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Testimony
Before the Committee on Resources
U.S. House of Representatives

Legislative Hearing on H.R. 5018 and H.R. 1431
To reauthorize the Magnuson Stevens Fishery Conservation and Management Act
and for other purposes

May 3, 2006 Mr. Chairman, members of the Committee, for the record my name is Rod Moore and I serve as Executive Director of the West Coast Seafood Processors Association, a non-profit trade association representing shore-based seafood processors and associated businesses in California, Oregon, and Washington. Our members range in size from two of the largest seafood processing companies in the United States to three of the smallest, including one owned and operated by two generations of women. Collectively, our members process the majority of Pacific groundfish, pink shrimp, Dungeness crab, and Pacific whiting landed in the three west coast states, along with substantial amounts of salmon, Pacific sardines, albacore tuna, and other species. All of our members are privately owned, U.S. citizen companies that in many cases go back for several generations. Our members are integral parts of their communities and actively participate in the fisheries management process at the state and federal level.

I am also a member of the Pacific Fishery Management Council but my testimony reflects solely the views of my members, although we agree with many of the comments that will be presented by the Council's Executive Director who is also testifying today.

Before talking about specifics in the bills before the Committee, I would like to offer some general comments on the Act and how it has evolved. When the Fishery Conservation and Management Act was passed in 1976, it established a unique cooperative partnership among scientists, managers, resource users, and the public through the regional Council system. Users gained the benefit of having a voice in decisions that affected their lives and livelihoods. At the same time, they assumed the responsibility of conserving and managing the fisheries under science-based guidelines. Equally important, the Congress recognized that there were significant differences in the ecological, economic, and social factors that affected fisheries around the country. What works in the Gulf of Mexico may not work on the Pacific coast. Thus the Act provided for over-arching science-based principles and standards, while allowing room for flexibility so that each region could make the most practical choices in ensuring that management of our fisheries provides a net benefit to the nation. As we consider changes to the law, we should make certain that these basic principles - science, cooperative partnership, and regional flexibility - are not lost.

On the whole, we support H.R. 5018 although we suggest some minor modifications and additions be made. We also note that some of the same general themes in H.R. 1431, such as Council member training, peer review, cooperative research, and fishing gear development are contained in both bills, though we prefer the way these issues are handled in H.R. 5018 because they provide the flexibility that the Councils need. Following are our comments on some of the major issues.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)
We have seen numerous comments in the press claiming that section 10 of H.R. 5018 somehow denies public participation by melding NEPA with the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA). Nothing could be further from the truth. The MSFCMA provides one of the most transparent, exhaustive public participation processes that we have ever seen. There are numerous opportunities for public comment at all stages of regulatory development. In fact, at our April Council meeting, we had nearly 300 witnesses testify before the Council on a single agenda item. We also reviewed hundreds of written comments on the same issue, along with the reports from local meetings held for the benefit of the public that could not afford to travel to the Council, and three separate Council committee reports. I fail to see how the public was not heard.
In fact, what NEPA adds to the Council process is more work for Council staff and fisheries managers, more paper, more cost, and more confusion to the public. The sheer volume of paper that a member of the public has to be familiar with has become so large with the addition of NEPA documents that we regularly need to bring a second suitcase to meetings to avoid overweight luggage charges on airplanes. Advisory panel members spend hours of preparatory time trying to wade through the documentation; it gets even worse for a fisherman who has to get off his boat to go to a Council meeting. Management actions are delayed because of time needed by NMFS staff to ensure we are complying with NEPA. And if we goof, we are slapped with a lawsuit alleging inadequacy of an environmental impact statement. In the past 4 years, our members have spent over $100,000 to intervene in such lawsuits, just to protect the interests of our industry. Think how much better our fisheries would be if all that time, money, and effort were spent on resource surveys, stock assessments,

and gaining better understanding of our fish stocks.
We believe that the blending of requirements of NEPA and the MSFCMA as will be accomplished when H.R. 5018 is enacted represents an excellent method of resolving these issues.

NATIONAL MARINE SANCTUARY ACT vs. MSFCMA

We are unique in the Pacific region in having a significant portion of our coastline - and fishing grounds - included in National Marine Sanctuaries. Unfortunately, this unique state of affairs has led to significant problems with efficient fisheries management.
The difficulty lies in the fact that the National Marine Sanctuary program has its own ideas of how resources should be managed and in some instances have been pretty blunt about insisting that we do things their way or else things will be done to us. Unlike the very public process inherent in the MSFCMA, as noted above, the Sanctuaries have a very tightly controlled, bureaucratically top-heavy decision system. They also have little to no expertise in fisheries management and the effects of regulations on resource users. While the Pacific Council has tried to accommodate resource concerns in Sanctuaries - and has done so quite well in several instances - there is continued insistence by the Sanctuary program that they intend to take charge of everything, even though this will require a complete rewrite of the regulations establishing the Sanctuaries.
While section 10(d) of H.R. 5018, in combination with section 5(h)(1), is a good step in the right direction towards resolving the conflicts, we would prefer a more straight-forward approach that makes clear that the Councils, not the Sanctuaries, have jurisdiction under the MSFCMA process over activities that affect fisheries. Again, the MSFCMA provides transparency and easy public input; the National Marine Sanctuary Act does not. At the very least, we urge inclusion in section 5(h)(1) of the phrase “(including the water column)” after the word “habitat”. One of our most vexing issues at the moment is an effort to provide protection for certain areas in the Channel Islands National Marine Sanctuary, only to be told by the Administrator of NOAA that we cannot because we don’t have authority over the water column, just the ocean floor. While that change would help us resolve a current issue, we still would like a more clear resolution to the larger problem.

REBUILDING AND OVERFISHING

Without doubt, the issue of how to address rebuilding of a small number of species in the context of a multi-species fishery is the biggest problem faced by the west coast in the last 10 years. Our Pacific Groundfish Fishery Management Plan covers 82 species, none of which are harvested individually. Of those, 7 have been classified as “overfished”, primarily due to low productivity as a result of ocean conditions. We have reduced catches, terminated at least one fishery, instituted total catch limits, required carriage of electronic monitoring systems, instituted a trawl vessel buyback program, and closed off tens of thousands of square miles of productive fishing grounds from Canada to Mexico. We have also dealt with a continuing series of lawsuits claiming that we aren’t doing enough.
The results are sobering: in 1997, our non-whiting groundfish landed catch totaled 56,209 metric tons with an estimated ex-vessel value of $72.7 million; in 2005, those same species’ landings totaled 26,586 metric tons with an estimated ex-vessel value of $43.4 million. That is a roughly 53% reduction in landings and a 40% reduction in ex-vessel revenue in 8 years. That difference in value is also equal to about twice what we spend on groundfish research and observer coverage on the west coast every year.
Let me emphasize that these reductions don’t come about because of massive declines in stocks. In fact, most of our stocks are healthy and all are managed conservatively. Rather, what we are facing is the inability to access the 75 species that are in good shape because we are trying to prevent harvest of the 7 species that are being rebuilt under the provisions of existing law. Further, keep in mind that species can’t simply be brought above the “overfished” level; we are required to maintain restrictions until species are brought all the way to our maximum sustainable yield proxy, which is 40% of calculated virgin spawning biomass. So a species like Pacific ocean perch, which most likely was a fringe population off the northwest coast and which was severely fished down by foreign fleets prior to 1977, may never rebuild and harvest restrictions may be in place for generations to come.
To make matters worse, stock assessments are done using computer models that require huge amounts of largely unavailable data. It is no coincidence that the 7 species are all in the group known generally as “rockfish”, because they live in rocky habitat that is inaccessible to standard trawl surveys. In fact, we have not been able to use trawl survey data for widow rockfish for years because it is essentially meaningless. The result is that these species will in all likelihood not be considered rebuilt until their populations have grown so large that they are forced out of their natural habitat and can be captured by a trawl survey. In the meantime, we will continue to forgo harvest of other healthy stocks and increase bycatch and discards.
Please understand that we are not interested in fishing any species to commercial - or real - extinction. But with a multi-species fishery such as we have on the west coast, we need to find some way to balance rebuilding with access to healthy stocks that can sustain our coastal communities.
With this in mind, we believe that section 11 of H.R. 5018 goes a considerable way towards addressing the problem. We would ask that you consider one important addition in light of a recent 9th Circuit Court ruling: modify section 304(e)(4)(A)(i) by replacing “as short a time as possible” with “as short a time as practicable”.
Under the ruling in the case of NRDC v. NMFS, the court tried to figure out the balance between rebuilding in as short a time as possible with meeting the needs of communities. The resulting guidance that we have received from NMFS - and for the record, WCSPA was a defendant intervener in the case and does not necessarily interpret the court direction the same

way as NMFS - is that we have to start with rebuilding plans that assume zero harvest, calculate the date by which a stock will be rebuilt, then gradually allow some harvest in consideration of community needs but not stray too far from the zero-harvest rebuilding date. Thus in 2007, we again anticipate harvests being reduced as we comply with this latest direction, on top of everything else that we have done. With a late start to the crab season due to weather and restrictions on salmon fishing (also to meet rebuilding requirements), fishermen are not going to have much to fall back on when the new restrictions come into play in 2007. We need the relief that section 11 and the additional change we are suggesting will provide.

CATCH LIMITS

On the west coast, we have operated under catch limits for many years. In the groundfish fishery, we have annual limits that are established on the basis of recommendations from our Scientific and Statistical Committee and the technical experts of our Groundfish Management Team. We also have bi-monthly cumulative limits designed to ensure a year-round fishery and avoid early closures. Unless a stock has been assessed and known to be healthy, the annual catch limits are set below the ABC level. And, they are total catch limits so any discards are accounted for in determining total mortality.

We would, however, oppose rolling over catch limits to the following year as has been called for in other bills. For the most part, our annual catches from all fisheries are below what is provided for. However, because we have extensive recreational fisheries for some species, we do not have landing reports to rely on for all harvest. Recreational catches are modeled at the beginning of the year and then models are reconciled through post-season surveys. The survey methodology, while improving, is still not exact and we had a case several years ago where recreational effort was far greater than anticipated and the resulting post-season survey indicated total recreational catch for two species was higher than we thought. Had there been a requirement to roll over this assumed catch overage, we would have had no commercial or recreational fishery the next year.

We spend a great deal of time at each Council meeting dealing with in-season management adjustments to keep our catch levels within the annual framework. In fact, it is often the commercial and recreational fishermen who suggest harvest constraints to the Council in order to stay within limits. Because we are cautious in setting annual limits we are able to accommodate these infrequent miscalculations without doing damage to fish stocks.

DATA COLLECTION

We strongly support the definition of “confidential information” in H.R. 5018 as we believe it strikes a good balance between the need to acquire economic data in support of fisheries management and the need to protect proprietary business data which, if revealed, could cause problems for small businesses operating in a highly competitive industry. We would suggest that you make a conforming amendment in section 303(b)(7) of the MSFCMA by replacing “(other than economic data)” with “(other than confidential information)”. This would ensure that there is no legal conflict in data collection.

We also agree with provisions ensuring that the Scientific and Statistical Committee (SSC) provides on-going scientific advice, with cooperative research provisions, with developing guidelines for best scientific information, with recreational data collection, and with requirements for peer review. Sound science and reliable data are the under-pinnings of good fisheries management and should be supported.

We do not agree with paying an additional stipend to SSC members. In order to provide the best science, the SSC needs to be somewhat independent of the Council. Paying a stipend to SSC members simply makes them beholden to the process rather than to the science. The Pacific Council has had no problems attracting well-qualified individuals to serve on its SSC, even without a stipend.

We also support the observer funding program in section 9 of H.R. 5018 but suggest that you include potential funding mechanisms for electronic monitoring as well as observers. Canada has been using a camera-based monitoring program with a high degree of success. On the west coast, we have introduced a camera observation system on the shore-based Pacific whiting fleet, also with success. Camera programs, while expensive, can allow enhanced observation of fishing activity and discards on a larger percentage of a fishing fleet without having to find trained observers to cover the same percentage of activity. However, camera systems are not cheap and we hope that electronic monitoring devices can be covered under the funding program.

We also hope that you can resolve the multiple requirements for electronic monitoring using vessel monitoring system (VMS) units and the Coast Guard’s latest requirement for vessels to carry automatic identification system (AIS) units. All of the vessels in our groundfish fleet on the west coast now carry, or shortly will carry, VMS units. These are required by regulation and paid for by the vessel owner. They provide a generally reliable way to determine whether a vessel is fishing in areas that have been closed. AIS units have no fishery management use and are designed to prevent collisions. However, the Coast Guard’s own data on fishing vessel casualties shows that the number of collisions that would be prevented by AIS is so small as to be statistically zero. Further, the anti-terrorism value of AIS units is questionable given the way the system operates. We are already carrying the financial burden of conservation; anything the committee can do to keep from adding to that burden would be appreciated.

COUNCIL OPERATION AND AUTHORITY

We support the idea of Council member training as envisioned in H.R. 5018 and generally in H.R. 1431. We oppose forbidding a Council member to vote until he or she has completed training. At the training session I attended last year after my appointment to the Pacific Council, there were two of us who began dealing with the Council process when the instructor was still in elementary school. Councils are diverse enough and have enough staggered terms of appointments that a

voting prohibition is unnecessary.
We would also suggest that the bill clarify that training is required after a member is “first” appointed. Since members can serve up to three terms, there is not much to be gained by sending them to Council training at every re-appointment.
We support clarifying that the Council has authority to establish closed areas and establishing standards to do so, but note that the standards only apply if an area is to be closed to “all fisheries managed under this Act.” There may be times when a Council wants to close areas to just certain fisheries, as for example both the Pacific Council and North Pacific Council have done with bottom tending gear to protect habitat, and it would seem to make sense to apply the same scientific rigor to such partial closures.

LIMITED ACCESS PRIVILEGE PROGRAMS
We support establishing general standards for limited access privilege programs (LAPPs) but want to note some particular problems with the provisions of section 7 of H.R. 5018.
First, we suggest a general editing process to ensure that references to LAPPs are clear. In several areas, different terms are used and it is difficult to determine what exactly is meant.
Second, we note that communities and regional associations can only develop proposed LAPPs if the Council establishes criteria to do so. Unfortunately, the workload facing Councils can be so exhaustive that no time is allotted for issues that aren’t urgent. If communities or regional associations have to wait for Council criteria to be established, they may be effectively prevented from developing reasonable and useful LAPPs.
Third, one of the prerequisites for establishing LAPPs is that they contribute to rebuilding overfished (which should probably read “diminished”) fisheries. Since LAPPs have as their basis economic efficiency and don’t necessarily affect rebuilding times, this requirement seems almost impossible to meet; we suggest it be removed.
Finally, the bill authorizes LAPPs to be held, acquired, or used by a limited category of entities. Under current law, if a Council can justify allocating harvest privileges only to right-handed fishermen of Irish descent under 6 feet in height (an example chosen so I can qualify), then it can do so. As written, the bill seems to unintentionally remove some of the flexibility that a Council has in designing a program appropriate for its fisheries.

SPECIFIC WEST COAST ISSUES
We would like to call your attention to certain issues specific to the west coast that are not fully addressed in either H.R. 1431 or H.R. 5018, in the hope that you would add appropriate provisions when the Committee takes action.
First, while we fully support H.R. 5018's provisions on joint enforcement agreements, we hope the final bill will make clear that state enforcement agents operating under a joint agreement have full access to VMS data for use in state court cases. On the west coast, states generally adopt federal regulations for fisheries management, so when an enforcement action occurs involving a state officer, the case is often prosecuted in state court. Unfortunately, without access to VMS data, some of these cases cannot be made. We want to make sure that enforcement can be carried out.
Second, we ask that the Committee extend the existing provision for limited state management of Dungeness crab within the exclusive economic zone. Such authority has been in place since 1996 and has been previously extended. The nature of the crab resource and the crab fishery lend themselves to state, rather than federal, management and the existing system has been both successful and cost-effective. We would not support the additional data reporting requirements accompanying extension of state authority as provided for in H.R. 5051 because the data required simply does not exist, making the entire management program moot and forcing a successful multi-state management program to be pushed into the federal process.
Finally, we request that the Committee exempt the designated tribal seat on the Pacific Council from the term limit requirements imposed on public - but not governmental - Council seats. Tribal governments are essentially co-managers of certain fisheries with the states and the federal government. The tribal seat was established to ensure a cooperative working relationship between treaty tribes with rights to fish in their usual and accustomed areas and the Council.
The arrangement has worked well since its establishment over 10 years ago. However, because treaty tribes are essentially government entities, they should be treated equitably with other non-federal government entities on the Council. We believe that inclusion of the tribal seat was inadvertent when Council member term limits were adopted during the course of several different re-authorizations of the MSFCMA and urge the Committee to correct this mistake.

Mr. Chairman, that concludes my testimony. I appreciate the opportunity to present WCSPA’s views and comments on the legislation you have introduced. I look forward to continuing working with you and your staff as the bill progresses and would be happy to answer questions or provide additional information as needed.