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 net 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 interjursidictional 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 representying 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 advise 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 Governors 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)

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)

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

**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.