

## LEGISLATIVE MATTERS

The Legislative Committee (Committee) will meet Monday, June 12 at 1:00 p.m. with a primary objective to review federal legislative issues regarding reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

The Committee last met on April 28, 2006 in a full day session in lieu of a meeting at the April 2006 Council meeting. This full day meeting was scheduled by the Council in March 2006 at the request of the Committee primarily to allow adequate time for Committee deliberation of H.R. 5018, the *American Fisheries Management and Marine Life Enhancement Act* introduced in the U. S. House of Representatives by Congressman Richard Pombo (R-California) along with Congressman Barney Frank (D-Massachusetts) and Congressman Don Young (R-Alaska). The meeting was comprehensive and productive given the lack of time constraints that can happen when the Committee meets in conjunction with Council meetings.

Due to considerable congressional activity in May 2006 regarding H.R. 5018, there was insufficient time for full Council review of the Committee's comments. To facilitate timely consideration of Committee comments during this legislative process, the Committee recommended and the Chair approved, Council Executive Director, Dr. Donald McIsaac providing written (Agenda Item B.3.a, Attachment 1) and verbal comments (Agenda Item B.3.a, Attachment 2) conveying Committee positions at a May 3, 2006 hearing regarding H.R. 5018 held by the U.S. House of Representatives Committee on Resources. Mr. Rod Moore also provided testimony at the hearing, but qualified his testimony as not being in his capacity as a Council member. The Committee's comments were conveyed in a letter (Agenda Item B.3.a, Attachment 3) sent to Congressman Pombo and the cosponsors of H.R. 5018, other key members of Congress working on MSA reauthorization, as well as staff members of the U. S. Senate Committee on Commerce, Science, and Transportation and the U.S. House Subcommittee for Fisheries, Conservation, Wildlife, and Oceans in advance of a May 17, 2006 work session of the U.S. House Committee on Resources to review and revise the bill. At the June Council meeting, the Committee will review and discuss any amended version of H.R. 5018 that may arise from this session.

The Committee also reviewed an amended version of S. 2012, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005* introduced in the U. S. Senate by Senator Ted Stevens (R-Alaska). The Committee noted several key issues previously raised by the Council which have not been addressed in the current version of S. 2012. Additionally, in response to Council deliberations and public testimony at the March 2006 Council meeting, the Committee reviewed and commented on two new issues; 1) removal of term limits for the Council Tribal Obligatory seat, and 2) S. 2012 provisions for U.S. representation on the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific Ocean in accordance with the Western and Central Pacific Fisheries Convention. Committee comments were sent in a letter from Dr. McIsaac (Agenda Item B.3.a., Attachment 4) to Senator Stevens and the same distribution list as aforementioned letter regarding H.R. 5018.

The Council is tasked with considering its Legislative Committee recommendations on these and other legislative matters and responding, as appropriate.

**Council Action:**

**Consider recommendations of the Legislative Committee.**

Reference Materials:

1. Agenda Item B.3.a, Attachment 1: May 3, 2006 written testimony of Dr. McIsaac to U.S. House of Representatives, Committee on Resources regarding Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.
2. Agenda Item B.3.a, Attachment 2: May 3, 2006 verbal testimony of Dr. McIsaac to U.S. House of Representatives, Committee on Resources regarding H.R. 5018 and H.R. 1431.
3. Agenda Item B.3.a, Attachment 3: May 15, 2006 letter from Dr. McIsaac to U.S. Congressman Pombo regarding Legislative Committee comments on H.R. 5018.
4. Agenda Item B.3.a, Attachment 4: May 15, 2006 letter from Dr. McIsaac to U.S. Senator Stevens regarding Legislative Committee comments on S. 2012.

Agenda Order:

- |   |             |
|---|-------------|
| a. Agenda Item Overview   | Mike Burner |
| b. Legislative Committee Report   | Dave Hanson |
| c. Reports and Comments of Advisory Bodies                                      |             |
| d. Public Comment   |             |
| e. <b>Council Action:</b> Consider Recommendations of the Legislative Committee |             |

PFMC  
05/22/06

**Hearing Before the  
United States House of Representatives  
Committee on Resources**

**Reauthorization of the Magnuson-Stevens Fishery  
Conservation and Management Act**

**May 3, 2006**

**Washington, DC**

**Written Testimony of  
Dr. Donald McIsaac  
Executive Director  
Pacific Fishery Management Council**

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.

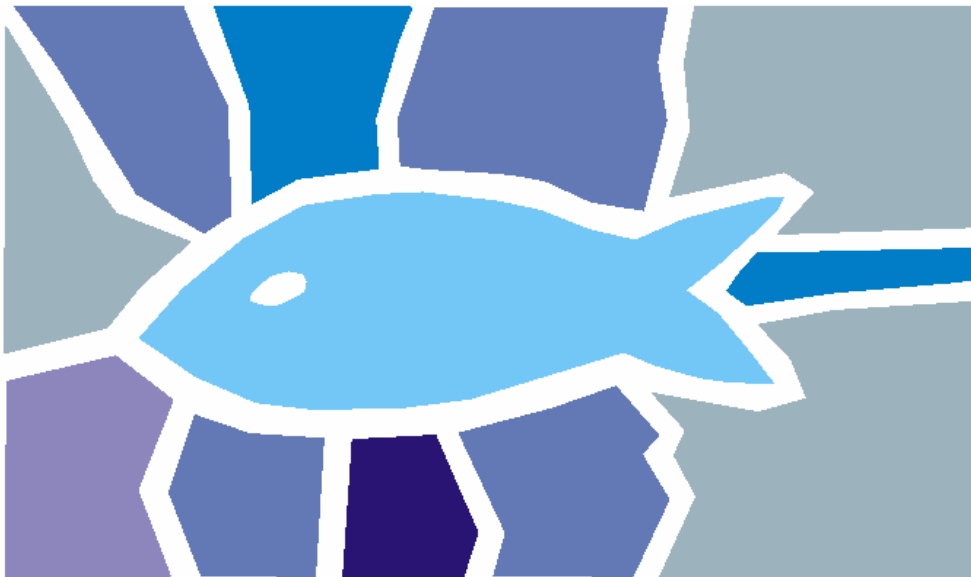
### **LIST OF ATTACHMENTS**

1. Disclosure Requirement for Donald O. McIsaac to testify before the House Committee on Resources, May 2006

2. Positions of the Regional Fishery Management Council Chairs on Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, April 2005

**Positions of the Regional Fishery Management  
Council Chairs on Reauthorization of the Magnuson-  
Stevens Fishery Conservation and Management Act**

April 28, 2005



## **Preface**

The 109<sup>th</sup> Session of Congress is currently underway and it is anticipated that reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will be addressed during this Congress. Regional Fishery Management Council (RFMC) input on MSA reauthorization has been requested by U.S. Senators Ted Stevens (R, Alaska), Daniel Inouye (D, Hawaii), Gordon Smith (R, Oregon), and Olympia Snowe (R, Maine), as well as U.S. Representative Wayne Gilchrist (R, Maryland). At the annual meeting of the RFMC Chairs and Executive Directors in Dana Point, California on April 27 – 28, 2005, the collective RFMC Chairs considered various issues associated with MSA reauthorization towards the purpose of developing consensus positions, including previous positions developed in 2001 and 2002.

This document describes the RFMC Chairs' positions on the nine issues developed at the referenced meeting. This document also contains the Council Chairs' positions from 2001 and 2002, as updated on the basis of a review for relevance and consistency with the 2005 positions to insure that any 2005 positions supercede and take precedence over any potential conflicts with prior positions. The Chairs adopted these positions, with the understanding that positions on outstanding relevant issues would be forthcoming at some point in the future.

## **Table of Contents**

Issue 1: Dedicated Access Privileges .....	Page 2
Issue 2: Competing Statutes.....	Page 3
Issue 3: Integration of Science in the Fishery Management Process.....	Page 6
Issue 4: Ecosystem Approaches to Management.....	Page 7
Issue 5: Rebuilding Time Frame.....	Page 9
Issue 6: Governor’s Nomination of Council Members.....	Page 9
Issue 7: FACA and Council Chairs Meetings.....	Page 9
Issue 8: Bycatch Reporting Requirements.....	Page 10
Issue 9: National Saltwater Recreational License .....	Page 10
Amended 2001 Council Chairmen Positions .....	Appendix A
Amended 2002 Council Chairmen Positions .....	Appendix B

## **Issue 1: Dedicated Access Privileges (Individual Fishing Quotas, Community Quotas, Area-Based Quotas, and Fishing Cooperatives)**

### ***Preamble***

A reauthorized MSA shall include comprehensive authority to develop dedicated access privilege programs, generally referred to as individual quotas (IQs), but also referred to as area-based quotas, community quotas, fishing cooperatives, allocation systems, or share-based programs.

No later than 18 months after reauthorization, the Secretary of Commerce (Secretary), in consultation with RFMCs, should develop National Guidelines consistent with the recommendations in this document for the establishment of allocation systems, including, but not limited to, IQs, community quotas, and cooperatives. However, the development of these National Guidelines shall not prevent the adoption of a new IQ program or compromise existing IQ programs while the guidelines are under development. Guidelines shall not be applied retroactively, although existing programs may be subject to periodic review and revision by RFMCs as appropriate.

### ***Criteria for Allocation***

The initial allocation of interests under an IQ program shall be consistent with existing National Standard 4. The RFMCs shall consider the interests of those who rely on the fishery, including vessel owners, processors, communities, and fishing crews. An IQ program may include provisions to protect these interests. However, goals of the IQ program should also be to create market-based programs and conserve the resource.

### ***Conservation***

IQ programs should include incentives to reduce bycatch and discards and to promote conservation wherever possible, consistent with existing National Standard 9.

### ***Limitation on Interests and the Duration of IQ Programs***

Shares under an IQ program must have tenure sufficient to support and facilitate reasonable capital investment in the fishery; however, any shares allocated under the program shall be a privilege, which may be revoked without compensation to the holder.

IQ program duration shall be at the individual RFMC's discretion without required sunset.

### ***IQ Program Review***

Periodic, comprehensive review of IQ programs shall be required to assess the extent to which the program is meeting original goals and objectives and to assess the social and economic ramifications to program beneficiaries.

### ***Quota Transfers***

Appropriate provisions governing transferability, which may include permanent and temporary transfers, shall be subject to limitations consistent with the social objectives of the program and shall be determined by individual RFMCs.

### *Excessive IQ Shares and Quota Accumulation Limits*

The IQ program allowance should include limits on shares, including caps on holdings of a person or use of shares by a person or a single vessel. However, such limitations shall be determined on a program-by-program basis by the individual RFMCs.

### *Referenda of IQ Programs*

Referenda shall not be a mandatory requirement for Secretarial approval of an IQ program. RFMCs may, however, establish requirements for referenda for individually tailored IQ programs.

### *IQ Program Cost Recovery Fees*

IQ programs should include an allowance for the collection of fees to offset management and monitoring costs, including state costs. However, the collection of fees should not exceed 3% of the exvessel value and should take into consideration existing industry-born costs for observers.

### *Enforcement, Monitoring, and Data Collection*

IQ programs should include provisions for effective monitoring and enforcement of the goals and objectives under the program.

## **Issue 2: Competing Statutes**

### *MSA and National Environmental Policy Act*

Following the addition of critical provisions to MSA sections 302, 303, and 305, thereby making MSA fully compliant with the essential intent of National Environmental Policy Act (NEPA), reauthorized legislation should specify MSA as the functional equivalent of NEPA and exempt from NEPA in the same manner as the MSA is exempt from the Federal Advisory Committee Act (FACA). Areas to be addressed include analyzing a full assessment of environmental impacts, a range of reasonable alternatives, cumulative effects, and the extent of analysis on effects to the human environment, as well as a comprehensive public participation process. The specific proposed amendment language is as follows:

SEC. 302 [16 U.S.C. § 1852] REGIONAL FISHERY MANAGEMENT COUNCILS CONTENTS OF FISHERY MANAGEMENT PLANS

(i) PROCEDURAL MATTERS.

**(7) Prior to a Council submitting a fishery management plan, plan amendment or proposed regulations to the Secretary as described in Section 303, a Council shall prepare a fishery impact statement that shall**

**(a) include a range of reasonable alternatives;**

**(b) specify and assess likely direct and cumulative effects of each alternative on the physical, biological and human environment, including**

**(i) participants in the fisheries and fishing communities affected by the plan, amendment, or regulation and**

**(ii) participants in fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council representatives of those participants;**

**(c) be considered in draft forms during at least two Council meetings; and**

**(d) be made available to the public in draft form at least 10 days prior to the date of final Council action.**

**A final fishery impact statement shall be submitted to the Secretary coincident with a final recommendation.**

SEC. 303 [16 U.S.C. § 1853] CONTENTS OF FISHERY MANAGEMENT PLANS

(a) REQUIRED PROVISIONS.

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

...

(9) include a fishery impact statement of the plan or amendment (in the case of a plan or amendment thereto submitted to ~~or prepared by~~ the Secretary after October 4, 1990~~2005~~) which will assess, specify, and describe the likely effects, ~~if any~~, of the conservation and management measures ~~on~~ **as described in Section 302 (i) 7. Fishery management plans prepared by the Secretary shall conform to the requirements of Section 302 (i) 7.**

~~(A) participants in the fisheries and fishing communities affected by the plan or amendment; and~~

~~(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council representatives of those participants;~~

SEC. 305 [16 U.S.C. § 1855] OTHER REQUIREMENTS AND AUTHORITY

...

(e) EFFECT OF CERTAIN LAWS.—

**(1)** The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of section 304 as they apply to the functions of the Secretary under such provisions.

**(2) Any plan or amendment or regulation developed under sections 302, 303, and 304 of this act, is deemed to be in compliance with the National Environmental Policy Act.**

### *MSA and National Marine Sanctuary Act*

Fishery management authority in national marine sanctuaries (NMS), for all species of fish as defined in the current MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority shall not be limited to species of fish covered by approved fishery management plans (FMPs), but shall include all species of fish as defined in the current MSA and shall cover the full range of the species in the marine environment. Prior to reaching decisions on the management regulations affecting fishing in NMS waters, a RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.

In addition to the proposed changes in the MSA above, the RFMCs also recommend the National Marine Sanctuaries Act be amended to achieve jurisdictional clarity as follows:

**NATIONAL MARINE SANCTUARIES ACT**  
SEC. 302. [16 U.S.C. § 1432] DEFINITIONS

As used in this chapter, the term-

...

(8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary, **excluding fish and Continental Shelf fishery resources under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1811)**, that contributes to the conservation, recreational, ecological, historical, education, cultural, archaeological, scientific, or aesthetic value of the sanctuary; and

SEC. 304. [16 U.S.C. § 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

(a) Sanctuary Proposal

...

(5) FISHING REGULATIONS-**The appropriate Regional Fishery Management Council shall prepare fishing regulations for any fish and Continental Shelf fishery resources within a sanctuary in accordance with section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852). The Secretary shall review the proposed fishing regulations in accordance with section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1854), and other applicable statutes. Regional Fishery Management Councils shall cooperate with the Secretary and other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practical stage in drafting any sanctuary fishing regulations. Preparation of fishing regulations under this section shall constitute compliance with section 304(d) of this Act. Fishing in compliance with regulations prepared under this section shall not constitute a violation of this Act.**

***MSA and Freedom of Information Act***

The MSA should be amended to clarify the confidentiality of observer data relative to the Freedom of Information Act (FOIA); i.e., unless otherwise authorized (as in 402(b)(1)(E) for example), prohibit the release of non-aggregated observer data. Other information such as that generated by electronic monitoring devices (VMS or video cameras, for example) should be afforded similar protection.

State law enforcement officials under a cooperative enforcement agreement with NOAA should be provided access to information and data gathered by the vessel monitoring system (VMS) operated by the National Marine Fisheries Service (NMFS) Office of Law Enforcement, and such information should be allowed for use in prosecutions of state and federal law violations.

The U.S. Coast Guard should be provided access to VMS data for enforcement and homeland security purposes unless otherwise arranged by agreement between agencies for enforcement, homeland security, and maritime domain awareness programs.

### **Issue 3: Integration of Science in the Fishery Management Process**

#### ***Separation of Conservation and Allocation Processes***

Final determinations of necessary scientific fishery parameters should be made within the RFMC management process and not in separate, distinct bureaucracies.

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.

#### ***Structure and Function of SSCs***

The specific structure of the SSC should be based on the policy of each Council consistent with the overall guidance of the MSA.

RFMCs should retain appointment authority for SSCs and establish terms to meet their standard administrative processes.

SSC members should not be subject to any limit to the number of terms they may serve.

When possible, the SSC should meet concurrently with Council meetings and at the same locale.

Opportunity should be provided for regional or national SSC meetings where members from different regions could discuss best practices and seek to identify analytical and research needs.

#### ***Best Scientific Information Available***

Each Council's SSC shall peer review fundamental analyses needed for fishery management, including such matters as stock assessments, fishery impact models, and projection methodologies. For purposes of compliance with the Data (Information) Quality Act and attendant Office of Management and Budget guidelines, the MSA shall constitute the SSCs as an appropriate alternative review mechanism for influential and highly influential information. The SSC shall make a determination of the best available scientific information prior to Council decision-making and provide the Council with an assessment of the soundness of the scientific conclusions and the uncertainty of the science. The Council will consider the soundness of the data, levels of certainty, and socioeconomic factors when developing catch limits and/or management measures.

Best scientific information available determinations include the social and economic sciences, as well as the physical and biological sciences.

#### ***Need for Independent Review***

There should be an independent peer review of scientific information and processes used by each Council at appropriate intervals determined by the Council. Such reviews should not be limited to stock assessments, but could also extend to socioeconomic and other types of models and analyses used by the Council.

### ***Use of Default Mechanisms***

Default measures that close fisheries entirely until science and management integration standards are met should not be used. Emergency and interim rules may be extended as necessary to address delays in the use of best available science, miscellaneous violations of National Standard 1, or other such potential concerns.

### ***Making Research Relevant***

SSCs should develop research priorities and identify data and model needs for effective management.

### ***Other***

NMFS should be provided with the support to dedicate more resources to stock assessments and socioeconomic impacts.

## **Issue 4: Ecosystem Approaches to Management**

### ***Overall Conclusions for Ecosystem Approaches***

Ecosystem-based management is an important tool for enhancing fisheries and the ecosystems on which they depend.

The RFMCs and NMFS should work collaboratively to pursue an ecosystem approach to fisheries involving all stakeholders, managers, and scientists.

The RFMCs endorse a preference for the use of currently available tools in implementing ecosystem-based management and the resources and funding necessary to better engage those tools.

RFMCs and NMFS regions need to maintain the flexibility to manage regional fisheries. The concept of “national standardization” is incompatible with the need for ecosystem approaches to reflect regional differences.

A holistic approach is a realistic approach only with collaboration among RFMCs and NMFS, partner agencies, and stakeholders.

### ***Regional Ecosystem Planning and the Role of Regional Ocean or Ecosystem Councils***

The RFMCs do not support separate ecosystem councils, but do support establishment of regional coordinating bodies comprised of regional authorities/jurisdictions and public expertise to address non-fisheries management issues.

### ***Technical Requirements for an Ecosystem Approach to Fisheries***

The RFMCs and NMFS should (1) identify, prioritize, and develop weighting for ecosystem characteristics as recommended by the SSC at the *Managing Our Nation’s Fisheries II* conference (including human characteristics and reference points and performance indicators to measure progress, future monitoring, and research) and (2) inventory current ecosystem projects.

To develop successful ecosystem management, the approach must progress in a deliberate, evolutionary, and iterative process.

### ***Science Limitations***

A lack of data should not limit our ability to adopt a realistic ecosystem management approach.

Additional funding is needed to enhance ecosystem data collection and model development. The goals and objectives of any ecosystem management approach must match the reality of available information, the reality of budget limitations, and the evolutionary nature of the process.

The first priority should be to focus on improvements that can realistically be accomplished in the short term, using and improving on our current management tools, existing data sets, and knowledge, recognizing models and available data will differ by region.

### ***Incorporating Ecosystem Planning in FMPs***

Councils should develop ecosystem-based management documents for fisheries.

Ecosystem-based FMPs should be a fundamental, first order goal for each Council or region.

If an overarching fishery ecosystem plan is developed, it should provide general guidance to FMP development.

### ***Process for Developing Ecosystem-Based Goals and Objectives***

Broadly defined national level objectives should be developed, followed by regionally defined goals and objectives.

A steering committee comprised of Council and NOAA participants in each region or large marine ecosystem should provide recommendations on the process of developing goals and objectives.

### ***Development of National Guidelines for an Ecosystem Approach to Fisheries***

National Guidelines should provide general guidance, recognizing the diversity of ecosystems, and not be technical in nature. It is noted that many of the pitfalls in the development of national guidelines for essential fish habitat [EFH] and the complexities of overfishing can be avoided.

Guidance should help Councils and NMFS to use tools available under MSA and other mandates, to evaluate the potential for ecosystem-based management in each region, and address differences among regions.

### ***Elements of an Ecosystem Approach to Fisheries that should be Codified in the MSA***

Great caution should be applied in considering amendments to the MSA that include any specific requirements. More specifically, the RFMC are wary of strict regulations and guidelines that will require Councils to produce new FMP amendments across the board (as occurred with new elements in the 1996 Sustainable Fisheries Act), rather than building an ecosystem approach into existing management practices.

Noting the current MSA allows for ecosystem-based management, the RFMCs do not believe it is necessary to amend the MSA to address ecosystem management. Instead, it is recommended that regional guidance be developed to help Councils move forward with an increased level of sophistication.

### **Issue 5: Rebuilding Time Frame**

The RFMCs recommend MSA Section 104-297 (e)(4)(A)(ii) be deleted as follows to address the problems associated with the arbitrary 10-year rebuilding time boundary:

- (2) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—
  - (A) end overfishing within one year, and specify a rebuilding period that shall—
    - (i) be as short as possible, taking into account the status, mean generation time, and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; ~~and~~
    - (ii) ~~not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;~~
  - (B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and
  - (C) for fisheries managed under an international agreement, reflect traditional participation in the fishery relative to other nations, by fishermen of the United States.

### **Issue 6: Governor’s Nomination of Council Members**

The RFMCs recommend no change in the process for nominating Council members.

### **Issue 7: FACA and Council Chairs Meetings**

The RMFCs recommend amending § 302 of the MSA (16 U.S.C. § 1852) by adding subsection (k) as follows.

SEC. 302 [16 U.S.C. § 1852] REGIONAL FISHERY MANAGEMENT COUNCILS

#### **(k) COMMITTEE OF COUNCIL CHAIRS.**

**(1) There shall be established a Fishery Management Council Committee of Chairs, consisting of the Chairs, Vice Chairs and Executive Directors of each of the Regional Fishery Management Councils identified in subsection (a)(1), and, in each case, selected under subsection (e)(2), of this section.**

**(2) The Committee of Chairs shall meet at a minimum annually, to discuss national**

**policies and issues related to, and the effectiveness of implementation of, this Act and the relationship of these matters to other applicable laws.**

**(3) Council Members authorized to receive compensation and expenses under subsection (d) of this section shall also receive such for meetings of the Committee.**

**(4) The requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Committee of Chairs, however, the requirements for Councils under subsection (i)(2) of this section shall apply to the Committee of Chairs.**

### **Issue 8: Bycatch Reporting Requirements**

The RFMCs recommend the following revision to section 303 (a) (11):

**to the extent practicable** establish a standardized-reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, ~~to the extent practicable and~~ in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided.

### **Issue 9: National Saltwater Recreational License**

There should be no federal saltwater recreational license. States should be encouraged to maintain or institute licenses.

Donald McIsaac Verbal Testimony  
before the  
House Natural Resources Committee Hearing on H.R. 5018 and H.R. 1431  
Wednesday May 3, 2006

*Speaking Copy*

(Note: bold font below represents the subset of the full testimony that was actually delivered so as to not exceed the 5 minute limit on oral testimony)

**Mr. Chairman and Members of the Committee:**

My name is Donald McIsaac and I am the Executive Director of the Pacific Fishery Management Council. I have trained for and worked in fisheries management for the last 32 years, including earning a bachelor of science degree 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. On behalf of the Pacific Fishery Management Council, I would like to thank the Committee and Committee staff for the opportunity to provide oral testimony and a written statement.

**Let me start by thanking the bill authors for bringing new ideas to this important legislation that will define the future of marine fishery management in the United States. It is apparent that much thought has gone into the bills that are the subject of this hearing and I would like to commend you for your efforts.**

Today I will limit my testimony to three issues, and focus primarily on one. Please note however that there are many other areas that we feel we can offer constructive comment; my written statement addresses the topic of other issues. **The issue I will focus most of my testimony on is fishery regulation in National Marine Sanctuaries; the essential question of this issue is who should establish such fishing regulations and how should it be done.** The second issue is the question of a hard cap on Total Allowable Biological Catches and the question of “repayment” of 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 Limited Access Program legislation.

Fishery Regulation in National Marine Sanctuaries  
(H.R. 5018 Section 10: COMPETING STATUTES, pages 60-61)

On the issue of fishing regulation in waters of NMSs, **the Pacific Council believes legislation needs to be clear and unambiguous that this be accomplished through a RFMC process and not under the process described in the current NMSA.**

**Why is this so important to West Coast marine fishery management?**

- 1. NMSs cover a great deal of geography along the West Coast.**
- 2. Fishery regulation expertise lies in the Council process, not in the NMS infrastructure.**
- 3. The public is now confused as to where fishery regulation occurs: is it in the Council process or the NMS process?**
- 4. There is a history of promises that NMS would not regulate fishing, but now it seems it is occurring** via current NMS processes that can lead to fishery management authority in Sanctuary designations.
- 5. True ecosystem management** in the fishery context is facilitated by consolidating fishery regulation jurisdiction in a single authority, not two authorities. **Ecosystems do not break conveniently along Sanctuary boundaries, and neither should fishery management.**

**H.R. 5018 is a commendable effort to solve the problems, but we think it does not go far enough. Let me elaborate on these and offer our recommendations for additions to the H.R. 5018 solution.**

The first reason had to do with **geography**: the areas of NMSs on the West Coast is large and could get much larger in the near future. **There are currently 4 NMS off the State of California.** Three contiguous ones cover about 250 miles of coastline near the center of the State—the Monterey NMS south of San Francisco Bay, the Farrallon Islands NMS on either side north and south of the Golden Gate Bridge, and the Cordell Bank NMS north of San Francisco Bay. California also has the Channel Islands NMS, covering what has historically been some of the best fishing grounds off southern California. **Together, these NMS cover 40% of the California coast. Off the State of Washington, the Olympic NMS covers roughly**

**the northern two thirds of the coast of Washington. Lastly, the Governor of the State of Oregon has proposed a NMS stretching the entire length of the Oregon coast from the mouth of the Columbia River to the California – Oregon State line: about 300 miles of coastline. These areas combined are approximately 55% of the United States coastline between Canada and Mexico. Further, one cannot rule out more Sanctuary designations in the future. So, on the West Coast, we are not talking about a NMS around a particular isolated reef here or there, or a ship wreck—we are talking about the potential of a huge portion of the West Coast. For those of you representing east coast States, imagine if you will NMSs encompassing just over half the area between the Maine – Canada border and the tip of Florida. For those of you representing Gulf States, imagine NMSs encompassing just over half the area between the Mexico-Texas border and the tip of Florida.**

**The second reason has to do with the fishery management expertise to deal with complex fishery regulation issues. The RFMC process has it: a proven open, transparent process that the public knows about; an SSC and other scientific advisory bodies that thoroughly analyze the effects of fishing regulations; a specialized Habitat Committee; expert advice from other advisory bodies composed of fishing industry and conservation group representatives; the opportunity for those affected by fishery regulation to be heard prior to a final vote of the Council in an open public forum.**

**The current situation on the West Coast whereby fishing regulation goals and objectives are developed in a NMS process is confusing to public as to who is in charge, and can result in bureaucratic duplication and inefficiencies.**

**As Council Member Bob Alverson said of the commercial fishermen in his organization, “The small boat owners do not want to have to participate in the Council process, and then go do the same thing at one or more NMS processes to insure that the fishing seasons make sense.”** These and the other fishing interests with the same concerns want the one forum to be the Council forum as the single place to go: the place with the fishery management expertise, the place with the scientific knowledge, the advisory body know-how, the place with the open process proficiency, the place with the demonstrated capability to make reasonable decisions to manage entire fish populations and sustainable fisheries. The West Coast

public does not want fishery regulation by the NMS with no history of fishery management and no demonstrated capabilities in the complexities of fishery management. **The public wants one stop shopping for federal fishing regulations and they want that one stop to be the RFMC process.**

Another reason the public wants the RFMC process to comprehensively manage fisheries is the promises made when the NMS were originally created. The promise was that the NMS would not become involved in fishery regulation—fishery regulation was to remain in the sole purview of the RFMC and NMFS, or the individual States in some State waters circumstances. This was reflected in the original Designation Documents for each of the West Coast NMS not having authority to manage fisheries. But now the NMS are engaging in processes that can change the terms of these Designation Documents to allow fishery regulation in West Coast NMS, to the dismay of the fishermen that supported Sanctuary designation to start with under the promise that they would never regulate fisheries.

As further reinforcement that West Coast fishing industry participants, coastal communities, Indian tribes and most of the public expects—and wants—single authority for fishery regulation in the RFMC forum, I refer to Oregon Governor Ted Kulongoski's press release on his proposed Oregon Coast NMS, where he said, "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."

Why do people want and expect this? Again, the Council forum is where the fishery management expertise is.

An additional reason to secure fishery regulation under the sole jurisdiction of the RFMC process under Magnuson has to do with ecosystem management. Ecosystems do not break conveniently along the boundaries of a NMS. Why make it difficult to achieve ecosystem management by having two separate jurisdictions managing fish inside one ecosystem? The MSA currently says that the RFMC process shall manage fish stocks throughout their range. This was wise when adopted and the concept is wise now given the momentum for ecosystem management.

I want to stress that the Pacific Council and the West Coast Sanctuaries have worked well together. The NMSs staffs are hardworking, talented, and professional. I characterized the current working relationship with the NMSs as cordial and mutually respectful. But the Council believes the relationship works best with fishery regulation solely accomplished under Magnuson.

There is strong recent evidence that consolidating fishery management authority in the RFMC process strictly under Magnuson can work well. The first example I cite is the recent decision by the Pacific Council to ban krill fishing on the West Coast. The NMS became interested in closing krill fishing and brought a recommendation for a closure in NMS waters to the Council forum. The Council considered it in a multi-meeting process and after thorough analysis, adopted a coastwide ban in the EEZ inside and outside the NMS boundaries. It was all done under Magnuson; there was no NMSA process. Also, in the case of the Cordell Bank NMS and Monterey NMS areas, ideas for closure of bottom contact fishing gear were brought forward by the NMS, and the Council successfully acted under the MSA to accomplish these fishing regulations; again, Secretarial approval came under Magnuson and not the NMSA. Conversely however, changes to the fishing regulations in the Channel Islands NMS has progressed under the NMSA, and the process has taken much longer (and is still not completed), been wrought with public confusion and controversy, and will apparently require their Designation Document to be changed to allow the regulation of fishing inside the CINMS. However, the krill fishing ban is the current poster child of successful interaction between RFMCs and NMSs; again, we point out that this success was accomplished under Magnuson, not the Sanctuaries Act.

**For all of these reasons, legislation needs to make it clear and unambiguous that fishery regulation in federal waters be accomplished through a RFMC process and not under the process described in the current NMSA.**

We commend the authors of H.R. 5018 for addressing this problem, whereas Senate bill 2012 did not and the Administration draft did not. **H.R. 5018 is commendable that it recognizes the current NMSA chain of jurisdiction does not require fishing regulations in NMS to conform to national standards, nor fully bring to bear the scientific and fishing sector**

**expertise that exists in the RFMC process. However, we believe H.R. 5018 does not go quite far enough to cement a finite solution. It does not unambiguously state that the place for fishery regulation is under Magnuson, not under the NMSA. H.R. 5018 still seems to provide for a NMSA fishery regulation process and the associated potential for bureaucratic duplication and public confusion over who is in charge of fishing regulation.**

The Pacific Council feels there is a way for legislation to be clear and unambiguous that fishing regulations be accomplished through a Regional Fishery Management Council process and not under the process described in the current National Marine Sanctuaries Act. **To be clear and unambiguous, we recommend language in a revised MSA in accordance with the April, 2005 position of the Regional Fishery Management Council Chairs. This position can be found in the position paper attached to my written statement. Further, to cement the desired result, we also recommend the changes to the NMSA as described in the same document.**

Total Acceptable Biological Catch Levels – (H.R. 5018, Section 3: SCIENCE-BASED IMPROVEMENTS TO MANAGEMENT, pages 4 and 5)
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The Pacific Council supports the existing language in Section 3 of H.R. 5018 that mandates adoption of total catch limits that do not exceed the allowable biological catch calculated by the Council's SSC. Further, we recommend that established annual catch limits be considered hard caps that fisheries are managed to not exceed. We note the Pacific Council currently implements this management principle and has for the past thirty years, including the utilization of in-season management adjustments when catch tracking information is available.

We appreciated the fact that H.R. 5018 does not contain a "penalty" provision in instances where the catch inadvertently exceeds adopted catch levels, with the penalty being a commensurate deduction from the following year's harvest allowance. There have also been calls for a policy to carry both overages and *quid pro quo* underages into the following year. The Pacific Council disagrees with both of these potential provisions and think they can be unwarranted, disruptive, and in the case of rolling underages from one year to increase the catch limit the next year, biologically

dangerous. We feel that a much better approach is to schedule stock assessments every two years for species where overages and underages of established catch limits is a concern, to adjust season specifications in one year based on lessons learned from prior years, and to actively track catches in-season.

Limited Access Privilege Programs (H.R. 5018, Section 7)
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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 this groundfish trawl individual quota program. Therefore the Pacific Council is supportive of H.R. 5018 proposed language for MSA Section 303A(h) which we perceive protects programs under development before the date of the bill's enactment from retroactive application of new provisions.

Other Issues and Topics
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**I agree with my Executive Director colleague to the north, Mr. Chris Oliver, with regard to integrating any essential principles of NEPA into the MSA and providing a technical exemption of the MSA from NEPA. This can create great efficiencies in the public process at no loss of the intent of NEPA, while minimizing superfluous litigation opportunities and conflicting time lines.**

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, we will convey the results of the Legislative Committee's section-by-section review of H.R. 5018 and 1431 which will provide additional comments on the three topics I have highlighted today together with detailed comments on the various bill sections. We will also copy you to a letter to Senator Stevens regarding further Council comment on various provisions in S. 2012.

F:\McIsaac\Talking Points for Meetings\2006: oral testimony

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May 15, 2006

The Honorable Richard Pombo  
Chairman, Committee on Resources  
United States House of Representatives  
2411 Rayburn House Office Building  
Washington D.C., 20515

Dear Congressman Pombo:

Thank you again for the opportunity to provide comment at your May 3, 2006, hearing on H.R. 5018, the *American Fisheries Management and Marine Life Enhancement Act* and H.R. 1431, the *Fisheries Science and Management Enhancement Act of 2005*. At the close of that hearing, it was announced that supplemental written material could be submitted. This letter provides the results of a section-by-section review of H.R. 5018 by the Pacific Fishery Management Council's (Pacific Council) Legislative Committee, approved by the Pacific Council Chairman for your review. We ask that you consider these comments as you proceed with further development of legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

### **H.R. 5018, Section 3. Science-Based Improvements to Management**

#### **(a) Harvest Level Caps**

The Pacific Council is supportive of H.R. 5018's proposed language to ensure catch limits are based on the best available science and do not exceed acceptable biological catch levels as recommended by the Scientific and Statistical Committee (SSC). The Pacific Council already implements this sound resource management approach. Further, the Pacific Council effectively utilizes in-season management mechanisms to ensure the adopted acceptable biological catch levels are not exceeded whenever possible.

Unlike H.R. 5018, other bills call 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. Some call for a policy to carry both overages and underages into the following year. The Pacific Council disagrees with both of these potential provisions.

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 or new management measures take 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. Further, Pacific Council-managed groundfish fisheries operate under a biennial management

process that is not amenable to such mechanisms. Additionally, catch data is often not timely enough for such a management response. Therefore, the Pacific Council is supportive of the absence of such requirements in H.R. 5018.

To ensure full participation of the public and Pacific Council advisory bodies in setting catch limits without exceeding the SSC's recommendations for acceptable biological catch, the Pacific Council recommends the H.R. 5018 Sec 3(a)(2) recommended language for MSA Section 302(h)(7) read, "(7) adopt a total allowable catch limit or other annual harvest effort control limit for each of the fisheries for which such a limit can be established, after considering the recommendation of the SSC and other advisory bodies of the Council having jurisdiction over the fishery, which shall not exceed the recommendation for the acceptable biological catch as recommended by such SSC; and".

**(a) Regional Stock Assessments and Peer Review**

The Pacific Council concurs with the proposed language in this section and notes the Pacific Council currently utilizes Stock Assessment Review Panels and its SSC to create a strong scientific peer review process.

**H.R. 5018, Section 4. Data Collection**

**(c) Confidentiality of Information**

In the interest of the specific need for increased socioeconomic data collection for improved fisheries management (H.R. 5018, Section 4(d)), the Pacific Council recommends an additional conforming amendment under H.R. 5018, Section 4(c)(2) as follows, "Section 303(b)(7) is amended by striking '(other than economic data)' and inserting in lieu thereof '(other than confidential information)'".

**(e) Need for More Frequent Stock Surveys**

The Pacific Council along with its SSC and other advisory bodies currently coordinates with the National Marine Fisheries Service on a regular basis in reviewing stock assessment priorities and data needs. The Pacific Council recommends H.R. 5018, Section 4(e)(1) be amended to include the phrase "in consultation with Regional Fishery Management Councils" after "shall determine".

**H.R. 5018, Section 5. Council Operations and Authorities**

**(a) Council Appointments**

Regarding the Pacific Council's Tribal Obligatory seat, tribal representation plays a vital role in the Pacific Council process and the tribal seat functions in a similar capacity as the official Washington, Oregon, and California state representatives. The Council recommends that, like the State government seats, the Tribal Obligatory seat should not be limited by term limits. The Council recommends MSA Section 302(b)(3) (16 U.S.C. 1852 (b)(3)), be amended by striking "paragraphs (2) and (5)" and inserting in lieu thereof, "paragraph (2)".

**(b) Council Training**

To clarify that the required training is intended for appointees new to the Regional Fishery Management Council (RFMC) process, the Pacific Council recommends the language proposed

for MSA Section 302(k)(3) be amended to include the word “first” after the phrase “Council members”.

**(e) Observer Funding Clarification**

The Pacific Council is unclear of the intent of the proposed language for MSA Section 303(e)(1)(A) which requires observer programs be paid for by the Secretary. This provision seems to preclude the use of any other funds, including the use of non-federal funds to reduce federal costs related to observer programs.

**(g) Habitat Areas of Particular Concern**

The Pacific Council has been working in coordination with the National Marine Sanctuary Program in the establishment of fishing regulations within National Marine Sanctuaries and has identified habitat areas of particular concern in these waters. To help clarify jurisdictional authority for these areas the Pacific Council recommends language proposed for MSA Section 303(b)(18) be amended to add the phrase “including the water column” after the phrase “ or other methods for limiting impacts on habitat”.

**H.R. 5018, Section 6. Ecosystem-Based Fishery Management**

The Pacific Council is supportive of efforts to increase the application of ecosystem-based principles into fishery management. Pacific Council efforts to prohibit krill harvest, protect essential groundfish habitats, and provide adequate abundance of forage species are reflective of our increasing knowledge of the role of fishery management in the overall health of West Coast ecosystems. The balance between recovering populations of marine mammals and ongoing efforts to recover depressed fish populations is a major issue the Pacific Council feels needs addressing under any ecosystem-based approach to fishery management.

**H.R. 5018, Section 7. Limited Access Privilege Programs**

**(a) In General**

The Pacific Council is currently in the process of developing an individual quota program for the trawl sector of the groundfish fishery. The Pacific 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.

In general, the Pacific Council notes inconsistent use of terms in this section of H.R. 5018. Terms such as limited access privilege, limited access system, shares, and allocation are not clearly defined and seem to have inconsistent application. The Pacific Council recommends a careful review of these terms and their definition as well as consideration of new terms to clearly separate “privilege” programs, which allocate individual quotas, from “limited entry” programs, which also allocate privileges albeit in the form of licenses.

The Pacific Council believes “limited access privilege” or individual quota programs have primarily economic benefits with secondary biological benefits through improved catch accounting and reduced bycatch. Therefore, the Pacific Council recommends the proposed

language under MSA Section 303A(c)(1)(A) be amended by striking “assist in” and inserting in lieu thereof “is not detrimental to”.

Recognizing the growing technology of remote sensors, onboard cameras, and other electronic monitoring devices, the Pacific Council recommends MSA Section 303A(c)(1)(G) be amended to include the phrase “or appropriate electronic monitoring” after the phrase “use of observers”.

To avoid potential increased workload and program delays, the Pacific Council would like to clarify that the provisions for the eligibility requirements for fishing communities under MSA Section 303A(c)(2)(A)(i) or regional fishery associations under MSA Section 303A(c)(3)(A) apply only to an initial distribution of quota shares and not to any subsequent purchases of quota shares by fishing communities or regional fishery associations.

The Pacific Council understands the list of entities who substantially participate in the fishery under MSA Section 303A(c)(4)(F) is intended to be representative rather than comprehensive. To clarify this point, the Pacific Council recommends the phrase “but not limited to” be inserted after the phrase “as appropriate”.

The Pacific Council believes RFMC process represent the appropriate mechanism for initiating a limited access privilege program and does not see the utility of the petition process.

#### **(b) Fees**

The Pacific Council believes the appropriate RFMCs should be closely involved with the determination of appropriate fees and the use of those fees. These fees should be collected and used for support of the entire program, including requisite observer coverage but, these federal fees should not be considered the sole funding source. Therefore, the Pacific Council recommends MSA Section 304(d)(2)(C) be amended to include the phrase “in consultation with the appropriate RFMCs” after “the Secretary shall”, insertion of the word “federal” prior to the first occurrence of the word “cost”, and insertion of “observer coverage,” after “data analysis”.

#### **H.R. 5018, Section 8. Joint Enforcement Agreements**

The Pacific Council relies on effective collaboration between state and federal entities to enforce the increasing complex fishery regulations on the West Coast. This enforcement effort is greatly enhanced by the use of vessel monitoring systems. The sharing of data from these systems between state and federal enforcement personnel is critical. The Pacific Council would like to clarify that the improved data sharing provisions under MSA Section 311(i)(1) is not tied to an allocation of funds but rather to the establishment of a Joint Enforcement Agreement as described under MSA Section 311(i)(2).

To clarify allowable uses of vessel monitoring data in law enforcement, the Pacific Council recommends that MSA Section 311(i)(A) be changed to read “directly accessible on a real-time basis and available for the prosecution of State laws in State courts involving federally managed species, by State enforcement officers authorized under subsection (a) of this section.”

## **H.R. 5018, Section 9. Funding for Fishery Observer Programs**

### **(b) Observer Program Funding Mechanism**

In keeping with previously established caps on fees, the Pacific Council recommends amending MSA Section 403(d)(2)(A) by adding the phrase “which shall not exceed 3 percent” after the phrase “which may include a system of fees”. Additionally, as previously mentioned, the Pacific Council recognizes the increasing importance of electronic monitoring technology in fishery observation and recommends including a new category under MSA Section 403(d)(2)(A) that states “(iii) the cost of buying or leasing electronic monitoring equipment including, but not limited to, video equipment and satellite transponders”.

The Pacific Council believes fees collected for general fishery observer programs should not be in addition to fees collected under a limited access privilege program. Therefore, it is recommended that a new section be included under MSA Section 403(d)(2) stating “(C) Fees collected under this subsection are not in addition to those collected under Section 304(d)(2)(B)(ii).

## **H.R. 5018, Section 10. Competing Statutes**

### **(c) Compliance with National Environmental Policy Act of 1969**

The Pacific Council would like to reiterate that integrating any essential principles of the National Environmental Policy Act (NEPA) into the MSA and providing a technical exemption of the MSA from NEPA would be an important improvement in a reauthorized MSA. Such provisions can create great efficiencies in the public process without losing the intent of NEPA while minimizing superfluous litigation opportunities and conflicting time lines.

### **(d) Review of Fishery Regulations in National Marine Sanctuaries**

The Pacific Council has worked closely with the five National Marine Sanctuaries (NMS) on the West Coast on a variety of issues. Recent Pacific Council actions to establish areas closed to bottom-tending fishing gear in the Cordell Bank and Monterey Bay National Marine Sanctuary areas, and the ban on the harvest of krill to ensure the vital role krill play in the West Coast ecosystem are examples of effective collaboration between the Pacific Council, the National Ocean Service (NOS), the National Marine Sanctuary Program (NMSP), and the West Coast Sanctuaries. However, these regulatory actions were accomplished under the existing authorities of the MSA.

Existing language in H.R. 5018 is commendable in its recognition that fishing regulations promulgated under the National Marine Sanctuaries Act (NMSA) are not currently required to conform to national standards under MSA Section 301(a). Neither does the NMSA bring to bear the scientific and fishing industry expertise that exists in RFMC processes. However, H.R. 5018 does not go far enough in achieving the kind of clarity on fishery management the public expects.

The Pacific Council continues to support implementation of the April 2005 positions of the RFMC Chairs calling for changes to MSA as well as the NMSA to clarify the issue of fishery management authority as follows:

## ***MSA and National Marine Sanctuary Act***

Fishery management authority in NMS, for all species of fish as defined in the current MSA, shall be under the jurisdiction of the RFMCs and the Secretarial approval process described in the current MSA. This authority shall not be limited to species of fish covered by approved FMPs, but shall include all species of fish as defined in the current MSA and shall cover the full range of the species in the marine environment. Prior to reaching decisions on the management regulations affecting fishing in NMS waters, an RFMC shall give full consideration of the responsibilities, goals, and objectives of individual NMS and any specific recommendations of the NMS.

In addition to the proposed changes in the MSA above, the RFMCs also recommend the NMSA be amended to achieve jurisdictional clarity as follows:

### **NATIONAL MARINE SANCTUARIES ACT**

#### **SEC. 302. [16 U.S.C. § 1432] DEFINITIONS**

As used in this chapter, the term-

...

(8)"sanctuary resource" means any living or nonliving resource of a national marine sanctuary, **excluding fish and Continental Shelf fishery resources under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1811)**, that contributes to the conservation, recreational, ecological, historical, education, cultural, archaeological, scientific, or aesthetic value of the sanctuary; and

#### **SEC. 304. [16 U.S.C. § 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.**

(a) Sanctuary Proposal

...

(5) FISHING REGULATIONS-**The appropriate Regional Fishery Management Council shall prepare fishing regulations for any fish and Continental Shelf fishery resources within a sanctuary in accordance with Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852). The Secretary shall review the proposed fishing regulations in accordance with Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1854), and other applicable statutes. Regional Fishery Management Councils shall cooperate with the Secretary and other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practical stage in drafting any sanctuary fishing regulations. Preparation of fishing regulations under this section shall constitute compliance with Section 304(d) of this Act. Fishing in compliance with regulations prepared under this section shall not constitute a violation of this Act.**

## **H.R. 5018, Section 11. Diminished Fisheries**

### **(b) Duration of Measure to Rebuild Diminished Fisheries**

The Pacific Council appreciates the effort to clarify the intent of the 10-year requirement for rebuilding diminished fisheries but recommends MSA Section 304(e)(4)(A)(i) be amended by striking the word “possible” and inserting in lieu thereof “practicable”.

## **H.R. 5018 Omissions**

The Pacific Council notes the following issues have been raised in comparable bills on reauthorization of MSA in the United States Senate and encourages their consideration for inclusion in H.R. 5018 or subsequent federal legislation regarding MSA reauthorization.

### **State Authority for Dungeness Crab Fishery Management**

The Pacific Council believes the current management and assessment of the Dungeness crab resource on the West Coast is adequate under State authority and recommends removing the sunset clause as the law already contains provisions for the termination of State authority upon completion of a fishery management plan under MSA.

### **Western and Central Pacific Fisheries Convention Appointments**

The Pacific Council is concerned with those provisions in S. 2012, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005*, Title V, the *Western and Central Pacific Fisheries Convention Implementation Act* which add a Western Pacific Fishery Management Council (WPFMC) member as a United States Commissioner and add the chair of the WPFMC’s Advisory Committee to the WCPFC Advisory Commission. The Pacific Council believes this action would give undue influence to the WPFMC and undermine West Coast interests in Western and Central Pacific Fisheries. The Pacific Council notes that many of the vessel owners, fisherman, and processors who participate in these fisheries or who maintain fishery support facilities in the Western Pacific are based on the West Coast. The Pacific Council would support the removal of the proposed WPFMC representation or the addition of similar representation for the Pacific Council.

### **Additional Input**

We understand you will consider the content of S. 2012 and other proposed legislation as you proceed with development of H.R. 5018. We have also sent, under separate cover for your consideration, a May 15, 2006, letter to U.S. Senator Ted Stevens which includes Pacific Council comments on S. 2012 developed in December 2005.

The Honorable Richard Pombo

May 15, 2006

Page 8

Thank you again for providing the Council an opportunity to provide comments on these important matters. If you or your staff have any questions about this letter, please contact me or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

Sincerely,

D. O. McIsaac, Ph.D.  
Executive Director

MDB:ckc

c: U.S. Congressman Barney Frank  
U.S. Congressman Don Young  
U.S. Congressman Wayne Gilchrest  
U.S. Congressman Nick Rahall  
U.S. Senator Ted Stevens  
U.S. Senator Daniel Inouye  
U.S. Senator Olympia J. Snowe  
U.S. Senator Maria Cantwell  
U.S. Senator Gordon Smith  
U.S. Senator Barbara Boxer  
U.S. Senator David Vitter  
Pacific Fishery Management Council Members  
Regional Fishery Management Council Executive Directors  
Ms. Margaret Spring, Senate Committee on Commerce, Science and Transportation  
Mr. Matthew Paxton, Senate Committee on Commerce, Science and Transportation  
Mr. Drew Minkiewicz, Senate Committee on Commerce, Science and Transportation  
Mr. Dave Whaley, House Subcommittee for Fisheries Conservation, Wildlife, and Oceans

## PACIFIC FISHERY MANAGEMENT COUNCIL

7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384

CHAIRMAN  
Donald K. Hansen

EXECUTIVE DIRECTOR  
Donald O. McIsaac

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May 15, 2006

The Honorable Ted Stevens  
United States Senate  
522 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Stevens:

The Pacific Fishery Management Council (Council) appreciates your request for Council review of S. 2012, the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005*. The Council and its Legislative Committee recently met March 6-10, 2006 in Seattle, Washington and again on April 28, 2006 and requested that I convey the following comments regarding the December 13, 2006 staff working draft of S.2012. In a letter dated December 12, 2006, I enclosed for your consideration, a Council approved report on recommended changes to S.2012 prepared by the Legislative Committee during a full-day session devoted largely to a section-by-section review of the bill. On March 6 and April 28, 2006, the Legislative Committee reviewed the December 13, 2005 staff working draft of S.2012 and noted where Council recommended changes to S.2012 were not addressed in the staff working draft. Additionally, the Council recommends two new changes to S.2012, the removal of term limits for the Tribal Obligatory seat on the Council.

Regarding the Tribal Obligatory seat, tribal representation plays a vital role in the Council process and the tribal seat functions in a similar capacity as the official Washington, Oregon, and California state representatives. The Council recommends that, like the State government seats, the Tribal Obligatory seat should not be limited by term limits. The Council recommends Magnuson-Stevens Fishery Conservation and Management Act (MSA), Section 302(b)(3) (16 U.S.C. 1852 (b)(3)), be amended by striking "paragraphs (2) and (5)" and inserting in lieu thereof, "paragraph (2)".

The Pacific Council is concerned with those provisions in S. 2012, Title V, the *Western and Central Pacific Fisheries Convention Implementation Act* which add a Western Pacific Fishery Management Council (WPFMC) member as a United States Commissioner and add the chair of the WPFMC's Advisory Committee to the WCPFC Advisory Commission. The Pacific Council believes this action would give undue influence to the WPFMC and undermine West Coast interests in Western and Central Pacific Fisheries. The Pacific Council notes that many of the vessel owners, fisherman, and processors who participate in these fisheries or who maintain fishery support facilities in the Western Pacific are based on the West Coast. The Pacific Council would support the removal of the proposed WPFMC representation or the addition of similar representation for the Pacific Council.

The Honorable Ted Stevens

May 15, 2006

Page 2

As in December 2005, the Council emphasizes two omissions from S. 2012, a removal of the arbitrary ten-year rebuilding time frame for overfished species and clarification on fishery management authority in national marine sanctuaries. These two important matters continue to be omitted from the staff working draft of S.2012. The Council would like to reiterate its recommendation that the positions on these matters adopted by Regional Fishery Management Council (RFMC) Chairs in April 2005 be included in MSA reauthorization legislation.

In addition to the two key issues previously mentioned, other important Council recommendations, conveyed in December 2005, have not been addressed in the staff working draft. Notable Council recommendations not addressed include:

- Remove language providing stipends for members of the Scientific and Statistical Committee.
- Include language to prevent disruption of the Council's ongoing effort to develop a groundfish trawl individual quota program.
- Include clarifying language on the competing statutes of MSA and the National Environmental Policy Act.
- Strengthen access to vessel monitoring system data by State enforcement entities for real-time monitoring and prosecution of violations in State courts.
- Remove Section 209 pertaining to the Capital Construction Fund because improvements to the fund are best addressed under separate legislation.

I have enclosed a copy of the Council approved Legislative Committee report of December 2005 for a complete description of Council recommendations for your consideration. We have also sent, under separate cover for your consideration, a May 15, 2006 letter to U.S. Congressman Richard Pombo which includes detailed Pacific Council comments on H.R. 5018, the *American Fisheries Management and Marine Life Enhancement Act*.

Thank you again for providing the Council an opportunity to provide comments on these important matters. If you or your staff have any questions about this letter, please contact me or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

Sincerely,

D. O. McIsaac, Ph.D.  
Executive Director

MDB:rdd

Enclosure

The Honorable Ted Stevens

May 15, 2006

Page 3

c: U.S. Congressman Barney Frank  
U.S. Congressman Don Young  
U.S. Congressman Wayne Gilchrest  
U.S. Congressman Richard Pombo  
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U.S. Senator Daniel Inouye  
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Mr. Dave Whaley, House Subcommittee for Fisheries Conservation, Wildlife, and Oceans  
Mr. Casey Sixkiller, Environment Legislative Assistant, Senator Patty Murray  
Ms. Elizabeth McDonnell, Legislative Assistant, Senator Gordon Smith