

Hearing Before the
United States House of Representatives
Committee on Resources

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act

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Written Testimony of

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Mr. Chairman and Members of the Committee:

My name is Donald McIsaac, Executive Director of the Pacific Fishery Management Council. I have trained for and worked in fisheries management for the last 35 years, earning a bachelor of science in fisheries biology, a master's degree in fisheries management, and a Ph.D. in salmon ecology. Prior to becoming Executive Director of the Pacific Council, I worked for 25 years for the Washington and Oregon state fishery management agencies with a focus on interjurisdictional fishery management matters.

Thank you for the opportunity to testify before you today on behalf of the Pacific Council regarding reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. We appreciate the bill authors bringing in new ideas to this important legislation.

Today I will limit my testimony to three issues, and focus primarily on one issue. The focus of my testimony is the issue of fishing regulations in National Marine Sanctuaries: who should establish such fishing regulations and how should it be done? The second issue is the question of using hard total allowable catch levels in fisheries management and "repayment" of any catch number overages and underages that happen from management imprecision or unforeseeable events. The last issue I want to touch lightly on is an element of the Individual Quota Program legislation.

Fishery Regulation in National Marine Sanctuaries (H.R. 5018, Section 10: COMPETING STATUTES)

On the issue of fishing regulation in waters of National Marine Sanctuaries, legislation needs to be clear and unambiguous that fishing regulations be accomplished through a Regional Fishery Management Council process described in a slightly revised Magnuson-Stevens Fishery Conservation and Management Act and not under the process described in the current National Marine Sanctuaries Act.

I would like to mention several reasons this issue is important to West Coast fishery management.

- A considerable portion of the West Coast lies within a National Marine Sanctuary. As you know, there are four sanctuaries in California, The Channel Islands National Marine Sanctuary, the Monterey Bay National Marine Sanctuary, the Gulf of the Farallones National Marine Sanctuary, and the Cordell Bank National Marine Sanctuary as well as the Olympic Coast National Marine Sanctuary off the coast of Washington. Additionally, Oregon Governor Ted Kulongoski has formally proposed consideration of the entire coast of Oregon for an Oregon Coast National Marine Sanctuary.
- The current status of fishery authority is confusing to public and can impede collaboration between the Regional Fishery Management Councils and National Marine Sanctuaries. I and the Pacific Council have heard frequent public testimony requesting a single fishery management authority, that being the Regional Fishery Management Council where there exists the scientific expertise and open public process intended for this purpose. Mr. Bob Alverson, Pacific Council member and General Manager of the Fishing Vessel Owners' Association, recently commented that "my organization's fisherman are interested in working with a single entity on fishery management issues rather than multiple authorities and jurisdictions."

- Competing authorities and jurisdictions do not facilitate the application of ecosystem-based fishery management principles.
- Pacific Council members and members of the public repeatedly refer to promises originally made during the enactment of the National Marine Sanctuaries Act that, although not formalized in act itself, are remembered by members of the public, “Sanctuaries will not become involved in fishery regulation, that will remain in the sole purview of the Regional Fishery Management Councils and the National Marine Fisheries Service, or the individual States in some circumstances”. This common perception of fishing industry participants, coastal communities and Indian tribes on the West Coast is still being put forward today. In a letter to the Oregon Congressional Delegation, Oregon Governor Kulongoski wrote, “I want to emphasize that commercial and recreational fishing will continue within the sanctuary and will continue to be regulated by the Pacific Fishery Management Council and the Oregon Fish and Wildlife Commission based on the management plan for the sanctuary. As you know, a National Marine Sanctuary does not have separate authority to manage or regulate marine fisheries.”

The solution: legislation needs to be clear and unambiguous and state that fishing regulations be accomplished through a Regional Fishery Management Council process under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and not under the process described in the current National Marine Sanctuaries Act.

Regarding the competing statutes of the Magnuson-Stevens Fishery Conservation and Management Act and the National Marine Sanctuaries Act, H.R. 5018 represents an important initial step, but additional clarification is needed.

Existing language in H.R. 5018 Section 10 COMPETING STATUTES is commendable its recognition that fishing regulations promulgated under the National Marine Sanctuaries Act are not currently required to conform to national standards under Section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act. Neither does the National Marine Sanctuaries Act bring to bear the scientific and fishing industry expertise that exists in Regional Fishery Management Council processes. However, H.R. does not go far enough in achieving kind of clarity on fishery management authority the public expects.

Without amendment, H.R. 5018 does not clearly identify a Regional Fishery Management Council as the sole fishery authority where public fishery management decisions are made. The existing process under Section 304(a)(5) of the National Marine Sanctuaries Act can be applied in a manner which leaves a Regional Fishery Management Council little more than the task of drafting fishery regulatory language to meet the underlying fishery policies and goals as determined by a National Marine Sanctuary.

The Pacific Council would like to see additional federal legislation which builds on the foundation of H.R. 5018 as introduced. The Pacific Council recommends Regional Fishery Management Councils and their associated public processes be formally brought into the early decision-making phases of the National Marine Sanctuary Act process. In this way, the scientific rationale for National Marine Sanctuary goals and objectives can become fully vetted and developed in a collaborative process.

Recent Pacific Council actions to ban the harvest of krill on the West Coast and to prohibit the use of bottom-contacting gear with the Cordell Bank and Monterey Bay National Marine Sanctuaries are good examples of Regional Fishery Management Council and the National Marine Sanctuary collaboration. In these cases, habitat and ecosystem concerns, shared by both the Pacific Council and the sanctuaries were addressed through the scientific and public processes of the Pacific Council and were efficiently implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Conversely, fishing regulations in the Channel Islands National Marine Sanctuary have recently been recommended for implementation under the both the Magnuson-Stevens Fishery Conservation and Management Act and the National Marine Sanctuaries Act, a process that has widely been considered to be confusing and inefficient.

Again, the Pacific Council feels legislation needs to be clear and unambiguous that fishing regulations be accomplished through a Regional Fishery Management Council process described in a slightly revised Magnuson-Stevens Fishery Conservation and Management Act and not under the process described in the current National Marine Sanctuaries Act. To achieve this, the Pacific Council stands behind its recommendation to adopt the position of the Regional Fishery Management Council Chairs. This position can be found beginning on the bottom of page 4 of the attached position paper.

This position paper calls for an ecosystem-based approach which broadens Magnuson-Stevens Fishery Management authority to cover the full range of species in the marine environment and calls for jurisdictional clarification through specific amendments to the National Marine Sanctuaries Act.

Total Acceptable Biological Catch Levels – (H.R. 5018, Section 3: SCIENCE-BASED IMPROVEMENTS TO MANAGEMENT)

The Pacific Council supports the existing language in this section of H.R. 5018 and notes the Pacific Council already

implements these management principles. Further, the Pacific Council effectively utilizes in-season manage mechanisms to ensure the adopted acceptable biological catch levels are not exceeded whenever possible.

Unlike H.R. 5018, there have been calls for a “penalty” provision in instances where the catch inadvertently exceeds adopted catch levels. The penalty being a commensurate deduction from the following year’s harvest allowance. Others call for a policy to carry both overages and underages into the following year. The Pacific Council disagrees with both of these potential provisions and think they can be unwarranted, disruptive, and dangerous.

Overages should not be deducted from the next year’s harvest because the overage could have a minor biological effect if the overage is minimal under an in-season management policy and a new stock assessment has takes the overage into account. It can be risky to rollover uncaught harvest allowance to the next year because one possible reason for the underage is an inaccurate stock assessment, a result that is not often discovered within one year.

Limited Access Privilege Programs (H.R. 5018, Section 7)

The Pacific Fishery Management Council is currently in the process of developing an individual quota program for the trawl sector of the groundfish fishery. The Pacific Fishery Management Council strongly recommends that nothing in any MSA reauthorization legislation apply to, or disrupt the ongoing development of potential future amendment of its groundfish trawl individual quota program. Therefore the Pacific Council is supportive of H.R. 5018 proposed language for MSA Section 303A(h) which protects programs under development before the date of the bill’s enactment.

Other Topics

I agree with my colleague from the North Pacific Fishery Management Council, Mr. Chris Oliver with regard to integration of the National Environmental Policy Act (NEPA) into the Magnuson-Stevens Act to create great efficiencies in the public process at no loss to the intent of NEPA.

On Friday April 29, 2006, I met with the Pacific Fishery Management Council’s Legislative Committee whose agenda focused on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. In a forthcoming letter, I will convey the results of the Legislative Committee’s section-by-section review of H.R. 5018 which will provide additional comments on the three topics I have highlighted today together with detailed comments on Pacific Fishery Management Council appointments, ecosystem-based fishery management, funding for observer programs, diminished fisheries, and Joint Fisheries Enforcement Agreements.