

**TESTIMONY OF
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ON

**REAUTHORIZATION OF THE
MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT
ACT (MAGNUSON-STEVENSON ACT)**

AND

**MAGNUSON-STEVENSON ACT AND NATIONAL ENVIRONMENTAL POLICY
ACT**

**BEFORE THE
SUBCOMMITTEE ON FISHERIES AND OCEANS
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

WASHINGTON, D.C.

APRIL 14, 2005

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify before you regarding the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I am William T. Hogarth, Assistant Administrator for Fisheries in the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce. My testimony today will focus on the Administration's ongoing efforts to implement the 1996 Sustainable Fisheries Act and to develop a Magnuson-Stevens Act reauthorization proposal. Per your request, I will also comment on our responsibilities under the National Environmental Policy Act (NEPA) and on the relationship between the Magnuson-Stevens Act and NEPA.

The 1996 Sustainable Fisheries Act

To understand where we are today, we need to look at the progress we have made in implementing the 1996 Sustainable Fisheries Act (SFA). The SFA ushered in a major expansion in fisheries management policy, leading all of us—the Regional Fishery

Management Councils, commercial and recreational users, and the National Marine Fisheries Service (NMFS)—to manage targeted species more carefully.

Most significantly, the SFA contained several key new provisions, including: managing fisheries to avoid overfishing and, if managed stocks are overfished, developing rebuilding plans; reducing bycatch; identifying essential fish habitat (EFH) and mitigating the adverse effect of fishing operations on these areas; and, taking into account the importance of fishery resources to fishing communities, providing for sustained participation of these communities and minimizing adverse economic impacts on them.

As a result of these new provisions, we pay more attention to the impacts of fishing operations on non-target species and the marine environment. In addition, we are more mindful of the effects of management measures on people, their communities, and their safety. In the years following passage of the SFA, the Councils and NMFS have made a major and sustained effort to implement these changes. We have faced many challenges, but I believe our marine fisheries are healthier and are managed more effectively than a decade ago.

I would like to outline some of our key accomplishments.

- We have developed rebuilding plans for nearly all overfished stocks, and, as our annual congressionally mandated report on the status of stocks shows, we are reducing both overfishing and the number of overfished stocks.
- To address the ongoing concern with bycatch, we are factoring it into our fishery management process and now have a national bycatch plan that will help us reduce overall bycatch as well as bycatch mortality.
- Through a variety of dedicated access privilege programs, we are reducing overcapitalization in many of our most important commercial fisheries in Alaska. These initiatives could serve as models for dedicated access privilege programs in the rest of the country.
- We are assessing and addressing overcapacity in the harvesting sector through a series of quantitative and qualitative capacity reports, the U.S. National Plan of Action for the Management of Fishing Capacity, industry-funded buybacks, and the development and implementation of individual and community based quotas.

Although we have achieved much, we also face many obstacles. The SFA presented many challenges on several fronts, and we have gone a long way toward successfully meeting those challenges. Now, almost a decade after the enactment of the SFA, it is time to reexamine our legal mandates and address new issues.

The Administration's U.S. Ocean Action Plan

Our discussions of the Magnuson-Stevens Act are taking place within a larger debate on ocean policy and governance. On December 17, 2004, the White House issued the U.S. Ocean Action Plan. I would like to focus on a few aspects of this plan that have significant implications for fisheries management.

The U.S. Commission on Ocean Policy, in their Final Report, urged the United States to move away from the focus on managing single species and toward a more comprehensive, ecosystems approach. The U.S. Ocean Action Plan explicitly endorses ecosystems approaches to management (EAM) and places it in a larger policy framework of working with regional and local authorities. The plan states:

“The Administration will continue to work toward an ecosystem-based approach in making decisions relating to water, land, and resource management in ways that do not erode local and State authorities and are flexible to address local conditions.”

We now need to focus on how best to achieve this transition in fisheries management in light of its regulatory complexities and the need for new and additional science. The 1996 amendments to the Magnuson-Stevens Act—in particular the provisions relating to bycatch and essential fish habitat—can support significant progress toward EAM.

EAM is incremental; we are already doing it to some extent in several federally managed fisheries, most notably in the Western Pacific, North Pacific, and South Atlantic. We have a Coral Reef Ecosystem Fishery Management Plan (FMP) in the Western Pacific, and we are developing several EAM pilot projects on the East Coast. Additionally, a number of “conventional” FMPs have been substantially modified and expanded in recent years to incorporate principles of EAM.

The U.S. Ocean Action Plan includes several elements that will continue to enable us to take further steps toward ecosystems approaches to management.

1. Regional Fishery Management Councils should continue to make every effort to base their management proposals on the best available science, and NMFS—specifically the NMFS Fisheries Science Centers where stock, economic, and social analyses assessments originate—should continue to play a key role in providing the best possible scientific information. In fact, the U.S. Ocean Action Plan, on page 19, commits NOAA to “establish guidelines and procedures for the development and application of scientific advice for fisheries management decisions.” The Administration supports the use of peer-reviewed science in resource management decisions.
2. Regional Fishery Management Councils should have more broadly based membership. The Administration is considering transmitting a proposal to amend the Magnuson-Stevens Act to require governors to submit a slate of Council member nominees that represent a balanced apportionment in marine fisheries in their respective states.
3. Regional Fishery Management Councils and the Administration should promote greater use of market-based systems for fisheries management or dedicated access privilege programs, such as individual fishing quotas (IFQ), as a management measure to mitigate overfishing and overcapacity, as well as to contribute to the economic well-being of the marine fishery sector. NOAA has committed to

develop, in consultation with the Regional Fishery Management Councils and interested parties, national standards and guidelines for the development and implementation of IFQ allocations. These guidelines will draw on the 1999 congressionally mandated report *Sharing the Fish: Toward a National Policy on Individual Fishing Quotas*, as well as the ongoing debate on standards and requirements for IFQs, a type of dedicated access privilege. Dedicated access privilege programs raise many complex and contentious issues, but the key question centers on how best to balance the principles of efficiency and equity under these programs. We have worked closely in the past several years with the Government Accountability Office in their studies of various IFQ-related issues, and this collaboration has helped us refine our views on how to develop and administer these programs.

We have worked with several Regional Fishery Management Councils in the past few years on dedicated access privilege programs in federally managed fisheries. For example,

- In the North Pacific we are implementing an Alaska crab rationalization program that includes IFQs, community quotas, and fishing cooperatives, and we are working on a Gulf of Alaska groundfish rationalization plan that will also include a number of distinct dedicated access privilege programs.
- In the Pacific, we are developing a groundfish IFQ program.
- In the Gulf of Mexico, we are resuming work on the red snapper IFQ program.

Reauthorization of the Magnuson-Stevens Act

In light of the current discussions surrounding the U.S. Ocean Action Plan, last year we decided to review the Administration's June 2003 proposed Magnuson-Stevens Act amendments and consider new issues. The 2003 Administration proposal to reauthorize the Magnuson-Stevens Act included 26 proposed amendments. Many of these were technical in nature but others would make significant substantive or procedural changes. These include:

- distinguishing between the terms "overfishing" and "overfished";
- requiring submission of economic data from processors;
- establishing standards for new IFQ programs;
- streamlining fishing capacity reduction programs;
- increasing maximum fines and penalties; and
- authorizing the means to fund observer programs.

NMFS is now considering a wide range of possible Magnuson-Stevens Act proposals and plans to prepare a formal package of amendments. We anticipate the major topics covered would include ecosystems approaches to management; National Standards 1 (overfishing), 2 (best available science) and 9 (bycatch); Council operations; dedicated access privilege programs; permits and fees; and essential fish habitat.

A few weeks ago, Regional Fishery Management Council members, staff, and the public discussed many of these issues at the Washington, D.C. conference, "Managing Our Nation's Fisheries II." I plan to work closely with the Councils and other interested parties to better understand their views on these matters. Magnuson-Stevens Act reauthorization is a major topic to be addressed at the Council Chairs and Executive Directors meeting in southern California the last week of April.

The Magnuson-Stevens Act and NEPA

One issue related to reauthorization of the Magnuson-Stevens Act that has prompted considerable discussion and debate in recent years is the relationship between the Magnuson-Stevens Act and the National Environmental Policy Act (NEPA). NMFS applies NEPA in the Exclusive Economic Zone as a matter of policy and has always recognized that NEPA can provide a critical framework for the fisheries management measures that the Regional Fishery Management Councils develop and we approve. NEPA can establish the ground rules for public participation in developing these decisions, the assessment of environmental impacts, and the consideration of alternatives to the selected measures. The NEPA analytical and regulatory framework provides important benefits to the Administration, the Regional Fishery Management Councils, the fishing industry, and the general public.

In recent years, Congress and the Administration have committed significant resources to programs to improve our implementation of the NEPA framework. NMFS has developed and implemented a Regulatory Streamlining Program that highlights the importance of applying NEPA, and hired national and regional NEPA coordinators. For the past several years, with support from Congress, we have worked hard to upgrade the quality of our NEPA assessments, in particular the Environmental Impact Statements. In our FY 2005 appropriation, \$3 million is dedicated specifically for NEPA training and other NEPA-related work, and a total of \$8 million is requested for FY 2006.

These efforts have yielded positive results. From 1996 to 2002, NMFS won only 42% of the NEPA claims in Magnuson-Stevens Act cases. Since 2003, however, NMFS prevailed on the NEPA issues in all 8 Magnuson-Stevens Act cases raising NEPA claims that resulted in final decisions in District Courts. This track record indicates that we are by and large doing a credible and defensible job in applying NEPA requirements to our fisheries management actions.

Although we are undeniably doing better in applying NEPA requirements, concerns remain regarding NEPA's impacts on flexibility and timeliness of fisheries management actions. Past implementation of some NEPA requirements has duplicated some steps already required by the Magnuson-Stevens Act. Real time within year management decisions on fisheries management actions recommended by the Councils particularly highlight this issue. In other words, while there are obvious and significant benefits flowing from NEPA and we have improved our compliance over the past few years, there have been costs in terms of time spent, resources expended, lack of flexibility and duplicative reviews in complying with the NEPA process.

In your letter inviting me to present testimony at this hearing, the House Subcommittee asked that I comment on “conflicts” between our natural resource statutes, in particular the Magnuson-Stevens Act and NEPA. The two laws are not in conflict in principle, but as there are certain differences in the scope and degree of analysis and in the regulatory timelines, I think it is useful to identify the three key differences.

First, NEPA requires the careful consideration of alternatives and a reasoned analysis of why some are selected and others are not. The Magnuson-Stevens Act, on the other hand, does not mandate an assessment of alternatives. In many cases, the Regional Fishery Management Councils must make difficult choices among a number of options, each with its own benefits and costs. Their decision-making process benefits from careful consideration and assessment of alternatives.

Second, NEPA and, in particular, the Council on Environmental Quality’s (CEQ) regulations for implementing NEPA, mandate the assessment and consideration of the cumulative effects of management measures. However, cumulative effects are not explicitly addressed in the Magnuson-Stevens Act. In a sector in which a series of regulatory actions can have a significant aggregate effect over time, consideration of cumulative impacts is worthwhile and necessary.

Third, the Magnuson-Stevens Act includes precise timelines for the development, consideration, and approval of management measures that are not always entirely consistent with the NMFS’ comparable timelines for compliance with NEPA. Magnuson-Stevens Act timelines governing the review and approval of Council actions and their publication in the *Federal Register* do not always correspond with NEPA timelines. While NMFS consults with CEQ on administrative ways to reduce or eliminate those inconsistencies, application of the two statutes sometimes results in a disjointed regulatory process with inconsistent deadlines.

As we heard during last month’s “Managing Our Nation’s Fisheries” conference, these are complicated policy and regulatory issues that deserve careful consideration. I would be happy to work with Congress to better understand the relationship between these two laws, and the need, if any, for legislative changes.

Conclusion

Mr. Chairman, thank you for the opportunity to discuss the reauthorization of the Magnuson-Stevens Act. The scope of issues has changed significantly in the past several years. Until a few years ago the major concerns centered on implementing the specific provisions of the 1996 amendments. In the past few years we have gained a wider perspective. Today our attention is focused on ecosystems approaches to fisheries management as opposed to single-species management, dedicated access privilege programs instead of open access fishing quotas, and more broadly representative Regional Fishery Management Councils. Therefore, we have been seriously studying

and considering these larger issues and rethinking our views on important regulatory and procedural matters.

I look forward to working with you, other members of this committee, and interested members in both the House and Senate. I would be happy to answer any questions you have.