

TESTIMONY OF KEVIN C. DUFFY
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BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND OCEANS

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

KODIAK, ALASKA

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Thank you, Mr. Chairman and Members of the Subcommittee for the invitation to testify on fisheries management successes in Alaska. I am Kevin Duffy, Executive Director of the At-sea Processors Association (APA). APA is a trade association composed of seven member companies that operate U.S.-flag catcher/processor vessels, primarily in the Bering Sea/Aleutian Islands Alaska pollock fishery. The seven companies own and operate 19 U.S.-flag catcher/processor vessels that are allocated 40 percent of the annual Bering Sea/Aleutian Islands pollock catch.

The Alaska pollock fishery is a proven fishery management success story. In 2005, the Alaska pollock fishery was certified as sustainably managed by the Marine Stewardship Council (MSC), an international non-profit organization founded by the World Wildlife Fund (WWF). The certification was earned through a four-year long assessment of the fishery against the MSC sustainability standard by a team of independent scientists and fishery management experts. I am not aware of any fishery that has been subject to such a rigorous and comprehensive evaluation, and the MSC process is simply one of many internal and external reviews to conclude that management of the Alaska pollock fishery by the North Pacific Council and NOAA Fisheries has been exemplary.

The sustainability certification of the fishery is a notable achievement for many reasons, not the least of which is the significance of Alaska pollock in the world marketplace. Alaska pollock production is a dominant player in the world whitefish market because it is valued as a consistent and dependable source of high quality product. In 2005, three billion pounds of Alaska pollock will be harvested, accounting for approximately one-third the weight of *all* U.S. seafood landings. While few seafood consumers might know Alaska pollock by name, most have likely eaten pollock. Alaska pollock is the principal whitefish used in frozen fish products in retail stores as well as "quick service" restaurants. Alaska pollock fillets reportedly account for 90 percent of the 275 million McDonald's fish sandwiches served each year in North America. Alaska pollock is also processed into *surimi*, a minced, frozen product used to make imitation crab products. The harvesting and primary processing of pollock in Alaska generates \$800 million in revenue annually. The U.S., Japan and the European Union are important markets for Alaska pollock products.

Keys To Successful Management of Alaska Pollock

In February 2002, APA testified before this Subcommittee on the success of fish harvesting cooperatives in the Alaska pollock fishery. The Alaska pollock cooperatives, in which eligible harvesters agree voluntarily to allocate the available harvest on an individual basis, have successfully resolved overcapitalization, reduced incidental, non-target species catches and dramatically increased utilization of harvested resources. Rationalization of the Alaska pollock fishery is a critical component of successful fishery management, but there are other keys to successful management pertinent to reauthorization of the Magnuson-Stevens Act that my testimony will focus on today.

Science and the Management of Alaska Pollock

NOAA Fisheries has a long time series of reliable data on Alaska pollock abundance, data derived from hydro-acoustic surveys, bottom trawl surveys and from fishery dependent data collected under a comprehensive federal fishery observer program. NOAA Fisheries' scientists use state-of-the-art stock assessment models in analyzing data to determine pollock abundance levels. Currently, the adult spawning biomass of Alaska pollock exceeds 20 billion pounds.

The methodologies employed by NOAA Fisheries' stock assessment teams and their findings are peer-reviewed internally and then again through the Groundfish Plan Team process, a review process conducted by scientists inside and outside of NOAA and at which public comment is invited.

The findings of the Groundfish Plan Team are then considered by the North Pacific Council's Scientific and Statistical Committee (SSC). The SSC, which meets five times a year in conjunction with the Council, forwards a recommendation of a safe harvest level—the Acceptable Biological Catch (ABC)—to the Council. The Council sets the Total Allowable Catch (TAC) at, and most often below, the ABC recommended by the scientific panel.

While recent policy discussions focus appropriately on enhancing and standardizing the role of SSC's in the council process, the Subcommittee should be mindful that investment in science and rigorous internal and external review of scientific findings and methodologies beyond the contributions of the SSC's contributions play a significant role in management of the Alaska pollock fishery.

Enhancing and Standardizing the Role of SSCs Nationally

It is well-documented and perhaps well-known that the North Pacific Council traditionally defers to its SSC in setting catch levels at or below the safe harvest level recommended by the SSC. Congress should consider amending the Magnuson-Stevens Act to require each council's SSC to propose ABC levels for fish species under the jurisdiction of each council and for councils to adopt the SSC proposal and to recommend catch levels no higher than the upper range of ABC recommendations.

With respect to the Alaska pollock fishery, managers and scientists have been using an ecosystem-based management approach since well before the term came into common usage. Virtually every element of an ecosystem-based management approach is in effect for the Alaska pollock fishery, including conservative catch limits, comprehensive monitoring and enforcement, a precautionary approach to possible fishing impacts on the environment, bycatch reduction measures and extensive use of marine protected areas.

The above progressive fishery management measures adopted by the North Pacific Council were reviewed by the Council's SSC, including analyses of proposed measures required under the Magnuson-Stevens Act and the National Environmental Policy Act (NEPA). APA recommends that either through law or regulation SSCs be directed to peer review analyses pertinent to the development of all fishery management measures developed by councils.

In formalizing and standardizing the role of SSCs in the regional fishery management council process, we should not minimize the value of independent external scientific review. Currently, peer review teams selected by the Center for Independent Experts (CIE) at the University of Miami provide valuable advice to NOAA Fisheries on major issues, including reviews of stock assessment procedures in the North Pacific and important new research results on possible fishing impacts on Steller sea lion populations.

NOAA Fisheries and the North Pacific Council cooperate on integrating science seamlessly into the fishery management process, but fishery managers are concerned about a recent administration action that could impede Council decisions based on the best scientific information available. New guidelines developed by the Office of Management and Budget (OMB) to the Information Quality Act (sometimes called the Data Quality Act) have created concerns. OMB's revised guidelines mandate outside review of certain scientific information and "highly influential" scientific assessments developed by agency scientists. While regular external review of major scientific developments that could provide the basis for altering the regulatory regime is appropriate and desirable, APA urges the Subcommittee to evaluate the impact on the fishery management system of OMB's recent action. Fisheries management in the North Pacific is based on the best scientific information available and is intended to be adaptive. If the revised Information Quality Act guidelines require external review of information and assessments routinely peer reviewed by the SSC, the process would suffer from increased costs, lack of timeliness for incorporating new data into the decision making process and delays in the regulatory process.

As Congress considers the proper role for SSCs in the regional fishery management council process, APA offers the following comments as well:

- To ensure that SSC members are knowledgeable about the fisheries being managed, new SSC members should be nominated by the existing SSC members and appointed by the relevant Council.
- SSC candidates should be federal or state employees or in academia.
- If SSC members are to be compensated, Congress must increase funding for councils since councils are already under-funded to meet mandates required by law.
- SSC members should be free from conflicts of interest, including affiliations with non-governmental organizations (NGOs) or commercial or sport fishing interests.

Transparent Public Process

In February 2005, the North Pacific Council adopted a fishery management plan amendment closing 280,000 square nautical miles of ocean to bottom trawling and six additional areas with especially high density coral and sponge habitat to *all* bottom contact fishing gear. Oceana, an environmental stakeholder group hailed the Council's action in a media release that read in part,

"In an historic move for our nation's fisheries, the North Pacific Fishery Management Council today unanimously adopted Oceana's Approach to protect nearly one million square kilometers of seafloor, including the exquisite coral gardens of the Aleutians... Three years and 33,000 public comments later, due to the diligence of Oceana and the vision of the (Council), the Fisheries Service will... protect the Aleutian Island (sic) coral gardens..."

There is no shortage of irony that Oceana, which was created by the Pew Trusts environmental program as the litigation arm of its oceans advocacy program, provides such a clear example of the public's opportunity to effectively shape policy by participating in the rulemaking process, but it is the case nonetheless.

In the TAC setting process alone in the North Pacific, stakeholders of all stripes are afforded public comment opportunities during the Plan Team, SSC and Council processes as well as when the proposed rule is published in the Federal Register for comment. Beyond that, stakeholders are provided opportunities to serve on the Council and on its Advisory Panel. Both bodies include a wide range of interested stakeholders, including Alaska natives, NGO representatives, sport fishermen, onshore and offshore processors, and competing commercial fishing interests using longline, pot and trawl gear. The Secretary, in making appointments to the Council, and the Council in making appointments to its Advisory Panel must accommodate all of the above interests while also considering geographic balance among three states and disparate regions within Alaska.

To the extent that opportunities for public participation in the fisheries management process are not standard across all regions, APA urges that this be done by law or regulation. Fisheries management in the North Pacific is an open, transparent public process and that process has resulted in a progressive, ecosystem-based approach to management. We do not favor changing this successful system, but if it can be replicated elsewhere there is much to recommend it.

Final Comments and Recommendations

NOAA Fisheries and the regional councils have been resolute in implementing the 1996 Sustainable Fisheries Act (SFA). Fishery managers appear to have effectively addressed overfishing in regions and fisheries where it was occurring. Fishery managers have also instituted rebuilding plans where necessary. A next step is to evaluate whether effective monitoring and enforcement mechanisms in place for major fisheries to ensure that responsible catch levels required under the SFA are respected.

Earlier in my testimony, I referenced the comprehensive federal fishery observer program in effect for the North Pacific groundfish fisheries. In the BS/AI pollock fishery, every vessel greater than 125 feet in length carries a fisheries observer 100 percent of the time while fishing. There are two federally-certified observers on pollock catcher/processors. The \$13 million annual cost of this program is borne by fishermen and processors.

There are two national policy issues that, if addressed, could strengthen the North Pacific fishery observer program. The first issue deals with vessel owner liability in the event that an observer is injured. Current law is not clear about the legal status of observers. As a result, vessel owners often purchase more than one insurance policy since it is not clear under which statute an injured observer might choose to file a lawsuit. Congress should clarify the status of observers and help contain insurance costs for vessel owners.

The second observer related issue pertains to observers' status under the Fair Labor Standards Act, specifically, whether government observers are "professionals" or "technicians." If the latter designation is applied, observers are entitled to overtime pay for time on the vessel even when they are not on duty. Obviously, such a designation substantially increases program costs, which either makes an observer program less practical or results in significantly scaled back levels of observer coverage. APA proposes that federal observers be designated as "professionals" and be fairly compensated in line with their experience, knowledge and level of responsibility.

Beyond observer programs, monitoring and enforcement is being enhanced in Alaska and other regions through application of various technologies, including onboard cameras and Vessel Monitoring System (VMS) units. These technologies can often offer significant cost savings over labor intensive observer programs, but regulations requiring onboard surveillance technologies raise privacy issues, among other concerns. We urge the Subcommittee to consider necessary changes in the Magnuson-Stevens Act to promote cost-effective methods that promote fisheries monitoring and enforcement without infringing upon individuals' privacy rights.

That concludes my testimony, Mr. Chairman. Thank you, for the opportunity to testify on Alaska's fisheries management successes and on efforts to further improve living marine resource management in the region and nationally. I am pleased to answer any questions from the Subcommittee.