TESTIMONY OF

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FISHERIES CONSERVATION, WILDLIFE & OCEANS

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Thank you, Mr. Chairman and members of the Subcommittee, for the invitation to testify today on fish harvesting cooperatives. I am Jim Gilmore, Director of Public Affairs for the At-sea Processors Association (APA). APA represents seven companies that operate 19 U.S.-flag catcher/processor vessels. The catcher/processor fleet participates in the Nation's largest fishery, the Bering Sea groundfish fishery, and in the west coast Pacific whiting fishery.

Fish Harvesting Cooperatives

APA members participate in two fish harvesting cooperatives--the Pollock Conservation Cooperative (PCC) and the Pacific Whiting Conservation Cooperative (PWCC). The pollock cooperative was formed in 1999; the Pacific whiting cooperative was initiated in 1997. Participation in the cooperatives is voluntary. Under terms of a private contract, eligible participants in the catcher/processor sector of the Bering Sea pollock fishery and the Pacific whiting fishery allocate the available harvest on an individual basis and members limit their harvests to the agreed upon amount.

The cooperatives work within the established federal fishery management system. In the case of Bering Sea pollock and Pacific whiting, the regional councils recommend and the National Marine Fisheries Service (NMFS) implements Total Allowable Catch (TAC) level for the fisheries annually. For both fisheries, fishery managers divided the TAC among three sectors in which the catcher/processor sector is allocated a certain percentage of the TAC. Eligible participants in the catcher/processor sector operate within this framework in establishing cooperatives in which member companies agree to limit their individual catches to a specific percentage of the TAC. By agreeing to apportion the available harvest on an individual basis, fishing and processing can be conducted at a deliberate, rational pace. Once the apportionment is set, the cooperatives allow for transfers of target species among member companies. The cooperatives are *not* involved in matters relating to pricing or marketing of fishery products.

While participation in the cooperatives is voluntary, all of the qualified participants in the catcher/processor sector in the Bering Sea pollock fishery and Pacific whiting fishery participate in the cooperative. It is unlikely that the cooperatives could succeed without 100 percent participation of all qualified entrants in the fishery. If a single, qualified entrant continued to engage in a "race for fish," it would likely undermine collective efforts by the remaining fishing companies to rationalize fishing practices. It is instructive that both the Bering Sea pollock and Pacific whiting cooperatives include multi-vessel companies and single vessel companies. Both larger and smaller-sized companies realize benefits from cooperative fishing, although the way in which those companies benefit may differ.

Practical Considerations in Forming Fish Harvesting Cooperatives

The cooperatives formed by catcher/ processor companies are feasible because in the Bering Sea pollock and Pacific whiting fisheries the federal government 1) regulates output by setting annual catch limits in the fishery, 2) imposed effective limits on new entrants into the fisheries, and 3) created separate allocations for the catcher/processor sector in the pollock and Pacific whiting fisheries.

Because there is no specific legislative authority authorizing the catcher/processor cooperatives, prospective co-op members prudently requested a "business review letter" from the Justice Department's Antitrust Division evaluating the cooperatives. The Antitrust Division confirmed that because the government regulated output through TACs and limited entry into the fisheries there was no bar to qualified participants voluntarily establishing individual harvest limits. Far from expressing concerns about fish harvesting cooperatives leading to anti-competitive practices, the business review letters support the industry's view that the formation of cooperatives could be expected to benefit consumers. The Antitrust Division's letter of May 20, 1997 on the proposed Pacific whiting co-op stated, "*To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of the processed Pacific whiting and or reduces the inadvertent catching of other species whose preservation is also a matter of regulatory concern, it could have pro-competitive effects.*"

Once a cooperative is established, there must be effective monitoring and enforcement of fishing activities to ensure compliance with terms and conditions of the cooperative contract, particularly adherence to agreed upon individual catch amounts. Pollock catcher/processors are required to carry two federally trained and certified fishery observers onboard at all times while fishing; catcher/processors in the Pacific whiting fishery voluntarily carry at least one fishery observer. Observers record all target and non-target species catch, relying on flow scales that weigh the catch as it moves along a conveyor from the fish hold into the factory. (Catch accounting is relatively easy in the pollock and Pacific whiting fisheries because 99 percent of the catch is the target species.)

The federal observers report catch data electronically and on a real-time basis to the National Marine Fisheries Service (NMFS). Cooperative members authorize a private company, Sea State, Inc., to access the NMFS observer reports to calculate each individual cooperative member's catch amount. NMFS maintains the responsibility for closing a fishery when the catcher/processor sector allocation is reached. The cooperative enforces individual catch limits. The cooperative contract provides for monetary penalties should companies exceed their assigned quota, including any quota leased from other co-op members. To date, no penalties have been assessed in either cooperative.

Fishery Cooperatives Improve Fisheries Conservation and Management

The North Pacific groundfish fisheries, including Bering Sea pollock, and the Pacific whiting fishery are well-managed and sustainable fisheries. Fish stocks are healthy and abundant. NMFS' most recent report to Congress on the status of U.S. fisheries states that none of these stocks is over-fished. In the North Pacific in particular, fishery managers have adopted an ecosystem-based management approach to conserve target species and to minimize effects of fishing on other fish species, marine mammals and sea birds and sensitive habitat. This ecosystem-based management approach, which includes annual TAC levels, comprehensive observer coverage, sophisticated catch accounting practices, electronic catch reporting, among other progressive management measures, makes the cooperative a viable option. What the management system had not done, however, was to stop the "race for fish." Fishing cooperatives end the "race for fish" and, in doing so, further improve conservation and management of these important national resources.

Producing More Food From Each Pound of Fish Harvested

In 2001, the pollock catcher/processor fleet yielded 49% more products from each pound of fish harvested than in 1998, the last year of the "race for fish." (See Attachment "A.") In the past three years, vessel operators have instituted numerous changes in fishing and processing practices to achieve this dramatic improvement in the amount of products produced from the available harvest. In terms of changes in fishing practices, without a "race for fish," fishing captains can now be more discriminating and deliberate, prospecting until they locate optimal-sized fish for maximizing processing yields. Under the "race for fish" format, slowing down fishing operations meant sacrificing fishing opportunities to other vessels.

Production yields are increasing, in part, because multi-vessel fishing companies are using their most efficient catcher/processor vessels and leaving less efficient vessels tied up. Also, when the co-op shifted the emphasis from maximizing one's share of the TAC to deriving as much value as possible from a pre-determined allocation, extra processing lines onboard active catcher/processors could be replaced with equipment, such as decanters and mincing machines, that extract additional protein from fish after primary processing and before secondary processing of inedible fish parts into fish meal.

Not only is more product and value derived from each fish processed, but very little of the catch is discarded. In 2001, the discard rate for Bering Sea pollock catcher/processors was six-tenths of one percent. The average discard rate for world fisheries is about 25 percent.

Resolving Overcapitalization in the Fisheries

Ten catcher/processor vessels are licensed to catch and process Pacific whiting, and 20 catcher/processor vessels were eligible to catch and process Bering Sea pollock when the pollock cooperative was formed in 1999. Without the "race for fish," between 6 to 8 of the ten eligible catcher/processors participate annually in the Pacific whiting fishery, and 14 to 16 pollock catcher/processors participate in the Bering Sea pollock fishery each year. One pollock catcher/processor vessel has forfeited its U.S. fishing privileges, but the remaining 3 to 5 catcher/processors eligible to fish for pollock remain moored or conduct some limited fishing in the non-pollock North Pacific groundfish fisheries.

Anticipating the formation of the pollock catcher/processor cooperative, federal law and regulations severely curtail other fishing opportunities for the fleet, avoiding the "spillover" of excess capacity to other fisheries. The Bering Sea pollock catcher/processor fleet is limited to catching somewhat less than its historical share of non-pollock Bering Sea groundfish species, and the fleet is not permitted to operate beyond U.S. waters of the Bering Sea except for the Pacific whiting fishery. There are similar constraints placed on pollock catcher vessels that deliver to Bering Sea onshore processors and motherships, again, to prevent unused capacity from being deployed in other fisheries.

However, because of the more ephemeral nature of co-ops vis-à-vis Individual Fishing Quota (IFQ) programs, it is unlikely that idled vessels will be permanently retired from the fisheries. Cooperatives are voluntary. The government does not assign the individual quotas. If circumstances warranted, co-op members might elect to return to a "race for fish." Companies with idled vessels would likely reactivate those vessels to be more competitive in the race.

However, as long as the cooperatives continue, there is no incentive to employ harvesting and processing capacity beyond what is needed to catch and process the available harvest. Therefore, in addition to idling vessels, companies are no longer investing in equipment to increase fishing and processing capacity. Under

the "race for fish" fishermen and processors engaged in "capital stuffing," enhancing vessels' harvesting capability and adding more processing lines, refrigeration equipment, etc. Harvesters and processors sought to maximize their individual share of the TAC. Because virtually all participants were making these investments, their share of the catch remained relatively unchanged. And because TAC levels remained relatively stable, the investments were not yielding additional value. This unhealthy economic situation, which led to numerous bankruptcies in the catcher/processor fleet in the 1990s, is alleviated under fishing cooperatives.

Cooperatives Complement Steller Sea Lion Protection Measures

In 1997, NMFS classified the western stock of Steller sea lions as endangered under the Endangered Species Act (ESA). Despite years of research, scientists are unable to determine the cause of the decline of Steller sea lion populations. To insure that fishing does not hinder the recovery of sea lion populations by competing for groundfish with foraging sea lions, NMFS and the North Pacific Fishery Management Council have implemented far-reaching management measures that close areas to fishing and disperse fishing effort temporally and spatially.

Cooperatives, which are in effect for all sectors of the pollock industry, complement federal rules designed to slow down and spread out the harvest. For example, in its first year of co-op fishing in 1999, the pollock catcher/processor sector reported that vessels made 45% fewer tows per day and caught 27% fewer fish per tow by rationalizing the fishery. As a consequence of these operational changes, catcher/processors are taking over 200 days to take their quota compared with about a 90-day season in 1998. Other pollock sectors have had similar experiences. NMFS notes in its 2001 biological opinion on Steller sea lion protective measures that pollock cooperatives have "shown success in reducing the 'footprint' of fisheries." The biological opinion goes on to recommend "an expansion of these types of approaches to rationalize all (North Pacific) groundfish fisheries."

Cooperatives Help Achieve Lower Discard Rates And Reduce Incidental Catches of Non-Target Species

As noted earlier in my testimony, pollock accounted for roughly 99 percent of total catch by the pollock catcher/processor fleet in 2001, and the fleet discarded just six-tenths of one percent of its total groundfish catch. Performance in the Pacific whiting fishery is similar. While these two fisheries are, perhaps, the "cleanest" fisheries in the world, the cooperatives further promote increased retention and increased utilization of non-target groundfish species. Under the "race for fish," catcher/processors, which have multiple processing lines, dedicated each line to processing as much pollock or Pacific whiting as possible as quickly as possible. Now, factories can be more flexible to accommodate processing the modest amounts of non-target groundfish species that are incidentally caught.

In the North Pacific, federal regulations require trawl vessels to discard any herring or crab that is incidentally harvested, and halibut and salmon can be retained only if donated to food banks. (There are similar restrictions on trawl vessels in the Pacific whiting fishery.) Because the Bering Sea pollock and Pacific whiting fisheries are conducted using mid-water trawl nets, salmon is the only "prohibited species" caught in significant quantities. To complement fishery management measures that limit salmon bycatch, in 2001, the nine pollock cooperatives that govern fishing for the inshore processing sector, mothership processing sector and the catcher/processor sector signed an inter-cooperative agreement to achieve further reductions in salmon bycatch. The 120 pollock catcher and catcher/processor vessels that constitute these nine cooperatives voluntarily agreed to locate fishing away from areas of salmon concentrations. Sea State, Inc., the firm that records and monitors individual catch levels for cooperatives members, administers the

bycatch program as well, downloading NMFS observer data and alerting pollock fishing vessels of bycatch "hotspots." Each cooperative's bycatch rate is evaluated on a real-time basis and if its vessels' performance is sub-par, then vessels from that cooperative must voluntarily refrain from fishing in those identified areas.

Public Policy and Fish Harvesting Cooperatives

As is the case with IFQ programs, fish harvesting cooperatives are not practical for all fisheries. However, the success of the pollock and Pacific whiting cooperatives suggests that fisheries conservation and management could be enhanced by the formation of cooperatives in other fisheries. Cooperatives could be an attractive alternative for a number of reasons. Among other things, cooperatives could alleviate public policy concerns over the more permanent nature of government-issued quota shares under IFQ programs. Also, concerns among stakeholders that they could be disadvantaged under the initial allocation of quota shares under an IFQ program are alleviated because cooperatives give stakeholders a direct voice in the apportionment of the TAC.

The American Fisheries Act (AFA), enacted in 1998, included specific provisions for pollock cooperatives in the non-catcher/processor sectors, including considerations for pollock and non-pollock processors and non-pollock fishermen. The North Pacific Council published a draft report in October 2001 that confirmed the success of the pollock cooperatives. The Council's report to Congress stated, "Reduced bycatch, higher utilization rates, increased economic returns, and improved safety are among the direct benefits of the AFA…the cooperative management structure has shifted more of the monitoring and enforcement burden to the cooperatives and their members, which has allowed the fishery to be managed more precisely." The AFA and the Council's report could provide useful guidance to Congress in considering legislation relating to IFQ programs and cooperatives. We would particularly commend to the Subcommittee's attention the consideration for processors in the design of the inshore and mothership pollock cooperatives and the management measures that preclude "spillover" of fishing capacity between the pollock and non-pollock groundfish sectors.

Although our experiences and the North Pacific Council's report on the AFA confirm that fishing cooperatives offer a promising approach to enhancing fisheries management and conservation, there are impediments to the formation of new cooperatives. In reauthorizing the Magnuson/Stevens Act, including considering changes to existing IFQ policies, Congress should consider the following issues related to expanding opportunities for communities of interest to form fish harvesting cooperatives.

The moratorium on new IFQ programs impedes the formation of new fish harvesting cooperatives, in part, because NOAA General Counsel interprets the existing IFQ moratorium to preclude regional fishery management councils from allocating a percentage of the TAC in a fishery to any like-minded group of fishermen interested in forming a cooperative. An opinion from the agency's lawyers contends that an allocation of a percentage of the TAC to a group violates the moratorium on issuance of quota shares. It is difficult for a fish harvesting cooperative to succeed without unanimous, or near unanimous, participation of eligible participants. By continuing to race for fish, outliers can frustrate the will of fishermen seeking to rationalize a fishery through formation of a cooperative, so allocating to fishery participants seeking to create a cooperative on the basis of an historical catch formula is important. If Congress extends the IFQ moratorium but wants to permit, or even encourage, cooperatives, some provision should be made for allowing allocations to groups.

A second issue relates to the Fishermen's Collective Marketing Act of 1934. Although formation of the catcher/processor cooperatives for pollock and Pacific whiting did not rely on any specific statutory

authority, federal law does provide for fishermen to engage in collective harvesting *and* marketing activities under the statutory authority of the FCMA. This Act exempts qualified fishermen from antitrust laws in allowing collective production and marketing arrangements similar to exemptions enjoyed by agricultural producers. However, because the FCMA allows for collective *marketing* arrangements, there is case law that might preclude processor-owned vessels from participating in a fish harvesting cooperative formed under the FCMA statute. In reviewing the success of fish harvesting cooperatives, Congress might review the FCMA to determine whether changes to the 1934 Act are warranted and would serve to facilitate cooperative formation.

That concludes my testimony, Mr. Chairman. I am pleased to answer any questions that Members of the Subcommittee might have. Thank you, again, for the opportunity to testify.

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