

**WRITTEN TESTIMONY OF  
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U.S. DEPARTMENT OF COMMERCE  
ON**

**TWO BILLS TO REAUTHORIZE THE  
MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT**

- (1) “AMERICAN FISHERIES MANAGEMENT AND MARINE LIFE ENHANCEMENT  
ACT” (H.R. 5018)  
AND  
(2) “FISHERIES SCIENCE AND MANAGEMENT ENHANCEMENT ACT OF 2005”  
(H.R. 1431)**

**BEFORE THE  
COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

**MAY 3, 2006**

Good morning, Mr. Chairman and Members of the Committee. My name is Dr. William T. Hogarth. I am the Assistant Administrator for Fisheries in the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce. Thank you for the opportunity to testify today on two pieces of legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the authority of the Magnuson-Stevens Act, NOAA’s National Marine Fisheries Service is responsible for managing our Nation’s fishery resources.

The Administration appreciates all of the work that you have done over the past months to move forward on reauthorization of the Magnuson-Stevens Act. I believe that the Administration and Congress are moving in the same direction on many issues important to reauthorization, and I will discuss these issues in my testimony today. First, however, I would like to review the Administration’s goals and priorities in reauthorizing the Magnuson-Stevens Act, and then I will comment on the bills introduced by Chairman Pombo (H.R. 5018) and Congressman Rahall (H.R. 1431).

**The Administration’s Magnuson-Stevens Act Priorities**

Management of U.S. fishery resources has improved since the last reauthorization of the Magnuson-Stevens Act in 1996. We have made progress towards reducing overfishing, rebuilding overfished stocks, reducing bycatch, minimizing adverse impacts to essential fish habitat, and assessing the impacts of fishery-management decisions on fishing communities. Advancements in the natural and

social sciences have enhanced our knowledge and understanding of marine ecosystems and enabled us to improve fishery management decision-making. We believe that fishery managers should possess the tools necessary to sustain our fishery resources for future generations, as well as the industries and communities that depend on them.

The Department of Commerce has testified on several occasions on Magnuson-Stevens reauthorization, giving our views on which provisions have merit -- most recently, at a legislative field hearing in Massachusetts. In September 2005, the Administration provided Congress with a proposal to reauthorize the Magnuson-Stevens Act. The Administration's proposal addresses the challenges currently facing our federally-managed marine fishery resources and the communities that depend on them. The President's U.S. Ocean Action Plan was central in the development of the proposal. The views and concerns of stakeholders are incorporated in the Administration's proposal. In 2005, NOAA sponsored a national conference, "Managing Our Nation's Fisheries – II," specifically addressing reauthorization issues. Based upon the input of over 800 attendees, the Administration developed a list of strategic priorities to address in the reauthorization process. Over the past year, NOAA has also been working closely with Congress on a wide range of issues related to Magnuson-Stevens Act improvements. In sum, the Administration's proposal was developed in the larger context of future ocean policy and governance, stakeholder concerns, and Congressional input.

### **Administration Priorities**

The Administration's Magnuson-Stevens Act reauthorization proposal seeks to achieve the following broad objectives: (1) end overfishing and achieve fishery rebuilding based on the biology of species and needs of communities, rather than arbitrary time schedules; (2) promote wider use of market-based fishery management tools; (3) incorporate ecosystem-based approaches in our fishery management process; (4) strengthen the role of science in the decision-making process and increase our access to social and economic information; (5) conform the Magnuson-Stevens Act regulatory procedures with the objectives of other environmental laws; (6) improve the operations of Regional Fishery Management Councils (Councils), as well as broaden and balance the constituent interests represented on the Councils; (7) improve the collection and use of recreational fisheries data; and (8) enhance enforcement tools so penalties become a real deterrent, rather than simply a cost of doing business.

I was pleased to see many of the Administration's priorities reflected in H.R. 5018, sponsored by Chairman Pombo, and H.R. 1431, sponsored by Congressman Rahall. In my testimony today, I will highlight the provisions in each of the bills that address the Administration's priorities.

### **"American Fisheries Management and Marine Life Enhancement Act" (H.R. 5018)**

H.R. 5018 addresses a comprehensive range of domestic fisheries management issues, and the Administration supports many of the bill's provisions. The Administration believes a few of these provisions are critical in Magnuson-Stevens Act reauthorization, and I will discuss them in detail. These provisions would: (1) establish limited access privilege programs, (2) broaden Council membership, and (3) authorize ecosystem-based fishery management plans. Each of these provisions is consistent with key Administration priorities, and we are pleased to see these issues addressed in the Chairman's bill. At the same time, the Administration has concerns with some of the provisions in H.R. 5018, and we are prepared to work with you and the Committee, Mr. Chairman, to address these concerns.

## **Overfishing and Rebuilding Plans**

We believe that a deadline to end overfishing should be included in the Magnuson-Stevens Act reauthorization. Unlike the Administration's proposal, H.R. 5018 does not include a provision to accelerate a mandatory end to overfishing. The Administration believes a deadline is critical for two reasons: 1) to prevent a stock from reaching an overfished status, and 2) to prevent the need to require rebuilding. Management measures that require an end to overfishing have contributed significantly to the rebuilding of many federally managed stocks, such as North Atlantic sea scallops.

The Administration's proposal to end overfishing within a defined timeframe and allow rebuilding timeframes to reflect the unique life history of the pertinent fish stocks provides appropriate levels of management flexibility to achieve sustainable fisheries. H.R. 5018 identifies additional circumstances to be considered in determining rebuilding schedules, which we believe could inappropriately and unnecessarily slow rebuilding times.

## **Limited Access Privilege Programs (LAP)**

In working toward ending overfishing, the Administration supports granting the Councils expanded authority to implement limited access privilege programs for a variety of reasons. Secretary Gutierrez pledged to work with the Fisheries Management Councils to double the number of dedicated access privilege programs by 2010. This goal will bring eight new fisheries under market-based management programs. In the eight fisheries where these programs have been implemented since 1990, fishermen have enjoyed higher profits, lower costs, longer fishing seasons and a safer, more stable industry. Therefore, the Administration believes that the Councils should be able to design management programs using the full range of fisheries management tools available. We believe the Councils should have authority to establish LAP programs with sufficient flexibility to address the unique management needs of their fisheries. At this time, the Magnuson-Stevens Act only authorizes two forms of limited access privileges: individual fishing quota (IFQ) programs, and community quotas (in two specific geographic areas). Second, market-based management approaches have demonstrated success in achieving economic benefits and promoting sustainable fisheries. Limited access programs currently in place have resulted in increases in per-unit product value and decreases in harvesting cost for fishermen. They have allowed fishermen greater control in choosing when to fish, and this increased flexibility allows them to improve profitability by harvesting fish when prices are most favorable. Third, these programs have safety benefits for fishermen. Since fishermen can choose when to fish under limited access privilege programs, they can avoid inclement weather and the "race to fish." For all these reasons, the Administration supports expanding the Councils' authority to implement a variety of limited access privilege programs.

## **Cost Recovery for Limited Access Privilege Programs**

While H.R. 5018 outlines the authority to establish limited access programs, it does not authorize the collection of fees necessary to implement these programs. Recent experience suggests that the implementation and monitoring costs of these programs may easily exceed the caps proposed in H.R. 5018. We believe this places an unfair burden on the taxpayers to support these programs. Failure to adequately cover the costs of proposed fishery management actions could preclude Secretarial approval, limiting the expansion of these programs. The Administration's proposal would authorize the recovery of a larger share of the costs in all dedicated access privilege programs.

## **IFQs in New England**

Another concern is that H.R. 5018 mandates an IFQ referendum with a 2/3 majority requirement in New England, but nowhere else. Many provisions in current law and regulations ensure an open and transparent debate on the evaluation and choice of management options. Management by IFQ may ultimately be appropriate for some Northeast fisheries but not others. Mandating such a referendum for New England could result in a costly and unnecessary impediment to the implementation of limited access programs in this region. Current law ensures that all stakeholder concerns are addressed in the decision-making process, and places control properly with local institutions responsible for fisheries management.

### **Ecosystem-Based Fishery Management Plans**

For many years, fisheries scientists and managers have advocated using ecosystem approaches to fisheries management, whereby management programs consciously account for and address multiple living resource issues within an ecosystem. In 1996, Congress mandated a report to assess the extent to which ecosystem principles are used in fisheries management and research, and to make recommendations to further include them in the management of our Nation's fisheries. The Administration supports this vision and believes we must move towards an ecosystem approach to management. Although NOAA and the Councils have already begun to integrate this approach into fisheries management, we believe that more can be done.

We support reauthorization language that defines ecosystems, authorizes the Councils to take ecosystem considerations into account when developing fishery management plans, and authorizes the Councils to prepare fishery ecosystem plans. The Administration commends Chairman Pombo for his inclusion of ecosystem-based fishery management plans provisions, as we believe that ecosystem-based approaches to management are fundamental to the future of sustainable fishery management.

### **Compliance with the National Environmental Policy Act (NEPA)**

The Administration supports study, revision, and updating of relevant Magnuson-Stevens Act procedures to integrate the environmental review processes of NEPA. The Administration supports this approach, which was included in our reauthorization proposal, rather than an exemption of fishery management actions from NEPA requirements.

### **Fishing Regulations in National Marine Sanctuaries**

H.R. 5018 requires the review and certification of National Marine Sanctuaries regulations for the conservation and management of fish or essential fish habitat. The Administration firmly believes Sanctuary regulations adequately protect fish and essential fish habitat and does not believe Sanctuary regulations should meet the Magnuson-Stevens Act national standards in all cases, since their mandates differ from the Magnuson-Stevens Act mandates. NOAA is committed to using all its regulatory tools and complimentary authorities to develop comprehensive ecosystem-based management strategies that meet the purposes, goals and objectives for state and federal fishery managers and National Marine Sanctuaries.

### **Broadening Council Membership**

The Councils are a key part of the fisheries management process, and the Administration believes the Council process is effective for achieving sustainable fisheries management. It is vital that Councils

are comprised of knowledgeable people representing the breadth of interests in our fisheries. H.R. 5018 helps promote a broader and more balanced representation of constituent interests on the Councils by authorizing Governors to nominate Council members from academia or other public interest areas. The Administration supports this provision and believes it would allow a wider diversity of interests to be represented on the Councils.

### **Collection of Recreational Fisheries Data**

Finally, the Administration is committed to the development of a nationally coordinated registry of saltwater recreational anglers that would build upon current State-administered programs. Knowing more about the recreational fishing sector will advance our understanding of fishery resources, help improve our scientific assessments, including social and economic impact assessments, and lead to better fisheries management. To establish a registry, H.R. 5018 adopted an incentives-based approach, calling on the Secretary to offer financial incentives to States to encourage collection of recreational fisheries data. The Administration and Senate bills propose a different approach, authorizing the Secretary to collaboratively work with States to establish a national registry, as recommended by a recent National Research Council review of recreational data collection programs. The Administration believes a comprehensive registration of anglers is essential for improving management of fisheries resources. We would like to work with you to craft the most effective policy on this critical need.

The Administration supports other provisions in H.R. 5018, including the authorization of a Fishery Observer Fund, to help pay for fishery observer programs. In addition, we support provisions in this bill that were not included in the Administration's reauthorization proposal. Examples include provisions that would: address cooperative research, identify marine ecosystems, authorize bycatch reduction incentives, and identify fisheries with excess capacity. Further, the Administration believes the proposed harvest level caps in H.R. 5018 could be a useful tool, provided they are practical to implement and enforce in any fisheries in which they are used.

### **Law Enforcement**

The Administration's Magnuson-Stevens Act proposal contains a number of fisheries law enforcement provisions designed to deter violations through fines and penalties. We believe increases in fines and penalties provide an appropriate legal response to serious violations of the Magnuson-Stevens Act. Fines and penalties must be significant in order to prevent potential violators from simply accepting them as a cost of doing business. The Administration recommends that H.R. 5018 include the increase in fines and penalties as outlined in its proposal.

Again, I would like to reaffirm the Administration's support for many of the provisions in H.R. 5018. We are pleased to see many of our priorities included in this bill. We look forward to working with you, Mr. Chairman, as reauthorization moves forward.

I will now discuss H.R. 1431, the Fisheries Science and Management Enhancement Act, introduced by Congressman Rahall.

### **Fisheries Science and Management Enhancement Act of 2005" (H.R. 1431)**

H.R. 1431 is narrower in scope than H.R. 5018, focusing largely on the role of science in the fisheries management process, Council membership and processes, and ecosystem considerations in fisheries

management. These are important issues, and we agree that improvements can and should be made. The Administration agrees with the goals of H.R. 1431, and we believe that several provisions in the bill are consistent with the Administration's priorities. However, we have concerns about the approaches proposed in a few cases.

### **Improving Fisheries Science and Technology**

H.R. 1431 would establish a program to expand cooperative research, data collection, and gear modification. The program would identify ecosystem effects of fishing, provide financial assistance to States to improve recreational fishing data, collect information on the status of stocks, develop fishing gear to avoid bycatch, and provide assistance for fishermen to transition to modified gear.

The Administration supports collaborative approaches to fisheries research and believes that improving data collection is essential for advancing our knowledge of fisheries and marine ecosystems. As data collection improves and our knowledge advances, fisheries managers can further incorporate ecosystem approaches into management decisions. Reducing bycatch also remains an important objective in fisheries management, and we believe that the continued development of technological solutions is critical to solving bycatch problems. In the past, collaboration with fisherman has provided essential information for the design, experimentation, and testing of new and modified gear. For example, collaboration with industry led to the successful development of circle hook technology in the North Atlantic pelagic longline fishery to reduce sea turtle bycatch and development of seabird avoidance technology in the North Pacific longline fishery. The Administration is pleased that H.R. 1431 addresses the need to expand cooperative research, improve data collection to enhance our knowledge of fisheries and marine ecosystems, and help reduce bycatch.

### **Broadening Council Membership and Council Member Training**

As I stated previously in my testimony, one of the Administration's objectives in Magnuson-Stevens Act reauthorization is broadening Council membership to include representation of the breadth of interests in the management of fishery resources, including those with a commitment to sustainable fisheries. H.R. 1431 would broaden Council membership by requiring that Governors nominate two nominees each from the commercial, recreational, and "fish conservation public interest sector" for Secretarial appointment to the Councils. While we agree with the objective of broadened Council membership reflected in H.R. 1431, the Administration prefers the approach taken in its proposal, which would provide Governors more flexibility in nominating members that reflect the particular needs of each region and Council.

H.R. 1431 would also require training for new Council members as a prerequisite for voting. NOAA supports, and already provides, training for Council members. The Administration is concerned that requiring training as a precondition to voting will create delays in the Councils' ability to take management action to address timely fisheries management issues.

### **Strengthening the Role of Science in Fisheries Management**

Several provisions in H.R. 1431 address the importance of science and peer review in fisheries management. The Administration supports authorizing pay/compensation for members of the Councils' Science and Statistical Committees to encourage qualified scientists to participate. We also support the use of peer-reviewed science. However, we prefer the Administration's proposal, requiring

the Secretary and Councils to formalize a peer review process, rather than the provision in H.R. 1431 requiring Secretarial review of the Councils' scientific determinations.

H.R. 1431 would establish a Fishery and Marine Science Subcommittee, consisting of fishery biologists and marine ecologists, within the Scientific and Statistical Committees of the Councils. This subcommittee would determine biological catch limits and other management measures necessary to protect habitat and threatened or endangered species. In developing management measures, a Council would be required to adopt measures that are at least as stringent as (or more stringent than) the measures developed by the newly created subcommittee. Although the Administration strongly supports science-based fisheries management decisions, we have concerns with this provision and its implications to decision-making authority within the current Council process. By concentrating decision-making authority in the hands of a small body, this provision would diminish the authority of the Councils and the participatory nature of the fisheries management process. Finally, we are concerned that this provision does not account for social and economic considerations, as required by National Standard 8.

I would like to reiterate that the Administration supports the objectives of H.R. 1431. We would be happy to work with you, Congressman Rahall, and the rest of the Committee to address these important issues as reauthorization of the Magnuson-Stevens Act moves forward.

### **Conclusion**

In summary, when we examine these two bills in light of the Administration's highest Magnuson-Stevens Act reauthorization priorities, we are encouraged in a number of important areas. Specifically, we support the direction in which these bills are headed with respect to: market-based fisheries management, Council operations and membership, ecosystem-based approaches to management, and cooperative science. We look forward to working with Congress on reauthorization of this important Act.

Thank you for the opportunity to present our views on this legislation. At this time, I would be happy to answer any questions.