

**Testimony of Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
To the
Senate Subcommittee on Oceans, Fisheries, and Coast Guard
September 14, 2004**

Good morning. My name is Stephanie Madsen, and I am the Chair of the North Pacific Fishery Management Council based in Anchorage, Alaska. Thank you for the opportunity to offer comments to the Subcommittee on behalf of the eight Regional Fishery Management Councils, regarding reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.

Before I begin my testimony on the issues related to reauthorization, I would like to make some general comments, and provide an update for the committee on some recent events. First, let me say that the Council Chairs believe strongly that the current system for managing our Nation's fisheries, as envisioned by the Magnuson-Stevens Act, can and is working effectively. When carried out properly, the Council process has all the ingredients for responsible stewardship of our nation's marine resources. It is based on science, it is deliberative and transparent, and it is representative of all user groups and the general public. This belief is evidenced in the proceedings from our conference held in November of 2003, "Managing our Nation's Fisheries: Past, Present, and Future". This first-ever conference, sponsored by the eight Regional Councils and NOAA Fisheries, was a tremendous success with over 600 conference participants. The proceedings of the conference report summarize key issues such as governance, rights-based management, habitat, fishing communities, bycatch, and ecosystem management, all of which are areas I will touch on today. It details the histories of each Councils' management programs, highlights regional successes, and charts a course to address remaining challenges. The Council Chairs believe that the conference proceedings provide valuable information to help frame the discussion for the reauthorization of the Magnuson-Stevens Act. Additionally, the eight Regional Councils and NOAA Fisheries are hosting a second national conference to continue the dialogue on future challenges. This conference, scheduled for March 24-26 2005 here in Washington, D.C., is specifically designed to address key issues related to the Magnuson-Stevens Act reauthorization and the report of the U.S. Commission on Ocean Policy. A 'Save the Date' notice for that conference is attached to my testimony.

As noted by our Council's previous chairman, we are very proud of our record in the North Pacific. Our formula for sustainable fisheries involves strong science and research programs, an effective reporting and inseason management program, a comprehensive observer program, limitations on fishing capacity, precautionary and conservative catch limits, strict limits on bycatch and discards, habitat protection measures, incorporation of ecosystem considerations, and an open public process that involves stakeholders at all levels. I am pleased to report that the Secretary of Commerce, just a month ago, approved the selection of the Preferred Alternative recommended by our Council in the Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement (PSEIS). This action reflects over three years of hard work and thousands of pages of analysis by the Council and NOAA Fisheries to develop a comprehensive, cumulative impact analysis of our existing fisheries management program, and chart a course for the future direction of our management policy in the North Pacific. The Preferred Alternative reinforces and enhances the precautionary approach to managing fisheries that has been the hallmark of our management program by adopting a comprehensive set of revised management objectives which will guide our specific actions over the coming decades. Rather than take too much of the Subcommittee's time on our regional program, I have provided a supplemental folder that contains information on the North Pacific Council's management philosophy and ecosystem-based approach to fisheries management. Also in this folder is a copy of the testimony that our former chairman gave to this Committee back in 2002, along with previous recommendations of the Regional Fishery Management

Council Chairs regarding Magnuson-Stevens Act reauthorization issues. These include a May 2001 document on general reauthorization issues, and a May 2002 document which is more specific to then-proposed HR 4749, both of which overlap with the issues addressed in S. 2066.

There are several issues that have been raised by S. 2066, and other draft legislation, that are very important to the Regional Fishery Management Councils. In addition, the recommendations from the U.S. Commission on Ocean Policy are also of great interest to the Regional Councils; however, the Councils have not had an opportunity to discuss the Ocean Commission recommendations in any detail. Therefore, I would like to focus my comments on issues that have been raised in the various bills to amend the Magnuson-Stevens Act. My written testimony today highlights sixteen areas of importance to the Councils relative to reauthorization of the Act.

1. Ecosystem-based fishery management - The Councils have long been incorporating ecosystem considerations into our Fishery Management Plans (FMPs), but we remain concerned about requirements for specific ecosystem plans, given our current state of scientific knowledge. We believe a gradual approach is appropriate. We need to have a clear understanding of what “ecosystem-based management” really means, what information is available to implement this approach, how much the necessary science will cost, and what if any guidelines are necessary before the Councils are required to develop explicit ecosystem plans. Identification of information needs, and identification of a fishery or fisheries for a pilot program, appears to be a reasonable start. Guidelines on how to prepare something as complex as ecosystem-based fishery management plans should not have the force of law, or we could find ourselves mired in legal challenges similar to what has occurred under the essential fish habitat guidelines.

2. Individual fishing quota programs – The Council Chairs strongly and unanimously believe that IFQs, dedicated access privileges, or similar limited entry/rationalization programs, must be in their fisheries management ‘tool box’. There may be regional differences of opinion on some of the specifics (for example, most of the Councils are concerned that referendum requirements and expiration dates may impede the development and effectiveness of such programs), but there is general agreement that some guidelines and review processes are necessary. The Council Chairs recommend that the MSA be amended to provide maximum flexibility to the Councils to tailor IFQ programs to specific regional, social, economic, and fishery conditions. Councils should have clear authority to address transferability and ownership issues; include harvesters, processors, and communities in such programs; promote conservation; and include measures necessary to successfully monitor and enforce provisions of such a program.

3. Separation of science and management (or conservation vs allocation) – This issue is of crucial interest to us and included in your packet are very specific comments the Council Chairs provided to the U.S. Commission on Ocean Policy, focusing on the issue of separating science from management. This concept has been raised in various discussions, draft legislation, and in the report from the U.S. Commission on Ocean Policy, particularly with regard to establishment of annual catch limits. The Councils believe that scientific advice is critical to successful management and should be an integral part of the Council process rather than a separate aspect of the overall decision-making process. Even the determination of annual catch limits sometimes requires the Council to judge uncertain or conflicting science. This is precisely the decision-making process the Regional Councils were designed to accomplish. Approval of these decisions by the Secretary of Commerce, or disapproval where appropriate, is the final safeguard built into this process. Aside from annual catch limits, virtually all other management actions involve aspects of both conservation and allocation which are often impossible to separate. Again, I urge you to consider the more detailed comments we have provided on this issue.

4. Independent peer review - Some legislation, and the report of the U.S. Commission on Ocean Policy, contemplate additional, independent peer reviews of scientific information used in the decision-making

process. The Councils believe this issue should be approached with extreme caution. Additional requirements for scientific peer review could result in prohibitive costs and further delays to an already lengthy decision and approval process. The reliance on a strong scientific and statistical committee (SSC) for review of all biological and socio-economic information provides the cornerstone for sound, responsible decisions. Periodic independent review (such as that recently commissioned in the North Pacific relative to fish stock exploitation strategies) may be sufficient to address the concerns underlying the recommendations for independent peer review. Annual peer reviews of stock assessments may be unnecessary for fisheries which already undergo annual review by Plan Team scientists and SSC scientists.

5. Reconciling statutes – The Councils believe strongly that the current mix of statutes which govern the fisheries management process needs to be reconciled, and that the Magnuson-Stevens Act needs to be reaffirmed as the guiding Act in this process. All Council actions must adhere to a number of Acts and Executive Orders including the Magnuson-Stevens Act, the Administrative Procedures Act, the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act (NEPA). The requirements for social and economic analysis, scientific review, and public comment specified in the Magnuson-Stevens Act are substantially the same as under NEPA; however, the timeline and administrative process under the two Acts often conflicts, and NEPA has now become the defining act for processing and review of management actions, largely due to the threat of litigation. These conflicts have led to cumbersome and unnecessarily complex administrative procedures resulting in long delays between the time that decisions are made and regulations are adopted. The letter of the NEPA law in terms of process has created an opportunity for endless litigation that often stymies the ability of the Councils to carry out their stewardship mission in a timely and responsible manner. It is of great importance to all the Councils that Congress assist in resolving the conflicts between these statutes in order to clarify and streamline the regulatory process. We believe this can be done by clarifying the Magnuson-Stevens Act as the predominant statute, and that this can be done without compromise to the underlying conservation intent of NEPA and other relevant statutes.

6. Overfishing/rebuilding - The term ‘depleted’ is an appropriate addition to the definitions section of the Act, as it provides for circumstances in which a species may be at low levels of abundance for reasons unrelated to fishing activity. Eliminating the arbitrary 10-year rebuilding timeframe, and replacing it with a fishing mortality-based strategy could have significant benefits in a multi-species fishery, as timeframes are often influenced by environmental factors beyond the control of the Councils. However, this issue of rebuilding timeframes may be largely resolved through recent revisions being implemented relative to the National Standard 1 guidelines, which would allow a combination of timelines and mortality controls. Controlling fishing mortality is one of the keys to sustainable fisheries, yet there are concerns among some of the Councils with limiting the fishing mortality to 80% of Fmsy within a year of the stock being identified as depleted or approaching a depleted condition, if overfishing was occurring. This formulaic approach could hinder a Council’s ability to develop an optimal rebuilding plan which could both rebuild stocks and minimize economic impacts on fishermen and communities. I would note that in the North Pacific this issue would not raise concern as our tier approach would trigger such limits in any case, even down to 50% of Fmsy.

7. Council appointments – The Councils believe that the current appointment process and mix of authorities embodied in the Act be maintained. The idea of diminishing, or eliminating, the role of Governors in developing lists of Council nominees could greatly compromise the ability of the Council process to reflect regional and local viewpoints. Problems with Governors’ offices who fail to submit lists of nominees, or which submit unbalanced nominations, can be addressed within existing Secretarial authorities.

8. Defining HAPC – The Councils support defining habitat areas of particular concern (HAPC) as discrete subunits of essential fish habitat (EFH) and recommend their designation through some national criteria. Such a provision would allow us to better focus on truly essential fish habitat.

9. Funding – the Councils strongly urge that any new mandates be supported by appropriate funding levels for both NOAA Fisheries and the Regional Councils.

10. Secretarial review process - The Councils request that Sections 304 (a) and (b) be amended so that Secretarial review of the proposed plan amendment, and the attendant regulations, occur simultaneously. The Sustainable Fisheries Act of 1996 (SFA) also deleted the provision allowing disapproval, or partial approval, of an amendment within the first 15 days of transmission. This provision, along with the proposed preliminary evaluation by the Secretary, should be reinstated. We also believe that it may be useful to include a provision allowing for an abbreviated FMP process which would allow the Councils to address problems with the imposition of temporary conservation measures, while a full-blown FMP or amendment can be developed. On a somewhat related issue, the Councils support changing the requirements for meeting notice to allow “any means that will result in wide publicity”.

11. Cooperative research/cooperative enforcement – The Councils support the establishment of a national program of cooperative research to consist of activities among fishing industry, States, and NOAA Fisheries. The Councils also believe that cooperative enforcement agreements, allowing federal authorities to State law enforcement officials whose States are members of interstate commissions, is an efficient and effective way to increase enforcement capabilities.

12. Collection of information – The Councils support the ability of the Secretary to initiate information collection programs, with the exception of eliminating confidentiality after 20 years. The Councils also support the ability to collect economic data, including cost and revenue data, and including economic data from fish processors, as long as appropriate confidentiality requirements are applied. Economic and financial information are necessary to properly conduct the analyses required by the Act and other statutes.

13. Buyback programs/overcapitalization – The Councils believe that fishing capacity reduction programs (buyback programs) should have the concurrence of the relevant Council and/or Governor before being initiated by the Secretary. Any buyback programs should also be designed such that capacity removed cannot shift into another fishery. Defining fisheries as overcapitalized should be done in consultation with the relevant Council(s).

14. Marine Protected Areas (MPAs) – With the passage of Executive Order 13158, there remains confusion, and concern, on the part of the Councils with respect to authorities for establishment of marine protected areas. The Councils have had authority to establish such areas, and have done so since inception of the Act. The Councils are in the best position to determine when and what areas should be closed for protection of fish stocks and habitat in the EEZ. We believe that Congress should review the MPA issue and possibly develop legislation which clarifies jurisdictional issues and administrative procedures for establishing MPAs.

15. Fishery Research - The Councils support a change to the definition of scientific research to include gear research and recommend a revision to include a range of research activities, including gear research. The Councils further support a provision allowing the Councils to close meetings for the purpose of reviewing research proposals. Presently, NMFS must convene those meetings at which proposals are reviewed.

16. Council Chairs Annual Meeting - The Council Chairs recommend an exemption for the annual Council Chair and Executive Directors meeting from the Federal Advisory Committee Act provisions. The historic practice of allowing the Council Chairs to meet with the intent of providing consensus views on issues such as Magnuson-Stevens Act reauthorization and other critical issues is very important and should be addressed through an amendment that clearly states such meetings are exempt from FACA. After decades of this practice, the Councils were recently informed that consensus positions could no longer be adopted at these meetings due to FACA constraints. This would thwart our ability to provide collective advice on critical fisheries management issues.

In closing, I want to again thank you for the opportunity to provide comment, on behalf of the Regional Councils, on these critical issues. The attachments provided contain additional detail, and in some cases suggested language, on many of these issues. These are certainly not all of the issues, but these are the most prominent issues which have been discussed by all eight Regional Councils. On behalf of the Council Chairs, I reiterate the values we all support -- a fisheries management process that promotes stewardship, streamlines the regulatory process, allows flexibility in managing multi-species fisheries, and adequately funds and expands the existing data collection and monitoring initiatives. I hope these comments are helpful to you, as you move forward with the reauthorization process.