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Regarding

HR 5018

The American Fisheries Management and Marine Life Enhancement Act

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Introduction.

Thank you, Mr. Chairman, for this opportunity to testify before you today on HR 5018, the American Fisheries Management and Marine Life Enhancement Act.

My name is David Benton. I am the Executive Director for the Marine Conservation Alliance. The MCA is a coalition consisting of seafood harvesters, processors, coastal communities, Community Development Quota organizations, and others interested in and dependent upon the groundfish and shellfish fisheries off Alaska. Taken together, the membership of the MCA represents about 80% of the harvesting and processing of groundfish and shellfish off Alaska.

I want to take this opportunity to provide you with information regarding Alaska's fisheries, and to touch on some of the key aspects of HR 5018 that I believe will further the role of science and conservation in the management of the nation's marine resources.

First, let me provide you with some information regarding Alaska's fisheries.

Alaska produces roughly half of the nation's commercial fisheries landings by volume. Fisheries account for about 35,000 jobs in Alaska, and are valued at over \$1 billion dollars in ex-vessel value. In 2004, the ex-vessel value of groundfish alone was \$593M with \$123.6M from the Gulf of Alaska and \$469.0M from the Bering Sea and Aleutian Islands. The gross value of the 2004 groundfish catch, after primary processing, was approximately \$1.7B (F.O.B. Alaska). In addition to groundfish, halibut and shellfish generated \$176.5M and \$208.5M ex-vessel values respectively. In 2004, roughly 1000 vessels caught Alaska groundfish.

Most importantly, the majority of Alaska's coastal communities are built around a fisheries based economy, and without a stable fishery resource base many of these communities would not exist. It is because of this dependence upon the sea and its resources that Alaskans work hard to ensure that conservation comes first, and that fishery resources are managed for their long term sustainability.

The record speaks for itself. There are no overfished stocks of groundfish in Alaska. Fisheries are managed under hard caps and close when harvest limits are reached. Federal observers, electronic Vessel Monitoring Systems (VMS), and U.S. Coast Guard patrols monitor the fisheries to ensure compliance with closures and bycatch limitations. Over 380,000 square nautical miles are closed to bottom trawling to protect marine habitat. Ecosystem considerations are taken into account in fishery management plans. For example, fishing on forage fish species is prohibited. And, for the two Bering Sea crab stocks rated as "overfished" aggressive rebuilding plans have been in place for many years. Most scientists believe that these stocks are depressed because of oceanographic changes that happened in the late 1970's, and that these stocks will not rebound until oceanographic conditions become more favorable for these species.

It is this record that led the U.S. Commission on Ocean Policy to cite Alaska as a potential model for the rest of the nation.

MCA concurs with that view.

## MCA Supports Provisions in HR 5018 to Strengthen the Regional Fishery Management Council Process.

Alaska is remarkably fortunate, in that we have robust fish stocks and a long and successful record of producing healthy seafood on a long-term sustainable basis. For fisheries conducted in federal waters, this success story hinges on the regional fishery management council system embodied in the Magnuson Stevens Act (MSA). We believe that this system has all the characteristics that are required for developing and implementing science driven, conservation oriented management regimes while at the same time providing the public, affected user groups, communities, academics, scientists, and other interested parties with unprecedented access to the decision making process.

The MCA strongly supports the regional council system because it recognizes the remarkable diversity of issues facing the different regions of the country, and because it provides the public access to a transparent and science-driven fishery management process. We support the broad inclusion of state and federal fishery managers as well as expert stakeholders as council members. The MCA supports the current MSA appointments process whereby each Governor consults with the public, ensures that each nominee is experienced and knowledgeable on the region's fisheries, and nominates at least three individuals. In order to ensure that top quality individuals continue to serve on the councils, the appointments should continue to be made by the Secretary of Commerce, with input from other Commerce officials as necessary.

The transparency of the MSA fisheries management process is unique in the federal government. It is a rare instance where the public has the level of access to the decision making process that is present in the regional fishery management council system. Council members sit through hundreds of hours of public testimony, receive voluminous reports and analyses, have the opportunity to receive scientific advice from experts through presentations, and in the end have to state their rationale for a decision on the record and vote. All of this takes place in the public eye. The complexity of fisheries management requires Council members with deep knowledge and experience in a region's federal fisheries. Training can build a common knowledge base among Council members to encourage understanding of the issues and efficient communication with each other and with the public.

MCA is pleased to note that HR 5018 recognizes the basic principles underlying the Regional Council process, and includes measures to build on the strengths of the existing MSA system.

The MCA supports provisions in HR 5018 requiring that each new Council member receive training before taking a seat on the Council. Such training should include the list of topics identified in HR 5018, with an emphasis on meeting the requirements of the Magnuson Stevens Act, the regulatory process (e.g. NEPA, Regulatory Impact Review, etc), and the rules for recusal and financial disclosure. The MCA supports continuation of the current requirements to disclose all financial interests relating to fishing and for recusal from voting in instances as defined in regulations.

Some argue that Council members with any financial interests in a fishery be barred from sitting on a Council or from voting on management decisions related to that fishery. Congress decided in 1976 to take a new approach to a regulatory system—establishing a Regional Council system that meets close to where the fisheries occur, opening all meetings to public scrutiny, and inviting those with hands-on experience to be part of the process that seeks to protect the sustainability of the resources they depend on. In 1996, as part of the Sustainable Fisheries Act, Congress reaffirmed this approach while at the same time strengthening the MSA recusal provisions to be functionally equivalent to those applied in other federal advisory boards. These provisions, coupled with the advisory role of the councils whereby the Secretary makes the final decision is a robust system of checks and balances that prevents misuse of authority by Council members.

Arguments have been made to require appointment of Council members from particular interest groups, rather than building Councils with important fisheries expertise. Designating specific seats for particular interest groups will lead to continuing battles for representation of specific interest groups such as recreational fishers, a longline seat, a trawl seat, a tangle net seat, etc. This would seriously undermine one of the strengths of the council system, inclusion of knowledgeable persons from a broad spectrum of interests. Although many current Council members have interests in either commercial or recreational fisheries, the largest group of seats goes to professional fisheries managers from NMFS and the states. Supplementing their broad expertise with private citizens with specific expertise in the fisheries being managed is the best method for promoting rational fisheries management. In the North Pacific, this discretionary process has led to the appointment in recent years of a wide variety of members from diverse backgrounds.

## HR 5018 Takes Important Steps to Strengthen the Role of Science in Management.

The MCA strongly supports strengthening the institutional role of science in the Regional Council decision-making process. MCA believes that the policy of the North Pacific Fishery Management Council to set harvest levels at or below

those recommended by their science advisors should be applied nationally. In the case of the North Pacific, the Council does not set Total Allowable Catch for any species or stock of fish higher than the Acceptable Biological Catch recommended by the Council's Science and Statistical Committee (SSC). The result is that no stocks of groundfish are overfished in the Bering Sea, Aleutian Islands, or Gulf of Alaska. That high degree of success is achieved within the existing Magnuson Stevens Act (MSA) structure and procedures.

A similar position was endorsed by the Chairs of the eight regional fishery management councils last year in comments on MSA reauthorization. The Chairs position states: "Councils shall adopt acceptable biological catches (ABCs) within limits determined by their Scientific and Statistical Committees (SSCs) (or appropriate scientific body) and shall set total allowable catches (TACs) and or management measures, such that catch would be at or below ABC."

The MCA supports amending the MSA along the lines recommended by the Chairs, and incorporated into HR 5018 in Section 3. HR 5018 establishes the correct relationship between the SSC and the Council for developing catch specifications by including the new paragraph (7) to Section 302 (h) of the MSA (p. 5 lines 3-11). This provision closely follows current practices in Alaska.

However, we also recommend that HR 5018 be amended to include a definition of Acceptable Biological Catch. This definition should identify ABC as an annual specification of fishing mortality for individual fish stocks or multi-species stocks of fish. It should be based on the best scientific information available, and be designed to prevent overfishing and promote maximum sustained yield. Including such a definition will strengthen this section of HR 5018, and most closely track successful practices employed by the North Pacific.

We are also pleased to see that HR 5018 has several provisions to improve the SSC process, including paying stipends to non-government SSC members and requirements for the SSCs to meet in conjunction with the respective Council. Some groups have called for a more formal split between the scientists and the councils. MCA does not support proposals to split the science process and the SSCs from the Regional Fishery Management Councils. Such an arrangement would serve to politicize the scientific process, and further remove the science from the overall decisionmaking. MCA believes that it will be more effective to forge stronger ties through closer working relationships between the science advisors and the councils, instead of creating additional institutional barriers.

The excellent conservation record in the North Pacific demonstrates the benefits of maintaining and strengthening this important partnership. The MSA currently provides that each Council appoints the members of its SSC, a process which should continue. The regional nature of the Council's work is key to a regulatory process that is transparent, available to all stakeholders, and that provides opportunities to participate and understand the scientific basis for decisions. A strong Council-SSC relationship is central to that process.

#### HR 5018 Strengthens Science Through Peer Review of Stock Assessments.

HR 5018 would improve the scientific process by requiring the Secretary and each Council to establish a peer review process. MCA supports this provision. The stock assessment process is the foundation of a successful science-based fishery management system. In the North Pacific, NMFS assembles top scientists for each Plan Team, with input and appointment by the SSC. The Plan Team assessment process is tied closely to the SSC-Council schedule for setting TACs, ensuring that the most recent scientific data is available and used. Plan Team meetings are open to the public and occur in the region.

Increased peer review would ensure that the methods used for stock assessment in each region are up-to-date and can withstand tough scrutiny, providing confidence in the stakeholder community. Each Council and its SSC should cooperate in selecting methods, models, etc. for outside peer review and, in consultation with NMFS, select the reviewers. The MCA recommends that time-sensitive work, such as annual stock assessments, be reviewed either on a periodic basis or after implementation with the objective of improved methods for future work.

One issue that is not addressed however are the requirements of the "Data Quality Act" and OMB guidelines for implementing that act. MCA recommends adding a provision under this section of HR 5018 to clarify that each Council, in conjunction with the Secretary, may establish a scientific peer review process to meet OMB requirements. It should specifically identify each Council's SSC as qualifying as the peer review body for that Council and that review by the SSC is deemed to satisfy Data Quality Act requirements.

#### HR 5018 Takes Appropriate Steps Towards Building an Ecosystem-based Approach to Fisheries Management.

Ecosystem-based management is an approach that seeks to balance the uncertainties of our knowledge regarding the workings of the marine environment with the better known science of single-species management. The goal of an ecosystem-based approach to management is to protect the long term sustainability of marine resources while providing a source of healthy food, jobs, economically viable communities, and recreation. The MCA supports ecosystem-based management as an important goal for the nation's federal fisheries management system. We agree with others, including the Chairs of the regional fisheries management councils, that the MSA currently allows for an ecosystem-based approach to fisheries management and that incorporating ecosystem considerations into management can be strengthened with increased research funding and enhanced collaborative efforts among fishing and non-fishing regulatory bodies.

However, we are not in favor of establishing statutory requirements for ecosystem-based management in the Magnuson Stevens Act or other law. Our knowledge base regarding the structure and functions of marine ecosystems is in its infancy. Marine ecosystems are dynamic and driven by climate, biological abundance and human-induced factors. Climate and ocean currents and biological conditions such as plankton production and predator/ prey dynamics change from year to year. Human-induced factors such as pollution, coastal development, shipping traffic, recreational uses and fishing do also influence marine ecosystems. While the United States Commission on Ocean Policy (USCOP) recommended moving towards an ecosystem-based approach to management, the Commission also recognized that our knowledge of these forces and their interrelationships is limited. The Commission recommended moving towards an ecosystem-based approach to management in a careful and deliberate manner, using voluntary programs, and taking into account these uncertainties. The Commission did not support mandating an ecosystem-based management regime.

The Ecosystem Principles Advisory Panel (EPAP) identified in HR 5018 also recognized these limits. The challenge, according to the EPAP, is to "rebuild and sustain populations, species, and biological diversity, so as not to jeopardize a wide range of goods and services from marine ecosystems, while providing food, revenue and recreation for humans." The EPAP proposed eight specific criteria to be used in development of an ecosystem-based approach to management.

In the North Pacific, the Council's precautionary approach to fisheries management incorporates measures consistent with these eight recommended guidelines. Extensive habitat protection, prohibition of fishing on forage fish, controls on bycatch, protections for seabirds and marine mammals, strict catch accounting and hard caps on harvest levels are all part of the program. This strategy has sustained the nation's richest marine resources, producing more than half of all seafood harvested in US waters. The record is 25 plus years without a single groundfish species classified as overfished. This success has come about within the existing framework of the MSA.

More recently, the Pacific States Marine Fisheries Commission (PSMFC) convened a panel of internationally recognized experts to look at current practices of the North Pacific and Pacific Councils, and to evaluate steps to improve the role of science and ecosystem-based approaches to fishery management. The report, entitled "Strengthening Scientific Input and Ecosystem-Based Fishery Management for the Pacific and North Pacific Fishery Management Councils" identified practical steps that fishery councils can take to move towards ecosystem-based fishery management in a deliberate and responsible manner. The report is available from the PSMFC at <http://www.psmfc.org/files/Ecosystem-Final-Report.pdf> and is currently in press for publication in the Canadian Journal of Fisheries and Aquatic Science.

Most importantly, this panel of experts rightly concluded that no new statutory authorizations are necessary. They pointed out that the major limiting factor is adequate scientific information on the interactions of numerous ecosystem functions, and that funding for research programs to address these data needs is the most important action that could be taken today to meet these challenges in the future.

All of these considerations lead MCA to conclude that the Councils already have the authority they need to incorporate ecosystem considerations into fishery management, and no new statutory language is required. However MCA generally supports the language in HR 5018 at p. 21 lines 6-14 providing discretionary authority for ecosystem-based management plans as it is consistent with existing authorities. MCA would not support similar provisions as mandatory requirements for fishery management for the reasons stated above.

In addition, MCA recommends modifying the provisions of HR 5018 to explicitly acknowledge that human beings are an integral component of the marine ecosystem. As such, we recommend amending the policy statement on ecosystem-based fishery management (page 28 lines 18-19) to read "understand the interactions of species in the marine environment, the role of humans as part of the ecosystem, and the development of..." And, while HR 5018 charges the Secretary with developing a definition of "ecosystem" and "marine ecosystem", we believe that HR 5018 could provide important guidance by incorporating a simple definition of ecosystem-based fishery management that recognizes all of the components of the marine ecosystem including people.

We would suggest a simple definition that explicitly states that ecosystem-based fishery management will be based on the

best available science, and considers the physical, biological, economic, and social interactions among the affected components of the marine ecosystem when developing fishery conservation and management measures. Such a definition is consistent with the work of the EPAP and the results of the panel convened by the PSMFC. It recognizes the use of best available science, and explicitly acknowledges that social and economic considerations are factors to be considered along with the physical and biological characteristics of the marine environment. It does not give preference to any one factor, thereby preserving the role of the Councils and Secretary of setting management goals and priorities through the public process.

Some have proposed to empower the Secretary of Commerce, in consultation with the Councils, to develop national guidelines to “standardize” the criteria used to develop an ecosystem-based approach to fisheries management. MCA does not support statutory language charging the Secretary with development of national criteria for ecosystem-based management. In the past, such mandates, though appealing on the surface, have led to lengthy administrative processes and unnecessary litigation to interpret the intent of Congress with regards to such language. Instead, MCA believes that we must recognize that one-size may not fit all, and that national criteria are not appropriate. The other regions of the country, as part of the established council-driven process under MSA, should consider and adopt their own sets of management policies to balance the uncertainties of marine ecology with the better known science of single species management as they incorporate ecosystem considerations into regional fishery management plans.

#### Flexibility is Needed When Using Limited Access Privileges to Support Conservation.

The MCA is supportive of quota-based and/or cooperative rights-based management systems, now being referred to as Limited Access Privilege Programs (LAPP). We support the availability of this important management tool to all regional management councils. Any such systems should be developed consistent with the National Standards and other provisions of the Magnuson Stevens Act.

HR 5018 establishes criteria and procedures for LAPPs. MCA supports the use of LAPPs, but believes that Councils need to have the tools to develop such programs and the flexibility to address regional concerns. We believe that a minimalist approach is best, and that there is no need for elaborate criteria or standards in the MSA. If the language from HR 5018 is used, then MCA believes that the criteria and provisions need to be discretionary throughout.

HR 5018 also modifies the existing fee structure of the present MSA. MCA supports retaining the 3% annual cap on cost recovery fees. MCA strongly supports the language on page 51 lines 19-23 directing that fees shall be devoted to the fishery from which they are collected.

MCA is concerned that the 1% initial allocation fee may cause undue hardships for small vessel operators who may not have anticipated this surcharge and may not have the funds saved to meet this obligation. A provision could be added under the Limited Access Privilege Assisted Purchase Program section of HR 5018 to address this matter.

#### The Observer Program Requirements of HR 5018 May Undermine Existing Programs.

MCA is a strong supporter of observer programs to improve fishery monitoring and management. We are concerned about the effects of some of the provisions of HR 5018 on existing programs as well as costs to industry participants. For example, the observer cost provisions under Section 5 of HR 5018 require the Secretary to pay for observers that are necessary for “the enforcement of a fishery management plan or for data collection necessary for the monitoring of a fishery”. MCA is concerned that this may have the unintended consequence of significantly undermining the existing observer program in Alaska.

The observer program in Alaska is paid for by industry, with the observers reporting only to NMFS. It is the largest program in the country, and perhaps the world. NOAA does not have the funding to support this program. Even if all of the agency’s observer funds were pooled and devoted to this one program, it would not be sufficient. And, obviously, if this were to occur then there would be insufficient funds for observers elsewhere in the country.

Under Section 9, HR 5018 sets out a fee-based funding mechanism for observer programs. MCA is concerned that this section of HR 5018 is overly broad, and provides the Secretary with too much latitude to develop funding mechanisms for observer programs. In this section, there appears to be an open-ended authority to set fees at whatever level the Secretary determines is appropriate. While it is important to be able to pay for necessary fishery monitoring, MCA believes it is also important that there be reasonable limits on the Secretary’s authority to raise fees.

We suggest that HR 5018 require that observer costs be set out under a plan adopted by a Council and approved by the Secretary. The intent of our suggestion is to leave it up to each individual Council to determine how best to meet

observer requirements for fisheries in their region, including the question of who pays. Providing a role for the Councils to develop a plan for observer coverage and cost recovery ensures that the public and the industry have the opportunity to review and comment on any such program. This should include the definition of “fishery” that is used to develop the fee structure.

In addition, we suggest that HR 5018 should clarify that fees to the observer fund are under the 3% cap, or some other upper limit be placed on observer fees. The original North Pacific Research Plan section of the MSA had a 2% cap for observer fees.

#### HR 5018 Resolves Conflicts Between MSA and NEPA While Protecting the Public Process.

HR 5018 correctly attempts to resolve the conflicts between the NEPA process and the MSA process. Anyone with practical, hands on experience in fisheries management knows that this problem is real, and that it is causing unnecessary bureaucratic delays in implementing effective conservation measures for our nation's fisheries. Having two competing processes has not resulted in better analysis or more effective conservation measures. Instead, it has led to confusion by the public, and numerous procedural lawsuits that only waste time and staff resources. The paramount example of efforts to address this unnecessary problem is the 7000 plus page Programmatic EIS developed by the North Pacific Council. A related example of how these competing statutes distort the management process is the perverse result that, because of the differing timelines, the North Pacific Council may be required to use outdated stock assessment data in setting catch levels, instead of the most up-to-date and best available science.

MCA therefore supports the provisions in Section 10 of HR 5018 to resolve the issue. However, MCA believes that HR 5018 can be strengthened by amending the language on page 60 line 18 from “may” to “shall”. This would clarify the procedures to be used and eliminate any future uncertainty.

For example, MCA is concerned that the “deeming” by the Secretary set out in this section could be after the fact. This could lead to the situation where a Council has acted in good faith, employed the process set out in HR 5018, but finds itself in the position of the Secretary making a determination that the Council action was not in compliance with NEPA after months or years of work. MCA strongly supports reconciling the differences between NEPA and MSA. Such reconciliation should be clear, and remove the potential for unnecessary procedural confusion or litigation.

An alternative would be to require the Secretary to specify in regulation the substantive requirements for compliance and the process used to make these determinations before they are applied by the Councils in their procedures.

#### MCA Supports Language in HR 5018 To Clarify the Relationship Between MSA and National Marine Sanctuaries.

MCA strongly supports the provisions set out in HR 5018 to require the Secretary to review sanctuary regulations to ensure compliance with MSA national standards. We believe that this is consistent with the intent of the National Marine Sanctuaries Act. Unfortunately, application of the NMSA has been inconsistent around the country, but this provision would ensure that the original intent is followed. MCA also believes that this review should include the relevant Council as well. Although the NMSA sets forth a role for the Councils in Sanctuary management, the practical effect has been for the Sanctuary Program to downplay the MSA national standards in making NMSA management decisions. This provision would ensure that Sanctuary resources are protected, but also that MSA provisions are given appropriate consideration.

#### MCA Supports the Grant Program Established Under Section 15 Bycatch and Seabird Interactions.

MCA strongly supports the cooperative research provisions of HR 5018, including those under Section 3 as well as Section 15. MCA believes that cooperative research between agency scientists, academics, and industry can be a cost effective tool to achieve practical results in fishery conservation.

With regard to seabirds, MCA believes that, like marine mammals, seabirds are best dealt with under existing law and should not be included in the MSA. However, MCA can support the language in this section to establish a grant program for gear research and modification. We are particularly pleased that HR 5018 correctly refers to “seabird interactions” as a separate issue from fisheries bycatch. MCA has long been concerned that seabird interactions might be labeled as bycatch, when in fact this is a different type of management concern, with solutions unique to the problem. Our members have long been involved in research and gear modification to address seabird interaction issues. In the North Pacific avoidance measures developed by industry working in cooperation with the Council, academic researchers, and federal agencies have resulted in an 80% reduction in incidental mortalities. Because of these successes, MCA supports the language calling for cooperative work between the Councils, the agencies and the industry to further seabird conservation.

#### Conclusion.

MCA wishes to conclude by emphasizing that the regional council process currently established under the Magnuson Stevens Act plays a vital role in the health of our communities, our fisheries, and in the conservation of the rich marine resources off Alaska's shores. We urge you to carefully consider the successes we have had in Alaska when others ask you to change this system. Adding new statutory requirements or new layers of bureaucracy to this system would, in our view, undermine what is widely regarded as one of the worlds more successful management systems.

Mr.Chairman, that concludes my testimony. I am prepared to answer any questions the Committee may have.