecosystem thinking can actually accelerate speed and produce sound decisions without creating process impediments.

Mr. Chairman, working together, we do have the opportunity to improve fisheries productivity and benefits for today's fishermen while also ensuring and enhancing our fisheries' continued availability for future generations. We have enjoyed the collaboration that we have had over the last year and the Administration continues to stand ready to provide the Committee all of its resources and technical skills to shape a bill that will have lasting consequence and stand proudly on the shoulders of the work, Mr. Chairman, that you have done before.

Thank you very much.

[The prepared statement of Mr. Connaughton follows:]

PREPARED STATEMENT OF JAMES L. CONNAUGHTON, CHAIRMAN, PRESIDENT'S COUNCIL ON ENVIRONMENTAL QUALITY

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you today to discuss reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. I commend you for your work on this important piece of legislation. The President is committed to providing the American people with healthy fisheries and an economically vibrant fishing industry, a source of both nutritious food and recreational enjoyment. Last week, NOAA announced that seafood consumption in America rose for the third straight year in 2004. As Americans demand more fish and shellfish, we need to become increasingly better at managing our fisheries. The Administration looks forward to working with Congress to ensure the long-term sustainable use of our marine resources. To achieve this objective, we must rebuild our fish stocks and end overfishing once and for all.

Let me first put this effort into its broader context. At the President's direction, the Administration is working with every level of government and the private sector to advance the next generation of ocean policy. This effort requires more effective management and conservation of our ocean and coastal resources through innovative science, management, and policy initiatives. In 2001, the President and Con-

gress initiated a thorough examination of issues affecting our ocean and coastal waters through the U.S. Commission on Ocean Policy chaired by Admiral Watkins. The Commission began work in September 2001, and pursuant to its legislative mandate, completed their report with 212 recommendations in September 2004. President Bush responded to this report 3 months later, on December 17, 2004, with the release of the *U.S. Ocean Action Plan,* which incorporates key recommendations of the Commission.

One of our most important priorities under the Action Plan is improved stewardship of our fisheries resources. On September 19, 2005, the President submitted to Congress his vision for the reauthorization of the Magnuson Stevens Act which contains essential elements to implement the President's Ocean Action Plan.

For centuries our national fisheries have been sources of prosperity and abundance. U.S. commercial and recreational fisheries contribute $60 billion to the economy annually, and they employ more than 500,000 people. The Magnuson-Stevens Act, signed over 30 years ago, has clearly stood the test of time. The creation of a partnership between the Federal Government and the Regional Fisheries Management Councils is the law's innovation for improved fisheries management. This partnership allows the expertise of scientists, fishermen and other stakeholders at the local level to guide fisheries management. The Administration has proposed reauthorization that will build on this strength and harness the changing landscape of the industry and our expanding scientific capability and knowledge. Commercial and recreational fisheries serve an important role in our country and our leadership on this issue here at home will provide an important model internationally.

I would like to highlight the most important features of the Administration's proposal, which should be part of any final legislation. Our proposal sets a hard deadline to end overfishing practices within 2 years. It also incorporates stock life history into rebuilding requirements. We maintain our commitment to balancing conservation and use of fisheries resources and continue to rely on scientists, fisherman and expertise at the local level to guide fisheries management.

Our proposal specifically authorizes the Councils to use dedicated access privilege programs as proven highly effective market-based tools for fisheries management, while ensuring that the Councils have the flexibility to tailor these programs. Under existing dedicated access privilege programs, commercial fishermen have ended the "race-to-fish." As a result, fishermen have benefited from a significantly safer and more stable industry, decreased harvesting costs, increased product quality, and increased profits. This proven mechanism provides an individual fisherman, cooperative, or community the exclusive privilege to a share of the total catch allowed. It is time that we replicate these successful management systems in other regions. Reauthorization of the Magnuson-Stevens Act is essential to achieving greater use of these proven tools, which harness the power of markets to achieve sustainable, profitable fisheries.

Additionally the NEPA analytical framework provides important benefits to our resource agencies, the Councils, the fishing industry, and the general public. It is essential that we ensure that the NEPA process is more timely and better integrated with the fisheries management plan process to better inform local planning and infrastructure decisions.

The Administration's proposal includes an ecosystem-based approach to assist further ecologically sound resource management decisions. Our proposal establishes broad policy direction and gives clear authority to the Councils to design ecosystem-based approaches. Because fisheries scientists and managers have advocated ecosystem approaches to fisheries management, NOAA and the Councils have already begun integrating this approach into fisheries management and more can be done.

Working together, we have the opportunity to improve fisheries productivity and benefits for today's fishermen while also ensuring and enhancing our fisheries continued availability for future generations. We look forward to continued work with your Committee to develop a final bill that can best meet the objectives for the vibrant sustainability of our Nation's living marine resources. Thank you, Mr. Chairman for the opportunity to address your Committee today. I would be happy to answer questions.

The CHAIRMAN. Thank you very much.

Our next witness is Mr. Jack Dunnigan, Director of the Office of Sustainable Fisheries at NOAA. Mr. Dunnigan.

STATEMENT OF JOHN H. DUNNIGAN, DIRECTOR, OFFICE OF SUSTAINABLE FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

Mr. DUNNIGAN. Yes, thank you. Good morning, Mr. Chairman, Mr. Co-Chairman, members of the Committee. I am Jack Dunnigan. I work for NOAA and I am the Director of the Office of Sustainable Fisheries. And on behalf of the Department of Commerce, I would like to thank the Committee for the opportunity today to present our views concerning the reauthorization and the improvement of the Magnuson-Stevens Act.

Mr. Chairman, I would like, at the outset, to thank the Committee and its fine staff for the leadership that you have shown in bringing us to the position we are in today on this important issue. This is about the sixth one of these reauthorizations that I have personally been through, and I must say that it has been characterized by a unique sense of collaboration and collegiality. Your listening sessions, your sharing widely with the public of your ideas as you developed them, and your openness have really helped to create an atmosphere where these issues could be discussed productively. And we find that there is really much in common between the Administration's draft bill and S. 2012, and in many ways what we see happening is a converging of our shared vision on the problems that we are trying to address and the best ways to do so.

We also think that we should not forget the regional fisheries management councils. You know, Mr. Chairman, that NOAA and the Department are strong supporters of the council system. We have mutually engaged with the councils in an open dialogue as we developed our views, and we believe that we are fairly close in our positions on most major issues.

Mr. Chairman, the Sustainable Fisheries Act contained many key provisions that emphasized the conservation mission of our marine fisheries management programs, and overall, the Department believes that the last decade has largely been a record of significant improvement. We have developed rebuilding plans for nearly all of our overfished fisheries, and we have seen a reduction in the overall overfishing levels, as well as in the numbers of stocks that are overfished.

We now have a national plan for the reduction of bycatch, and we are seeing overall bycatch levels being reduced, as well as a reduction in the level of bycatch mortality.

We have witnessed the advent of new market-based approaches toward fisheries management. Whether you call them DAPs or IFQs or limited-access privileges or something else, the fact is that we are reducing overcapacity and improving the economic performance of many of our Nation's most important commercial fisheries.

Taking note of all of this, the Department believes that there are some improvements that can be made in the policies and the Administration of the Magnuson-Stevens Act, and we are very pleased that many of these views are reflected in S. 2012.

For example, we believe and our experience has shown that market-based approaches to fisheries conservation and management are effective in addressing many of the problems that are inherent and apparent in open-access fisheries. We have proposed measures

to expand the types of access programs that the councils could use, and we are convinced that this will improve the economic performance of the Nation's commercial fisheries.

The Administration's bill gives a high priority to the use of improved and more reliable scientific information in the fishery management process based upon an upgraded and a well-grounded peer review process for our important fishery science.

Mr. Chairman, our experience over the last decade has convinced us that some changes are necessary to the Act's provisions relative to overfishing and rebuilding overfished stocks. It is important to require a more timely and definitive action to end overfishing. We also believe that rebuilding provisions should move away from somewhat arbitrary and wishful scenarios for rebuilding fish stocks and be more practically tied to the realistic conditions surrounding the life histories of overfished stocks.

The last point that I would like to make, Mr. Chairman, is relative to international provisions. If you look at the President's Ocean Action Plan, you see a commitment of the United States stepping forward as a leader in the international community in developing sound practices for fishery conservation and management. The Administration's bill does not contain many provisions that specifically address this, but we note that S. 2012 does. And without commenting specifically on any of those, because we have only recently had a chance to look at them, we think it is a good sign that the Senate has stepped forward here and demonstrated some leadership in the international area, and we look forward as an administration to working with you to develop and elaborate these ideas.

Mr. Chairman, the Administration's draft bill and the Committee's bill have been developed in an effective and close collaboration. Each would build upon the successes of recent years and expand the vision that Congress advanced almost 10 years ago. The Department and NOAA look forward to continuing to work with you and with your staff to best meet our shared objectives for stewardship of the Nation's living marine resources in the coming years.

Thank you very much, Mr. Chairman. Mr. Co-Chairman and I look forward to being able to try to answer questions.

[The prepared statement of Mr. Dunnigan follows:]

PREPARED STATEMENT OF JOHN H. DUNNIGAN, DIRECTOR, OFFICE OF SUSTAINABLE FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

Good morning, Mr. Chairman and members of the Committee.

My name is John H. Dunnigan. I am the Director of the Office of Sustainable Fisheries, National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), within the Department of Commerce. Thank you for the opportunity to testify at today's hearing on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I want to commend you, Mr. Chairman, and the Committee for the work you have done over the past several months on this reauthorization. The incorporation of input from previous hearings, formal listening sessions, and countless communications with constituent groups is obvious. I am pleased to report that the Administration and Congress seem to be moving in the same direction on several of the most important Magnuson-Stevens Act issues. These points of full or near agreement suggest that the Administration and Congress share a common vision on which issues must be addressed to effectively update the Magnuson-Stevens Act.

The 1996 Sustainable Fisheries Act

To understand where we are today, we need to look at the progress we have made in implementing the 1996 Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Act. The SFA ushered in a major expansion of fisheries management policy, leading all of us—Regional Fishery Management Councils (Councils), commercial and recreational users, and NOAA's National Marine Fisheries Service (NMFS)—to manage our marine resources for the long term.

Most significantly, the SFA included several key new provisions, including strengthening requirements relating to managing fisheries to avoid overfishing, developing rebuilding plans for overfished stocks, reducing bycatch, identifying and minimizing adverse impacts of fishing operations on essential fish habitat, and taking into account the importance of fishery resources to fishing communities. In the years following passage of the SFA, the Councils and NMFS have made a major and sustained effort to implement these changes. We have faced many challenges, but our marine fisheries are healthier and managed more effectively than they were a decade ago.

I would like to outline some of our key accomplishments:

- We have developed rebuilding plans for nearly all overfished stocks, and we are reducing both overfishing and the number of overfished stocks.
- To address the ongoing concern with bycatch, we now have a national bycatch plan that is continuing to reduce overall bycatch as well as bycatch mortality.
- Using several dedicated access privilege management strategies—*e.g.,* individual fishing quotas, community development quotas, and fishing cooperatives—we are reducing overcapacity in many of our most important commercial fisheries. These initiatives are models for dedicated access privilege programs across the country.

The SFA presented many challenges, and we have gone a long way toward successfully meeting those challenges. Now, almost a decade later, it is time to revisit the Magnuson-Stevens Act and use what we have learned to improve the management of our fishery resources.

Major Themes in Magnuson-Stevens Act Reauthorization

Our focus on the Magnuson-Stevens Act takes place within the larger context of future ocean policy and governance. In December 2004, the White House issued the *U.S. Ocean Action Plan.* In light of the discussions surrounding the *U.S. Ocean Action Plan,* we have been working on Magnuson-Stevens Act reauthorization and considering new issues. We believe that our proposal addresses the most difficult issues raised in Magnuson-Stevens Act reauthorization discussions over the past several years. I would like to outline a few issues that we believe are critical to reauthorization:

Dedicated Access Privileges: A dedicated access privilege (DAP) provides an individual fisherman, cooperative, or community the exclusive privilege of harvesting a quantity of fish (generally, a percent share of a harvest quota). Market-based approaches to fishery management, including DAPs, can help solve many problems inherent in open-access fisheries. Since 1990, NMFS and the Councils have implemented DAPs in eight fisheries that together have annual ex-vessel values of over $600 million. In these fisheries, commercial fishermen have enjoyed increased profits, decreased costs of gear and labor, and a safer and more stable industry. For example, in 2001, due to the elimination of the open-access "race-to-fish," the Alaska pollock catcher/processor cooperative fleet was able to increase product recovery efficiency so much that the amount of marketable product per pound of fish caught increased by 49 percent compared to 1998, the last year of the race-to-fish. DAPs with transferable quotas allow for a reduction in overcapacity and increased profitability for participating fishermen and communities. Fishermen can change their fishing practices to reduce bycatch without concern that they will lose target catch to competitors.

Amending the Magnuson-Stevens Act to authorize a broader range of DAP programs with appropriate controls and guidelines will provide fishery managers more options to improve fishery management and enhance the economic performance of the Nation's fisheries. Toward that end, we have included in our Magnuson-Stevens Act reauthorization proposal a detailed provision on DAPs, which includes: (1) individual fishing quotas, (2) community quotas, (3) fishing cooperatives and (4) area-based quotas. All four types of DAPs would authorize the granting of exclusive harvest privileges to individuals or to groups, and include market mechanisms for the sale and/or lease of these privileges. The Administration supports the greater use

of these market-based management systems to improve the efficiency and sustainability of the harvest of federally managed living marine resources.

Scientific Support for Fisheries Management: The Administration gives high priority to the use of improved and more reliable scientific information in the fishery management process. With that end in mind, the *U.S. Ocean Action Plan* pledged to develop guidelines and procedures on the use of science in fisheries management. One key way to ensure the quality of scientific information is through peer review of this information. The Administration's bill recognizes the need to strengthen the quality of and the public's confidence in the science used by the Councils in crafting management decisions by bolstering the peer review of this science.

Rebuilding: A decade of experience has convinced us that changes are needed in the Magnuson-Stevens Act rebuilding provisions in section 304. In our view, it is critically important that we revise the Magnuson-Stevens Act to require more timely and definitive actions to end overfishing, and to amend the rebuilding time frames to better conform to the life history of the overfished stocks.

Data Collection and Access to Economic and Social Information: NMFS and the Councils will need more and different kinds of information—including biological, physical, and socioeconomic data—to improve the management process, make progress toward ecosystem approaches to management, and better anticipate the effects of management measures on commercial and recreational sectors. We propose that the Secretary implement an information collection program to obtain essential economic data. Improved access to economic and social information will also support efforts to quantitatively consider the effects of management measures on processors and communities.

Registration of Saltwater Recreational Fishermen: Complete enumeration of this important user group and subsequent collection of angler information for fisheries management is hampered because the existing state-based system of fishing licenses is incomplete. In the *U.S. Ocean Action Plan,* the Administration stated that we will work to harmonize data on state-managed recreational fishing licenses and develop a proposal to complete the state-based saltwater recreational fishing license network or propose appropriate alternatives to improve fisheries management. Better data on recreational fisheries are vital in an increasing number of federally managed fisheries. A national saltwater angler registry would ensure that all anglers are represented and accounted for. Knowing who fishes and where they fish will advance our understanding of fisheries, help improve our scientific assessments, and lead to better management of the resource. The Administration's bill requires NOAA to support and promote the controlled exchange of data for those states that have a system in place for gathering the information that scientists and managers need, and to help those states wishing to develop such a system in the future.

Compliance with the Act: Fishery management regulations require industry compliance to be effective. Compliance is achieved through voluntary behavior; effective fisheries law enforcement; and creating effective financial and penal sanctions. For particularly serious violations of the Magnuson-Stevens Act, NOAA must be able to utilize sanctions that have significant consequences in order to deter potential violators. When fisheries regulations are ignored, it is not only the resource that pays a price, but also the fishermen who obey the regulations. Increasing the level of fines and penalties, as well as expanding the types of offenses which can be criminalized under the Magnuson-Stevens Act will help to ensure that sanctions are not simply accepted by violators as the cost of doing business. Enhanced enforcement authority is also consistent with the highly public and active role the United States has taken in promoting international actions to combat illegal, unreported, and unregulated (IUU) fishing in both domestic waters and on the high seas. The Administration's Magnuson-Stevens reauthorization proposal recognizes this need for enhanced enforcement authority and proposes several important changes to existing law to accomplish it.

Compliance with NEPA: In recent years, NMFS and the Councils have worked diligently to ensure compliance with the numerous regulatory assessments that must accompany fisheries management actions. Chief among these mandatory assessments is a formal review of management actions under the National Environmental Policy Act (NEPA), which requires an analysis of the impacts of Federal actions on the human environment and a consideration of alternatives to proposed actions. Although there are some overlapping procedural and analytical requirements in the Magnuson-Stevens Act and NEPA, we have already done a great deal of work through regulatory streamlining to ensure NEPA compliance in a timely manner. However, in response to concerns raised repeatedly by the Councils, further work is needed to improve the efficiency and timeliness of the procedures governing compliance with NEPA. The Administration's bill outlines procedures to address this concern.

Fisheries Ecosystems: For several years, fisheries experts, conservation organizations, marine scientists, and various studies have advocated ecosystem approaches to fisheries (EAF), whereby management programs explicitly account for and address all living marine resources within a specific area/ecosystem, including all sources of environmental stress and factors influencing the ecosystem, not just fishing operations. An EAF requires a highly collaborative management process, and the more scientific information that is collected and analyzed, the more incremental progress can be made in creating a comprehensive plan.

We have already been including elements of an EAF in a number of "conventional" Fishery Management Plans that have been substantially modified and expanded in recent years to incorporate ecosystem principles. Most recently several federally managed fisheries, most notably in the Western Pacific, North Pacific, and South Atlantic have adopted an EAF approach. For example, we have a Coral Reef Ecosystem Fishery Management Plan in the Western Pacific.

However, the Administration supports continued progress toward EAF. The immediate question is how best to modify current fishery management practices to further EAF. It is critical that reauthorization of the Magnuson-Stevens Act provide the Councils overall direction and, equally important, the tools they will need to make meaningful progress toward EAF. The Administration's proposal emphasizes the Councils' discretionary authority rather than mandating actions that in some cases may not be necessary or may exceed the current capabilities of ecosystem science.

Conclusion

Our recommendations for this reauthorization would build on current successes and expand the vision Congress advanced 10 years ago. We would like to work with you to develop a bill that can best meet the objectives for the stewardship of our Nation's living marine resources. Thank you, Mr. Chairman. I would be happy to answer any questions.

The CHAIRMAN. Thank you very much.

Our next witness is the Commissioner from the State of Maine, Mr. George Lapointe.

STATEMENT OF GEORGE D. LAPOINTE, COMMISSIONER, DEPARTMENT OF MARINE RESOURCES, STATE OF MAINE

Mr. LAPOINTE. Thank you, Mr. Chairman. Senator Stevens, Senator Inouye, and members of the Committee, my name is George Lapointe and I am the Commissioner of Marine Resources for the State of Maine.

I want to thank you for the opportunity to provide a state perspective on reauthorization of the Magnuson-Stevens Act. In Maine, marine resources are central to the culture, economy, and character of our state and we view this pending reauthorization as an opportunity to ensure healthy fishery resources and fishing communities for generations to come.

My testimony focuses on what Maine considers to be the most critical provisions of the bill, including the importance of promoting effective State-Federal partnerships and achieving sustainable fisheries. I want to echo what Mr. Connaughton and Jack Dunnigan have said about building on past successes and working with your committee and working with NOAA fisheries in improving the Magnuson Act. I have some specific comments that I will go through.

The proposed language in the bill on cumulative impacts requires the inclusion of economic and social data and assessment methods in evaluating impacts on fishing communities, importantly including the cumulative economic and social impacts of management measures. I believe that taking a longer-term view of the impacts on coastal communities would reveal if particular geographic areas,

sectors, or gear types have been disadvantaged by successive plans and will plainly show the impacts of management on our Nation's fishing communities.

The language on impact mitigation provides an important next step in the fisheries management, lessening the concern that we manage with little regard for the real consequences of management actions on the participants in fisheries.

The proposed language on annual catch-limits requires the councils to adopt annual catch-limits for each of their managed fisheries based on the recommendations of science and statistical committees. The problem we have had with the fisheries in New England exceeding the target total allowable catch must be acknowledged, and I appreciate the need to achieve greater accountability in the future.

New England has sought to avoid TACs in the groundfish fishery ever since they were tried unsuccessfully in the 1970s and early 1980s. And as you have heard, we are concerned about some of the following impacts of TAC management.

TACs result in managing for the weakest stock components, the past history of TACs resulting in overfishing, market disruption, and high-grading, safety issues, and a concern that TAC management migrates inherently toward dedicated access privileges.

Having said this, I understand there is a lot of discussion about different language that balances management accountability and the flexibility to address circumstances that arise in particular fisheries and that these discussions are ongoing. I am committed to working with your Committee and with NOAA fisheries in coming up with the right language to improve fisheries management results while providing some flexibility in how to achieve these results. I know we have a lot of work to do on this.

The provisions on limited-access privileges I believe contain safeguards that Maine and other states have been seeking. These are the referendum process, a referendum on the program implementation in New England and the Gulf of Mexico, and the proposed language provides the framework for regional choice, which is very important. And the language on referendum makes sure that a move toward such a program is done very deliberately with the support of those most impacted by the actions.

The proposed language on the environmental review process would add discretionary provisions to the fishery management plans or would add the option to establish a process for complying with NEPA and require the Secretary to revise and update agency procedures to achieve compliance with NEPA. Most people I have talked to are seeking an environmental review process that does not result in redundant bureaucratic processes, which is what we seem to have now. The language contained in the draft bill addresses this issue.

There is language in the bill on joint enforcement agreements and access to information that recognizes and strengthens the necessary and successful partnership between NOAA Fisheries, the Coast Guard, and the state marine fisheries enforcement bureaus. Maine wholeheartedly supports these provisions which provide for cooperation and sharing, which are always important and are absolutely necessary in the lean budget times we all face.

Maine agrees with the continued emphasis on bycatch reduction, as Mr. Dunnigan has talked about and through the Bycatch Reduction Engineering Program.

On recreational fisheries, complete and accurate information on recreational fishing activity is currently missing from State and Federal fisheries management. The language contained in the bill recognizes current and future State licensing programs as being critical to a registry program being useful to both State and Federal management processes. There are some concerns we have about the specific language, and I would suggest or hope that the Committee, NOAA Fisheries, and states can get together to refine this process because the issue of recreational fisheries information is a critical next step.

Maine strongly supports adding a new section to the Magnuson-Stevens Act to formalize the ongoing cooperative research and management programs that have been generated over the course of the last decade, recognizing the impact of research participation on catch history and streamlining the experimental fisheries permit process. All these actions are critical in obtaining new information at a time when our management process becomes more data-hungry with things like ecosystem management. And lean budgets require innovative ways of getting new data. We simply have to take better advantage of these opportunities and I think this language allows that to occur.

In closing, I would like to say I appreciate the Committee's decision to include a representative of a State fisheries agency on the panel today. It illustrates your recognition that the states have a critical role to play as the primary managers of inshore fisheries and as full partners in the Federal fisheries management arena. I believe our Nation's fisheries will be improved by strengthening this role in a way that builds on and does not diminish the work of the regional fishery management councils. I hope my comments have been useful today and I would be happy to answer any questions when the time comes.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Lapointe follows:]

PREPARED STATEMENT OF GEORGE D. LAPOINTE, COMMISSIONER, DEPARTMENT OF MARINE RESOURCES, STATE OF MAINE

Senator Stevens, Senator Inouye, and members of the Committee on Commerce, Science, and Transportation, my name is George Lapointe, and I am Commissioner of Marine Resources for the State of Maine. The Department is established under Maine law for the purpose of conserving and developing marine resources, as well as promoting and developing Maine's coastal fishing industries. Thank you for the opportunity to provide a state perspective on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). I would like to say on behalf of Governor Baldacci that Maine appreciates the focus that this committee is bringing to the sustainable management of our Nation's living marine resources. In Maine, marine resources are central to the culture, economy, and character of our state. Their sustainable management is of the utmost concern to us, and we view this pending reauthorization as an opportunity to ensure healthy fishery resources and healthy fishing communities for generations to come.

The draft bill (dated November 7, 2005) extensively amends the Magnuson-Stevens Act. I have tried to focus my testimony on what Maine considers to be some of the most critical provisions, and conclude with some thoughts on the importance of promoting effective State-Federal partnerships in achieving sustainable fisheries. Topics are addressed in the order in which they appear in the draft bill.

Cumulative Impacts—The proposed language amends National Standard 8 to require the inclusion of economic and social data and assessment methods in evaluating impacts on fishing communities. It also requires that fisheries management plans analyze the likely effects, including the *cumulative* economic and social impacts, of the conservation and management measures. Maine has long advocated for cumulative impacts to be taken into account. The cumulative impacts on our fleet and shoreside infrastructure have been particularly severe. Over the past decade, Maine has lost more than half of the groundfish vessels previously homeported in the state. Taking a longer-term view of the impacts on coastal communities would reveal to managers if a particular geographic region, sector, gear type, etc., has been repeatedly disadvantaged by successive plans, and will plainly show the impacts of management on our Nation's fishing communities.

Further, the proposed language would also require that the Fisheries Management Plans provide possible mitigation measures to address any such impacts on the regulated communities. The language on impact mitigation provides an important next step in fisheries management, lessening the concern that we manage with little regard to the real consequences of management actions on participants in the fisheries.

Annual Catch Limits—The proposed language would require that Councils adopt annual catch limits for each of their managed fisheries, based on the recommendations of the Science and Statistical Committees. If the annual catch limit is exceeded, the excess must be deducted from the following year's annual catch limit. Management measures must be established such that catch would be at or below optimum yield, unless fully justified by the Council.

The problems that we've had with the fisheries in New England in exceeding the target total allowable catch (TAC) must be acknowledged, and I fully appreciate the need to achieve greater accountability in the future. However, what is essentially a version of a hard TAC is not necessarily the answer for all fisheries. Hard TACs are but one of a range of possible fishery management tools, and their use is more suited to some types of fisheries than others. In a multi-species fishery like New England's, hard TACs result in managing to the weakest stock. Once that TAC is reached, the entire fishery must be shut down. As a result, the biological goal may be achieved, but at significant social and economic cost.

New England has sought to avoid TACs ever since they were tried unsuccessfully in the late 1970s and early 1980s. Our experience has been that they failed to prevent overfishing, disrupted the market, and resulted in high-grading. It took several years to move away from this failed experiment into the Days-at-Sea (DAS) program. While DAS has certainly also had its problems, target TACs and DAS have stabilized the cod stocks in New England, while hard TAC/ITQ programs have failed to prevent a decline in cod fisheries in other parts of the North Atlantic.

The negative market impacts of hard TACs are well documented. They often create "derby"-style fisheries, wherein, in an effort by each individual fisherman to obtain a portion of the TAC, the entire TAC is caught in a highly compressed timeframe. Last summer's yellowtail flounder fishery is an example of this, where the TAC was caught quickly, and a low price was paid for the overabundance of fish in the market place. Because of their tendency to cause disruptions in the marketplace, hard TACs also tend to eliminate all but the largest (import capable) processors.

Hard TACs can endanger fishermen. Again, in an effort to secure a portion of the TAC, fishermen are much more likely fish under dangerous weather conditions, work continuously for long periods without rest, and possibly overload their vessels, greatly increasing the probability of loss of life or serious injury. In addition, hard TACs tend to lead to fishing strategies that favor big, mobile boats that can move between areas, which smaller boats are unable to do, and may result in discards and high-grading.

The problems created by hard TACs in other fisheries have often forced a shift to rights based management systems, such as Individual Transferable Quotas (ITQs). Historically, New England in general and Maine in particular, has expressed long standing concerns about the impacts of ITQ management on the traditional nature of our fleet and coastal economies. Some New England fisheries have been pursued for nearly 400 years; they are the lifeblood of our coastal communities. Other input controls on fishing effort can be just as effective as an output control like a TAC in rebuilding a stock, if they are properly designed. We would suggest alternate language to what is present in the bill such as "establish TACs or target TACs *with adequate measures as approved by the SSC in the council of jurisdiction."*

It is my understanding that some fishermen from New England recently visited Congressional offices to further discuss the balance between management accountability and the flexibility to address circumstances that arise in particular fisheries,

and that these discussions are beginning to yield results vis-à-vis this balance. I've not yet examined the proposed legislative language that came out of these discussions, but am committed to working with you, interested industry members, and conservation interests in coming up with the right language to improve fisheries management results while providing some flexibility in how to achieve these results.

Limited Access Privileges

One of the most important reasons to move forward with the reauthorization of the Magnuson-Stevens Act is the current absence of any guidance in law for the creation of Limited Access Privileges in those regions where there is interest in this type of management system. As reauthorization has been discussed over the past few years, Maine has been in the somewhat difficult position of providing input on standards for a system that the majority of people in the state hope will never be used to manage our fisheries. There is a fundamental belief that the implementation of Limited Access Privileges, or ITQs as they were previously known, would mean the end of the traditional character of the New England fleet. Under the traditional ITQ structure, corporate consolidation of the fisheries seemed an inevitable result.

For these reasons, Maine has long argued for strong "safe-guard" provisions that would ensure that Limited Access Privilege systems are only implemented in those regions in which they are appropriate and desired. The proposed language covers what we consider the most critical of these provisions, including the development of policies to foster the sustained participation of small, owner-operated vessels, preventing privilege holders from acquiring an excessive share, providing for new entry, setting specific standards for the program, and including a formal, detailed review after 5 years, and every 5 years thereafter. We support the concept that the specifics of each of these decisions are best made at the level of the Regional Fisheries Management Councils, so that they can be appropriately tailored to the specific fishery.

We also support the provision to require that at least 50 percent of the permit holders in a fishery petition the Regional Fisheries Management Council to develop a plan, before the Council could proceed with this option. In particular, we are glad to see that all permit holders, not just those deemed "active" will have a voice in whether or not a plan is developed. In addition, we appreciate the provision that is specific to New England and the Gulf of Mexico which requires the approval of two-thirds of the eligible permit holders in order to implement a limited access privilege plan. This concept of a "double-referendum" wherein permit holders have a say both before a plan is developed and before it is implemented, has been one way that Maine has advocated to ensure that any ITQ program is entered into very deliberately, with strong support from the individuals most impacted.

Because the implementation of Amendment 13 has continued to be so difficult for many of Maine's fishermen, there has been some very early discussion of identifying more palatable options that the traditional "Days at Sea" approach. While this conversation is only in the most preliminary stages, I am glad to see that the proposed language contemplates a variety of arrangements for the entities that may participate in a Limited Access Privilege program, including for example, fishing communities or regional fishery associations.

The language in the draft bill contains language that requires all fish harvested under a Limited Access Privilege system be processed in U.S. waters or on U.S. soil. I am concerned about the precedent contained in this language. Maine ships much of its fish to Canada for processing. If applied broadly to Maine fisheries, it would seriously disrupt the marketing and distribution systems for a number of our fisheries, most notably lobster.

Environmental Review Process

The proposed changes would add to the Discretionary Provisions of Fishery Management Plans the option to establish a process for complying with the National Environmental Policy Act (NEPA), and require the Secretary to revise and update agency procedures to achieve compliance with NEPA. Our assumption is that the underlying goal is to avoid duplication of effort and improve efficiency, while still considering the effects of the proposed actions on the marine environment, the cumulative effects of the proposed action, and reasonable alternatives. Provided that all of the NEPA requirements are met, we would support this change. This action is consistent with providing a balance between the NEPA procedural requirements, and the need to be able to make timely and responsive changes to fisheries management measures.

What most people involved in fisheries management are seeking is an environmental review process that doesn't result in redundant bureaucratic processes—which is what we seem to have now. The language contained in the draft bill addresses this issue.

Secretarial Action on State Groundfish Fishing

Maine is well aware of the specific issue that led to this language being included in the draft bill. We appreciate the attempt to address this matter, in which a significant percentage of the total Gulf of Maine cod catch is being taken in Massachusetts State waters by individuals not holding Federal permits, but state licenses only. As this percentage of the catch has increased in recent years, concerns have been raised that this catch erodes the effectiveness of the Multispecies Management Plan. However, it seems that this problem should be addressed through state action on the part of Massachusetts working with the New England Fishery Management Council, and I hope that this provision won't be needed in the future.

Joint Enforcement Agreement

Maine has been a successful partner in Joint Enforcement Agreements (JEA) for the past several years. Access to this program made it possible to obtain larger vessels that are capable of patrolling offshore in a way that we would otherwise be unable to do. For example, Maine has been able to patrol the EEZ for compliance with whale safe gear requirements in the lobster fishery. Prior to the JEA, we did not have the capacity to conduct such patrols safely. Similarly, we have also used JEA funding for effective enforcement of the "Gray Zone," the disputed area between the U.S. and Canada. This program provides an important opportunity for state enforcement agencies to assist their Federal partners in addressing enforcement priorities and maintaining an on the water presence. It would be very beneficial for all the coastal states to have the Cooperative Enforcement Agreement program formally authorized, and appropriation levels set.

Access to Certain Information

Much like the Joint Enforcement Agreement language, this proposed language points to the logical partnership between State and Federal agencies in sharing information and resources to achieve effective fisheries management. The intent of this section is to allow state enforcement employees access to data, such as VMS reports, to aid in the enforcement of fisheries regulations. The State of Maine strongly supports this change.

Bycatch Reduction Engineering Program

Maine agrees that the problem of bycatch must be addressed in a practical, effective way. We support a regionally based, conservation engineering approach to this issue, as proposed by the bill.

Recreational Fisheries Information

Complete and accurate information on recreational fishing activity is currently missing from state and Federal fisheries management. However, we all know that recreational fishing can have significant impacts on fish stocks, and better information is needed to improve stock assessments and fine-tune management measures. One need look no further than the current situation with summer flounder and scup in the mid-Atlantic states to illustrate the need for better recreational data. The creation of an angler data base for each of the eight fisheries management regions would improve data collection. It seems to be the intent of the proposed legislation to exempt those states with programs in place that meet the requirements of this section. We would like to ensure that this is a clear indication of the primacy of the state programs, and that a Federal program will only be established in the absence of a state program. In addition, we would hope that this would not be construed to limit a state's right to develop a licensing or registration program in the future.

Cooperative Research and Management Program

Maine strongly supports adding a new section to the MSFCMA to formalize ongoing cooperative research and management, and to provide for the authorization of continued funding. Maine has a long history of working with its fishing industry on gear research to reduce bycatch in the northern shrimp and whiting fisheries. Most recently, Maine scientists and fishermen have been active participants in cooperative research through the NMFS Cooperative Research Partners Initiative and the Northeast Consortium. The Maine-New Hampshire Inshore Trawl Survey is an excellent example of scientists and fishermen working together to collect data to improve the management of our coastal fisheries. We strongly believe in the value that such activity adds to the management process for all parties involved.

The role specified for the Councils in identifying research priorities is important in that it will ensure that the research that is conducted has a direct link to management needs, and will inform the development of future management measures.

In the past, a serious disincentive to participating in collaborative research was the potential that it might negatively impact the participant by lowering their catch history, or their expended days-at-sea, which may in turn limit their future participation in the fishery. This bill would require the Secretary to establish guidelines to prevent this from happening. Finally, we support the direction provided to promulgate regulations to create an expedited process for issuing experimental fisheries permits.

Herring Study

This bill singles out Atlantic herring as the focus of a cooperative research program in the Northwest Atlantic, authorizing $2 million/year for 3 years. This species certainly warrants a concerted research effort, as it is one of the most biologically and economically important fish species in the western Atlantic. Herring are oceanic plankton-feeding fish that occur in large schools, inhabiting coastal and continental shelf waters from Labrador to Cape Hatteras. With an estimated complex-wide biomass of 1.8 million metric tons, herring provide a significant forage base for other fish species, marine mammals, and birds, as well as supporting the second largest commercial fishery on the east coast. In addition to the direct economic contribution of herring landings, this fishery supports a domestic value added industry (canned sardines and frozen whole fish) worth approximately $50 million, and the North Atlantic lobster fishery estimated at $260 million. Studying the impacts of fishery practices on this keystone species will also assist in the move toward more ecosystem-based management of fisheries, something in which we all have an interest.

In closing, I would just like to say again that I appreciate the Committee's decision to include a representative of a state-level fisheries agency on the panel today. It illustrates your recognition that the states have a critical role to play as the primary managers of the inshore fisheries and as full partners in the Federal fisheries arena. I believe that our Nation's fisheries will be improved by strengthening this role, in a way that builds on, and doesn't diminish, the work of the Regional Fishery Management Councils. I hope that my comments have been useful to you in moving forward the Magnuson-Stevens Act Reauthorization.

The CHAIRMAN. Thank you, Commissioner.

Our next witness is Admiral Watkins who has been the Chairman of the U.S. Commission on Ocean Policy.

STATEMENT OF ADMIRAL JAMES D. WATKINS, U.S. NAVY (RETIRED); CHAIRMAN, U.S. COMMISSION ON OCEAN POLICY

Admiral WATKINS. Chairmen Stevens and Inouye and distinguished Members of the Committee, I am pleased to appear before you today in my capacity as the Chairman of the U.S. Commission on Ocean Policy to discuss legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, which I will refer to as MSA in my brief comments.

I request that my full written statement be submitted for the record, as well as that of the Chairman of the Pew Oceans Commission, Mr. Leon Panetta, who has asked me to do so. He is Co-Chair with me on what we have called our Joint Ocean Commission Initiative, one I will touch on briefly later.

I would like to begin by thanking the Chairmen for their solicitation of the views of the U.S. Commission on Ocean Policy during development of this legislation, also noting that members of both the U.S. and Pew Commissions collaborated in this effort.

The U.S. Commission on Ocean Policy addressed a broad array of issues, but few attracted the level of concern or interest that fisheries engendered. Our chapter on fisheries, entitled "Achieving Sustainable Fisheries," is twice as long and contains twice the number of recommendations as most other chapters in the report. The Commission worked long and hard on fisheries-related issues and believes that its recommendations are balanced and reflect the best interest of the Nation.

Mr. Chairman, what the Commission is recommending is, in essence, the codification of the process that has worked so successfully in the North Pacific Fisheries Management Council. You are justified in your pride in this Council and its conservative management approach which has served the region, its resources, and our Nation well.

As Chairman of the U.S. Commission, it is also particularly rewarding to see the influence of the Commission's report on the legislation under consideration today. I commend the Chairman and sponsors of the bill for inclusion of so many provisions that are responsive, in whole or in part, to recommendations made by our Commission.

These include: provisions mandating the science and statistical committees recommend acceptable biological catch levels to their councils; establishment of a national cooperative research and monitoring program; a call to establish a recreational fishing license program; establishment of a bycatch reduction program; providing guidance on the establishment of limited access programs; and a system for states to enter into cooperative enforcement agreements with the Secretary of Commerce.

As the Committee moves forward in its MSA deliberations, we believe that the legislation can be further strengthened by mandating that the fisheries management councils use the guidance provided by the SSCs; developing a mechanism for ensuring the qualification and impartiality of SSC members; including guidance requiring Governors to submit their slate of candidates that represent a broad cross section of the public; requiring the councils to establish and initiate a periodic scientific peer review process of information used by the SSCs; mandating the training of new council members; enhancing the provision on the role of the SSC by appointing SSC members whose qualifications are reviewed by an independent entity; and finally, enhancing the bycatch program by directing the Secretary to evaluate the effectiveness of the program after 2 years.

Full implementation of this collection of measures would represent an important step towards reinstilling confidence in the process by which fisheries science is collected, analyzed and used, reducing grounds for unnecessarily burdensome lawsuits and the diversion of scarce resources towards competing science.

I must also emphasize that ecosystem-based management is an important theme in both the U.S. and Pew Commission reports and feel strongly that MSA reauthorization should include statements that encourage fisheries management transition toward an ecosystem-based management approach. Once again, work being performed in the North Pacific by the Gulf of Alaska Ecosystem Monitoring and Research program, as well as the North Pacific Research Board, offer fine examples of regional ecosystem-based efforts that contribute significantly to the overall fisheries management process. I understand also that the Western Pacific Fisheries Management Council has tentatively approved four fisheries' ecosystem plans which supplant existing species-based fishery management plans.

I will close by commending the Committee and its staff once again for its bipartisan approach to soliciting input from fisheries

stakeholders and the effort to capture the Commission's recommendations. I fully support this bipartisan effort and have been collaborating with the Chairman of the Pew Commission, Leon Panetta, as part of a broader effort to move a national ocean agenda forward in Congress.

The Chairmen and members of this Committee are clearly committed to building on the success of the 1996 amendments to the Act, and the current legislation reflects this commitment. Fishing is a dominant factor in the health of ocean and coastal ecosystems, and I believe that the Committee recognizes the leadership role that the industry must play in the transition toward an ecosystem-based approach, an approach that rely on good science and a process that enjoys confidence and support of the fishermen and the general public.

I appreciate your collective effort to move forward in the implementation of the Commission's recommendations and I am prepared to respond to questions from Members of the Committee. Thank you, Mr. Chairman.

[The prepared statements of Admiral Watkins and Mr. Panetta follow:]

PREPARED STATEMENT OF ADMIRAL JAMES D. WATKINS, U.S. NAVY (RETIRED); CHAIRMAN, U.S. COMMISSION ON OCEAN POLICY

Chairmen Stevens and Inouye and members of the Committee, I am pleased to appear before you today in my capacity as the Chairman of the U.S. Commission on Ocean Policy, to discuss legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Before I begin, I would like to thank the Chairmen for the invitation to the U.S. Commission on Ocean Policy and the Pew Oceans Commission to both share views in conference with your staff as they developed the MSA reauthorization legislation under consideration today. The conference was particularly helpful given the relative similarities in the fisheries recommendations of the two Commissions. As most of you are aware, Leon Panetta and I have been collaborating to help move an ocean agenda forward on Capitol Hill, in the Administration, and out in the states and regions. We have focused our efforts on those areas where our respective reports reached similar conclusions, such as the need for a better governance regime, greater focus on advancing ocean and coastal science, and, relevant to today's discussion, changes in fisheries management and science. These are issues that enjoy wide, bipartisan support and we are both dedicated to supporting the implementation of these recommendations.

As authors and sponsors of the *Oceans Act of 2000,* I would like to thank you again for your vision and recognition of the need for a dramatic shift in the management of our Nation's oceans, coasts and Great Lakes. The Commission's final report, *"An Ocean Blueprint for the 21st Century,"* clearly identifies the multitude of ocean-related problems facing the Nation, and provides numerous recommendations for addressing these issues. It is particularly rewarding to see some of the Commission's fisheries-related recommendations incorporated into the MSA legislation currently under consideration by the Committee.

The Commission addressed a broad array of issues, but few attracted the level of concern or interest that fisheries engendered. At every regional meeting around the Nation fisheries-related issues were discussed and debated. Over the course of 9 regional meetings there were 11 panels dedicated to living marine resource issues. And this does not include the extensive public and written comments presented to the Commission on fisheries issues. The inputs were invaluable and formed the basis for chapter 19, *Achieving Sustainable Fisheries.* With 30 pages of text and 27 recommendations, Chapter 19 is twice as long and contains twice the number of recommendations as most other chapters in the report. Also worth noting is that many of the fisheries recommendations are relatively detailed, ranging from a call for better training for Council members, to suggesting various levels of peer review for fisheries science.

I am providing these details because the Commission worked long and hard on fisheries related issues and believes that its recommendations are balanced and re-

flect the best interest of the Nation. These recommendations are not unfamiliar to the fishing community since many reflect the results of studies and analyses that have been released over the past decade. What is unique is having them all gathered into one set of coherent recommendations, providing senior decisionmakers, such as yourselves, the opportunity to understand the interplay among key concepts, such as improving the use of independent science in the decision-making process and enhancing training for Council members who must digest and apply this increasingly complex scientific information. As we note in our report, Mr. Chairman, what we are recommending is basically codifying the process that has worked so successfully in the North Pacific Fisheries Management Council. You are justified in your pride in this Council and its conservative management approach, which has served the region, and our Nation, so well.

Before I use my remaining time to focus on a few key provisions, I want to inform the Committee that I have included an appendix to my testimony that contains a statement of principles that we believe should guide the MSA reauthorization process. These fisheries-related principles were developed as part of the collaborative effort of the two Commissions and reflect the broader, overarching guiding principles identified in the U.S. Commission's report.

I would like to take the remaining time to highlight key provisions that we support and suggest some additions that we believe will help strengthen the legislation.

Strengthening Use of Independent Science in Management Decisions

I want to commend the bill's authors and sponsors for the inclusion of provisions in the bill that mandate the Science and Statistical Committees (SSCs) to recommend acceptable biological catch levels or optimum yields to their Councils. This represents a significant step toward one of the key fishery recommendations of the Commission. However, I strongly recommend that the Committee further enhance this provision by also adopting the Commission's recommendation mandating that the Councils use the guidance provided by the SSCs.

The Commissioners felt strongly that the Regional Fisheries Management Councils should be required to adhere to scientific advice provided by the SSCs. This requirement is based on information that a lack of adequate scientific information has not been the main culprit in most instances of overfishing. Rather, a 2002 National Research Council report concluded that the problem in many cases of overfishing was that the Regional Councils disregarded or downplayed valid scientific information when setting harvest guidelines.[1] This problem is exacerbated by increasing pressure on fishery managers to maximize the total allowable catch instead of pursuing a more cautionary approach that factors in a conservation buffer in the event stock assessment information is found to be lacking or an unanticipated natural event causes elevated mortality within a fishery.

Further exacerbating the problem of exceeding total allowable catch levels is the fact that neither NOAA Fisheries nor the Secretary of Commerce have adequately exercised their authority to prevent the Councils from taking such risky actions. Thus, the problem of overfishing cannot be isolated to one source, but is a result of systemic problems. Thus, we are suggesting establishment of a safeguard in the process by allowing the SSC to set a total allowable catch that cannot be exceeded. Unless another measure can be identified to avoid the capitulation of Council members and administration officials to economic and political pressure that result in overharvesting, a mandate for the Councils to follow SSC recommended catch levels is necessary. I strongly encourage the Committee to consider incorporating a more forceful provision requiring the Councils to use the guidance provided by the SSCs.

The Commission also made recommendations to help ensure the qualification and impartiality of SSC members, as well as suggestions for strengthening and mandating a peer review process for fisheries information, which have not been fully incorporated into the legislation. Full implementation of this collection of measures would represent an important step toward reinstilling confidence in the process by which fisheries science is collected, analyzed and used, reducing grounds for unnecessarily burdensome lawsuits and the diversion of scarce resources toward competing science.

Ecosystem-based Management

Ecosystem-based management is an important theme in both Commissions' reports and there is agreement that fisheries management should be informed and guided by long-term objectives set for both the fishery and the ecosystem. The goal is to move toward a management approach that considers linkages between living

[1] National Research Council. Science and Its Role in the National Marine Fisheries Service. Washington, D.C.: National Academy Press, 2002.

and nonliving components of the sea, land, atmosphere, balancing ecological needs with the health and vitality of human communities. While we are not looking for legislatively mandated standards for ecosystem-based management, MSA reauthorization offers an important opportunity to introduce ecosystem-based management as a central concept, especially as a mechanism to enhance collaboration among government agencies.

The Commission recommended the development of regional ocean information systems whose objective would be to use the resources and expertise of governmental and nongovernmental entities to develop a better understanding of ecosystem processes within eco-regions. This information would be particularly useful in helping meet NEPA requirements, providing baseline information that would significantly contribute to the requirement of identifying cumulative impacts as part of environmental impact statements. Clearly, such a collaborative effort and the resultant information would be of great benefit to fishery managers and the Regional Councils. Again, I point to work being performed in the North Pacific through the Gulf of Alaska Ecosystem Monitoring and Research Program as well as the North Pacific Research Board, as examples of regional ecosystem-based efforts that contribute significantly to the overall fisheries management process. These are the types of initiatives we would like to see instituted throughout the Nation. Therefore, we recommend that the legislation incorporate language supporting a transition toward ecosystem-based management.

International

The effective management and conservation of global marine species, and the enforcement of international treaties, require a combination of domestic, bilateral, regional, and international approaches. Although regulation of fisheries on the high seas is conducted within broad regions of the seas, the existing regional fishery organizations generally struggle in their effort to ensure compliance with the provisions of these agreements. They lack adequate financial resources or enforcement capabilities, allowing member states to opt out of individual management measures they dislike. This, I presume, is the basis for the international provisions contained in the bill. While I strongly support efforts to strengthen an international enforcement regime that will improve compliance with sound living marine resource management objectives, I am not the appropriate witness to comment on the specific provisions contained in the bill.

However, I would like to note the Commission's report includes a number of recommendations aimed at addressing international issues, and I encourage the Committee to engage the appropriate officials from the Department of State, Commerce, and other relevant agencies, through the new White House Committee on Ocean Policy, in a review of these provisions. I also strongly encourage the Members of this Committee to communicate to Senate Majority Leader Frist its desire to have the United Nations Convention on Law of the Sea brought to the Senate floor for its approval early next year. U.S. accession to UNCLOS will greatly enhance our Nation's capacity to negotiate more forceful international regimes for the conservation of living marine resources as well as other important matters. Accession to UNCLOS is one of the top priorities of the U.S. Commission on Ocean Policy.

Other Provisions

I commend the co-authors and sponsors of the bill for the inclusion of provisions that are responsive, in whole or in part, to recommendations made by the Commission including:

- establishment of a national cooperative research and monitoring program, an important element in the broader effort to strengthen the quality of fisheries science;
- a call to establish a recreational fishing license program, allowing managers better information on this significant sector of the fishing community;
- establishment of a bycatch reduction program that addresses the need to reduce and minimize mortality;
- providing guidance on the establishment of limited access programs, giving fisheries managers access to an effective tool, where appropriate and supported by the community;
- a system for states to enter into cooperative enforcement agreements with the Secretary of Commerce;

As the Committee moves forward in its MSA deliberations, we believe that the legislation can be further strengthened by:

- including guidance requiring Governors to submit a slate of candidates that represents a broad cross-section of the public as nominees to the regional councils:
- requiring the Councils to establish and initiate a periodic peer review process to evaluate the scientific information used by the SSCs;
- mandating the training of new council members;
- enhancing the provision on the role of the SSC by providing the NOAA Administrator with the authority to appoint SSC members that are nominated by the councils and whose qualifications are reviewed by an independent entity; and
- enhancing the bycatch program by directing the Secretary to evaluate the effectiveness of the program after 2 years.

Closing

I will close by commending the Committee and its staff for its bipartisan approach to soliciting input from fisheries stakeholders and the effort to capture the Commission's recommendations. The Chairmen and Members of this Committee are clearly committed to building on the success of the 1996 amendments to the Act, and the current legislation reflects this commitment. Fishing is a dominant factor in the health of ocean and coastal ecosystems and I believe that the Committee recognizes the leadership role the industry must play in the transition toward an ecosystem-based management approach, an approach that will rely on good science and a process that enjoys the confidence and support of the fishermen and the general public.

I appreciate your collective effort to move forward in the implementation of the Commission's recommendations and I am prepared to respond to questions from Members of the Committee.

JOINT OCEAN COMMISSION INITIATIVE—APPENDIX A

Statement of Principles for Improving Fishery Management and Recovery (September 8, 2005)

In 2003 and 2004, two major national commissions—the U.S. Commission on Ocean Policy and the Pew Oceans Commission—released reports that identified similar priorities and made complementary recommendations in a number of key areas of ocean policy. In late 2004, the Joint Ocean Commission Initiative formed to continue educating people about the work of the two Commissions and to pursue implementation of the recommendations made in their reports. The Joint Ocean Commission Initiative is guided by a ten-member Task Force (five from each Commission) that is led by Admiral James Watkins and Mr. Leon Panetta, Chairs of the U.S. Commission and the Pew Commission, respectively.

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) shifting 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.

Based on the findings and recommendations of the U.S. Commission on Ocean Policy and the Pew Oceans Commission, the Joint Ocean Commission Initiative believes the concepts listed below must guide and be incorporated into meaningful and effective fisheries legislation.

- *Ecosystem-based Management.* Fisheries management should be informed and guided by long-term objectives set for both the fishery and the ecosystem, and thereby consider linkages between different living and nonliving components of the sea, land, atmosphere, and the health and vitality of human communities.
- *Base Management on Independent Science.* Strengthen the use of science in management by requiring Regional Fishery Management Councils to adhere to allowable biological limitations determined by their Science and Statistical Committee, setting catch limits at or below these limitations, and establishing a consistent and independent peer review process for the science used in decisionmaking.
- *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.

- *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.
- *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.
- *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.
- *Bycatch Reduction.* Bycatch should be addressed continuously to ensure the sustainability of fisheries and ecosystem services. Fishermen should be allowed to keep fish they catch within conservation limits, rather than be forced to discard and waste one species because it is in a target fishery for another. Bycatch reduction efforts should include accounting for such resources with regard to Total Allowable Catch.
- *Council Membership.* Require Governors to submit a slate of candidates that represents a broad cross-section of the public as nominees to the regional councils.
- *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.
- *Education*. Foster public understanding of ocean resources, including the importance of conservation measures aimed at sustaining fisheries and the linkages between human health and the health of oceans.
- *International Leadership.* Promote adoption and observance of international standards for the sustainable harvest of coral reef and other living marine resources.

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act should incorporate these and other relevant guiding principles as articulated in the reports of the U.S. Commission on Ocean Policy and the Pew Oceans Commission. The Joint Ocean Commission Initiative has identified fisheries management as a priority issue and will continue to monitor developments in this area.

PREPARED STATEMENT OF HON. LEON E. PANETTA, CHAIRMAN, PEW OCEANS COMMISSION

I would like to thank the U.S. Senate Committee on Commerce, Science, and Transportation for the invitation to testify at the hearing on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. I regret that a prior commitment prevents me from participating in the hearing, and I appreciate the opportunity to offer my comments to the Committee in writing.

Oceans and coasts are severely threatened, domestically and around the world. To formulate responses to these threats, two major national commissions released reports in 2003 and 2004. These commissions, the Congressionally-created and Presidentially-appointed U.S. Commission on Ocean Policy, chaired by one of your witnesses today, Admiral James Watkins, and the privately-funded Pew Oceans Commission, which I had the pleasure to chair, identified remarkably similar core priorities and made complementary recommendations in a number of key areas—including the need for fisheries management reform. I applaud the Committee for taking up this important issue and would like to compliment Committee Chairmen Stevens and Inouye for their leadership and for working together in a bipartisan fashion to build broad support for a bill that would reauthorize this important piece of legislation.

Earlier this year, Admiral Watkins and I agreed that it makes sense to work together to capitalize on the work of the two commissions. To that end, we have formed the Joint Ocean Commission Initiative. It is guided by a ten-member task force (five from each Commission). The primary goal of the Joint Ocean Commission Initiative is to accelerate the pace of change that results in meaningful ocean policy reform. The Commissioners involved bring extraordinary expertise, perspective, relationships, and diversity of interest to ocean and coastal policy reform. This foundation can serve as the basis for a greatly expanded understanding of the critical

issues facing our oceans and supporting action at regional and national levels to address these problems.

One of the Joint Ocean Commission Initiative's purposes is to monitor and assess the progress being made toward meaningful ocean policy reform, and we are committed to a careful examination of what progress is being made and what is lacking. The Joint Initiative has identified several priorities for concerted attention and chief among them is fisheries management reform. We also have developed a statement of principles on fisheries management and recovery. This statement of principles is based on the findings and recommendations of both commissions, and the Joint Ocean Commission Initiative believes the concepts included in that statement should guide and be incorporated into meaningful and effective fisheries legislation. This statement of principles has been shared with your offices; I am also attaching the statement to my comments for your convenience.*

Admiral Watkins and I join our fellow commissioners in thanking the Committee staff for opportunities to discuss earlier drafts of this bill and provide comments and suggestions. We are pleased to see that a number of our concerns have been addressed in the current bill. The following highlights a few specifics to which I would like to direct the Committee's attention, both to acknowledge the incredible work that has gone into developing this bill, and also to point out provisions that we believe can be further strengthened.

Strengthening the use of independent science in fishery management decisions. Both Commissions have stressed the need to strengthen the use of independent science in fishery management decisions, including through measures such as the items outlined below.

- *Recommendations of Science and Statistical Committees.* We are pleased to see language in the bill that requires Science and Statistical Committees (SSCs) to recommend acceptable biological catch levels or optimum yield limits to their Regional Fishery Management Councils (Councils). Both the U.S. Commission on Ocean Policy and the Pew Oceans Commission recommended amending the MSA to require Councils to set annual catch limits at or below the level recommended by their SCCs. However, the bill requires that Councils only "consider" the SSCs' recommendations. We believe the Councils should be required to follow rather than just "consider" the scientific recommendations of their SSCs.
- *SSC appointments.* In addition, as recommended by the USCOP, we would like to stress the importance of having SSC appointments made by the Secretary of Commerce (Secretary), with nominations from the Councils, and vetted through an external peer review process such as the National Academies Ocean Studies Board. Such a process would be an additional check on overtly political appointments and thus help to ensure the independence of science in the decision-making process. The bill does not speak to this point.
- *Peer review process.* We are pleased to see that the bill authorizes the Secretary to establish and initiate a periodic peer review process to evaluate the scientific information used by the SSCs. However, we believe the Secretary should be not just authorized, but required to establish a peer review process. We are also concerned that the peer review process for scientific information described in the bill does not address the standards of the scientific community. The bill need not lay out strict peer review requirements, but language in the two Commissions' reports could be used to establish guidelines under which an executive agency could develop more specific requirements.

Moving toward ecosystem-based management. Ecosystem-based management is an important theme in both Commissions' reports, but the bill does not incorporate provisions to move fisheries management toward ecosystem-based management. Fisheries management should be guided by long-term objectives set for both the fishery and the ecosystem, and should consider the linkages between different living and nonliving components of the sea, land, atmosphere, as well as the health and vitality of human communities. 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 MSA 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 Commissions' reports could be used to strike the right balance.

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* See Appendix A of Admiral Watkins prepared statement.

Provisions for an alternative environmental review process. I would also like to comment on provisions in the bill that seek to streamline implementation of NEPA and the MSA by amending the MSA to provide an alternative environmental review process. The bill requires that the Secretary revise and update agency procedures for complying with NEPA and specifies that the updated agency procedures would supercede NEPA procedures and CEQ regulations. While there is a need to improve the efficiency and efficacy of the NEPA process, NEPA is the only authority that requires agency actions to be considered within an ecosystem context. In addition, creating a new process establishes a precedent for doing so on other issues and sets fisheries apart from the environmental review for Federal actions in other sectors.

Council appointments, composition, and training. The bill does not address the USCOP recommendation that Congress amend the MSA to require Governors to submit a broad slate of candidates for each council vacancy that includes at least two representatives from the commercial fishing industry, the recreational fishing industry and the general public. In addition, although the bill contains language about training new Council members and advisory panels, it does not make such training mandatory. Such training is critical to ensure that Council and advisory panel members are aware of new science, policies, and fishing technology.

Recreational fishing license program. We are pleased that the bill requires the Secretary to establish and implement a regionally-based registry program for recreational fishermen in each of the eight fishery management regions. Such a program will enable managers to begin to collect better information on this important component of the fishing community and is a positive step.

Cooperative research. We are pleased that the bill requires the Secretary to establish a national cooperative research and monitoring program. Such a program enhances the quality of fisheries science and will improve the ability to address stock assessments, bycatch reduction, conservation engineering, identification of habitat areas of particular concern, and collection of socio-economic data.

Cooperative enforcement. We are also pleased to see the expansion of cooperative enforcement provisions in the bill, although clarification regarding comprehensive data-sharing, and the need for a clear lead agency will be needed for cooperative enforcement to be effective.

Mr. Chairmen and Members of the Committee, I commend and applaud you and your staff on your efforts to undertake reauthorization of this important law that is the cornerstone of our fisheries management regime. Thank you for the opportunity to provide these written comments. I would be pleased to discuss these and other matters with you at your convenience.

The CHAIRMAN. Well, thank you all very much. In listening to you, my mind went back to the time when I borrowed a Navy plane and flew from Kodiak to the Pribilof Islands just to view the foreign fleets that were fishing off our shores in January. And following that, Senator Magnuson authorized me to go to the Law of the Sea conferences all over the world and to hold meetings and hearings on the East Coast, on the Gulf Coast, and the West Coast, and Alaska on what fishermen wanted to do about some of the problems we faced.

We have come a very long way since then, and I really do appreciate all of you taking the time to be with us here today, and I appreciate, Admiral Watkins, your working with Leon Panetta on coordination with the Pew Commission. I think it is very important.

All the statements of the individual Senators will be placed in the record, but let me call now on the Co-Chairman for his statements and any questions he might have. We are going to allocate 8 minutes to each Senator here this morning, if that is agreeable.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. I would like to take this opportunity to commend you, Mr. Chairman, for establishing a model process in drafting legislation. Although the uninitiated will see four witnesses and might conclude that this was the alpha and the omega of the

process, this is the final phase, which was preceded by hundreds of hours of listening sessions, meeting with boat owners, with fishermen, with canners, and with agency heads. This has gone on for months, and I can assure you that this has been a model of collaboration and cooperation. We realize that we have not come to the end. We have some fine tuning to perform yet. But, Mr. Chairman, this is a model that I hope the whole Senate will look to very seriously. This is what we call bipartisanship.

My only concern in this bill is what you touched upon. No matter how well we draft a bill, we must find some way to bring the other nations in line with us because in this huge pond we call an ocean, we are not the only ones, and somehow the fish go from north to south or east to west, and before they get to us, they may be slaughtered on the other end. So I hope that we can do something better. But, frankly, I do not know what to do. If you do have suggestions on how to improve this, as far as the international nature is concerned, I would personally appreciate that.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Lautenberg.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Mr. Chairman, first let me thank you for the work that you did on this landmark process. Your legacy here will affect so much of human life that has not been tended to, but as a result of your initial work with Senator Magnuson, we have a plan that has, I believe, been helpful. If it has not specifically taken care of all of the problems, it has pointed us into a direction. It has sounded the alarm and has offered plans for rescuing a program that is of overfishing and abuse of the oceans and the species therein that, if it had continued, would have deprived all of mankind of an important food source and also disturbing the ecology that nature originally laid out for us and that would be so altered by the continued abuse and excessive use.

So I thank you, Senator Stevens and Senator Inouye, for the initiation that you have given to this process now with the bill you have introduced. Many of the concerns that Members have raised have been addressed, and I look forward to working with you further on the legislation between now and the markup.

It is a long way from the New Jersey shore to the Gulf of Alaska, but we share an appreciation for the importance of the ocean to our States, to Hawaii, to Oregon. Wherever you look in the coastal states, fishing and the recreation, as well as the commercial value attached to that, is a critical part of our culture and our existence. Fishing is a major industry in those states, a beloved form, as I said, of recreation for our citizens.

So I commend you, Mr. Chairman and Senator Inouye, for your hard work to rescue our fisheries. And I am pleased that the bill incorporates many of the recommendations of the Ocean Commission. My congratulations to you, Admiral Watkins.

I would hope you would also consider responding to the Commission's call for protecting deep sea coral and sponges. Only in the last decade have scientists truly begun to understand the impor-

tance of deep sea corals. Unlike tropical corals, deep sea corals grow in waters below 50 meters in depth. They are fragile, grow slowly, and take as long as 100 years to regenerate once destroyed. In recent years, scientists have learned that they have got to provide essential habitat for hundreds of marine species.

A 2002 survey of the sea floor in the Aleutian Islands—and I was interested, Mr. Chairman, when did you take that airplane to Pribilof?

The CHAIRMAN. 1970.

Senator LAUTENBERG. 1970. Well, you got an early look at what was taking place, and I am sure it has helped to direct your thinking to protecting the species and the waters that they live in.

A 2002 survey of the sea floor of the Aleutians, researchers found that 85 percent of certain species of rock fish present were found in deep sea corals. Indeed, it is the North Pacific Council that unanimously set the standard for protection of deep sea coral and sponge habitat, while maintaining access to existing fisheries.

The same year NOAA stated that deep sea corals—and I quote from their report—are "much more extensive and of more widespread economic importance than tropical coral reefs." We need to manage our marine resources so that we can study them, enjoy them, and use them for many years to come. When a fisherman destroys sea coral for the sake of today's catch, he burdens all of those who want to fish tomorrow.

Mr. Chairman, I do not want to prevent fishermen from trawling. There are many areas where it is appropriate, but surely we can set aside some of the most fragile coral habitats and protect them from destruction. And I look forward to working with you, Mr. Chairman, on this important bill.

The CHAIRMAN. Thank you very much.

Senator Cantwell?

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. Thank you and Senator Inouye for your leadership on this legislation, which I am happy to be a co-sponsor of and happy to say I think incorporates a lot of issues that are important both for the Northwest region and for the United States.

I thought I would ask a couple of questions of Admiral Watkins to make sure that we are on the right track as it relates to the Commission's report. Obviously, we heard today from witnesses about the Councils' scientific and statistical committee determination and about biological catch. Now, this is something we, in the Northwest, are very familiar with.

How important is it do you think that we incorporate these recommendations into the legislation?

Admiral WATKINS. Well, Senator, I think from our observations, it is essential that we put enough guidance in here so we do not have misuse of what was intended by the Congress in this piece of legislation. We found that we have a plethora of management techniques out there, a totally different concept of who makes up the SSCs, a totally different sense of how important the science-based information is to the SSC. It varies all over the map.

This is why in our report we cited the work done on the North Pacific Fisheries Management Council in Alaska because they have addressed this. They do it. I think that they are worried about anything that would come out of this legislation that would undo what they are doing well up there. It is worrisome to them. They think they are doing it right, and I think they are doing it right. So the degree to which we can codify the best practices is extremely important, and I think the bill goes a long way toward doing that, to setting the standard.

And I have recommended in my oral statement here and in my written statement some areas that we think could even enhance it further. We are actually putting clearer words, I would say, as to what we really want them to do, and we certainly want them to listen to the science. We want the cooperative research program with the fishermen and NOAA coming together in their database so that we are all on the same page. All these kinds of things are in our recommendations. So the extent to which you put that into legislation is your business up here, but we have outlined where we think you can strengthen it in seven or eight areas that you now have in a very good bill.

Senator CANTWELL. So harvest levels should be at or below the biological catch limit.

Admiral WATKINS. Yes, it could be. We think again that that level set by the scientific input to the SSCs should be the way to go, and we should not deviate from that.

Senator CANTWELL. Some people have complained about ecosystem-based management. Do you think there are good examples of ecosystem-based management taking place today?

Admiral WATKINS. I think that, there again, the fisheries management council in Alaska agrees. They do ecosystem-based management. That is the way they work up there. We are seeing this, as I mentioned in my oral statement—and I think probably Senator Inouye was involved in it. The Western Pacific Fisheries Management Council has just adopted four ecosystem-based plans. I have not seen those plans, but I understand they are excellent. So we are beginning, I think, to move toward that concept.

Some people think it is ill-defined. Okay, but let us give it a chance to work. We cannot do it species by species anymore. We are getting into too many litigious situations. We have got discrepancies in the minds of people working with both NEPA and the fisheries management plans. All these things have to be reconciled. We have got 140 laws that do not all talk to each other, that are counterproductive. Again, the ecosystem starts right here in the laws. When you integrate the laws in an ecosystem-based way, then there is a lot more cross-talk going on between multiple committees up here and subcommittees than ever before.

So this particular Act is important because it can be a start, a node into which so many other things can plug. Non-point source pollution, point source pollution, the coral reef issues, the airborne contamination of mercury, all those kinds of things can be plugged into the MSA. If we write the MSA right to accept those cross-decking items, then I think we have a tremendous opportunity here to take this and expand it further into all other aspects that we have

recommended in our commission. So you asked if it is important. I think it is extremely important.

Senator CANTWELL. Thank you, Admiral Watkins. I appreciate that perspective on how important science is and I am glad to know that the legislation does follow the Commission's recommendations.

You brought up NEPA, and I wanted to ask a couple of the other panelists about the Administration's support of NEPA in this process and whether you supported including NEPA as a part of this process in the legislation.

Mr. CONNAUGHTON. Yes, Senator. Actually we were pleased to work closely with the Committee in the development of that language, and we do strongly support improvement of the integration of the NEPA process into the fish planning process. In fact, from my perspective as a long-term student of NEPA, it has always amazed me how NEPA is not integrated because in 1969 when NEPA was created, if you read NEPA 101, it calls, it compels the integration of these environmental aspects of decision-making into decision-making.

So, I think there is a real opportunity in the fisheries management context to do state-of-the-art NEPA work, that it achieves coincident time lines, integrating the NEPA assessment work into the planning process, and hopefully we can get to convergence of a unified process, not even two that run in parallel, but a more unified process. We are looking forward at CEQ to providing not just the support in the legislation, but we are looking forward in our role on the executive branch side of things on helping each of the regional fish councils with implementation of these ideas.

Senator CANTWELL. Mr. Dunnigan, you look like you wanted to comment on that.

Mr. DUNNIGAN. What I would like to do, Senator, is to support the comments that have been made by Chairman Connaughton.

There was a time when NOAA was under a difficult litigation burden—and the Committee Members are aware of this—largely related to the way that we did or did not implement NEPA. We have been able to turn that around over the last couple of years. We continue to believe that NOAA can be an effective tool for the Department, for NOAA, for the public-at-large in understanding these issues and being able to make the best decisions we can for the future.

Senator CANTWELL. Thank you.

Again, Mr. Chairman, I am happy to be a co-sponsor of this legislation. Thank you for the open process of having so many different issues discussed and getting us to this point.

The CHAIRMAN. Has the Senator completed?

Senator CANTWELL. Yes, thank you.

The CHAIRMAN. Senator Smith?

STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Mr. Chairman. I join my colleagues in expressing to you and the Ranking Member appreciation for your hard work on this bill and your staffs'.

I particularly appreciate the inclusion in the legislation of language extending State authority to manage the Dungeness crab fishery, as well as, language implementing the terms of the agreement on Pacific hake/whiting signed by the United States and Canada. These are provisions that are very important to crabbers and fishermen in my state.

I think it is a good effort, and I have only one question and that is for Jim Connaughton. Nice to see you, Jim.

The Administration and both the ocean commissions have recommended moving to a more ecosystem-based approach to fishery management. Many of my colleagues have spoken to this, and obviously, I support that, but I am also aware that you are not looking for more lawsuits. You have got your share. I wonder if there is such ambiguity in this that you worry about more lawsuits. I am interested in hearing how the Administration would propose avoiding additional litigation under this ecosystem requirement that we are speaking about this morning.

Mr. CONNAUGHTON. Thank you, Senator, and it is good to see you again.

I just want to underscore the centrality of the ecosystem concept because we now have an appreciation, after 30 years of experience with marine management and land management and new environmental laws and new land planning components. The answers that we have to face in the future are complex. They are no longer dealt with in a silo: fisheries here, coastal zone there. So the concept is important to get all of the actors in the process talking to each other, as the Admiral said, "That should not become an instrument of litigation." In fact, the collaboration that that inspires should help to reduce conflict and, at least in areas of disagreement, sharpen those areas. So that is what we are working with at the back end.

Now, we tried to design the Administration bill to use this as a starting point for the conversation and make it very clear that this should not be a point of litigation. I operate on the principle that we have to avoid the term "no good deed goes unpunished." And many see putting their feet into the water on ecosystem-based conversations as the prospect of a good deed going punished by litigation, again process as a tool to produce substantive outcomes. So that is where we have to find a path.

I think we can construct that because we have seen, for example, in the forest context with actually your leadership, Senator, a way to construct the NEPA process and the Healthy Forest planning process in a way to facilitate the up-front collaboration, which is really ecosystem-based, again to diminish the prospect of conflict.

Now, we also set some pretty specific terms regarding the potential of future litigation. Our experience there shows it is working. In the forest context, we went from 8 out of every 10 decisions being litigated to currently 2 out of every 10 decisions being litigated. That is huge forward progress. So it does require, though, careful thinking.

The other point I would make is ecosystem management thinking is a two-way street. Certainly a fishery management process in a regional fish council is not responsible for the ecosystem as a whole. There are other people who have responsibilities and obliga-

tions as well. And so we cannot expect the burden of the ecosystem philosophy to start with and end with the fishery councils. So just even one of our goals should be to have a process where the fishery councils can take into account what is coming from some of the other broader ecosystem planning efforts. Like I would commend the effort in Puget Sound, for example. The forward movement and collaboration there is wonderful to behold. Now, that is a great input into the regional fish council process, and we should not sanction the fish council people for really trying to be more of a part of that in integrating that thinking. So, again, the fear of litigation in my mind is what leads people to say no, and we need to find a way to diminish that.

Senator SMITH. Well, thank you, Jim. I ask the question in part because I know your motivation is not to invite more litigation, but rather to have a legislative history that courts can draw upon, as well as these local management councils that can start putting it together, establishing some precedent that will make it so that we do not do our fishing in court, that we can do it on the basis of evidence, experience, and precedent.

So thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Snowe.

STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. Thank you, Mr. Chairman. I am sorry that I was late. I had a conflict this morning, meeting with Judge Alito.

First of all, I just want to congratulate you, Mr. Chairman, for your efforts in assembling a reauthorization of the Magnuson-Stevens Act. I know it is going to go a long way to setting the stage and the foundation for addressing some of the key issues and conflicts that have emerged over the years. As one who has chaired numerous hearings on this question, I can assure you that this represents a major breakthrough in reaching the point to which we can have a reauthorization.

I want to welcome all of you here today, especially Mr. Lapointe. Thank you for being here from Maine. I appreciate it.

[The prepared statement of Senator Snowe follows:]

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Thank you, Mr. Chairman, for convening today's hearing on one of the most complex and critical issues facing our Committee today—reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. And because this Act bears your name, Mr. Chairman, I have no doubt that you fully appreciate the magnitude of the challenges before us. From small fishing ports vital to Maine's heritage, to remote fishing outposts in the Aleutian Islands, this bill will have significant, far-reaching impacts on our Nation's coastal economies and environments. Therefore, I am profoundly grateful for your recognition of the unique issues facing Maine fishermen and pleased to offer my support of this bill.

The bill we are considering today would update and renew our Nation's predominant fisheries law, which, since 1976, has governed all Federal fishing activity in our Exclusive Economic Zone. Congress last reauthorized this law with the Sustainable Fisheries Act in 1996, which expired 6 years ago. Since then, this Committee—and most particularly my Subcommittee on Fisheries and Coast Guard—has been at the forefront of an ongoing debate about how America should manage its fisheries, now and into the future.

Today we will discuss a bill that attempts to answer this question, but first, we must note our recent history of managing fisheries under the current Act. I am now completing my 9th year as Chair of the Fisheries and Coast Guard Subcommittee, and during my tenure it has become abundantly clear that no two fisheries are identical, and that a diverse array of challenges affect fish stocks, our fishermen, their communities, and the overall seafood industry.

For example, when I chaired a series of 6 field hearings on this Act around the country in 1999 and in other hearing and listening sessions since then, I heard from fishermen who were being forced out of their fishery because stocks were rebuilding slower than models predicted—or, in the case of New Orleans, because their industry was literally wiped off the map—and where assistance programs are a paramount concern. I heard from scientists who struggled—sometimes unsuccessfully—to collect data and set accurate rebuilding targets. I heard from Council members who labored under onerous review processes and insufficient funds for meeting their obligations. I heard from regulators who misunderstood congressional intent on minimizing fishing community socio-economic impacts and applying flexibility and balance among management goals.

The experience of Maine fishermen shows the reality of trying to make a living in the face of these challenges. In the midst of a lawsuit—based on the claim that fish were not recovering fast enough—scientists discovered that they severely underestimated rebuilding targets and miscalibrated their data collection gear. The management plan for resolving the case required such severe cuts that fishermen now have—on average—only 52 days of fishing a year. And while the Maine industry once employed more than 8,500 people and supported more than $530 million of our state economy, we are still coming to terms with fisheries unemployment and foregone fishing on healthy stocks. And while these challenges persist in Maine, they are certainly not unique to our region.

But previously, reaching any consensus on what to do about these issues has eluded our Committee's grasp. We have gathered a great deal of testimony from those who advocate for stricter fishing limits in the Act, and we have heard from just as many who want to ease these limits. Given these mixed messages, we have struggled to define the middle ground that will ultimately lead to sustainable fish stocks and fishing communities for years to come.

Today, however, I am optimistic that we are on the verge of a breakthrough. Chairman Stevens has proposed a bill that may very well chart a way forward, out of the quagmire that often characterizes our fisheries today.

This bill would put scientists in a key advisory role to the Councils, and direct managers to weigh their recommendations carefully with other management goals in determining appropriate harvest levels. It would also streamline the environmental review process, restoring common sense to an already thorough management system. And, as I included in my Fisheries Conservation and Management Act of 2004, his bill would authorize national standards for limited access or quota programs and encourage a national cooperative research system.

Of course, I must thank our Chairman working with me on several provisions of key interest to Maine. The bill now contains language clarifying our intent with National Standard 8, to improve socio-economic impact assessment and mitigation. To resolve issues unique to the New England region, it would mandate two-thirds approval for new quota programs, a Gulf of Maine herring study, a review of state fishing on federally-managed groundfish stocks, and efforts to streamline approval of experimental fishing permits. Mr. Chairman, I also appreciate your willingness to consider Maine's concerns regarding catch limits and processor quotas, and I believe the language in this bill reflects significant progress on these challenges.

Collectively, these measures, and several others still under review, will make great strides in improving fisheries management—in Maine and throughout the Nation. That is why I am pleased to co-sponsor this bill. At today's hearing and in the months ahead, we will hear additional ways to refine the provisions of this bill, but I am confident that the basic framework proposed herein will lead to positive changes for our Nation's fisheries and fishing communities.

This hearing is a critical step on the road to final passage, and I thank you and all participants here today for your on-going dedication to improving our Nation's fisheries law. Mr. Connaughton and Mr. Dunnigan, I look forward to your testimony on behalf of the Administration. George Lapointe, I am very pleased to see you here today from Maine—I am confident that you will help us understand management from the Council perspective as well as from the unique Maine perspective. And Admiral Watkins, I am so pleased to see you before us again, representing the views of the U.S. Commission on Ocean Policy. The Committee—and our Nation's fishermen—will certainly benefit from your collective insight.

Thank you, Mr. Chairman. I look forward to working with you as we strive to complete our Committee's common goal of passing a solid, scientifically-based bill that will allow all our Nation's fish and fishermen to thrive.

I would like to start off with the value of this bill that is before us because I think it is going to be critical to getting a reauthorization that now has been overdue for almost 6 years. Hopefully, it can put us on the path to resolving some of the issues.

One of the questions has already been raised concerning lawsuits, and certainly in our experience with amendment 13—we certainly had wide-ranging issues and lawsuits in that regard.

To what extent do you believe that this legislation, as drafted, will help to reduce or alleviate the number of lawsuits? Mr. Lapointe?

Mr. LAPOINTE. I think that the bill, as drafted, if implemented, will continue the path that other people have talked about. We are getting smarter about how we put together our fishery management plans at the Council. The legislation will, I believe, assist in that. When the bill is passed and we move forward with implementation, I think that we need to continue on the path we have had of putting better plans together, following process better so that, in fact, it minimizes the chance of lawsuits.

When Mr. Connaughton mentioned ecosystem management, I think one of the things we have to do is learn from what we have done on the fisheries side as we incorporate ecosystem elements and build records and build processes that minimize the chance of lawsuits. And I think this will all help in doing that.

Senator SNOWE. Mr. Connaughton, do you agree? Is it going to help? Because so much of this whole process has been litigation. I am glad to see the streamlining of the National Environmental Policy Act in conjunction with the fishery management plans. I think that is going to be helpful. Do you see it mitigating a number of lawsuits in the future?

Mr. CONNAUGHTON. I see that it can, and let me give the two respects that will—I think further discussion with the Committee and refining the bill and then a good understanding on the implementation side of what we need to do is important.

First, the bill assures more completeness of process and information. So the science component, the notion of getting better data, for example, from the recreational fishing side of things, as well as better and ongoing data collection in each of these systems, that is the kind of thing that tends to, one, produce litigation or enable the judicial process to put a halt to things because courts tend to say—if there is a gap in process or information, that is where courts step in and say, well, go fill in the gap. So the essential elements of this bill do a really nice job of creating, again, this more complete process of data collection, integration, and thinking. By the way, if you end up in a lawsuit, courts then will defer to the administrative processes.

Certainly the process in which this bill was developed is one that can be expanded and replicated in the day-to-day implementation. Under the leadership of the Chairman and the Co-Chairman, they themselves have created a process where we are sitting here at the first hearing where we have 80 percent to 90 percent alignment.

That is huge, which means we can actually move rapidly on this, not slowly, to get it forward.

With the fish council process, the new enhanced scientific process, hopefully with a little more expanded representation on fish councils, we can begin to lay those planks down where outside reviewers do not have a basis of complaint. So that is the completeness side of things.

The other side of things is the definitional area. With the experience of the last 10 years, following the Sustainable Fisheries Act, we have seen some places where just definitionally we created some problems and ambiguity brooks litigation opportunity. The bill does a nice job of clarifying some of our experience in finding common ground among the councils so we can get more consistency.

Again, there too, if you end up in a litigation scenario, judges have a very hard time interfering where there is greater consistency and common understanding. They do not like to undo that. But when there are 20 different viewpoints on a particular term, then judges like to throw their oar in the water and decide it for themselves.

I would note, though, there remains the challenge with the NEPA process issues and the fact that, again, fisheries are an area of great passion, that there are some elements in here that we can continue to work on together to be sure we are not creating a litigation lever because something is new. And I think that is where Senator Smith's comment about the importance of this record that we are laying here today and the importance of the legislative history is going to be essential. These are evolving concepts we are dealing with, especially ecosystems, and we should be working them out between the Congress and the Administration. We should not be looking to the courts to set up these definitions for us.

Senator SNOWE. Mr. Dunnigan, do you have any views on that?

Mr. DUNNIGAN. Thank you very much, Senator. I would agree fully both with Commissioner Lapointe and Chairman Connaughton. Litigation can be extremely burdensome within the agency. It saps lots of our resources, and so we have been very sensitive to this in working with the Committee and its staff. We think, as Chairman Connaughton has said, the procedural provisions and the record-building that is implicit in the way that this law has come together is going to help us move forward in a way that is going to be more productive.

Senator SNOWE. On the issue of hard total allowable catches—and I know, Mr. Dunnigan, you indicated, unfortunately, the legislation is providing some flexibility. Those of us in New England really appreciate that, Mr. Chairman, because we have some concerns. If you had a finite total, it would be very difficult to include other issues that might have an impact.

Mr. Dunnigan, apparently you have said that fisheries within the hard TAC did not result in sustainable stock. Is that true?

Mr. DUNNIGAN. I do not think our testimony says quite that.

The problem we have in the way we manage fisheries is, first of all, fisheries are different.

Senator SNOWE. It was in the NMFS groundfish assessment report in 2005.

Mr. DUNNIGAN. I think the comment then was probably relating to the fact that we are looking at a number of stocks that right now are not yet sustainable in New England, and the Council has been using the effort control and the non–TAC mechanism for doing it and perhaps trying to draw a link.

The problem when you go with effort control mechanisms, as we have in the New England groundfish fishery, is that they are very imprecise. So in order to get the benefits that you want to have, you end up having to do a lot of regulation. The question of whether that is right or wrong is a policy question really that the Council ought to be making the choice about. We feel that it is our job to work with them and to support them where we can.

So it is a different way of doing fisheries management. Sometimes it can work well. It is difficult because it is imprecise as opposed to a TAC mechanism where you set a target and then you regulate to achieve that specific amount.

Senator SNOWE. Thank you.

The CHAIRMAN. Thank you very much.

I hope you have noticed that title IV is an international section and it really deals with the whole question of these international problems related to section 609, Illegal, Unreported, and Unregulated Fishing.

I was just talking with Senator Inouye. It is my intention that if this bill is enacted with those provisions, to once again go to the U.N. Now, when we had the anti-drift net fisheries action taken by Congress, I did go to the U.N. and Madeleine Albright was kind enough to arrange for us to have some visibility of our intention to start enforcing the provisions of that Act on the high seas, as it affected our fisheries.

I contemplate that we would also, once again, go to the U.N. and really advertise the fact that we intend to do just what the Admiral was talking about, reach out beyond the 200-mile limit and protect our fisheries, whenever it is necessary, through actions to prevent this illegal type of unregulated activity, particularly the process of trawling in the deep seas, Senator Lautenberg. It is a very vicious thing.

We have to give credit, I think, to Dr. Sylvia Earle to alerting us all. She has been using those miniature submarines. She has been observing our outer continental shelf and the actions of these foreign fishing fleets to disrupt fisheries in that area. I do hope you all are aware of that.

Second, I am going to ask you all. It is our opinion and if you look in the bill, the bill does not mandate the concept of eco-based systems management because it is already in the Magnuson-Stevens Act. Four regional councils are already pursuing pilot projects. Our Alaska area initiated it years ago. So why should we mandate what they already have authority to do?

I think what we have got to do is encourage. If you look at the sections we have, the findings of the Act, and the definitions, and the fishery research provisions in section 4—do you agree that is sufficient to deal with this concept of eco-based systems? There are some people who think we ought to come in now and mandate the others to move forward immediately. I believe we should leave it

to the councils to pursue what is authorized under the Act. Do you agree with that, Jack?

Mr. DUNNIGAN. Thank you, Senator. I appreciate that. I think we were aware—and one of the things that we have learned in thinking about this concept of ecosystems-based fisheries management over the last 2 or 3 years is just the point that you made. We have been doing this and various aspects of it for a long time in our regulatory programs, in our science programs, and in our data programs. So there is a substantial amount of authority that is in the law already.

I think our thinking was that the concept is getting such currency and it got so much support from the ocean commissions and from the President's Ocean Action Plan, that this was too good an opportunity for the real policymakers here, for the U.S. Congress, to pass up, to not spend some time thinking about whether there could be improvements that could be made in the way that we address our approach to ecosystem-based management. The Administration's bill contains a number of ideas, but they are not necessarily the end all. But we wanted to make sure that we were at least aware of this so that we could try to move forward.

The CHAIRMAN. Well, if you look at the provisions pertaining to NEPA, for instance, now—you have addressed that—our council had a 7,000-page EIS that it had to prepare before it could come up with this new fisheries management plan. This bill says you do both at the same time. You must comply with NEPA as you make your plan and not have a plan and then go back and try to see how you comply with it.

Is it not the same thing with eco-based systems? We give them the authority and encouragement to do what we think they should do. But these are regional councils. They do not all proceed at the same pace. Why can we not do the same thing with the eco-based system concept, saying we have the authority? We want you to do it. Here are some of the goals we have set for you.

There are some people now who want to mandate that. I believe if it is mandated instead of incorporated in, as we have NEPA, we will face increased litigation on the eco-based system. Now, am I wrong, Jim? Am I wrong?

Mr. CONNAUGHTON. In substance, sir, you are right, and I just want to underline, which is why our philosophy actually is not to create something new. It is actually to shine a light on a concept that has now emerged and is taking traction.

I would just underline your point, Mr. Chairman. Section 102 of the CEQ regulations that have stood the test of time for 35 years requires that the NEPA process initiate and utilize ecological information in the planning and development of resource-oriented projects. So this is an age-old idea. What we are doing is giving it the currency and centrality that it needs.

Now, I think in our bill what we tried to do was just that. We did not want to add new elements. What we wanted to do was identify this as an important operating principle in the planning and decision-making process and then add the tools, as Jack indicated, that will further enable councils and those participating with the councils to accomplish this objective. We have come a long way

from the time when Magnuson-Stevens was first enacted. We have come a long way in how to get there.

I think in a sense, sir, you are saying, if you have got webbed feet and wings and a long bill, you now have a duck. In that sense, we have got a lot of elements of the NEPA process and the fisheries planning process that add up to ecosystem-based management. So why do we not just go ahead and let people know that is what they are doing is our philosophy.

The CHAIRMAN. Well, that is the goal that we have here.

I sent some of the provisions of the Administration's bill to some of the marine and fishery biologists and scientists to see if we ought to put the definition of eco-based system in the bill. They say that they are following the concepts now, and they think that narrows their goals rather than giving them the broad vision of eco-based system as viewed by each council. Now, is that acceptable? Mr. Lapointe, do you have a point?

Mr. LAPOINTE. As a council member, I encourage that line of advancing the ecosystem-based management. I first sat on the councils in the mid-1980s as a nonvoting member for the Atlantic States Commission, and you did not hear the concept. Now you hear it at every council meeting. The concept of ecosystem-based management is clear as the nose on all of our faces, a little clearer on mine because my nose is bigger.

But the councils are working to integrate ecosystem-based concepts. As Jack said, we are trying to provide incentives so that in fact the councils can move forward with this effort. We all know it is more data-hungry than it used to be, but trying to provide the information and the tools so that, in fact, the councils can move toward more ecosystem-based management.

The states also recognize this. The Atlantic States Commission has a multi-species assessment plan that is going through the Federal process so that, in fact, we are making sure it is scientifically sound, and it will provide the tools so that, in fact, we can do a better job of that evolution toward ecosystem-based management.

The CHAIRMAN. I am using all the time. Jim, did you want to comment on that?

Mr. CONNAUGHTON. I just want to say I think based on this conversation, Mr. Chairman, I think we can accomplish what you desire by emphasizing the tool-based elements of this bill as the elements to contribute further to sounder ecosystem-based thinking. We share the concern about creating a concept that gets a narrow definition and then gives rise to just a new lever for litigation. That is not what we want to achieve here. We want to actually expand the innovation, expand the tool base. So, I actually think there is a way in this legislation to shine the light that this is what we are doing, but to do it in a very practical way where the substantive elements are contained in the very provisions that you cited.

The CHAIRMAN. Jim, do you have a comment?

Admiral WATKINS. I agree with that. Mr. Chairman, I do not think it is necessary to mandate it. I do think it is good to give a nod to it, to say this is the right approach.

In our whole report, we tried to get a bottom-up from the states meeting the top-down from the Federal level, and I think we did that. The State of California today is sending a letter to the White

House that says we have gotten our act together. Here is what we want to do to collaborate with you.

Now, it seems to me that we could provide an incentive that when those plans come in from the states, from the regions of the country, to put their ecosystem into a balance that they think is right, to accept that only if it takes account of the whole ecosystem, including the socioeconomic impact.

Let us not mandate it, but let us say it is best business practices here. Let us encourage it to be done and let us incentivize those states that come in for collaborative work with the Federal Government to get the nod over those that do not use ecosystem-based approaches.

The CHAIRMAN. Well, Jim, I think we have mandated it. We have not narrowly defined what eco-based management is. The fear is the definition will be so controversial it will lead to litigation, whereas the scientists and biologists and other people involved in marine management say, look, we accept this as a goal, but let us define it for our area.

Admiral WATKINS. Also, Mr. Chairman, you have to look at the science. Each of the regions of the country are going to have a different set of problems that they have to face, and the science is not there for ecosystem-based management to be mandated because we do not know how some ecosystems work. So we have got to do the research.

So this enables the regional council to say here are my research requirements. I need to know about this ecosystem in greater detail than I know today, and we should put our high-priority research package that the Administration is now trying to come with by the end of 2006—they are supposed to have their research package together. That should be an integrated package with the states out there that have the real requirements to understand those ecosystems.

I agree with the comments that have been made. I think the time is right. I think people are ready for it. I think you do not have to mandate it, but at least say this is a sensible approach and it is built into your law. We have to highlight it. There are some councils out there that are not doing what you are doing well in these four other areas regarding ecosystems. They do not get it. They are not doing it right. They are not doing the science. They are not demanding the requirements, both for their own research, as well as for the Federal Government.

The State of California just put 35 million bucks into a coastal ocean observing system. That is an integrated ecosystem-based approach. They get it. They are doing it now, and I think others are beginning to worry.

The Gulf of Maine Ocean Observing Initiative up there is an extremely important role model for others to be following. That is an ecosystem-based approach.

So I agree with you. You do not need to mandate it, but I think somehow we should incentivize those that understand it and are doing it.

The CHAIRMAN. Well, if we are going to have increased operations for oil and gas exploration on the Outer Continental Shelf, I want to see a mandate that part of that money that comes to the

Federal Government goes in to protect the basic resources of the oceans, if it happens.

Senator Inouye, do you have any further questions?

Senator INOUYE. I just want to say that we should give much of the praise to the staff. If it were not for the staff, we would not be here.

The CHAIRMAN. Led by Matt Paxton. He prepared a statement for me yesterday and I did not have to edit one single word. He was really in tune with where we want to go. That was his statement that I read.

Senator CANTWELL. Mr. Chairman?

The CHAIRMAN. Well, Senator Lautenberg would be next going through the order.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

I just want to make one point about the need to protect the deep sea corals. When we talk about ecosystems, where else could we go that is more important than protecting the deep sea corals. Mr. Dunnigan, I am sure that you—let me not put words in your mouth. Do you agree with the Ocean Commission's statement that deep sea corals and sponges are the most important habitat for numerous fish species, as well as their own value in terms of the pharmaceutical products, et cetera?

Mr. DUNNIGAN. Yes, Senator. I think that the habitat values that are presented by deep sea corals are enormous. I think, unfortunately, they have been under-appreciated for way too long. I think the landmark action that was taken by the North Pacific Council to step out and protect huge areas of the North Pacific is important, as well as the positions that the United States has been arguing for in our U.N. negotiations to move forward in providing greater protection to these resources. So we think that is a good idea.

Senator LAUTENBERG. Is the greatest threat to deep sea corals the bottom trawling? Is that not the way that most damage is done to deep sea coral?

Mr. DUNNIGAN. Senator, I am not sure that the science yet has told us that that is the case, and I think we have to be very insistent that we do this on the basis of good science. We know there are problems out there. We know we have to be more careful about it, and we would like to see the opportunity for the scientific community to develop a more complete understanding as we have become more aware of these issues in just recent years.

Senator LAUTENBERG. Well, the NOAA report says that the major threat to deep sea corals appears to be fishing—associated damage from bottom trawling. They do set out other things as well.

Admiral Watkins, do you have a view on where the risk to deep sea corals is greatest?

Admiral WATKINS. Well, we have a section in our report, Senator, regarding deepwater corals. And the Commission recommended that we get our act together by getting NOAA to serve as the lead Federal agency and work with the stakeholders to survey the distribution and abundance of these corals, as well as the major threats to their existence. So we ought to know where they are, just as we do for many other marine-protected areas. We ought to know where they are. We ought to be able to understand all about

that, get the science straightened out, and the information should be used to develop strategies to address protection of these corals.

So we need something new that we do not have today, and I think our addressing of this Bottom Trawl and Deep Sea Coral Habitat Act of 2005—we have addressed that subject in our report and we think it is very important. Coral and sponge habitat are areas of significant ecosystem importance and merit attention from the councils, from the Congress, and from the Administration.

Senator LAUTENBERG. Yes, because I think in the Commission Report it says that even one pass with a bottom trawler can seriously damage deep sea corals which obviously could take hundreds of years to recover. So is there not a need to take steps to protect deep sea coral now rather than wait for a further outcome of the research that is underway? If we know that there is a danger, we know that there is a fire under the sea, we ought to try to put it out as quickly as we can.

Mr. Chairman, my interest at the moment, in addition to seeing what I think is a very good bill on your part, is to include in there a particular mention on the protection of deep sea corals. Where it has already been trawled, then those areas can be opened to trawling.

The CHAIRMAN. Well, not necessarily. Sylvia Earle will tell you that they are looking at a process to try and stabilize some of those areas and reestablish them. But we would be perfectly willing to work with you to have specific mention of coral protection, but we believe we have got that covered by the sections I mentioned, but we will be specific. Admiral Watkins' Commission had a specific comment in their report.

Admiral WATKINS. We pointed out that the North Pacific Council and the Pacific Council approach has been to freeze the footprint of existing bottom trawling to areas already impacted and give greater protection to areas that have high concentration of corals and sponges. And we are saying that needs to be managed specifically. NOAA ought to be in charge of it. We ought to be doing the science to understand those areas, find out where they are, and then put the freeze on what they have already done in the North Pacific Fisheries Management Council.

The CHAIRMAN. Well, we originated this in Hawaii and down off Fort Jefferson and the Keys. I remember very serious problems about trawling and dragging of anchors too.

Thank you very much, Senator.

Senator LAUTENBERG. I just wanted to ask, if I may, one last question of Mr. Dunnigan, and that is, New Jersey's commercial fishery industry has a history of welcoming observers onto its vessels. However, our commercial fishermen have some concerns about the amount of training that the observers have. Now, is that something that you plan to address and to help us sort out?

Mr. DUNNIGAN. Yes, thank you, Senator. Within our Office of Science and Technology, we maintain a national program for improving our observer services around the country. The service delivery model is usually done out in the region, but we have recognized that there needs to be an effort that is made to upgrade the quality and make these programs work better. So I think the an-

swer to your question is, yes, we do see the need to do that and are doing the best we can to try to move forward. Thank you.

Senator LAUTENBERG. Mr. Chairman, thanks for your leadership on these issues. It is so important.

The CHAIRMAN. Senator Snowe?

Senator SNOWE. Thank you, Mr. Chairman.

With respect to the individual fishing quota provisions in this legislation, or as described in this bill, as limited access privileges, I am very pleased that we are going to have national standards established for fishing quotas. I think that is critical, so that the new quota programs do not negatively affect the fishing communities.

Admiral Watkins, I know the Commission recommended establishing national standards. How closely do these standards follow the Commission's guidelines with respect to establishing the criteria?

Admiral WATKINS. Well, I am not that familiar with that particular section, Senator Snowe. Again, when we mandate things as opposed to setting strong guidelines, I know that that is a difficult line to cross, and we are back and forth on it all the time. But we believe there ought to be at least national guidelines to help ensure that the programs meet biological, social, and economic goals. So whether you mandate or you just say here are the best national guidelines we can come up with and, again, incentivize those fishery management councils that engage in that process, I think again you can incentivize those kind of good practices, and I think it should be done. So I am not pushing mandatory one way or the other.

But I do think we need to say these are the best business practices and we are not going to support you unless you come in within the broad guidelines that we are talking about, work by ecosystems, work to achieve the limited access privileges that are in the bill. There are ways to do it without mandating it. I think maybe we allow a period of time to see if people start complying uniformly across the management councils and then decide whether or not we need anything further.

Senator SNOWE. Yes, I agree with you. I think it is important because many of the councils are proceeding with quota-type programs and it is essential to establish a national basis in keeping with the national Academy of Sciences' recommendations.

I also appreciate the fact the Chairman has included a referendum for the New England Council, requiring support from two-thirds of those eligible participants. George, have you had a chance to review those standards and the process in this bill?

Mr. LAPOINTE. I have, Senator Snowe, and I think two provisions in the bill are important. The provisions on limited access privileges have the referendum to start and the referendum to implement, as you just mentioned, and I think that is quite critical. And then the language I think in the bill on cumulative impacts and the social and economic impact that Admiral Watkins has mentioned allows the decision to be made very deliberately. I think people's concern is that this is done in kind of a de facto way and those two provisions to me just strengthen the process so that, in fact, should a council decide to move forward with a limited access program, it

is done very deliberately with eyes wide open about the impacts on the community, both positive and negative.

Senator SNOWE. Thank you.

Mr. Dunnigan, how does the Administration view these national standards?

Mr. DUNNIGAN. Senator, the Administration believes it is critical that we move forward to establish a uniform set of national standards for these dedicated access privilege programs. That being said, we recognize that circumstances are different when you get from one council area to another and that it is important that councils be given some latitude within the area of these standards to address the particular issues that they have.

Senator SNOWE. So, you would be supportive?

Mr. DUNNIGAN. We are supportive of having national standards for dedicated access privilege programs, and that is part of the Administration bill.

Senator SNOWE. I would like to follow up on what George has mentioned about National Standard 8, which has been one of my continued concerns because of the inability of the Administration and NMFS to evaluate the socioeconomic impacts. We saw that, and we are still seeing it, with respect to Amendment 13. I do not think NMFS has even undertaken a review yet of the impact on the communities. That is why the pending reauthorization legislation does include language on assessing the cumulative impact on the community, the collective societal and economic impact on the community. We cannot ignore or separate the impact of the regulations and the burden it presents to the community and to the fishing industry.

So how do you evaluate this? I am hoping that we are going to see a changed disposition on this question. I think that the legislation will strengthen the requirement for managers to consider and to minimize the adverse impact. The U.S. Commission on Ocean Policy, Admiral Watkins' report, also called for more regard for the impact on communities when the regulators are regulating the industry. You cannot separate it. There are ways in which to accomplish the same goals, but perhaps differently, understanding the harshness of some of the regulations that have been imposed and, as we have seen with the groundfish industry, that it had to recalibrate on several different occasions. That has now resulted in fishermen only allowed to fish 52 days a year at sea. That is the harshness.

So you have heard from me before on this whole issue, but we have not seen a change in NMFS on this approach. So can you give me your views now?

Mr. DUNNIGAN. Yes, Senator, thank you. I think the Administration would completely agree that it is absolutely critical that managers have that kind of information so that they can make the tough choices that they have to, understanding both the biological implications, as well as the impacts that it has on communities and on the fishing industry.

Part of the problem is that we have 125 years of investment in biological information, and it has really only been in the last couple of years that we have been able to step forward, with the support of the Congress with funding, to build a better basis for us to un-

derstand and do the social and the economic research that is necessary in order to provide the information that the councils have to have.

So I think the Administration looks at its responsibilities under National Standard 8 very seriously. We agree that this is an area where we need to find a way to do a better job and bringing that information to bear on the problems that the councils have to deal with.

Senator SNOWE. George, do you think that this legislation satisfies this issue of taking into account the needs of the fishing communities?

Mr. LAPOINTE. I think it provides the foundation to do that. As Jack has just said, this is a relatively new part of our fishery management process, and I think we need to concentrate some efforts on it, not taking away from the biological foundation we have because we need that as well, but that, in fact, we need to ramp up the efforts so we gather the socioeconomic data and we can look at, in a better way, the cumulative impact. There is much we can do now if we take the time to do it, but providing a better information foundation will allow us to do that better in the future as well.

Senator SNOWE. Admiral Watkins, I know that the Commission made recommendations in this area as well. Is there anything else that you would recommend as a way to improve it?

Admiral WATKINS. We recognize the issue. There are many Federal agencies that undertake socioeconomic research today, but it is very sporadic. It is not coordinated. We do not analyze the data in a uniform way on a systematic basis. So there are things that need to be done. We have made a recommendation that is part of the doubling of the research budget that we have recommended. And that is not an overwhelming number, $650 million today in our basic research from all Federal agencies on the ocean. You compare that with any other, and it is pitiful. So we say double that budget and call for in that process social science and economic research to examine the human dimensions and economic value of the Nation's oceans and coasts.

So we say include an operational socioeconomic research and assessment program within NOAA, an interagency steering group chaired by NOAA to coordinate ocean-related socioeconomic research and partnerships with other nongovernmental stakeholders to identify and address socioeconomic information needs. And this is very consistent with the National Academy of Sciences' work in this area.

So it is an important issue. Social science has not been recognized as science, and when we talk about science, we are talking about the human dimension as well. And I think that has been one of the reasons why we have the litigation process going up because we have not considered it.

Senator SNOWE. A good point, an excellent point. I applaud the Commission and your leadership in that regard because I do think we have to do more to ensure that that is taken into account and considered, and for the agencies as well. I agree with you. It probably would reduce the amount of litigation if we were to take into account all of those issues.

Do you see any other way, Mr. Dunnigan, on that question?

Mr. DUNNIGAN. I do not think so, Senator.

Senator SNOWE. Do you agree with Admiral Watkins and what he just said?

Mr. DUNNIGAN. I agree with Admiral Watkins relative to the need for having to move forward with this.

The question is always a matter of priority, and the country has a lot of those that have to get sorted out. That gets done above my pay grade. But there is no question, from the standpoint of us carrying out the responsibilities we have, that this is an important area that would help greatly.

Senator SNOWE. But in the National Standard 8, though, even as it is currently written under law, it is supposed to be given equal consideration and it is not. It has been getting a much lesser consideration, if at all.

Yes, Mr. Connaughton.

Mr. CONNAUGHTON. Again, Senator, I have the opportunity, because I work on these issues horizontally in other areas—NEPA actually requires it to begin with, the NEPA statute, as well as, again, the overarching regs. Other agencies in other resource management settings do this routinely and have erected a fairly good infrastructure for doing it. So we actually have the capacity to translate that skill set and do it even more effectively in the fisheries context. It just has not been done as effectively in that context. So there is reason for great optimism that this can be done more rapidly and to greater effect.

I would note the reverse of that is humans are part of the ecosystem. So even when we talk about ecosystem planning, these issues ultimately converge, and that is where we look at these tools. When we are selecting from among these market-based tools, our understanding of the tool to pick is directly relevant to the socioeconomic analysis that occurs if we are talking about minimizing disruption and having a smoother transition. So if we do not understand the socioeconomic side of it with the biological science, we cannot make a sound decision about the selection of the tool. So that is why it becomes critically important.

One final point. I just want to go back to Senator Inouye's signal to all of us. In a lot of questions is the international dimension. We need to more rapidly perfect these mechanisms because the U.S. is regarded not just as a leader in the world on these issues, but we are one of the world's largest consumers. If our U.S. harvest is only providing 15 percent of our consumption, well, we are responsible for that other 85 percent that is going on in the rest of the world that our citizens are consuming. So we have to get it even better here so that we can create the heightened expectation with those who wish to provide food to our citizens, that they do it more responsibly and well too, not just for the sake of our own economy and health, but for the sake of this very important, thriving ecosystem that we all depend on and want to increasingly depend on in the future.

So I do not have answers either, Senator Inouye, but we have to heighten the conversation, and I am pleased to let you know I have had high-level conversations in the capitals in Australia on this point, recently in China, in Japan, and I was just in Moscow last week. This was one of the first items that we discussed, greater

discipline in our international fisheries process and, in particular, on this unregulated component. We have to have more higher-level conversations about this to create the political attention that this issue deserves.

Senator SNOWE. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Admiral, do you want to add to that?

Admiral WATKINS. I just wanted to follow up a little bit, Senator, because Senator Inouye brought up a very important point. One of the most impressive presentations we had in Hawaii was from a long-liner, and he said we have not had a bycatch of turtles for a year, and yet, we are precluded from fishing south of a certain latitude when the other Asian nations that fish in the Pacific are not. That is not fair to our fishermen.

So what I am saying is why do we not accede to the Law of the Sea Convention and get our name at the table, the United States, and put the pressure on these systems along the line that Senator Stevens talked about that he had to do earlier. We are not at the table.

There are claims being made on extensions of the continental shelf beyond the 200-mile EEZ now. The Russians have just claimed a big claim in the Arctic. Now, it has been rejected for the time being, but they were told to go back and look at it again to take over half the Arctic. We have got to really start getting serious about the international ramifications.

We should be acceding to the Law of the Sea Convention. We talked about this at a former hearing with this committee. It was brought up, and Senator McCain said we would pass it 95 to 5 if we could ever get it to the Senate floor. So, I strongly urge that this committee to see if we cannot find the political leverage to get it to the Senate floor and vote it out and then get serious about our international connectivity.

The CHAIRMAN. We have done everything we could to get that out. I personally have made pleas that we bring it up, and certainly this Committee is, I think, 100 percent behind that. In the past, there had been some objections. There were modifications to that Law of the Sea agreement that led, I think, to really an almost unanimous approval here. But I agree with you.

We are getting close to the time we should close down.

Admiral we put several things in this bill specifically at the Ocean Commission's request. We have your recommendation that the scientific and statistical committees provide the councils with scientific advice on fishery management and that their recommendations for annual catch limits at or below the optimal yield acceptable for the biological catch would not be exceeded. We placed in this your recommendation that the National Marine Fisheries issue national guidelines for dedicated access privileges with flexibility for regional implementation. And we have followed your suggestions, I believe, in terms of the NEPA process.

Incidentally, few people remember that Senator Jackson had one co-sponsor to the National Environmental Policy Act, and that was this Senator. I do not think I ever envisioned that we would have a separate process for NEPA. We thought it would be advice that

the official in Government would receive at the time of the original decision, and that is where we are going in this process here.

Can you comment? Have we left out anything that is important to you? Let us put it that way.

Admiral WATKINS. Well, Senator, as I said in my oral statement, there are a number of things that we would do. Our Commission said that we should mandate the fisheries management council to use the guidance provided by the SSCs. Okay, if you do not want to mandate it, then let us do something to incentivize their use of this guidance. And if they do not use it, we ought to know about it.

Developing a mechanism for ensuring the qualification and impartiality of SSC members. I think that is very important. You have SSC members up there that are dedicated to the task, they are qualified in Alaska to do the job, and so you listen to them. Now, you do not want outsiders coming in. I understand that. But still, the qualifications of those people become very important so that then we can build the confidence in the system. We want to use the SSC data that is based on good science, and so we need to look at the process that we follow to make sure it is good science.

Then we said require the councils to establish and initiate a periodic scientific peer review process of the information used by the SSCs. We think that is just a follow-up mechanism so that it does not just languish there and sit there as a hope that they might do it and find out many councils are not doing it.

So, again, we have some recommendations in my statement here that I think can enhance that, to the extent you can stand it up here, to strengthen it even further.

The CHAIRMAN. We think that 22 of your 27 recommendations are specifically included in this bill. I think that is a pretty good batting average.

Admiral WATKINS. It is excellent. We are all for it. We are just saying we think it could be strengthened even further, but we certainly think you have made a tremendous step in the right direction.

The CHAIRMAN. We would appreciate some detail on the ones left out and suggestions as to how those might be modified to meet some of the objections of our Members. If you will help us, we will work on that.

I know that, Mr. Connaughton, you have had some suggestions also and Jack, we will be pleased to listen to any last-minute appeals. We do not intend to mark up this bill until January, and we hope to have it on the floor by about February. It is just not the kind of bill that we can get out and get into this mess that is out there right now. But I appreciate your help and I appreciate your coming here.

Do you have any last comments? Senator Snowe?

Senator SNOWE. No. I just want to thank all the witnesses.

The CHAIRMAN. We do thank you very much.

I want to place in the record that Margaret Spring, the Minority Counsel, has been very much of a resource and a great help in developing this bill. I want to start the practice for this committee to list at the beginning of any report that is filed the staff members who were specifically involved in preparing the material that led

to bringing the bills before the Committee. So that will be done now on this one, and that will be our policy so long as we are Co-Chairmen.

We thank you very much for your help.

[Whereupon, at 11:40 a.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF JOHN SISK; ON BEHALF OF STOSH ANDERSON, CHAIRMAN, MSA 2005 WORKING GROUP: WORKING FISHERMEN DEDICATED TO SUSTAINABLE FISHERIES AND PROSPEROUS COASTAL COMMUNITIES

On behalf of the MSA 2005 working group I would like to express our thanks to Senate Commerce Committee Co-Chairmen Ted Stevens and Daniel Inouye, for the opportunity to submit this written statement for the record of this hearing on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). We appreciate the Co-Chairmen's leadership, and the dedicated. hard work of their talented Commerce Committee staff. We also extend that appreciation to all of the Members of the Senate Commerce Committee, and their staff members, who have received our fishermen so openly when they have traveled to Washington. I submit this hearing statement today on behalf of group of a hard working American fishermen focusing specifically on this legislation.

Our working group, "MSA 2005," is comprised of active commercial fishermen and former regional fishery management council members who are dedicated to the health of our coastal communities and the fisheries they depend on. Participants in the working group hail from Alaska, Washington, Oregon, California and the New England states. Although our fisheries and our fleets are different, we have identified important shared priorities. MSA 2005 is engaged in the reauthorization of the Magnuson Stevens Fishery Conservation and Management Act (MSA) with one primary goal: keep the fishery access privileges connected to the working fishermen, their families, and our coastal communities. Keeping fishing privileges tied to the waterfront is an essential cornerstone of healthy, prosperous and sustainable communities.

With this goal clearly in mind, MSA 2005 is participating actively in reauthorization of the MSA, our Nation's primary law governing fishing in Federal marine waters. Working group members have drawn upon their substantial experience in commercial fishing and in fishery policy in order to develop recommendations for consideration by Members of Congress as they proceed with MSA reauthorization legislation. Our primary focus is on provisions related to limited access privileges (LAPs) and LAP Programs. We have worked hard to develop specific legislative language designed to address our interests, consistent with the purpose, spirit and substance of the MSA, and we are ready to work with the Committee on legislative details at any time. Today, we present the over-arching policy considerations and the approach we recommend in order to ensure healthy, prosperous fishing communities.

Policy Considerations

MSA 2005 seeks to keep fishing access privileges connected to the waterfront and to the working fishermen in our coastal communities. This entails enhancing access, sustaining participation, providing entry level opportunities. and maintaining competitive and open markets—all for working community based fishermen defined as vessel owner-operators, vessel captains, and vessel crew members. In addition, this requires measures to prohibit "absentee fishing" whereby persons distant from the community might hold fishing privileges from which they extract wealth through leasing of quota without ever fishing or taking responsibility for the fishing vessel or crew. Absentee fishing means wealth is extracted from the fishing fleet and from the coastal communities without accountability for conduct of the actual fishing. Absentee fishing compromises community, as well as resource health.

MSA 2005 does not ask that the MSFCMA provide detailed prescriptions for these challenges. MSA 2005 does recommend in the strongest terms that the MSFCMA should require that councils address these crucial issues when they prepare a LAP Program. We maintain that Congress should identify public policy priorities the councils must address in preparation of LAP Programs. The councils would retain flexibility and discretion as to *how* to address these concerns on a fishery by fishery basis.

Keeping access privileges connected to the waterfront and to the working fishermen in our coastal communities should require that councils follow a three step process in designing and implementing future LAP programs. These steps are:

A. Establish measurable goals and objectives.

B. Periodically review and assess the program including the degree to which goals and objectives are being met.

C. Modify the LAPs and/or the LAP program, based on the assessment, to enhance performance relative to achieving the goals and objectives.

MSA 2005 refers to this process as the "ABCs" of successful LAP programs.

These "ABCs" are interdependent. Measurable objectives provide the framework for the program. They provide the criteria for assessments, and the assessments provide accountability as well as a way to incorporate relevant new economic, social or biological considerations. Without clear authority to modify the program in response to program reviews revealing that adjustments are needed, a LAP program would become over time an inflexible artifact and program objectives may never be achieved or may be compromised over time. Instead of councils addressing shortcomings or new challenges in a timely and responsive manner through program modifications, problems would spill over to fishermen, communities, the resource itself or perhaps back to Congress.

Because the ABCs of successful LAP programs are interdependent, MSA 2005 urges that a provision for modification of LAPs and/or LAP programs be included in the Program Requirements section of draft reauthorization legislation.

MSA 2005 also recommends the legislation identify several specific types of goals or objectives that Councils should be asked to consider when they develop LAP programs. Again, it is not our intent to micro-manage program design and development, but rather to see the statute outline the important public policy considerations that must be addressed.

The ABC approach to LAP program development provides significant public policy benefits. It bridges the gap between advocates of a hard "sunset" provision that would render LAP programs void after a prescribed number of years, and advocates of permanent, unchanging fishing "rights." The ABC approach provides a rational way to periodically modify LAP programs, based on a sound process, to improve program performance. In so doing the ABC approach offers LAP holders the substantial value inherent to an access privilege of indefinite tenure yet provides councils with tools to ensure that program objectives continue to be achieved over time.

The ABC approach likewise ensures that councils provide LAP holders with clearly specified program objectives and conditions for the time period between reviews. The opportunity to modify programs and allocations may limit the maximum value an LAP would assume, with the effect of buffering price escalation such that LAP shares remain affordable to new entrants. The result would be LAP programs that provide substantial stewardship incentives to LAP holders yet allow councils to safeguard entry level opportunities, coastal fishermen and their communities, and the public process.

MSA 2005 recommends specific program requirements to keep access privileges tied to the waterfront and to guard against absentee ownership. We strongly recommend that holders of limited access privileges be directly connected to the actual fishing and that leasing be limited to instances of hardship or to address inheritance issues. We propose two ways to maintain the connection between access privileges and active fishermen.

First, in some instances an active working fisherman who holds LAPs might own more than one boat in the fishery in which they are engaged. In other instances a fisherman holding LAPs might fish in one fishery and own another boat in a fishery that occurs simultaneously. Another LAP holder might fish on their own boat and be part owner of a second boat on which a relative fishes. Such fishermen should be able to allow LAPs they hold to be fished on one of these other boats, provided they have a substantial direct ownership stake in the vessel.

A second option is for the holder of the LAP to be on board the vessel from which their LAPs are being harvested. This LAP "owner on board" provision has proven successful in the Alaska halibut—sablefish IFQ program, and it is well suited to many fisheries, or segments of fisheries.

A limitation on leasing and these two measures to empower active LAP holders who participate directly in fisheries are designed to ensure the long-term connection between access privileges and coastal fishing communities. When combined with the ABCs of successful LAP programs, the result is a framework that ensures limited access privileges remain connected to America's active working fishermen and fishing families, and that the wealth of our fisheries sustains our coastal communities.

Two additional, important policy problems and specific recommendations are included in our reauthorization recommendations: the need for better information on the participation of working fishermen in our Nation's fisheries, and the importance of maintaining open, free and competitive markets for fishermen to sell their catch.

Fishing vessel crew member jobs constitute the lion's share of the fishery employment opportunities in coastal communities. In Alaska, where we have the most experience with fishery rationalization and limited access privileges, the implementation of fishing quota programs has resulted in substantial layoffs of fishing crew members as fishing fleets consolidate, with heavy economic impacts on many fishermen, fishing families, and their communities.

Currently neither the councils nor NOAA Fisheries maintains a record of fishermen's participation in Federal fisheries as crew members. As a result. reliable information to support the assessment and mitigation of economic and social impacts associated with the transition to limited access privilege programs is lacking. In addition, there is no information base to inform decisions on whether to include crew members in the initial allocation of limited access privileges.

MSA 2005 recommends the establishment of annual records or registries of fishing crew members on board each vessel, recorded in conjunction with fish landing documentation. This will provide a data base of fishing crew members and the associated harvest landing quantities, by fishery, vessel and season. The resulting information will contribute to better fishery management and greater capacity to incorporate crucial community economic considerations into the council decision-making process.

Fishermen across the Nation share a common interest in maintaining open, free and competitive markets in which fishermen sell their catch. This enables fishermen to receive a fair share of the value of the resource, and is crucial for the economic well being of fishing families and the coastal communities where they reside. MSA 2005 appreciates the Committee's decision not to include processor quota in the draft legislation, and looks forward to working toward fishery arrangements that maintain open, competitive markets for fishermen.

Effective business arrangements among harvesters and processors are essential for economic success of a fishery, and those arrangements should—must—be voluntary in nature. Neither legislation nor management programs should force a fisherman to sell product to a specific processor. Similarly, measures that allow excessive consolidation in either the harvesting or processing sector should be strenuously avoided; competition is the lifeblood of innovation and entrepreneurship. Finally, fishery arrangements that risk anti-competitive outcomes must be rejected.

In conclusion, we would like to reiterate our appreciation of the Committee's work on this important legislation and restate our primary goal: Let us keep the fishing privileges connected to the waterfront, the working fishermen, their families, and our coastal communities. Congress can accomplish this important goal by providing guidelines to councils in the MSFCA for the development of LAP programs: establish measurable program goals and objectives, conduct regular periodic reviews of program performance, and modify programs as necessary in response to those reviews in order to optimize program performance and achieve program objectives. Additionally, program objectives should safeguard against absentee fishing, keep LAPs closely tied to the waterfront of active fishermen, and ensure that fishermen have a competitive market in which to sell their catch. Finally, Congress should direct councils to create a registry for all fishermen who participate in our Nation's fisheries.

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