

**TESTIMONY OF
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BEFORE THE HOUSE SUBCOMMITTEE ON
FISHERIES CONSERVATION, WILDLIFE & OCEANS**

**MARINE PROTECTED AREAS
AS A FISHERY MANAGEMENT TOOL**

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Thank you, Mr. Chairman and members of the Subcommittee, for the invitation to testify today on the use of marine protected areas (MPAs) as a fishery management tool. 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/Aleutian Islands groundfish fishery, and in the West coast Pacific whiting fishery.

Marine Protected Areas (MPAs) and the North Pacific Fisheries.

Participants in the North Pacific fisheries have followed closely, but anxiously, the emerging national debate on marine protected areas. The breadth and scope of Executive Order 13158, issued by President Clinton almost two years ago today, is still unclear and the impacts on fishing communities unknown. A March 2002 report issued by the National Oceanic and Atmospheric Administration (NOAA), "*Marine Protected Areas Needs Assessment Final Report*" finds that policy makers must still undertake the basic task of "identifying MPA goals and defining MPA terminology."

It is difficult for fishing organizations to develop a coherent position on MPAs absent a definition of what an MPA is. However, there appears to be general agreement that MPAs include marine areas that are closed permanently or seasonally to achieve fishery management objectives. Fishery management regulations for such areas might also restrict the use of some or all types of fishing gear. The purposes for such closures could include:

- Managing natural resources;
- Reducing fishing gear conflicts;
- Protecting endangered species;
- Protecting sensitive habitat;
- Providing research opportunities; and
- Conserving biodiversity.

The map below shows that in the Bering Sea/Aleutian Islands management area, federal fishery managers have already created marine protected areas encompassing more than 30,000 square nautical miles of ocean. The MPA website maintained by NOAA identifies a number of these closures on the inventory of U.S. MPAs.

Some of the MPAs in effect in the Bering Sea/Aleutian Islands management zone close areas to all or some fishing to reduce, or eliminate, the effects of fishing on marine mammals, including threatened

and endangered species. Other closures are designed to reserve access to fishing grounds to certain gear types or certain-sized fishing vessels. Fishery managers have also imposed MPAs to reduce the likelihood of incidentally harvesting non-target species that might be intercepted in such areas, and another type of MPA is designed to protect certain types of sensitive habitat. Virtually all of the protected areas identified below restrict trawling for some or all of the year. In other cases, trawl area closures are triggered if “prohibited species” bycatch caps are reached.



According to a paper presented by North Pacific Fishery Management Council staff member Jane DiCosimo in November 1998, the three king crab closures in Bristol Bay alone comprise “approximately 25% of the continental shelf where commercial quantities of groundfish can be taken with bottom trawl gear,” exceeding the “theoretical minimum of 20% of available habitat...of an effective marine reserve suggested by Lauck et al. (1998).”

There is an effective monitoring and enforcement program in place in the North Pacific fisheries to ensure compliance with MPA fishing restrictions. Among other management measures, there is comprehensive federal fishery observer coverage onboard vessels as well as a requirement that vessels be equipped with Vessel Monitoring System (VMS) units that electronically record and report vessel locations on a real-time basis to NOAA Fisheries.

The existing MPAs in the Bering Sea/Aleutian Islands management area (along with the MPAs for the Gulf of Alaska management area that total another 45,000 square miles) were developed through the regional fishery management council process. When a resource management problem is identified, the North Pacific Council develops a suite of management alternatives that address the problem. The Council

then conducts a thorough analysis of the alternatives for public review and comment and takes action based on the best scientific information available. The council process, authorized under the Magnuson-Stevens Fishery Conservation and Management Act, operates in accordance with requirements of the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA) and the Administrative Procedure Act (APA), among other laws.

Fishery managers must often balance competing priorities and objectives in utilizing MPAs as a fishery management tool. There are incidental catch considerations. Fishing effort that is shifted from fishing grounds newly designated as a marine protected area could result in increased non-target species catches elsewhere. For smaller vessels, there are safety issues associated with MPAs that close near shore areas and move fishing effort offshore. MPAs for fishery management purposes also need to be adaptive as climate change can affect migratory patterns and abundance on a species-by-species basis. In our view, the North Pacific Council has acted proactively and aggressively in addressing resource management and conservation needs. The Council has been precautionary in its approach and developed adaptive management measures that respond to ever changing environmental conditions in creating MPAs for fisheries management purposes covering 75,000 miles of the management area under its jurisdiction.

MPAs and Essential Fish Habitat (EFH).

The Essential Fish Habitat (EFH) provisions of the 1996 Sustainable Fisheries Act directed regional fishery management councils to describe and identify EFH in fishery management plans, identify adverse impacts on such habitat and take necessary measures to ensure conservation and enhancement of such habitat. The North Pacific Council is preparing an Environmental Impact Statement (EIS) as part of a comprehensive approach to fulfilling the mandate of the new EFH requirements.

In April 2002, the Council issued a report describing the fishing gear used in the fisheries under the Council's jurisdiction as well as a description of fishing operations. In addition, the report describes the habitat where each fishery occurs and describes existing rules to minimize the effects of fishing on the environment. A Council stakeholder committee is identifying candidate Habitat Areas of Particular Concern (HAPC) within EFH and will recommend to the Council such measures as may be necessary to minimize, to the extent practicable, adverse effects on essential fish habitat caused by fishing.

In some regions, the focus on EFH might be to restrict fishing in HAPC to allow fish populations to rebuild. This has not been the emphasis in the North Pacific where the fish stocks are already healthy and robust. For example, no Alaska groundfish stocks are overfished or approaching overfished status, according to NOAA Fisheries' most recent annual report to Congress. Environmental conditions have resulted in low abundance of some crab stocks, but harvests have been significantly scaled back, or fisheries closed, to allow stock rebuilding until more favorable environmental conditions return. Efforts by the North Pacific Council to implement EFH requirements are focused more on identifying HAPC and, if necessary, developing mitigation measures to protect sensitive habitat areas from adverse impacts of fishing. This is a difficult and time-consuming task, and the Council is allocating substantial resources to a multi-year project that could result in a significant expansion of MPAs in the North Pacific.

We urge Congress, federal agencies and federal advisory panels that are engaged in developing MPA definitions and articulating policy objectives and goals to recognize that existing law already provides regional councils ample authority to impose MPAs when circumstances warrant such action. Moreover, the

North Pacific Council has exercised this authority numerous times, including dedicating substantial staff time and funding to meet its responsibilities under EFH. We recommend that any new MPA initiatives to achieve conservation and management objectives be promoted within the existing fishery management council structure. The North Pacific Council has an excellent track record for protecting natural resources, and the council process provides stakeholders with maximum opportunity to participate in the decision making process.

MPAs and Marine Reserves.

While ill defined at present, MPAs should not be confused with no-take marine reserves, which have been proposed by some as a way of increasing productivity and overall catch levels. The science regarding the efficacy of marine reserves to increase long-term fishery productivity is incomplete and inconclusive. In the case of pollock, for example, the principal species fished by APA catcher/processors, there is no evidence to suggest that marine reserves would be effective for enhancing catches. Pollock stocks are currently approaching historically high levels of abundance. NOAA Fisheries' scientists estimate that the spawning biomass of Bering Sea pollock is approximately 11 million metric tons, roughly 2.4 billion pounds of adult fish.

Pollock stock abundance is a function, in part, of how much phytoplankton and zooplankton is available as food, and the availability of plankton is determined by environmental conditions that are unrelated to fishing (e.g. water temperature, wind direction, ocean currents, etc.). A second key factor in pollock abundance is predation, including predation on juvenile pollock by cannibalistic, adult pollock.

Fishery managers have also adopted a precautionary approach to fisheries management by employing conservative harvest levels. In fact, in 2002 the total allowable catch level of Bering Sea pollock is only two-thirds of the catch limit that is biologically acceptable. In addition, the Council has developed an effective harvest monitoring and enforcement regime that includes requirements for comprehensive federal fishery observer coverage on vessels, weighing of all catch on certified scales, electronic catch reporting and use of Vessel Monitoring System (VMS) technology.

Pollock is also a pelagic, not sedentary, species. Pollock spawn in the open ocean waters, are distributed over vast areas of the Bering Sea and are highly mobile. And pollock have a relatively short life span, reproducing by age 3 and living only until about age 10 or 12. Given that pollock abundance is dictated by environmental factors, that managers employ risk averse harvest strategies, that fish stocks migrate great distances throughout the Bering Sea, and that the species is relatively short-lived, marine reserves do not serve as a useful management tool for this fishery.

Non-Fishery Management MPAs—a Case Study.

While the focus of this hearing is on MPAs as a fishery management tool, concerns about the lack of a coherent national policy regarding existing state, federal and locally administered MPAs should be noted. The situation is exacerbated by the lack of clarity and agreement on definitions of MPAs and a lack of articulated goals and objectives. Uneasiness about the current state of affairs is heightened as disparate agencies respond to E.O. 13158 with far-reaching initiatives that are not coordinated, lack adequate stakeholder participation and ignore management measures that are already in place.

One example of a federal regulatory action that could significantly impact the fishing industry is a proposal by the Environmental Protection Agency (EPA) that, among other things, would designate Special Ocean Sites (SOS). In January 2001 in the final days of the Clinton administration, EPA submitted to the Federal Register a final rule relating to ocean discharge criteria. The rule was not published before the Bush administration came into office, and the rule was pulled back for review. However, EPA has informed interested parties that it will continue to press for adoption of this measure consistent with the executive order on MPAs.

Under the proposal, EPA, or any petitioning party can seek to designate an area as a Special Ocean Site. The draft rule states that an SOS would be an area of “outstanding ecological, environmental, recreational, scientific or esthetic value” and could include any area “designated under the Endangered Species Act as providing critical habitat for threatened or endangered species...” The draft further reads, “If these areas are already designated for protection under other authorities, EPA believes that SOS status may also be appropriate as an *additional level of protection* (emphasis added) if needed.”

More than 100 trawl, longline and pot at-sea processing vessels fish in the Bering Sea/Aleutian Islands management area under a National Pollutant Discharge Elimination System (NPDES) general permit issued by EPA under Section 402 of the Clean Water Act. EPA’s new proposal under E.O. 13158 “would prohibit any new permits for discharge at the site, as well as prohibit the significant expansion of existing discharges.”

This proposal raises numerous concerns. One concern is the potentially broad designation of SOS areas. The rule indicates that a critical habitat designation could be the basis for an SOS designation. In the Bering Sea/Aleutian Islands and Gulf of Alaska management areas, critical habitat for endangered Steller sea lions encompasses tens of thousands of square miles of ocean waters. Fishing is permitted in some but not all sea lion critical habitat as scientists recognize that some portions of critical habitat (e.g. those closer to rookeries and haulouts) are more important to the animals than other areas farther from shore. An overlapping SOS designation with associated restrictions on vessel operations (i.e. ocean discharges) could severely impact the at-sea processing sector.

EPA did not consult with either the North Pacific Council or the fishing industry in developing this proposal, although I understand that NOAA Fisheries was consulted. This is just one example of a proposed federal action under E.O. 13158 that could greatly impact the fishing industry. There are likely others.

The fishing industry agrees with those calling for a comprehensive review—an inventory—of existing MPAs. The purpose for creating and maintaining MPA status for protected areas should be reviewed and the effectiveness of MPAs in achieving the original goals and objectives should be evaluated. Within the context of that review, definitions and policy objectives must be clearly defined. Federal agencies should suspend new initiatives until it is clearly understood what MPAs are and should be and the efficacy of the current program has been evaluated. To the extent that such initiatives continue to move forward and affect fishing activities, federal agencies should work collaboratively with regional fishery management councils to coordinate actions and to promote stakeholder involvement from the fishing community.

Summary and Recommendations.

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- Any definition of MPAs should be broad enough to include fishery management actions that close an area permanently or seasonally and/or restrict the use of a certain type or types of fishing gear for purposes of achieving conservation and management objectives.
- We do not believe that a percentage-based goal, such as designating 20% of a management area as an MPA, is appropriate or useful, but if Congress or federal agencies set such an arbitrary goal, calculations should not be based solely on no take designations but on the vast areas already designated as MPAs for fishery management purposes or to achieve other conservation goals.
- Regional fishery management councils and stakeholders are working diligently to implement far-reaching EFH requirements of the Sustainable Fisheries Act. Regional councils and NOAA Fisheries are identifying EFH and HAPC and evaluating the impacts of fishing on such areas. Where necessary, mitigation measures will be proposed, affecting fishermen. The fishing community is deeply involved in this process and will find it difficult to commit resources to monitoring other federal MPA initiatives that could substantially affect their livelihoods.
- Federal MPA activities affecting fisheries should be put on hold until MPAs are properly defined and goals and objectives are identified. However, if other MPA initiatives are forthcoming, those that affect fishing should be considered in close consultation with regional fishery management councils and the fishing community.
- Half of all fish and shellfish landings in the U.S. come from federal and state waters off Alaska. The North Pacific fishing community should be adequately represented on NOAA's MPA Advisory Committee established under E.O. 13158.

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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