

## **Testimony to the President's Commission on Ocean Policy**

**Mary Hope Katsouros, Senior Vice President,  
The H. John Heinz III Center for Science, Economics, and the Environment**

**January 15, 2002**

Good afternoon, Mr. Chairman and members of the Commission on Ocean Policy. I am Mary Hope Katsouros, Senior Vice President of The H. John Heinz III Center for Science, Economics and the Environment. I am pleased to give our perspective on U.S. fisheries governance. Since its inception in 1995, The Heinz Center, working with collaborators from government, industry, academia and environmental organizations, has examined and provided nonpartisan policy options on ways to increase the effectiveness of U.S. fisheries management. Our work continues. Working with the National Marine Fisheries Service we are organizing a Dialogue on Marine Fisheries to continue stakeholder involvement in considering policy options for the complex problems facing our fisheries and its management process.

We applaud your efforts and will do whatever we can to support the Commission. The stakes are high. We are at an important time in this nation's relationship with our ocean resources. Your recommendations will affect profoundly all the United States uses of the sea in the decades ahead. We need your wisdom to assure that we can balance use and conservation of our ocean resources while maintaining national security and prosperity.

### **Governance: How We Manage Fisheries**

Governance is the process of making binding decisions for publicly owned living marine resources. Governance includes the laws and regulations and actions that result in resource management.

The enactment of the Fishery Conservation and Management Act (FCMA) of 1976 (most recently renamed the Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA)) ushered in a new era of fisheries management for the United States. The FCMA established a governing structure that affirmed decision-making authority in the Secretary of Commerce, removed Congress from the day-to-day business of fishery management, and created eight regional fishery management councils. These councils advise the Secretary, develop fishery management plans (FMPs) and amendments, recommend regulations and provide a forum for public participation in decision-making. Congress believed that engaging persons with hands-on knowledge and experience in regional fisheries was beneficial and would contribute to the development of effective management plans and regulations.

Fishery management authority is vested with the Secretary of Commerce, who has delegated that authority to NMFS. The agency promulgates regulations based on the National Standards, and from recommended rules that flow from FMPs developed by the eight Regional Fishery Management Councils. The Secretary has the responsibility to review FMPs, and to ensure that the measures in them are consistent with the National Standards and other provisions in the law.

Congress also exercises authority in the fishery management process through legislation, appropriation and oversight. In addition, Congress plays a special role in the allocation of U.S. fishery resources to foreign fleets through approval of Governing International Fishery Agreements, or "GIFAs," which allow the allocation to another nation of U.S. fishery resources that are not being harvested by U.S. vessels.

The structure and process of U.S. fishery management is laid out in the Act, but is also shaped by agency policies, Council operating procedures, federal rules of administrative procedure, open government and due process, interjurisdictional arrangements and pure politics. The once clear perception that ultimate authority rests with the Secretary has eroded over time as the Councils have become powerful in their own right. Congress remains engaged with the industries in their districts and influences research and management through the appropriations process. Stakeholders increasingly turn to the courts when they disagree with management decisions. This has caused a diffusion of authority and responsibility, leaving no final place where the citizen can look for accountability in the governance of the nation's fisheries.

Each year, NMFS is required to publish a list of overfished fisheries. If the Councils do not respond by developing management measures to stop overfishing and rebuild depleted stocks, the Secretary must do so within a year. The agency also has the responsibility for developing management plans and regulations for the management of highly migratory species.

The states have authority to manage fisheries in their marine waters, but in particular cases states have been delegated extended jurisdiction to manage fisheries in federal waters as well. States participate in Council decision-making through the membership of their top fishery management official. In addition, three interstate marine fisheries commissions for the Atlantic, Gulf and Pacific states were created to coordinate state regulations and develop management plans for species that occur in more than one state within their respective regions.

The idea behind the Councils was to garner the expertise of persons with experience in the nation's fisheries, and to bring that expertise into management through planning, public participation and advice to the Secretary. The objective was to find individuals who would represent the public interest rather than specific interest groups. The Act called for "qualified persons," who could make sound judgments in the public interest with respect to the management and conservation of fishery resources. The naming of a federal representative on each Council was seen as an important contribution to "a continual dialogue

between the Councils and the Secretary,” in order to avoid serious disputes. Congress also wanted the Councils to have help from independent scientists serving on the Scientific and Statistical Committees. The voluntary nature of the Councils, they said, required additional expertise.

Critics now say that the Council process has become overtly political, with candidates campaigning at every level — for their governor's nomination as well as for the support of interest groups and congressional delegations. This politicization carries over into Council deliberations and process, with participants or proponents of a view driving to gain support and align votes as at a political convention. This process disenfranchises individuals, industry sectors and the public.

The politicization of the fishery management process has eroded the balances between national policy and local concerns, between and among user groups and between congressional oversight and executive action. The ability of an interest group to mount a political campaign on an issue is often the deciding factor on management outcomes. This has overridden considerations of science and policy in the national interest, and led to *ad hoc* decision-making and congressional micromanagement.

The original FCMA envisioned an ideal, decentralized planning system arising from stakeholder participation, with central authority and federal accountability for decision-making. By its very nature the Council process is slow and cumbersome and not easily accessible. Once measures are passed by a Council, they must pass the hurdle of the rulemaking process. The MSFCMA describes an open, participatory process at the regional Council level, but in addition there are requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, the Administrative Procedure Act and various other procedural requirements. Although designed to safeguard and equalize public participation, administrative rulemaking is highly structured and very much an insider's game. NMFS reviews FMPs and their amendments to see if Council recommendations and proposed measures are consistent with their objectives and with the requirements of the law. If the Councils do not meet those requirements, the Secretary has mandates to act. Since the 1996 passage of the Sustainable Fisheries Act, which amended the MSFCMA, there is far less discretion for the Councils.

NMFS is responsible for oversight to ensure that Council plans and recommendations meet the National Standards and other requirements. Congress also plays a role. Critics argue that Congress has exercised too much oversight through regulatory intervention, special legislation, line item appropriations and budget language. The problem is that actions taken in this way are not the result of deliberate debate about how to manage and allocate the nation's resources, but rather the result of local reaction to particular problems

and claims. Oversight also occurs in the courts and many participants are concerned that litigation will play an increasing role in how decisions are made. The performance of governance for American fisheries to date is mixed. Fishery governance is conducted through an often confusing mix of local, state, regional and federal authorities. Authority over different marine species is fragmented.

The governance structure is complex. There are more than 100,000 people involved in commercial fishing-related activities, some 15 million recreational fisherman and over 400 species that are managed through 42 fishery management plans developed by 8 regional Councils in 30+ states. So it should not surprise us that many think the governance structure is flawed.

American governance also includes membership in the international fishery community, as reflected in a series of international agreements. The Rome Consensus on World Fisheries adopted by the UN Fisheries and Agriculture Organization (FAO) Ministerial Meeting in March 1995 includes agreement on the need to eliminate overfishing, reduce fishing capacity, reduce by-catch and discards and strengthen governance. The Code of Conduct on Responsible Fisheries adopted by the Rome Conference of FAO in October 1995 contains guidelines on fishery management and operations, aquaculture, coastal zone management, trade and research. The Kyoto Declaration adopted at the Conference on the Sustainable Contribution of Fisheries to Food Security includes agreements on the need to reduce fishing capacity, strengthen the scientific basis for multispecies and ecosystem management, reduce incidental catch and strengthen institutional coordination. International agreements such as these have lead to national efforts to define and implement the various actions.

### **National Fisheries Governance Needs and Opportunities**

The Commission will undoubtedly hear much about the state of marine fisheries management. The issues will range from the need to reduce fishing capacity, to the importance of marine protected areas, the Council appointment process, the variability of regional Council's performance in managing fisheries, the importance of public input and much more.

In my estimation there are three critical areas where the commission's advice and recommendations will have a long lasting legacy in US marine fisheries. They are: the need for a single marine fisheries agency that is accountable for our marine fisheries and mammals; better science to make management decisions; and a work force dedicated to balancing use and conservation.

### **A Single Agency**

Empower a single federal fisheries agency to provide focus and meet the demands of protective statutes such as the Endangered Species Act (ESA), the Marine Mammals Protection Act (MMPA) and better manage marine fishing activities in which protected species are sometimes caught. Also, this agency would facilitate enforcement measures and promote comprehensive management of the Exclusive Economic Zone. Although there would be resistance to such a single agency, in my estimation, a single agency reduces

conflict. Such conflicts threaten the long-term well being of marine resources and involve excessive duplication and waste on the part of government. With a single accountable agency, there would be no jurisdictional battles with other agencies.

The National Marine Fisheries Service should be that agency.

NMFS is already familiar with what works for the fishing industry as well as what protects listed species. NMFS already must categorize each fishery in the United States according to the likelihood of incidental mortality and serious injury to marine mammals. As a society we will need to decide whether marine mammals should be managed as part of the ocean ecosystem or whether they will be kept wholly untouched as a national marine icon. It would be impossible to meet the goals of the Magnuson-Stevens Act to rebuild all fisheries and the Marine Mammal Protection Act to attain zero mortality of marine mammals. Our ocean system is vast but it cannot support the recovery of all marine fisheries, marine endangered species, and marine mammals. Indeed, even the healthiest ecosystem cannot simultaneously support all of its stocks at peak capacity.

A recent editorial in the New York Times claims that NMFS is not receiving enough attention because it is part of the Department of Commerce and there are those that extol the virtues of moving NMFS to the Department of the Interior. There are presently over 100 lawsuits pending against NMFS. I don't think getting attention is the problem in NMFS. We do not need to move NMFS to make it more effective. We need to give it the tools – specifically the funding and the authority – that it needs to get the job done right.

### **Science and Science Credibility**

We need to strengthen both the scientific basis of fisheries management and the credibility of fisheries science among stakeholders. The science used to make fisheries management decisions must be sound, credible, and responsive to the needs of the managers. A solid scientific basis is critical because you cannot manage what you do not know. Without such a foundation, management efforts are less effective and open to challenge. Simply stated we need to improve stock assessments, enhance social science research, improve and expand data collection programs, re-examine research priorities, and improve the communication of scientific information to fisheries stakeholders without scientific backgrounds.

With the development of an ocean observing system, we can incorporate ecosystem scale marine science as an integral part of the management of living marine resources. The observing system has the potential to standardize fishery and marine mammal data collection and provide the long-term, time series data that is necessary. For example, one of the partners in the South Atlantic Bight Synoptic Offshore Observational Network is the South Carolina Department of Natural Resources. They will use the observational system to compile information on fisheries life history and behavior to improve their fisheries management.

Furthermore, ocean observation can be complimented by ocean exploration. Commissioner Ballard pointed out that we know more about the dark side of the moon than we do about our own oceans. Continuing ocean

exploration uncovers an unknown world and may well yield new economically important stocks of living marine resources. Only by investing in long-term monitoring and pursuing new knowledge will we gain a greater understanding of our marine resources and their ecosystems.

### **A Dedicated Workforce with the Right Tools**

Fifty percent of the present federal workforce is eligible to retire in the next 10 years. That means half of the National Marine Fisheries workforce, and all their experience and knowledge, will disappear in this decade. Who will replace them and what does NMFS have to offer those who will dedicate their lives to serving their nation? A tiny fleet of decrepit vessels including a wooden hulled Pacific trawler built in 1950? Moratoriums on effective management tools like ITQs which could deal with excess industry capacity and overfishing? A fractured and dissipated governance structure with little accountability?

We must replace the current fisheries research vessels to meet the ever growing need for timely, high-quality data. It is difficult to expect 21<sup>st</sup> century management with 1950's equipment. The MSFCMA calls for the "best available science" to be used in fisheries management. We need to make sure our fisheries scientists have the best available equipment to provide that science.

It is time to modernize this important agency, and this commission is in a unique position to do so. Balanced use and conservation in US marine fisheries, and a healthy national agency to sustain this balance, could be a legacy of this Commission that benefits Americans for generations to come.

This is but one of the ways the Commission could mobilize the Congress, the Administration and the public on the importance of our oceans and their resources.

Thank you very much for the opportunity to come and share my views with this Commission.