



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

December 12, 2005

The Honorable Ted Stevens
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, D.C. 20510-6125

Dear Mr. Chairman:

This letter provides the views of the Department of Commerce on S. 2012, the "Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005." We are very pleased that S. 2012 incorporates many of the provisions and proposals included in the Bush Administration's version of the reauthorization of the Magnuson-Stevens Act. Overall, the Administration strongly supports the objectives of S. 2012, and we have suggestions related to four high-priority areas that could be further strengthened to achieve these objectives. We also have some additional suggested improvements and clarifications, which are detailed below.

The main goal of the Administration's proposal is to give the Secretary of Commerce (Secretary) and the Regional Fishery Management Councils (Councils) the tools needed to effectively sustain living marine resources. S. 2012 shares this objective. In many cases, the same or similar approach is taken regarding: requirements of fishery management plans, the role of the Secretary, market-based approaches to fishery management, the environmental review process, emergency provisions in Section 108, social and economic information, a nationally coordinated registration program for saltwater recreational fishermen, an improved definition of the role of confidential data in managing fisheries, and a strengthened role of the Councils' Scientific and Statistical Committee.

We also support several S. 2012 provisions that, while not included in the Administration's proposal, would provide the Secretary and Councils additional useful tools, such as: the habitat restoration study, catch limits in all federally managed fisheries, National Standard 8 revisions, cumulative impacts, and incentives programs to reduce bycatch, bycatch mortality and post-release mortality.

The Administration, however, has some suggestions related to four high-priority issues. First, it is critically important that we revise the Magnuson-Stevens Act

provisions that govern overfishing and rebuilding our fish stocks. We strongly recommend that the Senate add to its Magnuson-Stevens bill provisions that require more timely and definitive actions to end overfishing, and to amend the rebuilding time frames to better conform to the life history of the overfished stocks. The objective is to modify the rebuilding provisions so that mandatory actions better reflect the capabilities of the Councils and the Secretary, and rebuilding goals and timetables adequately take into account the unique features of different federally managed fisheries.

Second, the Administration appreciates the Committee's clear expression of support for a wider use of market-based management approaches through the Limited Access Privilege (LAP) programs. The Administration also strongly supports wider use of market-based management approaches, and is, therefore, concerned about provisions in S. 2012 that would seriously jeopardize the successful implementation of LAP programs. S. 2012 imposes petition and referendum requirements that are duplicative of existing scoping and public participation processes. Current law ensures harvester concerns are addressed in the decisionmaking process. The new provisions would be costly and administratively burdensome and would exclude important fishing community and public stakeholders from a critical management decision point. The Senate bill also does not modify the current 3 percent cost recovery cap. Recent experience suggests that implementation and monitoring costs of future LAP programs may easily exceed that cap. While other provisions of S. 2012 expand the list of recoverable costs, the bill does not provide the legal authority to collect sufficient revenues to pay the additional costs of LAP programs, or any portion of the costs of non-LAP programs as proposed by the Administration. Failure to adequately cover the costs of proposed fishery management actions could preclude Secretarial approval, and severely limit the expanded use of LAP programs.

Third, we strongly recommend that S. 2012 be amended to incorporate the enforcement improvements contained in the Administration's legislative proposal to deter illegal harvesting and strengthen the incentive for compliance. These improvements include: increasing the maximum civil administrative penalty amount from \$130,000 to \$240,000 per violation, authorizing civil judicial penalties of up to \$300,000 for more serious violations, and allowing the imposition of criminal fines and/or imprisonment of up to five years for the most egregious violations.

These improvements are necessary because, under the existing Act, most violations are subject only to civil administrative penalties of no more than \$130,000 per violation, permit sanctions and/or forfeiture. Criminal fines are not available for any substantive harvesting violations regardless of the circumstances. As such, the existing enforcement authorities are inadequate to deter violations of the Act's prohibitions. A successful fishing trip for blue fin tuna off Cape Cod can result in a harvest worth up to \$230,000, and a successful fishing trip for Atlantic sea scallops could result in a catch

worth as much as \$300,000. The high profits realized from unlawful harvesting can make the existing maximum civil penalty amount of \$130,000 per violation no more than a cost of doing business. That civil sanction does not have the deterrent effect created by the possibility of imprisonment for knowing illegal conduct. Unlawful harvesting places the vast majority of fishermen who do comply with the Act at an unfair competitive disadvantage, and contributes to the depletion of our nation's valuable fishing stocks.

Fourth, the Administration supports continued work toward ecosystem approaches to fisheries management. Progress has already been made by including elements of ecosystem approaches in "conventional" Fishery Management Plans (FMP). In recent years, FMPs have been substantially modified and expanded to incorporate ecosystem principles. We support language that would build on the current efforts and provide the Councils overall direction and discretionary authority rather than mandating actions that, in some cases, may not be necessary or may exceed the current capabilities of ecosystem science.

Finally, there are a few provisions in the Senate bill that the Administration would recommend adding or amending:

(1) Fisheries Conservation and Management Fund. While the goals of this new fund are laudable, we believe they duplicate other activities carried out under this Act, which are more appropriately considered through the annual appropriations process. Moreover, we note with serious concern that this fund would effectively eliminate the civil asset forfeiture fund. Monies collected from civil penalties, fines, and forfeitures would be redirected from their current use for enforcement efforts to funding different activities. Congress established the current program 15 years ago to provide essential funding for enforcement efforts under all the statutes that we administer. We are opposed to any language that would modify or limit use of the current fund for enforcement purposes.

(2) International Fisheries Issues. We are concerned with the appointment and policy-making processes associated with the Western and Central Pacific Fisheries Commission. We believe the provisions related to bycatch of protected resources may reduce the effectiveness of recent agreements. In addition, flag-state (rather than port- or market-state) approaches are increasingly ineffective in addressing illegal, unreported, and unregulated fishing since it may occur in areas with no applicable international management measures or agreements. Further, the provisions for the application of trade sanctions to enforce the Act's provisions concerning overfishing and bycatch could raise concerns by our trading partners concerning U.S. compliance with our trade obligations.

(3) Bycatch and Seabirds. Reducing the bycatch of protected species, including seabirds, is one of our major objectives, and we strongly recommend that the Senate add

to its Magnuson-Stevens Act proposal a revised definition of bycatch that includes seabirds.

(4) Broaden Council Membership. Achieving balanced representation on the Regional Fisheries Management Councils is one of our objectives. We recommend that the Senate add to its Magnuson-Stevens Act proposal terms that require governors to submit a slate of nominees that represents a balanced apportionment in marine fisheries in their respective states.

(5) Fisheries Finance. The amendments broaden the use of the fisheries finance program to include technology upgrades and marketing plan development. These are not desirable uses of federal credit as there is no apparent capital market imperfection that would prevent these beneficiaries from obtaining a loan in the private capital market. Moreover, it is not clear that credit is the most efficient way of providing assistance, given that the subsidized activities would not necessarily generate revenue to repay the loan in the future. As such we would expect the appropriated loan subsidy to be substantial and request that these provisions be removed.

The Department appreciates the opportunity to present its views on S. 2012. We believe that carefully crafted amendments based on language from the Administration's proposal will give the Secretary and the Councils needed additional flexibility to fulfill their responsibilities. This legislation includes many provisions that are highly technical in nature. Some of these provisions will require further clarification. We look forward to working with you on these provisions and those noted above as the bill moves through the legislative process.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter from the viewpoint of the Administration's program.

Sincerely,



Carlos M. Gutierrez

cc: The Honorable Daniel K. Inouye
Ranking Member