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Hearing on Fisheries Management Successes in Alaska
and
Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act
Before the House Subcommittee on Fisheries and Oceans

July 8, 2005

Mr. Chairman, Congressman Young:

The Alaska Crab Coalition ("ACC"), a trade association representing the owners of Bering Sea crab fishing vessels, as well as service and supply companies in the fishing industry, is grateful to have been invited to testify at this important hearing on fisheries management successes in Alaska and reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act ("MSA").

Summary

I think it beyond challenge to say that the major fisheries of the Exclusive Economic Zone in the area under the jurisdiction of the North Pacific Fishery Management Council ("Council") are models of fisheries conservation and management. This success reflects the fact that the standards and procedures of the MSA, in accordance with which those fisheries are managed, are fundamentally sound, and that Congress has been superbly effective in adapting the MSA to the unique and widely differing circumstances of the major fisheries off the coast of Alaska. The United States fishing industry is fortunate, indeed, to have the benefit of the MSA and of the continuing dedication of you, Chairman Gilchrest, and you, Congressman Young, as well as that of other distinguished Members of Congress, to the conservation and management of our Nation's fisheries. And, in view of the venue of today's hearing, I think it especially appropriate to pay tribute to Senator Ted Stevens for his longstanding leadership in fisheries affairs. The United States fishing industry, the fishery-dependent communities, and the American public at large, owe him an enormous debt of gratitude.

Since its inception, in 1986, the ACC has worked closely with the North Pacific Fishery Management Council ("Council"), the State of Alaska, the Department of Commerce ("Commerce"), and Congress in the development and implementation of an array of statutes, regulations, and policies aimed at the improvement of safety, conservation, efficiency, and fairness in the Bering Sea and Aleutian Islands ("BSAI") crab fisheries. Over the years, the challenges have been enormous: the highest occupational fatality rate in the Nation, resources in severe difficulty, the industry on its financial knees, and communities at serious economic risk. The Congress, the Council, the State of Alaska, and Commerce have risen to these challenges.

Through amendments to the MSA in 1992, Congress set us and the North Pacific Fishery Management Council, with the leadership of the State of Alaska, on the path that led to a series of innovative approaches and industry compromises to addressing the adverse impacts of excessive bycatch, a problem that long vexed the crab fisheries in the BSAI, where bottom trawling wreaked havoc on female and juvenile crab. Then, again, in 1996, Congress elevated the priority of bycatch control, by enacting National Standard Nine. In that same year, Congress placed safety at the forefront, along with conservation, by the enactment of National Standard 10. The ACC, in concert with like-minded organizations, was proud to provide Congress with proposals that eventually were reflected in these vitally important amendments. In addition, Congress included authority for capacity reduction "buyback" programs. The ACC supported that legislation and the eventual implementation that resulted in removal of ten percent of the fishing capacity in the BSAI crab fisheries.

Then, in 2004, Congress crowned its efforts, for the benefit of the BSAI crab fisheries, with enactment of legislation to authorize and implement the rationalization plan ("Plan") that the Council adopted in accordance with far-seeing legislation enacted several years earlier. This achievement, with the cooperation and support of the State of Alaska and Commerce, was possible only because the standards and procedures of the MSA were fundamentally sound, and Congress could be counted upon to adapt the Act, as needed, to the unique circumstances of the BSAI crab fisheries.

What sets the Plan apart from all previous management responses, and what delivers the long-sought after solutions, is its comprehensive approach to addressing the root cause of the problems plaguing these fisheries—the race for crab. Through implementation of the Plan, in October of this year, excess harvesting and processing capacity will be removed from the BSAI crab fisheries in a way that will be fair to harvesters and processors, alike, and will avoid economic dislocation of dependent communities. Through a carefully balanced system of harvester and processor quota shares and regional delivery provisions, a sustainable equilibrium of production capacity and resource availability will be achieved, markets will

be stabilized, safety will be improved, and communities will be protected. It is true that the Plan encountered some spirited opposition, but the debate only served to highlight the foresight and resoluteness of Congress, and the effectiveness of the Council process.

The ACC urges Congress to proceed carefully with reauthorization of the MSA. The successes in Alaskan fisheries demonstrate the fundamental soundness of the Act. The unique circumstances of particular Alaskan fisheries, including BSAI crab, have been well accommodated by judicious amendments to the MSA. Accordingly, the ACC maintains that any further amendments to the MSA be crafted to avoid upsetting the basic fabric of the Act and the provisions specific to particular fisheries. In short, we would urge that BSAI crab fisheries be grandfathered against any new requirements that could result in costly and potentially damaging revisions to the Plan as only recently authorized and implemented by Congress in the MSA.

Background and Need for BSAI Crab Rationalization

The BSAI crab fisheries have long presented daunting challenges to fisheries managers, our industry, and dependent communities. Safety concerns have necessarily attended fishing operations in the extremely harsh natural environment of the Bering Sea and Aleutian Islands area. Conservation became an issue, as soon as major fishing fleets began to exploit the resource. Allocation issues arose for our fishermen, when we first sought to “Americanize” the fisheries, by wresting control from the foreign fleets, and later, after such issues arose again, when that goal was achieved and our domestic harvesting exceeded the available resources.

As communities became dependent upon BSAI harvesting and processing, the scope and complexity of economic and social issues greatly increased. The full spectrum of these challenges became less and less manageable, as BSAI crab resources suffered declines and failures under enormous fishing pressures.

Following much debate and the rejection of a harvester-only individual quota program, a license limitation program (“LLP”) was adopted in 1995 and implemented in 1998, with the objective of slowing, if not halting, increased harvesting capacity in the fisheries. Of course, this was only a halfway measure, as it failed to prevent “capital stuffing,” that is, additional investments increasing the efficiency of the limited number of vessels that were permitted to operate in the fisheries. Limits on the number of pots per vessel and various other management measures, including time and area closures, also failed to solve the fundamental problem of excessive harvesting capacity. The race for fish intensified.

In the superheated race for crab, these measures had perverse safety, conservation, and economic effects. Crab pots are designed to “soak” for long enough to allow all the bait to be consumed, and for the juveniles to leave, through escape panels, in search of other forage. Fishing seasons comprised of a few days, coupled with pot limits, led to a spiral of increased risk to the safety of fishermen and to the sustainability of the resources, as frantic efforts were made to maximize the numbers of pot lifts in short seasons. In these circumstances, juvenile crab feeding on bait, would still be in the pots at the time they were lifted, and a high percentage of juveniles would perish, as a result of the changes in temperature, when they ascended and descended through the water column. The future of the crab fisheries was dying with its juveniles. Many independent vessel owners were left hanging precariously on the brink of bankruptcy. Worst of all, the BSAI crab fishery remained the most dangerous occupation in the United States.

In 1996, while the LLP was wending its way through the bureaucracy toward implementation, the Sustainable Fisheries Act was enacted. As noted, above, it included two measures first proposed by the ACC, new national standards to limit and reduce bycatch, and to improve safety, and a third measure supported by the organization, authority for the federal government to conduct industry-funded fishing capacity buybacks. However, to the disappointment of the ACC, the Act also included a four-year moratorium on new individual fishing quotas.

Bering Sea pollock took center stage in the North Pacific, and in October 1998, the American Fisheries Act (“AFA”), established a unique system of harvester/processor coops for that fishery, including a 90/10 formula for mandatory deliveries to exclusive processors. Most of the Council’s time during the ensuing 18 months was consumed with resolving those issues left to its jurisdiction by the new law.

During the year 2000, the crab industry considered various forms of coops, modeled after the shorebased AFA coops, and a buyback. However, these potential management responses to the crisis in the BSAI crab fisheries failed to achieve a critical mass of support.

At the close of the year 2000, the moratorium on individual fishing quotas was extended for an additional two years. However, in the Consolidated Appropriations Act of 2001 (P.L. 106-554), Congress also enacted special legislation that served as a guidepost for future BSAI crab management:

...The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, and quotas held by communities. The analysis should include an economic analysis of the impact of all the options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representative in a timely manner.

In January of the following year, the Council formally constituted a 21-member Crab Rationalization Committee that represented all affected interests, including the crab industry organizations, dependent communities, and the environmental community. The work of that committee culminated on March 23 of that same year with endorsement, by a two-thirds vote, of a system that would provide quotas for both fishermen and processors, as well as regionalized landing requirements. This served as the basis for the Council's eventual adoption of a "three-pie voluntary cooperative program."

On June 10, 2002, the Council adopted the Plan by a unanimous vote of 11-to-0. The very fact that the long public debate leading up to this decision was spirited and even rancorous at times demonstrated that the Council's proceedings were a model of public participation, with input received from every party who had a perspective to bring to the table. There were countless hours of deliberation in the Council and its committees, as well as within and among interested and affected individuals and organizations over a period of more than two-and-one-half years. Anyone who failed to offer his or her views cannot claim to have lacked the opportunity for participation in the process.

There was, it is true, a last-minute disagreement over a system of arbitration designed to resolve price disputes. No organization was more concerned than was the ACC, which withdrew support for the Plan, pending the outcome of efforts to resolve the crisis. Fortunately, the ACC was able to support the end-product, based on the expectation that the Council and Congress would critically and continually review the operation of the arbitration process, and that the Council would make changes, if that proved necessary to assure fairness. This expectation was proved correct, when the Council submitted its May 6, 2003, report to the Congress, with the following statement concerning arbitration:

If the preferred arbitration program does not function as intended, the Council is committed to using a different arbitration structure to provide a fair price setting environment. Because of the completed analyses of these different structures, an alternative structure, such as the "Steele Amendment," could be expeditiously adopted as part of the binding arbitration program should Council review of the program suggest that the arbitration program is not working as intended. If Congress approves this program, such explicit authority could be provided to the Council to ensure timely action to address problems that might arise...We hope that Congressional authorization of the program will provide explicit direction to the Council concerning its obligation to review and amend the program should any unanticipated negative impacts arise.

The BSAI Crab Rationalization Plan

While there were concerns that the Plan would somehow establish precedents unsuitable for other fisheries, the fact is that it responded in a tailored way to a unique combination of circumstances:

- Horrendous weather and ice problems on the fishing grounds, resulting in the highest occupational fatality rate in the Nation.
- Extreme over-capitalization in both the harvesting and the processing sectors.
- Heavy economic and social reliance of five communities, located in two regions, on crab production.
- Unstable and declining crab resources, and excessive bycatch waste.
- Foregone fishing opportunities, due to inability to manage small resources.

The Plan responds, in a sustainable, fair, and balanced manner, to the complex resource, environmental, economic, social, and safety challenges confronting stakeholders in the major BSAI crab fisheries:

- Vessel owners;
- Skippers and crews;
- Processors;
- Communities; and
- The public at large.

To achieve this goal, the Plan contains the following primary elements:

- Harvest shares allocated to fishermen for 100 percent of the total allowable catch (TAC), with 90 percent of those shares to be delivered to processors holding processing shares, and the remaining 10 percent to be deliverable to any processor.
- Processing shares allocated to processors for 90 percent of the TAC.
- Regional share designations for processor allocations and the corresponding 90 percent of the harvest allocations, distributing landings and processing between specific regions, plus additional community protections.
- A mandatory binding arbitration program to settle price disputes between harvesters and processors and to insure competitive market prices.
- Voluntary harvester cooperatives permitted to achieve efficiencies through the coordination of harvest activities and deliveries to processors.
- Community Development Quota allocations of 10 percent of the TAC.
- Initial harvest share allocations to captains of 3 percent of the TAC, and the opportunity for skippers and crew to purchase shares.
- Low-interest federal loan program for captains and crew to purchase harvest shares.
- Comprehensive data collection and program review to assess the success of the rationalization program and to provide oversight on revenue share ratio between harvesters and processors.

The Plan presents an impressive array of improvements over the prevailing situation.

Biological Benefits:

- Improved stock management through use of a TAC;
- Reduced overharvests through individual allocations;
- Reduced discards resulting longer soak times and better sorting of undersized crab through escape mechanisms in gear; and
- Improved handling of discards by ending the race for crab.

Economic Benefits:

- Compensated reductions in capitalization through voluntary share transactions; and
- Economic stability for the harvesting and processing sectors and communities.

Social Benefits:

- Preservation of regional distribution of economic activity;
- Facilitated entry to the fishery for crew; and
- Protection of historical interests of captains.

Safety Benefit:

- Improved safety by ending the race for crab in bad weather and sea-state conditions.

The ACC Position on MSA Reauthorization

What the ACC Supports

The ACC strongly supports the provisions in the MSA that apply to individual quotas. We believe that those provisions have well served the Nation with respect to existing programs, and are adequate to support future programs.

The ACC also strongly supports the MSA provisions that apply uniquely to the BSAI crab fisheries as providing a successful adaptation of conventional management measures and the institution of novel approaches to addressing, in a fair, balanced, and effective way, the unique circumstances of those fisheries.

The ACC supports any modifications to the MSA that may be necessary or otherwise useful to ensuring effective implementation of the BSAI crab IFQ loan program. For that program, the ACC also supports provision for a loan subsidy of \$250,000 and a loan ceiling of \$25,000,000, in an appropriations Act, as required by the Federal Credit Reform Act. These amounts were recommended by the Council.

What the ACC Opposes

In general, the ACC opposes any changes to the MSA that would introduce either new, higher costs of operating in the fisheries, or otherwise reduce the practicability or effectiveness of individual quotas in achieving the broad goals of that Act. The ACC opposes any new authority to provide for processor quotas in any other fisheries than those for crab in the BSAI. However, the ACC does believe that, for each fishery, management measures, taking into account the particular circumstances, should provide for a fair and balanced approach to addressing the myriad affected private and public interests. We note in this regard, that there is, in important fisheries, a close interrelationship between harvesters, communities and shorebased processors. These relationships should be carefully considered in the crafting of any new quota programs.

The ACC would vigorously oppose any new standards or procedures that are not accompanied by a grandfather provision that ensures the continuity of individual quotas under the law as it exists today. Any new standards or procedures, therefore, should apply only prospectively to any program established after their enactment into law.

Among the previous proposals we have opposed, and would continue to resist, are the following:

- Any sunset of individual quotas. Such a measure would reduce the effectiveness of rationalization, by adversely impacting the value of quotas over time, and thus would impede consolidation and other measures leading to increased efficiency.
- Any new fees, the current law already provides for fees in individual quota programs, and there is no justification for increasing the costs to operators in those fisheries through what would amount to an additional, special tax. Any statutory requirement that would increase the time required for development and implementation of individual quota programs. The current statutory requirements are excessively time-consuming, and thus, costly to both the private sector and government. This situation should not be further aggravated by new law.
- Any new statutory provisions that would predictably spawn litigation. Commerce is already under severe assault in the courts, with seriously deleterious consequences for the management system. New provisions that are controversial, ambiguous, or duplicative must be avoided.
- Any penalties or enforcement mechanism that is suspect from the standpoint of due process. We believe the current penalties and enforcement provisions of the MSA serve its purposes adequately. (We support the special provisions in the enabling legislation for the BSAI crab rationalization plan.)

Matters of Particular Interest to the Subcommittee in this Hearing

The letter of invitation to this hearing identified matters of particular interest to the Subcommittee, and accordingly, requested information regarding them.

What is the importance of fisheries both to Alaska and the various regions?

Fisheries are vital to the economic well-being of Alaska. They provide thousands of jobs and revenues for the State and local governments. Many coastal communities depend upon fisheries, and have few if any major, alternative sources of economic activity. Fisheries off Alaska are managed on a sustainable basis. Therefore, they provide a renewable resource for the indefinite future, and thereby, stand in contrast to the such extractive activities as oil, gas, and hard rock mineral production. The BSAI crab fishery, alone, produces \$120 million in landings, and as the crab resources continue to recover, will produce much more.

How is science integrated into the management process and is this a transparent and public process?

The Scientific and Statistical Committee ("SSC") of the Council considers every management action in open meetings, and reports to the Council, where the public at large has an opportunity to comment. The Council is diligent in weighing scientific considerations, when making management decisions. In addition, the Council relies on the support of the impressive science capabilities of NMFS and other elements of NOAA. The process is both transparent and highly effective.

What management processes occur in the North Pacific and what lessons can we learn from the North Pacific for the reauthorization of the MSA?

The management process in the Council is characterized by careful consideration of inputs from scientists, fisheries managers, economists, communities, industry organizations, and members of the general public. Public hearings, recorded votes, exhaustive analyses in EIS and other regulatory analyses, ensure responsible decisions. The ACC believes that the North Pacific is a model for other regions. The views of the ACC on MSA reauthorization are set forth above.

What are the major issues affecting each region in Alaska and what are the challenges for each region?

The ACC would not presume to comment on issues affecting, and challenges confronting, all the regions in Alaska. However, we would point out that, in the BSAI, the key issues and challenges are, as they always have been, conservation, safety, and allocations. The new Crab Rationalization Plan resolves the major issues for the BSAI crab fisheries. However, challenges will arise in crafting refinements, as experience is gained with the program and circumstances change.

Also, the ACC, given its lengthy experience with Olympic fishery threats to overall sustainability of resources, resulting in excesses of discards of target and non-target groundfish species, bycatch mortality of crabs, halibut, salmon and herring, and threats to the safety of life at sea, recognizes a pressing need for the NPFMC to adopt at the earliest possible date, a suite of preferred alternatives for fair and balanced rationalization programs for the Bering Sea and Aleutian Islands non-pollock groundfish fisheries and for the Gulf of Alaska pollock, cod and flatfish fisheries.

Additional comments.

The ACC has long taken an interest in ecosystem management proposals. While we find them intellectually interesting, we believe them to run the risk of making an already complicated, yet highly effective, management system unworkable, excessively costly, and prone to even more litigation than now swamps the agency. The fact is that the complexity of marine ecosystems exceeds the technical, scientific, and management capabilities of NMFS and NOAA.

The ACC supports ecosystem-based management as an important goal for the nation's federal fisheries management system. The MSA currently allows for an ecosystem-based approach to management and that this approach should be given higher priority with increased research funding and enhanced collaborative efforts among fishing and non-fishing management bodies. The ACC concurs with the National Academy of Sciences ("NAS") conclusion that, given our current state of knowledge, single-species assessments currently provide the best guidance for scientific stock forecasting and fishery management advice. We endorse the use of currently available tools in implementing ecosystem-based management and the resources and funding necessary to better engage those tools on a regional basis.

ACC does not support establishment of a separate ecosystem council, but we do support establishment of regional ecosystem collaborative bodies designed to coordinate fishing and non-fishing information, research and management. The concept of "national standardization" is incompatible with the need for ecosystem approaches. The Regional Fishery Management Councils and NMFS need to maintain the flexibility to manage regional fisheries taking into account regional ecosystem differences. In March of this year, these same conclusions emerged in the official findings of the NOAA sponsored, Managing Our Nation's Fisheries Conference II. Participants were specifically wary of mandating development of overarching fishery ecosystem plans rather than building an ecosystem approach into existing management practices and plans.

Conclusion

The ACC is a major stakeholder in the BSAI crab fisheries, and therefore, in the MSA. We have a long history of constructive and successful participation in the legislative and regulatory processes, with the goal of improved conservation of our Nation's fisheries.

The ACC believes that the MSA is an excellent law, and should only be amended where a compelling need is demonstrated, the risk of litigation is low, and the probability of demonstrable, material improvement to conservation and management is high. We are strongly opposed to any changes that could increase operator costs or otherwise impede the effective management of individual quota fisheries.

The MSA is the organic fisheries law of our country, and as such, should not be amended by provisions of general application to address special cases. Special legislation, such as that enacted for the BSAI crab fisheries, is by far the preferable route to dealing with unique situations.