



WRITTEN TESTIMONY OF MR. SEAN MARTIN ON BEHALF OF THE  
WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL  
BEFORE THE HOUSE COMMITTEE ON RESOURCES

October 27, 2005

I. Fisheries Managed by the Western Pacific Council

The fisheries under the jurisdiction of the Western Pacific Council range from small-scale artisanal fisheries within U.S. waters, to large-scale commercial fisheries in international waters. The fish caught in these fisheries are marketed worldwide as high quality fresh fish, and as canned, dried, and frozen products. Within the Western Pacific Region there is a particularly high demand for high quality fresh fish by a culturally diverse population. The seafood industry in Hawaii is an important source of living wage jobs for local residents, and generates significant revenues for the State's tourism industry. Moreover, the region also contains some of the worlds largest tuna canneries, located in Pago Pago, American Samoa, which is also the home port to the US purse seine fleet which operates under an international treaty with the Pacific Island nations of the Central and Western Pacific. In addition, Guam is a major transshipment port for domestic and foreign fishing vessels, which ship high quality fresh fish by air to Japan and other global markets.

The Western Pacific Council's most important commercial fisheries target pelagic fishery resources, primarily tuna and swordfish. In 2004, commercial landings by domestic fisheries in the U.S. Pacific Islands amounted to about 33 million pounds of fish worth an estimated \$68 million. About 97 percent of this volume was from pelagic longline fisheries. Fishery landings have declined in recent years due to stringent management restrictions closed the swordfish fishery between 2001 and 2004. In addition a further 134 million pounds of tuna was caught by the US purse seine fleet based out of Pago Pago, worth \$52 million.

Fish and fishing have unique socio-cultural significance for the peoples of the Western Pacific Region, and it was primarily with this in mind that the interests of Hawaiian indigenous peoples were embodied in the Magnuson-Stevens Act. The 1996 reauthorization of the Magnuson-Stevens Act recognized the unique nature of such issues in the Western Pacific Region by stating "Pacific Island Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth."

To summarize, fish are an integral part of Pacific Islands culture, and we are therefore very interested in how our ocean resources are managed under federal law.

II. Recommendations for Magnuson-Stevens Act Reauthorization

The Western Pacific Council offers the following observations and recommendations regarding reauthorization of the Magnuson-Stevens Act. We would appreciate the opportunity to meet with Committee staff to discuss these recommendations and proposals in greater detail.

A. Membership of Scientific and Statistical Committees

First, the Council's reliance on a strong Scientific and Statistical Committee (SSC) for review of all biological and socio-economic information is the single most important part of responsible management. The SSC provides key scientific advice needed by the Councils, including determinations of allowable catch, and recommendations for minimizing bycatch. The Western Pacific Council believes the current system of committee selection is effective and successful, and should be maintained.

Although the Western Pacific Council's jurisdiction includes about half of the total U.S. Exclusive Economic Zone, we are comprised of a number of small island archipelagos in the Western and Central Pacific. Even Hawaii, the largest of our island groups, has just over one million people, most living on the island of Oahu. This means we have a limited pool of candidates to draw from for Council advisory bodies, including our SSC.

The Council applauds the goal of strengthening the role of the SSC, but is concerned about proposals to place limitations on SSC membership. Some proposals have suggested that scientists who have received money from any fishing industry sector should be barred from SSC membership, thus restricting the pool of candidates to government scientists and academics. We believe such a limitation to be unnecessary and likely harmful to the SSC process in the Western Pacific Region.

In the Western Pacific Region many knowledgeable, well-respected scientists have at one time or another consulted for or worked with the fishing industry in some capacity. Excluding such parties from participation on technical committees would limit an already limited candidate pool in the Pacific Islands. We believe that those scientists selected to serve on the SSC have exhibited the utmost professional integrity, and that recommendations made by this group have been well supported by available scientific information. Given the past history of SSC performance, the limited body of qualified persons available to serve on such committees, and the high degree of public scrutiny experienced by committee members, we believe additional limitations on SSC membership are unnecessary and potentially counterproductive.

## B. Pelagic Fisheries and National Standard No. 1

Like other Councils, we have amended our Fishery Management Plans to be consistent with the requirements of National Standard 1 to avoid overfishing of stocks of fish. The Councils' implementation of National Standard 1 is most successful where managed stocks interact only with domestic fisheries. Implementation of National Standard 1 is less effective in the case of highly migratory species, such as tuna and swordfish, which are encountered by a multitude of foreign fishing fleets and a diverse range of fishing gears.

For example, yellowfin tuna are one of the most commonly caught pelagic fishes in the Western Pacific Region, including Hawaii. However, Hawaiian catches of yellowfin constitute less than 3% percent of the total Pacific catch. Most yellowfin catch occurs in a mix of fisheries in Southeast Asia. As a result of foreign fishing, the stock is now classified as subject to overfishing under the Magnuson-Stevens Act, meaning that its biomass is not yet depleted, but may become so if fishing mortality is not reduced. A similar situation exists for bigeye tuna in the Pacific, where Western Pacific Council fisheries constitute less than 2% of the Pacific total.

The Western Pacific Council recommends that Congress, through reauthorization, provide guidance to the Councils regarding how to address situations where overfishing is occurring due in part to foreign fishing pressure. For example, the Western Pacific Council believes that regulation of U.S. fisheries in response to overfishing should be commensurate with the impact of U.S. vessels on the stock in question. We believe this appropriate, in part, because restricting or closing U.S. fisheries may simply result in economic hardships to U.S. fishermen without providing any benefit to the overfished stock. We have observed firsthand in and around Hawaii, that when the U.S. segment of an international fishery is closed or restricted, foreign fleets increase their effort to make up the shortfall in product. This results in the substitution of imported product for domestic product, and generally results in increased environmental impacts, because the U.S. fleet is more highly regulated than its foreign competitors. We do not believe that the Magnuson-Stevens Act is intended to cause this result and strongly urge Congress to provide express guidance to the Councils and the National Marine Fisheries Service to avoid this situation.

## Proposed Revisions to Section 102 of the Magnuson-Stevens Act

We recommend the following addition to section 102 of the Magnuson-Stevens Act to clarify the Council's obligations to end overfishing:

(e) For fisheries determined by the Secretary to be overfished or approaching a condition of being overfished under Section 304(e) of this Act due to inadequate international enforcement or regulation, the Secretary shall direct the relevant Council to develop and submit recommendations to the Secretary and Secretary of State for domestic regulations and international actions. Any regulations developed under this Section to end overfishing shall be commensurate with the relative impact of U.S. vessels on the fishery.

## C. International Management and "Leveling the Playing Field"

In the Western Pacific Region, our relationships with foreign fishery managers and industries are crucial to ensuring responsible management of highly migratory fishery resources. We have, over many years, cultivated close working

relationships with these countries, such as Japan, and have achieved effective management agreements as a result. We cannot overstate the importance of preserving and cultivating such relationships to facilitate effective management programs.

The Western Pacific Council has deep concerns with proposals that would result in the U.S. “overseeing” foreign compliance with foreign laws, and restricting access of foreign vessels to U.S. ports when such compliance is deemed inadequate. While we strongly support the objective of leveling the playing field for U.S. fishermen by encouraging foreign compliance with conservation laws, this Council, with its strong international focus, believes that attempts to oversee foreign compliance with foreign laws are impractical and unworkable, and may even be counterproductive and alienating.

The Western Pacific Council has a long history of collaborative successes, including development and adoption of measures to reduce bycatch. The Western Pacific Council recommends that through reauthorization the Councils be given the ability to develop proposed regulatory programs and recommendations for international action that are reviewed and implemented by the National Marine Fisheries Service and the U.S. State Department. We believe it appropriate that Congress direct the federal government to report on an annual basis regarding its implementation of these Council recommendations to permit Congress to take additional legislative actions when and if warranted. The Western Pacific Council believes this approach will permit the U.S. to enter into stronger, more resilient conservation agreements with foreign countries, particularly on the Pacific Rim.

#### Proposed Revisions to Title IV of the Magnuson-Stevens Act

We recommend the following amendments to Title IV of the Magnuson-Stevens Act to provide a process to permit Councils to address international fisheries management issues:

1. Amend Title IV to require the Secretary of Commerce, in consultation with the State Department and the Regional Fishery Management Council possessing expertise in the matter, to prepare not later than 1 year after reauthorization, and every year thereafter, a report summarizing (a) those efforts begun made by the Government and the Council to enter into agreements with foreign nations to manage fishery resources; (b) recommendations for legislation or funding that will facilitate development of such agreements; (c) recommendations, if any, to amend existing international agreements to improve their performance and affect; and (d) those actions being taken by the Secretary and Secretary of State to implement recommendations developed under paragraph (3) below.
2. Amend Title IV to require the Secretary of Commerce, in consultation with the Regional Fishery Management Council possessing expertise in the matter, to develop a report listing all stocks of fish classified as over-fished or over-exploited by any regional fishing management organization to which the United States is a member.
3. Amend Title IV to require each Council with management authority over over-fished or over-exploited species to develop formal recommendations to end overfishing or overexploitation. Require each Council with management authority over such stocks to develop recommendations, in consultation with the Secretary of Commerce and the Secretary of State, for domestic regulations and international actions. A copy of the Western Pacific Regional Fishery Management Council's proposed plan and protocol for developing recommendations is attached as Appendix A.

#### D. Fisheries Ecosystem-based Management Plans

The Western Pacific Council is a strong advocate for taking an ecosystem-based approach to fishery management. We believe that this builds on the intent of Congress evident in the previous re-authorization of the Magnuson-Stevens Act, in which much of the foundation was laid for an ecosystem approach to fisheries management. This Council has pioneered the implementation of ecosystem-based fishery management through the Coral Reef Ecosystems Fishery Management Plan, which was the first fishery management plan (FMP) in the US to explicitly address ecosystem-based fishery management. The Council is currently working to transform its remaining FMPs into fishery ecosystem plans, in line with current approaches being developed by the National Marine Fisheries Service, which consider ecosystem-based fishery management from a place-based perspective. The Council's approach is to develop individual plans for all related fisheries in discreet archipelagos such as the Hawaiian Islands, Mariana Islands and American Samoa, or aggregations of remote and isolated islands which share commonalities such as being uninhabited or under military control, such as Wake, Howland, Baker, Jarvis and Kingman Reef and Palmyra Atolls in the Central Pacific.

The Council hopes therefore that the final version of the reauthorized Magnuson-Stevens Act will contain instructions for Councils to prepare ecosystem based fishery management plans. Such an approach was recommended in the recent Ocean Commission report, which also spoke to the formation of regional ecosystem councils to integrate approaches to managing oceans not just for fishery impacts but for all natural and anthropogenic effects. Such initiatives are also consistent with approaches being explored by the United Nations and other fishing nations including Iceland and the

member states of the European Union.

#### E. Environmental Review Processes for Magnuson-Stevens Act Actions

The Council believes that the reauthorization of the Magnuson-Stevens Act should include provisions which would make the drafting of fishery management plans and amendments consistent with the objectives and requirements of the National Environmental Policy Act (NEPA). The National Marine Fisheries Service (NMFS) has placed an increasing emphasis on NEPA to underpin fishery management in the U.S. However, the need to complete separate NEPA analyses, especially Environmental Impact Statements (EIS), creates a duplicative and confusing process. An EIS is drafted by NMFS and not the Council, and the control of the EIS by NMFS frequently impedes the Council process due to excessive scrutiny of the EIS language, alternatives and information through fear of political miss-steps or litigation. Moreover, during the development of an FMP or an FMP amendment the Council will develop a range of alternatives and conduct public hearings. However, because the NEPA process usually lags behind the Council process additional alternatives may emerge subsequent to the Council's decision date. This is confusing to the public and can necessitate yet another round of meetings while the resources we are trying to manage and conserve remain vulnerable. Further, resource management is a dynamic process and the delays engendered by the NEPA process may make Council measures outdated or inappropriate by the time the entire process is completed. Because, both NEPA and the Magnuson-Stevens Act require the use of best available science, and a public review process, the Council believes that the Magnuson-Stevens Act should be amended to clarify that the FMP development process is consistent with the objectives and requirements of NEPA, and that separate NEPA documents, with their own public review process and timelines, need not be prepared as doing so is unnecessarily duplicative, and wasteful of limited staffing resources.

In addition to an explicit recognition that FMP and supporting documents satisfy the procedural requirements of NEPA, we also recommend that the MSA clarify that Councils constitute "applicants" for the purpose of NEPA and Endangered Species Act compliance. Section III discusses this matter in more detail, and outlines procedures by which the Councils may assist NMFS in streamlining regulatory requirements.

#### F. Resolving Conflicts between the Magnuson-Stevens Act and the National Marine Sanctuaries Act

Both NMFS and the National Ocean Service (NOS) are housed within NOAA. However, these agencies have very different objectives. NOS is responsible for the National Marine Sanctuaries Program (NMSP) and Marine Protected Areas (MPAs) within the USA. This largely conservation objective frequently put it at odds with NMFS and the Councils whose objectives are to build sustainable fisheries. There are increasing tensions within the Agency over management of fisheries in National Marine Sanctuaries. For example, in our Region, there is increasing confusion about who will manage fishing activities in the federal waters of the Northwestern Hawaiian Islands (NWHI) as it is transformed from a coral reef reserve to a sanctuary. The NMSP office in Hawaii has a developed management plan (using NEPA as its vehicle) which would regulate all fisheries within the boundaries of the proposed NWHI sanctuary. These fisheries have been stringently regulated and monitored by NMFS and the Council for 30 years, but now their future is uncertain, due in large part to the unresolved question of who has authority for fisheries within sanctuaries. This situation is a gross disservice to the public and the fishermen and women who make their livelihoods within the NWHI, and is a disincentive for the continuity of these fisheries. It is also a reflection of NOAA's internal conflict concerning appropriate goals for the management of our nation's fisheries.

Ocean areas protected under the National Marine Sanctuaries Act (NMSA) currently range in size from one-quarter square mile in Fagatele Bay, American Samoa to over 5,300 square miles in Monterey Bay, California, one of the largest marine protected areas in the world. Together, these sanctuaries cover nearly 18,000 square miles of ocean waters and habitats, an area nearly the size of Vermont and New Hampshire combined. By comparison, the proposed NWHI sanctuary would encompass over 130,000 square miles of the Pacific Ocean, an area larger than the land area of Florida and Georgia combined. Designation of the NWHI sanctuary alone would expand by over seven fold areas currently designated under the NMSA.

The NMSA provides that Fishery Management Councils may develop and propose fishery management regulations within designated marine sanctuaries; however, only if the sanctuary designation document involves fishing. The NMSA also requires the Secretary of Commerce to accept proposed fishery management regulations developed by the Councils unless the Secretary finds such proposed regulations inconsistent with the "goals and objectives" of the proposed marine sanctuary. Although the purposes and policies of the NMSA are generally in alignment with the Magnuson-Stevens Act, those specific to each Sanctuary vary widely and at times, conflict with Magnuson-Stevens Act requirements to use the best available scientific information. Further, changes to bycatch designation documents currently being contemplated by the NOAA Sanctuary Program would have the effect of bypassing Regional Fishery Management Councils and usurping control of fishery resources within designated sanctuaries.

In view of these issues, we propose to amend the NMSA to specify that Fishery Management Councils retain authority to develop fishery regulations and manage fisheries within designated sanctuaries areas consistent with the Magnuson-Stevens Act. The proposed amendment will (1) ensure that fisheries are conducted in accordance with sound scientific principles; (2) clarify management roles and responsibilities concerning fishery actions; (3) ensure appropriate regulatory processes and public participation; (4) avoid unnecessary duplication of process; and (5) eliminate current conflicts between the NMSA and the Magnuson-Stevens Act. The specific elements of this proposed amendment include the following:

1. Exclude from the definition of “sanctuary resources” under section 302 of the NMSA fish and Continental Shelf fishery resources under the authority of the MSA.
2. Clarify that Councils shall use existing regulatory procedures under the MSA to propose fishing regulations and manage fisheries within designated marine sanctuaries.
3. Specify that the Secretary of Commerce shall (a) review proposed fishery regulations in accordance with section 304(b) of the MSA; and (b) recommend to the Council changes to proposed regulations when the Secretary finds such regulations inconsistent with Fishery Management Plans, the MSA, or other applicable law, including the NMSA.
4. Specify that (a) the process for developing fishing regulations under MSA satisfies the consultation requirements of section 304(d) of the NMSA; and (b) fishing activities conducted in compliance with regulations developed under the MSA do not violate the NMSA.

#### G. ESA Section 7 Consultations

Reauthorization of the ESA is not the subject of this hearing, but is a concern of this Committee and routinely has a major impact on fisheries management. Section 7 consultations have been conducted for many of our fisheries and have resulted in the temporary suspension of one of our more important pelagic longline fishing operations. However, each of the consultations developed under ESA for our fisheries was conducted by the NMFS, under the authority of the Secretary of Commerce. We understand that drafts of ESA reauthorization bills would delegate all authority for ESA Section 7 consultations to the Secretary of the Interior and by extension, to the U.S. Fish and Wildlife Service (USFWS).

We are concerned with this proposal, particularly since NMFS has just recently established a Regional Office in the Pacific Islands to manage fishery and ESA consultation issues, which now has the necessary scientific expertise to analyze Pacific Fisheries under the ESA. Although the Council has been critical of some of the biological opinions developed by NMFS for the Western Pacific Region, such Biological Opinions are developed within an agency with responsibility for and knowledge of marine fishing. The USFWS has very little scientific capacity to deal with fisheries, sea turtles or marine mammals in this region, topics which have been the focus of research at NMFS Pacific Islands Fisheries Science Center. Moreover, the NMFS Pacific Islands Regional Office has the most comprehensive grasp of the issues surrounding a Section 7 consultation for marine mammals or sea turtles and can liaise directly with colleagues in other NMFS divisions for consultation inputs. We therefore strongly believe that transfer of ESA Section 7 authority from the Secretary of Commerce to the Secretary of Interior would result in a step backward in resolving conflicts between the ESA and its application to Council-managed fisheries, and thus should be abandoned.

Aside from our concerns with transfer of authority, we generally support legislation proposed by the House of Representatives to reauthorize and amend the ESA. Specifically, we support provisions in the proposed legislation to ensure ESA consultations are based upon sound scientific information, and that applicants for permits are afforded status and involvement in the consultation process. We recommend that reauthorization legislation to clarify the Councils’ role in the ESA section 7 consultation process by stating that Councils may participate as “applicants” in ESA Section 7 consultations, and NEPA processes if the Councils possess the requisite resources to do so. This clarification is important to ensure the Councils retain active involvement in ESA and NEPA processes, particularly since the Councils possess the request knowledge and resources to assist NMFS in developing required ESA, NEPA, and Magnuson-Stevens Act documents.

#### III. Future Challenges for Fisheries Managed by Western Pacific Council

We believe the most significant challenge facing the Western Pacific Council is to effectively address fishing pressures from foreign countries that are just starting to expand fishing fleets to target tuna and swordfish species. We urge the Committee to carefully consider our recommendations on this matter, and to empower the Councils to continue developing effective fishery management agreements with foreign fishery management agencies.

Aside from international fishing pressures, the Western Pacific Council, along with other Councils, continues to be inundated with regulatory requirements, some of which, while well-intentioned, conflict, and result in costly delays and litigation that

prevent implementation of scientifically-sound management strategies. We are not alone on this issue. We are aware of many proposals for “regulatory streamlining” that are intended to reduce the regulatory burdens of both the federal government and the Councils. While we support such streamlining in concept, we differ in our recommended approach to achieve this result.

Simply stated, we recommend that Congress assist the Councils and the federal government by directing the Councils to develop proposed implementing procedures to consolidate the myriad of environmental requirements associated with Fishery Management Plan development, such as the National Environmental Policy Act and the Endangered Species Act. The Councils are uniquely situated to develop processes for approval by NMFS that will permit effective and efficient implementation of the Magnuson-Stevens Act, and other environmental laws. We have years of experience on these issues, and ultimately, will be highly involved in implementing any procedures that are developed. Given our experience, I am confident the Councils, working collaboratively with the National Marine Fisheries Service, could quickly develop administrative processes that streamline regulatory requirements, while at the same time permit public involvement and full consideration of all applicable scientific and technical information. We believe each Council should be permitted to tailor specific administrative procedures to meet its own needs and circumstances.

For example, each Council could submit to NMFS specific recommendations and protocols to integrate FMP preparation with development of NEPA and ESA documents. In doing so, Councils could ensure that FMPs and supporting information contain required analyses to satisfy the requirements of these laws and the Magnuson-Stevens Act. As an applicant in an ESA consultation, the Council could submit such document to NMFS in the form of a biological assessment to assist NMFS in developing any required ESA section 7 consultation documents. Such protocols could be adopted in the form of policy guidance or rulemaking, and could be made flexible to permit each Council to develop tailored processes to fit its needs and respective fishery issues.

#### IV. Conclusions

The Western Pacific Regional Fishery Management Council appreciates this opportunity to comment on the reauthorization of the Magnuson-Stevens Act. As indicated in these written materials and our oral testimony, marine resources possess a unique importance to Hawaiian peoples. The Council would appreciate the opportunity to meet with Committee staff to discuss these matters [and our proposals in more detail](#)

#### Appendix A

##### ***Western Pacific Council protocol for international management of Pacific highly migratory pelagic species***

- The Council participates on U.S. delegations to Regional Fishery Management Organizations (RFMOs e.g. IATTC and WCPFC) in the Pacific Ocean and is included in all pre and post meetings and negotiations.
- The Council and NMFS monitor RFMO meetings and actions and relevant fisheries, the Council becomes aware of a need for management action or receives notice from NMFS or the RFMO directly of a need for such action, with supporting documentation.
- The Council reviews information from RFMOs, NMFS, and other sources concerning stock assessment, area of consideration, fishery issues and data supporting determinations, and the role of U.S. fisheries in causing or contributing to overfishing.
- NMFS provides formal notice and time frame for Council action within MSFMCA and RFMO frameworks.
- The Council refers information to its Pelagics Plan Team, Advisory Panel(s), Science and Statistical Committee and other advisors for review and advice with focus on:
  - Definition and condition of the stock or other fishery management unit, and the issue of concern (e.g., overfishing, bycatch, allocation, etc.),
  - Possible reasons for the situation including fishery and environmental conditions that may be relevant to the stock condition or other management concern,
  - The relative role of U.S. fisheries in overall stock harvests and management situation,
  - Existing conservation and management measures of the RFMO with jurisdiction over the stock or fishery involved,
  - Possible multi-lateral measures to avoid or end overfishing, rebuild the stock, or resolve other management concerns,
- The Council's Pelagic Plan Team, Advisory Panel(s), Science and Statistical Committee and other advisory bodies recommend possible domestic and international fishery conservation and management measures, including a comparison and evaluation of alternative measures which

- identifies the effects and effectiveness of potential Pacific-wide, regional, and local measures.
- The Council makes initial decision on how to address problem (initial action).
  - The Council's draft decision document is distributed for public review and advice.
  - The Council makes formal recommendations to NMFS and the Department of State on:
    - domestic regulations
    - international actions
  - The Council drafts a position paper on how the RFMO should address the situation - the position paper clearly states the Council's recommendation on every substantial issue.
  - The Council presents its position within the U.S. delegation to the RFMO.
  - The RFMO meets and acts on fishery conservation and management needs in the international arena.
  - The Council considers the RFMO's actions, U.S. government positions and legal requirements under applicable treaties and the MSFCMA.
  - The Council determines the appropriate regulatory response for domestic fisheries consistent with international agreements and the MSFCMA.
  - The Council takes final action (if any) to recommend regulations for NMFS' approval and implementation.
  - NMFS implements approved recommendations