

Testimony of Mr. David Benton, Chairman  
North Pacific Fishery Management Council  
to the  
Senate Subcommittee on Oceans and Fisheries  
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Introduction

Good morning Mr. Chairman. For the record, my name is David Benton. I serve as the Chairman of the North Pacific Fishery Management Council. I also serve as the Chair of the North Pacific Research Board, a multi-agency organization which is establishing a long-term, comprehensive marine research program for the North Pacific and Bering Sea. The NPRB is newly formed, but will over time administer a multi-disciplinary research program providing research funding at about \$10-15 million per year.

First off, I want to thank you for the opportunity to offer comments to the Committee on our fisheries management process. I would like to touch on two major areas today. Of course, because I am from Alaska, I want to highlight for you some of our successes as well as the issues facing the North Pacific Fishery Management Council as we work to conserve the vast marine resources of the North Pacific. I also want to discuss with you some of the issues facing all the Councils.

NORTH PACIFIC FISHERIES MANAGEMENT

I am going to start with the North Pacific. Needless to say, we in Alaska are proud of our record in meeting conservation goals and maintaining healthy fisheries. Working together with the National Marine Fisheries Service (NMFS) and the Alaska Department of Fish and Game, we have been very successful at managing the federal fisheries off Alaska. Given the focus of this hearing and the time constraints, I will not provide the endless details or numerous examples of these accomplishments; however, they need to be recognized and I have provided a supplemental folder of materials that summarize the overall management philosophy of the North Pacific Council and provides examples of what we are doing to conserve fish stocks, protect habitat, manage and reduce bycatch, and incorporate ecosystem considerations into fishery management decisions. I hope that these materials, which are in the white folder with our Council logo, along with my testimony, will be of use to the Committee as you consider what is right with our fishery management system as well as ways we can strengthen it.

Alaska's fisheries are valued at over \$1.1 billion annually, before processing, and provide over half the volume of fish landings in the United States. They are a powerful economic engine for coastal communities off Alaska, and provide tens of thousands of jobs in the fishing and processing industries throughout Alaska and the Pacific Northwest. With so much at stake, the North Pacific Council has approached fisheries management with an eye towards long-term sustainability of marine resources. 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. Here are some examples:

### Precautionary and Conservative Catch Limits

Annual catches of our fish stocks are controlled by strict harvest limits (which includes all catch for each species whether targeted, retained, or discarded). The Council establishes annual harvest limits for each stock at a level that never exceeds a biologically safe and precautionary harvest level recommended by the scientists on the Plan Teams or Scientific and Statistical Committee. Our scientists set harvest levels in a precautionary manner; when less is known about the dynamics of a stock, the more conservative the harvest rate. Fisheries are closely monitored and closed when the harvest limits are reached. As an additional precautionary measure in the Bering Sea, the combined annual harvest limits for all species is limited to no more than 2 million metric tons, which is only about 65% of what could be safely removed without impacting fish stocks. The application of conservative catch limits has resulted in sustainable catches. Annual North Pacific groundfish harvests have been sustained in the 1.5 - 2.5 million metric ton range (3 - 5 billion pounds) for the past 30 years.

All of our groundfish stocks are considered to be at healthy biomass levels. None of our groundfish stocks are considered to be 'overfished'. I should note that I dislike that term 'overfished' because it implies that stocks got to low levels because of fishing, when in many cases the causes are related to environmental change or other factors. The marine ecosystems off Alaska are dynamic, and fish stocks increase or decrease in response to environmental changes, and generally not in response to the levels of fishing mortality found in our fisheries today. Of course, prior to the Magnuson Act, and even into the 1980's, some stocks suffered from fishing pressure largely from foreign fisheries. But today's management takes into account total mortality, and sets very conservative harvest limits to ensure sustainability.

For the two crab stocks in our region that are considered to be overfished, we implemented aggressive rebuilding plans - the fisheries have been closed entirely - even though scientific data indicated that abundance of these stocks depends almost entirely on environmental factors. And, bycatch in other fisheries has been significantly constrained. Due to these efforts, we are seeing some improvements, but recovery will ultimately depend on ocean survival conditions which appear to be dependent on long term environmental factors.

However, in our quest to always look for better ways to meet our obligation to conserve our nation's fishery resources, the NPFMC has recently established an independent scientific review process to look at our overall harvest strategies, especially the process and science which we use to establish harvest rates. The Council has contracted a group of independent, international experts to critique our system and make recommendations for improvements. We expect to receive their report later this year.

#### Observer Program and Inseason Catch Monitoring

Our comprehensive observer program (averaging about 36,000 observer days annually) and inseason monitoring program are integral to the conservation of our resources. Observers measure catch and bycatch and collect biological information. Observers are required on all vessels longer than 60 feet, and at all but the smallest shoreside processors. Observers are placed on vessels and processing plants through a NMFS-certified contractor, and the costs for the observers are borne by industry, not by the government. Inseason managers at NMFS use information provided by the fleet on weekly catch and processing reports, as well as daily information from onboard observers, to manage complex area and seasonal quotas. The combination of timely reporting and observer information allows managers to monitor catch levels and close fisheries so that catch and bycatch limits are not exceeded.

#### Bycatch Reduction

The Council has been concerned about bycatch of non-target organisms since the implementation of the first fishery groundfish management plan in 1979. Catch limits have been placed on species traditionally harvested by other gear types (halibut, crab, herring, and salmon). The intent is to minimize the impacts of bycatch on non-target populations while at the same time allowing directed fisheries to be prosecuted. For example, current allowable bycatch levels in the Bering Sea and Aleutian Islands area equate to less than 1% of the halibut, crab, herring, and chum salmon populations. Bycatch of chinook salmon has slightly larger

impacts, in the order of 2% to 3%, and the Council is pursuing several initiatives to further reduce this level. In addition, the Council has initiated work to adopt salmon bycatch controls in the Gulf of Alaska in addition to controls already in place on halibut.

Another type of bycatch is comprised of target and non-target species that are caught but then discarded. This discard bycatch is thrown back into the sea and considered wasteful by many. We have made considerable progress in reducing this type of bycatch. For example, in 1993, over 17% of the groundfish caught off Alaska were discarded. By 2001, less than 7% of the catch was discarded. In raw pounds this equates to a discard of about 350 million pounds in 2001, down from over 800 million pounds in 1993. This reduction is partly due to implementation of full retention and utilization requirements - you catch it, you keep it - for major species such as pollock and cod. The fishing industry has also worked to reduce bycatch in a voluntarily manner by sharing catch information and modifying gear to allow unwanted fish to escape. Additionally, the formation of cooperatives in the Bering Sea pollock fishery, as prescribed under the American Fisheries Act, ended the race for fish. This allowed vessels to slow down fishing operations, and combined with our ongoing bycatch reduction efforts resulted in further reducing bycatch and discards. The cooperatives also aided the development of additional markets for lower valued species, and significantly increased utilization rates (pound of product per pound of raw fish harvested).

Further reductions in discards will be achieved with full retention requirements for flatfish, which are currently scheduled to be implemented in 2003. We also are continuing to evaluate additional approaches to bycatch reduction, including assignment of individual vessel accountability, bycatch avoidance techniques, and bycatch pools under a cooperative-style approach.

The Council recently started a new initiative to look broadly at further bycatch reductions. As Chairman, I will be appointing a stakeholder committee to review each of our various fisheries and make recommendations for programs to further reduce and manage bycatch. In reality, this is a resumption of work the Council had been engaged in a few years ago, but was put on hold because of the need to respond to litigation, mostly to do with procedural problems under NEPA.

## Habitat Protection

We all know that most fishery resources depend on healthy sea floor habitat. Although scientists have only a limited understanding of the distribution of benthic habitats off Alaska, and how these affect fish production, the Council has established numerous marine protected areas to reduce potential effects of our fisheries on habitat. Bottom trawling has been prohibited from a large portion of the continental shelf to protect sensitive fish and crab habitats. Closed areas in the Bering Sea total more than 30,000 square nautical miles, bigger than the state of Maine. Closed areas in the Gulf of Alaska are even larger, totaling about 45,000 square nautical miles. Management measures related to protection of Steller sea lions were implemented this year which include additional closures of vast areas of the Gulf of Alaska, Bering Sea, and Aleutian Islands to trawling, and in many cases, to all fishing with any gear type.

This work was in progress several years ago following the passage of the Sustainable Fisheries Act in 1996, but was subsequently put on hold due to lawsuits filed by the environmental community. They prevailed on procedural matters, with the overall effect that work on habitat protection essentially stopped until NEPA requirements were addressed. The Council is back at it though, currently working on an accelerated time line to develop and implement alternatives to improve the essential fish habitat protection program off Alaska. We are conducting a thorough evaluation of our fisheries, through an EIS process, and expect to recommend significant actions in 2003.

## Ecosystem Considerations

Over the past several years, the Council has been developing an ecosystem-based approach for management of our groundfish fisheries. The principles and elements of our approach are essentially the same as recommended by the Ecosystem Principles Advisory Panel in their report to Congress and by the National Academy of Sciences in their report on sustaining marine fisheries. In fact, one of the authors sits on our Council and chairs our Ecosystem Committee. While we have yet to take the next step and develop specific fishery ecosystem plans, our strategy is to minimize potential ecosystem effects while allowing for sustainable fish removals as we gain the knowledge necessary to implement more specific measures.

In the meantime, a number of measures have been implemented to reduce potential effects of fisheries on marine mammals and seabirds. As a precautionary measure, directed fisheries for forage fish species are prohibited. In addition, we have dispersed fisheries over time and space to reduce potential for competition

with Steller Sea lions, and prohibited vessels from fishing too close to the areas of land on which they haul out or give birth. To reduce seabird bycatch in longline fisheries the Council recently approved a suite of regulations requiring vessels to use deterrent devices. These are some of the more stringent measures in the nation and possibly the world. And, while it is anticipated that these deterrent devices will reduce seabird bycatch by over 80%, the Council is also committed to working with the U.S. Fish and Wildlife Service to review and improve seabird avoidance measures in the future.

In concluding my remarks on North Pacific fisheries issues, I want to emphasize that the North Pacific Fishery Management Council is committed to conservation. We do our best to base our decisions on sound science and when there is a question, we try to err on the side of conservation. In recent years, much of our effort has, unfortunately, been focused on responding to litigation, most of which focuses on procedural matters. This has thwarted our efforts to take up new initiatives to manage and reduce bycatch and protect important fisheries habitat. We have a very transparent process that relies on the participation of all sectors of the public. Again, unfortunately, much of the litigation we are addressing comes from special interests that have decided to not participate in this very public forum. Apparently, they prefer to go to court, and then get in a closed room and conduct backroom negotiations with federal attorneys. Away from the public eye. Away from the science based deliberations that Congress intended when you established the Magnuson Stevens Act and NEPA, and the other relevant statutes.

#### GENERAL FISHERIES MANAGEMENT ISSUES

I believe that the current system, a collaboration between the Regional Fishery Management Councils, NMFS, and the states is the appropriate process for management of our Nation's fisheries resources. When it is carried out properly, this process has all the ingredients for responsible decision-making. It is based on science. It is deliberative. It is transparent. It is representative. And, where it has failed to meet the conservation test, it is not because of the structure, but because of implementation. With regard to the National Marine Fisheries Service, there are several levels of review ongoing relative to NMFS' organizational structure and its ability to meet mission requirements under multiple authorities. I believe that Dr. Hogarth is working hard to address the problems facing the agency. Rather than focus on organizational structure of the agency, or specific budget and management processes, I would like to provide my thoughts on a few overriding issues relative to the collective Council/NMFS management process. I believe these are fundamental problem areas that you should be aware of that are impeding our ability to collaboratively accomplish our management mission. I also want to point out that several of these issues are discussed in the

comments of the Council Chairs regarding MSA reauthorization, which I have attached to my testimony for your information.

### Litigation gridlock

Litigation is currently the most pressing problem facing the agency, and attempting to gird our process against this litigation is threatening to cripple our management process. Because of conflicts regarding procedure under various statutes, the door is open to often frivolous lawsuits over procedural issues, which have the perverse effect of thwarting necessary conservation action. While judicial remedy should be available to address real shortcomings in our management programs, the Catch-22 is that we have reached a point where litigation is seriously impeding our very ability to effectively manage our fisheries and comply with Congressional direction. Whether this is by design, or an inadvertent result, I can't say. I can only note that the very interest groups who are calling the loudest for dismantling the Council process are often the same groups engaged in these procedural lawsuits.

For example, there has been a dramatic trend in litigation to exploit the mismatch between NEPA and the Council process, and circumvent the very public process envisioned by this and other Acts, by attempting to use the courts to achieve their desired end game, rather than participate directly in the Council process. Settlement negotiations between NOAA attorneys and plaintiffs, which often follow, further circumvent the process by avoiding the deliberative, public processes envisioned under all of the Acts. In some cases, litigation ostensibly aimed at conservation objectives has actually impeded implementation of conservation measures recommended by the Councils. Essential Fish Habitat (EFH) is a prime example, where several of the Councils' proposed EFH amendments (intended to comply with the 1996 Sustainable Fisheries Act), were challenged as inadequate. As I understand it, the plaintiffs were successful under the NEPA claim that the EIS was deficient. The net result of this litigation and attendant settlement negotiations is at least a three year delay in implementation of amendments which would have defined and provided protection for EFH and Habitat Areas of Particular Concern (HAPC), while the Councils and NMFS undertake development of a new and comprehensive Environmental Impact Statement to implement EFH protections.

Similarly, the North Pacific Council and NMFS have been, over the past three years, attempting to develop a comprehensive, programmatic-level EIS for our groundfish Fishery Management Plans. Through court orders and settlement negotiations, where plaintiffs are attempting to directly influence the outcome of the EIS process, completion of that EIS has been delayed for at least an additional year, more likely two. The

Council and NMFS devote thousands of hours of valuable, limited staff resources to these litigation-driven exercises, compromising our ability to focus time and resources to address real management and conservation issues. It is further frustrating that many of the groups who are criticizing the current fisheries management process have not attempted to participate in that process; rather, they have simply turned to litigation as their primary means of influencing fisheries policy and regulations.

### Conflicting Acts

Among the recommendations from the Council Chairs is the need for clarification of the authorities and requirements among the primary Acts governing our process. The Magnuson-Stevens Act (MSA) outlines a process for public participation, extensive supporting analyses, and public participation that is similar in scope to that outlined under the National Environmental Policy Act (NEPA). However, there are some fundamental differences between these Acts, and some fundamental mismatches between the fisheries management process outlined under MSA and the process requirements under NEPA. It is these process requirements under NEPA that most often provide for litigation opportunities, regardless of the validity of the underlying science or the completeness of the analyses which support a proposed management action. And more importantly, often times despite the conservation benefits of the proposed action as well. It appears that the process and requirements for fisheries management plans and amendments as outlined under MSA satisfies most of the letter of NEPA and certainly all of the intent of NEPA, relative to analysis, public participation, and ultimately, environmental conservation. The attached Council Chair's recommendations contain specific reference to this issue, and proposes clarification that failure to comply with NEPA in the management of a fishery under MSA should result only in judicial guidance regarding NEPA compliance, rather than judicial management of, or injunction against, a fishery unless there is a clear MSA violation.

In addition to the litigation opportunities for procedural lawsuits under NEPA, there are some additional problems which result from our attempts to comply with both statutes. In the North Pacific, we are currently in the process of altering our annual quota-setting process so that establishment of Total Allowable Catch (TAC) levels will go through a complete and formal rulemaking process under NEPA, including lengthy public comment periods at both the Council level (before final recommendations by the Council) and the Secretarial level (in reviewing the Council's recommendations). Currently the Council sets quotas each fall for the upcoming fishing year, based on just-completed scientific survey data. One of the keys to success in avoiding overfishing is to use the most up-to-date scientific information to judge the health of fish stocks and adjust harvest accordingly. Under the proposed change, which is being suggested by NMFS to comply with



NEPA procedural requirements, quotas would be set on year-old survey data rather than on the best, most recently available scientific information, as mandated by the MSA. This is one example of a perverse, and presumably unintended consequence of the literal application of NEPA procedures to our management process.

Our Council is currently attempting to conduct an independent legal review of issues surrounding the intersection of these various Acts, including MSA, NEPA, and the Endangered Species Act (ESA). We hope that this legal review will better inform us how to balance the requirements among these Acts, as well as clarify NMFS and the Councils' respective roles in promulgating management measure under these Acts.

### Regulatory Streamlining

NMFS has recently undertaken what is being labeled 'regulatory streamlining', in an attempt to ensure that all proposed fisheries management programs are legally consistent with the provisions of the Acts mentioned above, as well as other applicable laws. One aspect of this initiative would require all Fishery Management Plans, or amendments to those plans, to illustrate full compliance with NEPA and other laws prior to action by a Regional Council. NMFS hopes that this will better enable the Councils to make informed decisions and will, ideally, better enable the agency to defend these decisions against potential litigation. However, given the unique nature of the Council process, coupled with the process requirements under NEPA, there are concerns whether this initiative will ultimately be successful without some clarifications as to the relative applicability of NEPA vs applicability of the MSA. Again, the Council Chair recommendations contain specific reference to this concern, and suggest a potential remedy which would help define a more reasonable application of NEPA to our process, without jeopardizing the underlying environmental conservation objectives of this Act or the MSA.

### Conclusion

There have been allegations recently that the Regional Council system is ineffective at addressing conservation objectives of the Magnuson-Stevens Act, and even suggestions that the Council system should be scrapped altogether, or, limited to only allocation decisions. This is a seductive bit of sloganeering that ignores some of the most fundamental lessons of fishery management. Much of the business of managing fisheries involves both conservation and allocation, and more often than not allocation and conservation issues cannot be separated. While some regions have been more successful than others at implementing the

baseline, conservation oriented management measures necessary to preserve and sustain these valuable resources, the Council process can work effectively to address both conservation and allocation issues. I can cite numerous examples of where our Council has taken the lead and approved conservation measures above and beyond that deemed necessary based on agency advice. These include the Pacific ocean perch rebuilding plan; the Southeast Alaska trawl closure; the 2 million mt OY cap in the Bering Sea; Bering Sea closures to protect depleted crab stocks, and the closure of the Aleutian Islands pollock fishery. I submit that fisheries in the North Pacific are a shining example of the ability for this process to directly address conservation objectives, and balance the allocation objectives that often come into play. It is this collaborative process between the Councils, the Department of Commerce, and the public that the drafters of the Magnuson-Stevens Act envisioned, which allows for an informed group of stakeholders and managers to craft fisheries regulations that take into account specific regional considerations.

This is not to say that our system is perfect by any means, or that there is not room for improvement. There are a number of issues we still need to address, such as fishery rationalization in our remaining open access fisheries, and the effects of such programs on conservation and communities, as well as the immediate distributional effects on participants. We need a greater understanding of ecosystem processes to allow us to manage with more of an ecosystem perspective. We need to continually engage in self assessment of our science programs, and our management strategies. And, we need to make the system more user friendly so that a broad cross section of stakeholders is engaged in a transparent process. We need to solve the conflicts among statutes to cut the chain of paper chase litigation so we can focus on the business of managing our marine resources in a responsible manner. NMFS, with input from the Councils, is working hard to achieve a more efficient regulatory process, and to ensure that our fisheries plans and regulations meet the tests outlined by various Congressional statutes. I believe this process is improving, and we stand ready to respond to any directions that come out of the Magnuson-Stevens Act reauthorization process or other Congressional actions. Again, I appreciate the opportunity to speak to you today on these issues. Thank you.