IMPROVING FISHERIES MANAGEMENT IN MAGNUSON ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 39

A BILL TO AMEND THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT TO IMPROVE FISHERIES MANAGEMENT

FEBRUARY 23, 1995—WASHINGTON, DC

Serial No. 104–49

Printed for the use of the Committee on Resources

U.S. GOVERNMENT PRINTING OFFICE

89–569cc WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-052241-2

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IMPROVING FISHERIES MANAGEMENT IN MAGNUSON ACT

THURSDAY, FEBRUARY 23, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS,
COMMITTEE ON RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 11 a.m. in room 1334, Longworth House Office Building, Hon. Jim Saxton (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

Mr. SAXTON. Good morning. The Subcommittee on Fisheries, Wildlife and Oceans will come to order. The subcommittee is meeting today to hear testimony on the Magnuson Fishery Conservation and Management Act.

[The bill may be found at end of hearing.]

Mr. SAXTON. This will be our only hearing on the Magnuson Act this year. As such, we have invited 14 witnesses to share their expertise with us. Our witnesses cover a broad range of commercial and recreational fishing interests. Under Rule 6(f) of the committee rules, the oral statements at hearings are limited to the Chairman and the Ranking Minority Member. This will allow us to hear from our witnesses sooner and help Members keep their schedules.

To set what I hope is a good example, I ask unanimous consent that my statement be placed in the record; and I will yield the time allotted to me for my opening statement to Mr. Young, the Chairman of the full committee.

[The statement of Mr. Saxton follows:]

STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

Good morning and welcome to our only hearing this year on the Magnuson Fishery Conservation and Management Act. Congress enacted the Magnuson Act and created the 200-mile fishery conservation zone (now called the exclusive economic zone) in direct response to a dramatic rise in foreign fishing off the coasts of the United States in the early 1970s. One undisputed success of the Magnuson Act has been the virtual elimination of foreign fishing within the exclusive economic zone.

According to some environmental groups, the Magnuson Act succeeded in getting rid of foreign overfishing only to replace it with domestic overfishing.

Our fisheries resources are facing an acknowledged crisis. The National Marine Fisheries Service reports that some of the nation's most historically important fisheries are in serious decline, including several key species of Northeast groundfish, many Pacific coast salmon runs, and Gulf of Mexico shrimp.

During this year's reauthorization, the Magnuson Act must provide a framework for the recovery of diminished stocks. One of the issues that will have to be addressed is "overfishing." The original Magnuson Act did not define overfishing and the time has come to do so. Our fisheries resources are too valuable to squander away.

One component of a healthy fishery with which we can all agree is that healthy habitat makes for stronger, healthier fish stocks. The fishing community should be prepared to share its expertise on how to better protect fish habitat. Details must be worked out in regards to this issue. Should the Congress empower the eight fisheries councils or the Secretary of Commerce to identify habitat? Should councils be required to address "essential fish habitat" when drafting fishery management plans?

The issue of fishing clean also must be addressed. Bycatch—non-target fish caught by commercial fishermen in error—can diminish breeding stocks. Some environmental groups insist that further gear changes must be imposed on commercial fishermen. Others argue that the cost to the fishermen will make fishing prohibitively expensive.

The council system has recently come under fire due to its specific exemption from standing conflict of interest laws. Because the council system was designed so that the experts on fisheries—the fishermen—would be able to draft the fishery management plans, this issue will remain at the forefront. The legislation before us today strikes a balance between getting council business efficiently completed and protecting against conflict of interest.

The National Marine Fisheries Service has made clear its support for Individual Transferable Quotas, also known as ITQs. If NMFS will be moving forward administratively on ITQs, the Congress should play a role. The Administration has proposed a fee on ITQs that is not addressed in the bill before us today. This issue will come up again and Congress must deal with it. It should be noted that these quotas do reduce and/or limit the number of resource users, as we have found in the surf clam industry in New Jersey. The ITQ system is still in its infancy, however, and should be studied carefully before widescale change takes place.

One final issue that will surely be discussed at this hearing is about allocation. There has been some discussion about preference in the law for "fishery-dependent communities." The premise is to give special consideration to those communities that have limited economic alternatives. But, how does Congress define these communities?

During our hearing today, we will surely touch on the issue of overfishing, essential fish habitat, the reduction of bycatch and "conflict of interest" in the council system. The purpose of this hearing is to educate the newer Members about the Magnuson Act. With our full slate of witnesses, I have no doubt our goal will be accomplished.

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND CHAIRMAN, COMMITTEE ON RESOURCES

Mr. YOUNG. Thank you, Mr. Chairman and I thank you for holding this hearing on H.R. 39, the reauthorization of the Magnuson Fishery Conservation and Management Act. This is a vital piece of legislation for this subcommittee to examine for the long-term health of our Nation's fisheries resources.

On a side bar, I would like to suggest that this Act was worked on diligently way back in 1976 by then-Chairman of this subcommittee, Mr. Studds from Massachusetts. He and I are the last remaining ones that voted on this legislation.

In the last Congress, the Merchant Marine Committee, where Mr. Saxton and Mr. Studds and several other Members of this subcommittee all served—we held 11 hearings on the reauthorization, 11 hearings. That is why we are only going to have this one hearing this year because it is time for us to move forward. As you know, the Magnuson Act was sunsetted last year; we are operating under a temporary authorization.

Last year, the Merchant Marine and Fisheries Committee wrote a compromise bill that addressed all the major concerns voiced in

those hearings. The result of that work was adopted by the Fisheries Management Subcommittee as H.R. 780.

This legislation is not significantly different from H.R. 780. In fact, H.R. 39 should not look new to anyone in this room. H.R. 39 addresses the issue of bycatch reduction, habitat protection, overfishing and rebuilding of overfished stocks and Regional Council reforms. There may be those that do not think this bill goes far enough, but I would argue strenuously with that position.

There are those who think that the current system of Council management of our marine fisheries does not work. The Magnuson Act was set up to allow those who know the most about fisheries to make the management decisions concerning those fisheries. This is the fundamental premise of the Magnuson Act. I will not stand by to see people attempt to undermine the Council system. I want to stress that, Mr. Chairman, to those in the audience, that the Council system is working.

We have a number of very knowledgeable witnesses today, and I look forward to hearing their testimony. There are a large number of people I wished I could have also heard from, but we are limited in the amount of time we have. Many of these people have testified at the hearings we held in the 103rd Congress, and I urge Members that are new to look back to those hearing records.

I would like to thank Dave Benton of the State of Alaska's Department of Fish and Game for submitting his testimony and working with my staff on issues affecting Alaska. We received numerous requests from other States to have their representatives testify, and to agree to all of these requests would mean we would be here well into next week.

I will continue to work with the State of Alaska to make sure their concerns are addressed. Again, I appreciate Dave's leaving an open chair at the witness table for others.

Members will hear a lot about ITQs, both pro and con. I am frankly not a supporter of ITQ for many reasons, including the fact that they prevent future generations from getting into the closed fisheries without a lot of money. However, I always said Congress should not micromanage fisheries management. We have regional Councils which we have given the duty to manage and conserve fisheries, and I will not second-guess their decisions.

We also are aware that the NMFS is out pushing Councils to enact ITQs. I don't think this is correct. I will be working with Members to see if we should include guidelines for ITQ programs in this legislation. If NMFS is going to encourage Councils to enact ITQ programs, we need to do what we can to protect traditional fishing practices. I look forward to working with my colleagues to address all the concerns before we mark up this legislation.

Mr. Chairman, I would like to recognize another part of this legislation, the CDQs; these CDQs are Community Development Quotas enacted in the State of Alaska, primarily in the Bering Sea.

I hope everybody will look at what occurred by enacting CDQs, how they benefited areas of our State that has no other resource or income to be developed. They have worked, they have been encouraged and actually developed by a gentleman named Harold Sparck. This gentleman has worked long and hard for many, many years to make sure this is embraced in the small communities of

Alaska, and I suggest at this time, as time goes by, we recognize his great contribution. Unfortunately, he cannot be with us today. He has a serious illness, and I hope God takes care of him in the long run.

Again, Mr. Chairman, I thank you for this time.

Mr. SAXTON. I thank the gentleman for his statement.

[The attachments to the statement of Mr. Young may be found at end of hearing.]

Mr. SAXTON. I now recognize the Ranking Minority Member, the gentleman from Massachusetts, Mr. Studds.

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND RANKING MINORITY MEMBER, SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

Mr. STUDDS. Thank you very much, Mr. Chairman.

This is not the first and probably not the last time the gentleman from Alaska and I indulge in historical musings. It happens to you when you get to be our age.

Mr. YOUNG. Cut it out.

Mr. STUDDS. We are the only two people here old enough to remember that it was 22 years ago that we first had hearings in this room on what became known as the Magnuson Act. Twenty years ago the House initially passed that bill. You may recall, at the time it was known for a variety of Members. Then the Senate, in character, in particularly senatorial fashion, officially renamed it the Magnuson Act. We were taken aback by that at that time.

There were a few years when we were in power and considered renaming it after the gentleman and myself—the Young-Studds Act was what it was going to be; it had a certain ring to it. And then when we saw what happened, particularly in New England, we were sort of glad the Senate took credit for it in some cases.

But it is a history which I know my friend and extraordinarily mellow colleague from Alaska treasures, as I do. You may recall in the early- and mid–1970's that throughout both of our coasts foreign vessels were ravishing the stocks. We in New England, our fishermen on Georges Bank, our own fishermen, were taking only 12 percent of the catch. The rest were vacuumed by the Soviets, other East Bloc countries, the Japanese and others.

We set out to, first of all, essentially throw out foreign vessels from our 200 miles zone, develop our own fleet and establish conservation and management programs for the United States. We did the first part right. We threw everybody out, we established our own fleet; it was heavily capitalized. And now, 20 years later, we find ourselves in a situation much like what we faced 20 years ago. Our groundfish landings are at an all-time low, even lower than they were in 1975 in some cases, without any foreign competition. Haddock is virtually commercially extinct, and cod and yellow tail may be close behind.

I tell this history not to point fingers or lay blame and not even because history is the preferred sideline of many prominent House Members these days.

You have to think about that for a minute.

I really think the New England Council probably did the best job it could, given the tools they were given. I highlight this only to point out that we need to give all the Councils better tools. We need to strengthen this Act.

This bill, the Magnuson Fishery Conservation and Management Act Amendments, indeed tracks to a large degree what we began last year to address overfishing, to deal with some conflicts of interest that are inherently in those animals called "Management Councils", and to deal with bycatch which has been a terrible problem everywhere. We need to strengthen in some respects, particularly with respect to overcapitalization, which is probably the single largest component of our problem in New England, where high tech has gone in directions we have not dreamt of in the last 20 years and there is no way on earth to allow nature to replenish the stocks if we simply go back at them with the technology that will exist 10 years from now, never mind that which exists today. We will not have done anything wise or helpful and certainly not long-lasting. We need to give science a far more prominent role than what it has had.

If we learn nothing else from the tragedy that occurred in New England, we must never allow it to happen again—on Georges Bank or anywhere else. That is the challenge, as we deal persuasively and meaningfully with the problem that plagues New England, but to do so in a fashion that will see to it that this crisis does not develop elsewhere in the country.

I don't want, and I doubt that the gentleman from Alaska or anybody here wants to pass on fishing only as a memory for large parts of this country. So we have a very, very important responsibility, and I am delighted, given the changes in this institution, that when the dust has settled, I and the gentleman from Alaska, the gentleman from New Jersey and the many other colleagues with whom I have worked for a very long time will find some solutions to this situation.

It is not going to be easy to figure out what is right, never mind having the fortitude to do what is right. But we have to do it.

I look forward to the challenge and we are ready to go.

[The prepared statement of Mr. Studds follows:]

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

This year marks the twentieth anniversary of final House passage of H.R. 200, my bill to establish U.S. jurisdiction and management authority over fisheries within 200 miles of our coasts.

When that bill was signed into law the following year, 1976, it marked the end of a three-year legislative battle, waged by myself, Chairman Young, and others who represented the fishermen and fisherwomen of this country, to protect our fisheries and the communities that depended on them from the ever encroaching foreign vessels off our shores. It was not an easy fight, but we persevered, and the Magnuson Act was established.

Those foreign vessels were decimating our stocks. By 1974, our fishermen on Georges Bank and in southern New England were harvesting only 12 percent of the overall catch. The rest of our fish were being taken by boats from the Soviet Union, Poland, and elsewhere. Haddock had become almost commercially extinct and other stocks were threatened with a similar fate.

Our goal then was to push out the foreign boats, develop our own fleets, and establish sound conservation and management programs. As I and others have pointed out over the past two years, we did the first part pretty well. U.S. boats can now

harvest any and all fisheries available in our waters. Sadly, our conservation efforts have not been as successful.

In New England we ironically find ourselves in a situation which, in many ways, mirrors 1975. Groundfish landings are at an all time low. In some cases, even lower than they were in 1975 when we were competing with the foreign fleets. Haddock is commercially extinct and cod and yellowtail may be close behind.

I relate this history not to point fingers or lay blame. I believe the Council in New England did the best job they could with the tools they were given. Instead, I highlight our crisis to point out the need to give the Councils better tools—to strengthen the Magnuson Act to definitively address overfishing, to reduce bycatch and waste, and to protect habitat. If we learn nothing else from the tragedy in New England, it must be that it can never be allowed to occur again—on Georges Bank or anywhere else.Fishing must not become something our grandfathers used to do, but remain an honorable way of life that can be passed on to future generations. As members of this Committee we have a responsibility to ensure that this is possible. I believe H.R. 39 is a good step in that direction, and I look forward to hearing from the witnesses today on their ideas to improve it.

Mr. SAXTON. I thank the gentleman.

Before introducing the first panel, let me remind everybody who is going to testify that we are operating under the five-minute rule and that there is a little device on the table with three light bulbs on it—green, yellow and red. Please, when the yellow light comes on, begin to complete your testimony, because when the red light comes on, your time is over. That is what it says right here. So we will try to adhere to that as closely as we can. And, of course, at the conclusion of your testimony, Members will be invited to ask questions.

Let me introduce the first panel, people who are well-known to us and to the industry, Rollie Schmitten, Assistant Administrator, National Marine Fisheries Service; Joseph Brancaleone, Chairman, New England Fisheries Management Council; and John Magnuson, Chairman of the National Research Council, Committee on Fisheries.

We welcome you all here, and we will begin with Mr. Schmitten.

STATEMENT OF ROLLAND SCHMITTEN, ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE

Mr. SCHMITTEN. Thank you, Mr. Chairman and Members of the Committee. I am Rolland Schmitten; I am Assistant Administrator for Fisheries of the National Marine Fisheries Service, and I do appreciate the opportunity to present the views of the Department of Commerce on H.R. 39.

From a resource perspective, this will be a major accomplishment for this Committee, for the Congress and certainly for the marine resources of the Nation. The Department strongly supports reauthorizing the Magnuson Act and recommends the enactment of H.R. 39 with the following brief comments.

Mr. SAXTON. Excuse me, could you pull that microphone just a bit closer.

Mr. SCHMITTEN. Is that a little better, Mr. Chairman?

Mr. SAXTON. Thank you.

Mr. SCHMITTEN. In passing, let me compliment Chairman Young for introducing this legislation; and I did enjoy the Magnuson history lesson from both Mr. Young and Mr. Studds.

I have been attempting to meet with every Committee Member, and before commenting on the bill I will just take a very brief moment to describe our vision for the future of marine fisheries and

put it into context to shape our view of where amendments could come from for the Magnuson Act. It is our goal to seek the greatest long-term benefits possible to the American public from our marine fisheries resources and thereby increase the Nation's wealth and, in turn, the quality of life for members of the recreational and commercial fishing industries and communities.

We believe that you can realize that vision by concentrating on two areas. First, undertaking an aggressive approach to stewardship of our trustee resources to rebuild overfished stocks and maintain them at maximum sustainable levels, thereby avoiding the economic and social consequences that accompany attempts to repair damage to the resources after it occurs.

No more New Englands.

Mr. Chairman, on H.R. 39, foremost, we support its attention to conservation issues. We strongly support the measures in H.R. 39 which end or prevent overfishing, and we support the rebuilding of depleted stocks and maintaining them at maximum sustainable levels. We cannot afford to continue the current practices which are permitted under the Magnuson Act where stocks are legally allowed to be fished down to and managed at the point where overfishing occurs. We can do better, and, in the end, the Nation deserves better.

The Department supports strongly the concept of identifying essential fish habitats, and providing for improved consultation with other agencies. We cannot rely solely on regulatory measures to restore our fisheries. I have said it many, many times: We can regulate our fishermen out of existence, but it won't necessarily bring the fish back; we must also do something to protect and preserve their habitat.

We also support the provisions in the bill that deal with bycatch. The emphasis on bycatch with inclusion of a new national standard and the mandatory requirement for fisheries management plans to contain information on bycatch, is well taken and essential in our view.

We continue to seek innovative ways to reduce bycatch, including the use of incentives, and refocus the use of S-K on gear technology and product development, which we have not done for 10 years as an agency. Further, we want to be sure that measures such as incentive and harvest preferences be carefully designed to prevent "due process" problems.

For example, we do not believe that such a program should prohibit some fishermen from receiving allocations of, or access to, fish stocks because of their bycatch levels without also providing some administrative hearing in advance of the agency decision.

The Department supports inclusion of strong provisions that would address the appearance or possible appearance of conflict of interest on the regional councils. While the provisions in H.R. 39 are a step in the right direction, we recommend that the Committee work closely with our staff and others to help strengthen and provide definitions for the conflict provisions.

I have asked the Committee to consider in H.R. 39 the use of user fees associated with ITQs, or what we call "individual transferable quota programs" to recover the cost of these programs and improve implementation.

As a part of its fiscal year 1996 budget request, the Department has submitted a proposal to recover those costs, but what is new, and I think significant to the fishing community, is that the fees collected would not disappear into the general fund but would go back into the management and conservation of marine resources.

Mr. Chairman, I also urge inclusion of a nationwide data collection program. I think we did a very poor job of explaining the benefits of such a program, and I notice it is not included in H.R. 39. To improve the management of our marine resources, we need to gather information in a consistent way across the Nation. Our intent in such a program is not to increase the reporting burden on fishermen—we already are turning them into fisheries bureaucrats—but rather to simplify and reduce it. I think by working with you we can provide the tools to do that.

In my full comments I offer less significant technical comments, and additions to H.R. 39. Mr. Chairman, that concludes my comments and it is a pleasure to be here.

Mr. SAXTON. Thank you, Mr. Schmitten.

[The statement of Mr. Schmitten may be found at end of hearing.]

Mr. SAXTON. Mr. Brancaleone.

STATEMENT OF JOSEPH M. BRANCALEONE, CHAIRMAN, NEW ENGLAND FISHERIES MANAGEMENT COUNCIL

Mr. BRANCALEONE. Thank you, Mr. Chairman and Members of the subcommittee. I am here today on behalf of the Chairmen of all eight of the Management Councils. The Chairmen have not met since H.R. 39 was introduced, and my own Council even now does not have Senate bill, S. 39.

However, over the last two years the Chairmen have considered a number of draft bills and proposed changes to the Magnuson Act. Following our May 1994 meeting, we prepared testimony covering a wide range of proposed amendments. I think the testimony was never delivered to the subcommittee, but I am submitting it today as our most recent agreed position. Keep in mind that the Chairmen have reached consensus on that testimony, but it does not necessarily reflect a full consensus of the eight Councils themselves, even though there is substantial agreement by the Councils to most of it.

The general view of the Chairmen is that Magnuson is a good law and does not need basic revision, although minor adjustments may be helpful. We believe the perception of conflicts of interest on the Councils is greater than any actual conflict. We are opposed to mandatory recusal and to NOAA General Counsel determining when a conflict exists. We urge you to consider the alternative language proposed in our draft 1994 testimony.

We believe Councils should have discretionary authority to establish fees related to data collection programs and limited entry programs. A requirement for bycatch data, as in H.R. 39, would make fees even more necessary.

The Chairmen do not believe lowering compensation for appointed members is appropriate, but if compensation is lowered to the GS–15 level, it should be set at the top step of that grade level.

We are all concerned about possible habitat degradation, but believe that a requirement to define or identify essential habitat would burden Councils beyond the limits of their funding and staffs.

Likewise, we are gravely concerned about overfishing, but we doubt that defining overfishing in the Act would be helpful. The 602 guidelines are adequate in this regard. Overfishing and rebuilding issues are best dealt with at the Council level with guidance.

We support a 180-day period for emergency actions and for extensions of such actions.

We are in favor of reducing the time required to implement regulations for fishery management plans. I believe the 60-day time limit in H.R. 39 on secretarial review of proposed regulations is a step in that direction.

Mr. Chairman, this is clearly a very brief summary of our views. We did not specifically consider the H.R. 39 proposal that all persons presenting oral or written statements must state their interest and their qualifications. Neither did we consider the addition of items to a Council's agenda upon the request of two members or the defining of Fisheries Dependent Communities. Our view, however, was that flexibility and latitude within the parameters of Magnuson are preferable to very detailed prescriptions and proscriptions in the Act. The Councils were created to exercise judgment.

I expect that in the next several weeks most, if not all, of the Councils will consider H.R. 39 and submit specific comments on that bill. I will be happy to answer any questions that I can.

I thank you for inviting me here today.

Mr. SAXTON. Thank you for your testimony.

[The prepared statement of Mr. Lee Anderson may be found at end of hearing.]

Mr. SAXTON. Mr. Magnuson, I assume that you are a relative of the famous Magnuson.

Mr. MAGNUSON. No, neither a relative nor have we ever met. We obviously have common interests, however.

Mr. SAXTON. Thank you. You may proceed.

STATEMENT OF JOHN MAGNUSON, CHAIRMAN, NATIONAL RESEARCH COUNCIL, COMMITTEE ON FISHERIES

Mr. MAGNUSON. Mr. Chairman and Members of the subcommittee, I am John Magnuson, Director of the Center for Limnology at the University of Wisconsin, Madison. I participated in many National Research Council studies on fisheries, recently as chairman of the Committee on Fisheries to Review Atlantic Bluefin Tuna.

On behalf of the NRC, I appreciate the opportunity to testify before this subcommittee on H.R. 39.

Having an effective Magnuson Act is important to our country. Specifically, for resource information, I refer you to Chapter 4 recommendations in the NRC report, Improving the Management of U.S. Marine Fisheries, and also to my written testimony that I have turned in.

With the limited time today, I present four important topics for your consideration during this reauthorization, relating entirely to our recommendations:

First, prevent overfishing, including controlling entry and wasteful capitalization and better defining the meaning of the words "optimum yield"; second, improving institutional structure embodied in the Act; third, improving the quality of fisheries science and the data used; and fourth, moving toward an ecosystem approach to fishery management, including reducing the bycatch, and protecting fish habitats.

First, preventing overfishing: Congress should strengthen this Act to prevent overfishing by adding specific provisions for managers to control entry and wasteful overcapitalization of marine fisheries and providing a better definition of "optimum yield" so it will not conflict with fisheries' goals. Wasteful capitalization must be responsible, equitable, be tuned to individual fisheries and have adequate phase in periods. The current definition of "optimum yield" is so broad that under the present Act it has been used to justify almost any quantity of catch. Consequently, increasing catches to achieve optimum yield has conflicted with conservation goals; it has depleted fisheries' resources and resulted in lost jobs and revenues. This needs to be fixed.

Second, improving institutional structure: Although H.R. 39 includes very important recusal process to prevent possible conflict of interest on the Management Councils, Congress should further strengthen the Act to improve institutional structure, namely, require that acceptable biological catches be determined by scientific experts, clarify lines of authority and responsibility between the Secretary of Commerce and the regional Councils, and establish an independent oversight body.

Third, improve the quality of fisheries science and data. Congress should amend the Act to mandate confidential reporting of catch and to promote collection of reliable socioeconomic data. Presently, there are insufficient funds for conducting appropriate stocks assessments, which results in uncertainty and great user conflicts.

Also, supporting observer programs that are necessary to collect the bycatch/discard data to determine the socioeconomic fact of these management actions.

An example of the benefit from improved fisheries science data is found in the NRC bluefin tuna study. The scientific basis was critically reviewed and analyzed. Bluefin tuna in the eastern and western Atlantic are not independent because tuna move significantly between these two fishing areas. There were two outcomes: The science was improved and more effective management was established, and the added plus was a large economic benefit to the U.S. bluefin tuna fisheries.

Fourth, move toward an ecosystem approach to fisheries management. Congress should take further steps to move fisheries management toward an ecosystem approach, namely include promoting a multiple species approach to fisheries management, factoring in nontarget species and ecosystem interactions, determine the environmental components essential for fisheries production, survival and production, and identify the current causes of this habitat degradation.

We compliment the subcommittee, because H.R. 39 includes important first steps in moving fisheries management toward an ecosystem approach. However, there is still an opportunity to make further improvements in the Act based on the NRC report recommendations which would make it less likely that we will be returning to these same issues in a few years with even fewer fish.

Thank you, Mr. Chairman and Members of the subcommittee for your interest in the National Research Council's recommendations for improving fisheries management.

[The statement of Mr. Magnuson may be found at end of hearing.]

Mr. SAXTON. We thank you all for your very articulate statements.

I will begin with the first question, and I would like to address it to Mr. Brancaleone.

In your statement, you mentioned that you felt that it was perhaps more appropriate—this may be true, I am not challenging you—for the Councils not to have to deal as a primary activity with habitat management.

Did I interpret you correctly?

Mr. BRANCALEONE. Not as a primary activity, but if it is written into the Magnuson Act, it would, we feel, hold our feet to the fire even more than we could possibly do.

We understand that habitat is "motherhood and apple pie," and everyone wants to do everything they can for it.

We are required to do as much as we can, but if it is written actually in the law, we don't have the money or manpower. We are understaffed and underfunded right now.

Mr. SAXTON. There are many people in and about the industry who believe that habitat management is something that we need to take a closer look at.

Do you have any suggestions as to how we might restructure the Act, or do we need to look at habitat management in some other structure, in some other legislation, and look at some other agencies that can do a better job than we have been doing thus far?

Mr. BRANCALEONE. It is a difficult question to answer. My personal feeling is that the first thing forthcoming should be the money and manpower. I think that could be directed toward the Service. We look to them for all the help we can get when writing plans. If they don't have the money and manpower, surely we don't have it.

Whether it should be outside of this Act, I am not sure.

Mr. SAXTON. Can you tell us about the relationship that currently exists between the National Marine Fisheries Service and the Councils? Do you think it works well? Do you think it needs improvement? Are there changes that we need to make in the legislation to encourage a better working relationship if it isn't what it should be currently?

Mr. BRANCALEONE. I would have to admit—that is just not because Mr. Schmitten is at my right side—the relationship has gotten somewhat better. What is needed is better data, more timely data; the Council right now is struggling with a new amendment to the plan in New England, and we are waiting for data from 1994 and it looks like we may not get that until the beginning of next

year. Without that timely data, it is hard to make judgment calls that could virtually bankrupt communities; and this is what the Council is wrestling with now. So if you and the committee in any way can help us get the data quicker, we can respond more quickly.

The other issue is the 602 guidelines. We feel that they are appropriate now, but if you make them law where we have to define "overfishing," it will slow our process even more; and I think the interpretation by the National Marine Fisheries Service up until now is, that has been pretty much law and not just used as guidelines. I think I see that changing.

Of course, that is my personal opinion. You may find other people on my Council and other Councils may disagree.

Mr. SAXTON. Would you address the issue of data, Mr. Schmitten? We have heard statements in this regard previously as to data accuracy, methods of collection, as to the cost. Would you address that issue?

Do you need more resources? I suspect that is one of the things.

Mr. SCHMITTEN. When I first came aboard I went to the community with 48 different meetings all up and down the eastern seaboard and in the Gulf, saying, how can I better serve you; we want to put service back into the National Marine Fisheries Service. I heard consistently, whether it was from the recreational or commercial community, three things: We need better data, better enforcement and habitat improvements.

You will see that our budget reflected that, in that we put $23 million more into data collection in our 1996 budget. That is exactly what the fishing community is saying. That is where I am trying to guide this Service. We want data more readily available; we want data that can be used in the real timeframe—like Chairman Brancaleone, to provide for his needs; and I think we are attempting to gather that right now.

Mr. SAXTON. Can you specifically address the method of data collection in the Northwest?

Mr. SCHMITTEN. It differs. In the Northwest, there is a system I am familiar with in which we rely on a fish commission. The commission contracts with the States. We provide the funding for that, we do the oversight. There is an informal peer review of the data collection, and we are comfortable with that. We have a similar process in the Southeast, but in various areas it differs.

Mr. SAXTON. I understand in the Northwest, and Southeast as well, maybe, is there one ship that does the data collection?

Mr. SCHMITTEN. As far as collecting the data itself, we have four NOAA ships usually on station on the West Coast, but they rotate. We usually only do our contracted surveys once every three years or, at best, every other year. That is a function of time and money, and, certainly, the shorter the timeframe sequence, the better the data.

Mr. SAXTON. There may be some ways to subsidize that data collection process. I understand that maybe we can get into that.

Mr. SCHMITTEN. I would be very interested in hearing about those ways.

Mr. SAXTON. Thank you.

The gentleman from Massachusetts, Mr. Studds.

Mr. STUDDS. Thank you, Mr. Chairman.

Mr. Schmitten, Mr. Brancaleone, I don't want you to take personally what I am going to say. I want to express some personal frustration.

When we first wrote this law, the initial version was two pages long; and we thought about it, and eventually ended up with how many dozens of pages now? We created the creatures known as the Councils. We were aware at the time that that was an unusual thing to do, because put as members on those Councils were people affected by the decisions that would be made—that is, representatives of the industry themselves.

We couldn't have done that today probably, because it is a direct conflict of interest in many cases, and God knows what headlines would come up the next day. We did it then because we thought nobody in Washington knew how to run a fishery, and the expertise and wisdom lay around the country in the regions and in the fisheries themselves.

As the gentleman from Alaska mumbled under his breath, that is probably still true.

However, it wasn't working; at least it is not in New England. We have a disaster on our hands in New England. Something is wrong. I don't know for sure whether it is in the wording of the statute or that creature called the "Council" or what it is.

People say—I think, Mr. Brancaleone, you said it is difficult to be in a position where the decisions you make can bankrupt people.

One of the things we do that will bankrupt virtually every fisherman in New England is to do nothing. We can do that. If we were to do nothing, very soon there would simply be no fish left and, therefore, no fishermen left. It is almost as simple as that. That is an option. I don't think anybody thinks that is a particularly desirable option.

I think it is probably safe to say that any option we have at this point—putting aside for the moment how we got here—involves pain for fishermen and their families, whether it is the do-nothing option and let nature take its course or deliberate actions. But I don't sense in anybody's testimony a sense of this emergency.

Mr. Brancaleone, you have a job even worse than the job Mr. Young and I have. I don't envy you that job at all. I also realize you are speaking for all eight Councils and not speaking particularly with your New England hat on here. I have a hunch it is not fair to put in your mouth these words, but you might have a little stronger language you would use if you addressed yourself only to the situation in New England.

But clearly, unarguably, with respect to New England at least, this has led in 20 years to a situation that is at least as bad as where we started. I think New England was the only region that began with a crisis when the Act first was written. We were in crisis there in the 1970's.

We are back in crisis. Whatever it is that we did has not kept us from that point. The Council has been unable, for whatever reason or reasons, to come up with a plan that has worked for the groundfish. The Secretaries of Commerce have, for whatever reason or reasons, been unwilling or unable to come up with emergency plans, given the inability of Councils to act, and here we are with Georges Bank effectively closed. I assume the fleets concentrating

on the Bank will eventually be forced to come inshore and threaten the inshore vessels and bring the crisis to them if nothing happens for them out on the Bank.

With all the danger of oversimplifying a situation, I believe I am correct in saying that we have too many boats with too sophisticated technology going after too few fish. Is that a fair statement?

Mr. BRANCALEONE. Yes, it is.

Mr. STUDDS. Is it therefore a fair next inference to say that whatever the answer might be, in the future, if we can find a way to restore these stocks, we cannot ever again allow that many vessels with that much technology to go after them? Is that a fair statement?

Mr. BRANCALEONE. Yes, it is.

Mr. STUDDS. How do we get from here to there? How do we get the vessels that ought not to be fishing at all out of the fishery and allow those who ought to be fishing to somehow sustain themselves for whatever years it will take for nature to replenish it and then to wisely manage these resources into the future? That is really the nub of the question at the moment, certainly for New England, but I have a hunch and a sad feeling that before long it will be a question in other regions of the country.

But I don't hear in anybody's testimony, A.—a sense of that urgency; and B.—any bold new thinking about where we go. I don't think that tinkering with the law at this point will restore the fish on Georges Bank. Certainly it isn't going to give us the courage to make difficult decisions if we didn't have it before. I don't like the idea with the Congress sitting here, if you think it is hard for you, but I suspect you don't want us making these decisions.

That is why—for right or wrong—we wrote the Act the way we did. I don't want the Congress, I don't think Mr. Young or anybody else wants the Congress, making detailed fisheries management decisions. We are simply not competent to do that. But somebody has to do it.

Nobody, to date, has done it—again, without pointing fingers as to why the Councils have not done it—and succeeding Secretaries of Commerce of both parties have somehow been unwilling or unable to do it.

How do we grapple with the problem? I don't see anything in anyone's testimony. It is a frustration, but it is a challenge. How do we do that? How do we think big enough to do that?

The only reason we have lobsters left in New England is we mandate by the law the most inefficient method of catching them. You can only use a pot. You can't go out with high-tech equipment; they would have been extinct decades ago if you could have done that. Maybe we should be going back to the dory, maybe we should look at hook and line again. I don't know. If high tech had been allowed in lobster fisheries, we would have no lobsters left.

What do we do?

My time has expired.

Mr. SAXTON. The gentleman's time has expired; however, this is the crux of the matter we are here to deal with, and I would ask unanimous consent from my colleagues on both sides of the aisle that we reset the clock for another five minutes to give each witness an opportunity to respond to this very important question.

Mr. YOUNG. Reserving the right to object, it shouldn't take five minutes to answer that question.

Mr. STUDDS. And really it shouldn't have taken five minutes to ask it.

Mr. SCHMITTEN. Mr. Chairman, I will start. As to urgency, I said in my statement and I add this as a footnote from myself: No more New Englands.

I think the way you get there is threefold. First, we must address overfishing. We must apply limited effort. It doesn't need to be ITQs, but limited effort, and seven of eight Councils are looking at limited-effort programs. Second, we need aggressive management. You simply have not had that either from my agency or from the Councils in many parts of the country. Third, you need to begin to recover the stocks while the other two goals are being pursued. I happen to support quotas because it is one way to protect the fish while other things are occurring.

You asked how to grapple with the problems. I think in New England, currently, the Council has under consideration the one thing it can do and that is widespread closure to look at the short-term urgency; but I think you need to ultimately look at long-term and what you do there.

You can allow the marketplace to sort out what occurs and that leads to disaster. You could attempt to look at a buyout or buyback. That is a very costly system. It is something I happen to think that has incentive, and I would like to work with the industry in coming up with ideas for this Committee. But that is the recipe that I see in the short, one-minute answer.

Mr. BRANCALEONE. Frankly, I don't know if I have an answer. The worst part about coming here is following Mr. Studds.

First of all, I am not going to apologize for what has happened in the past. I can only tell you where we are headed now. I can tell you where the New England Council is headed.

The New England Council has voted, and they have set their minds that they are going to do something for the resource. The people that come before us now are crying, screaming, you can't do this, you can't do that; and we are going ahead and doing it anyway. The people in my community, the people out of Gloucester, don't want anything to do with me anymore. If I come up for reappointment, they are going to be knocking on your doors—they are commercial people—don't appoint him.

I face recreational fishermen who look at me and say, you are for the commercial industry.

How do we deal with it? Ten years ago I was opposed to any form of moratorium or limited entry. I am convinced now that that is the only way.

I was opposed to buyouts. The reason I was opposed is because my father was a fisherman, and his father before him fished; and I wanted my opportunity to fish, and I wanted my children to have the opportunity to fish. I don't see that happening. The future is gone.

The only way—my personal feeling—is, there will have to be substantial downsizing. The number of boats will have to be reduced in number to one-third eventually, if we do our job. That is my opinion.

But that is the only way I can answer your question, Mr. Studds. The Council, the present Council, is presently on a road that is going to dismantle the industry up and down the coast. But I don't think that taking those people off the Council who are knowledgable in the industry is the right way to go.

I have sat there at meetings and argued with Allen Peterson, who in any meeting—he did it in front of our Council, he did it with Mr. Schmitten—had those people in tears at the state of the stocks. I showed them what would happen if you put into place a 500-pound trip limit and still millions of pounds of haddock would be going overboard. We are doing something to alleviate that.

The answer is not to take the knowledgable people off the Council. We need the Allen Petersons; we need the Service; we need people with biological backgrounds to tell the Council what is happening, and we will tell them how the fishery works.

Mr. SAXTON. Thank you.

Mr. Magnuson.

Mr. MAGNUSON. I also share that critical aspect of this issue and was pleased to hear it coming from the head of the room here.

Clearly, the way the system works is bound to failure. What we have is a fuzzy definition of what an acceptable catch is to maintain a fishery into the long-term. We have built into that the possibility that short-term economic goals like paying for a boat next semester—I come from a university, we have those problems, too—paying for a boat in the next year is more important than sustaining the fishery over 10 years; so short-term economics with an overcapitalized fishery continuously bite in personal ways into rebuffing conservation measures.

Then the catches are increased. They are increased and increased and increased, marginally, and the fishery collapses. It happens over and over again in common property resources where the amount of capital investment and the rules are not tight enough, but have fuzzy data sets to do this. It is clearly a situation that needs improving.

I don't think that the National Research Council, in its recommendations that are in that black book, tinkered a little with the Act; I think we have addressed some of the major considerations. The people that were involved in making these recommendations were involved in the industry; some of them were involved in helping write the Magnuson Act in 1976, and they were people that argued for a long time to come up with these kind of things. These were not hastily thought out and not minor tinkerings.

It is clear that we need to go back to a biological definition of what a sustainable yield is, and we need to prevent short-term economic issues from erasing future opportunities to grow.

It is also very clear that we need to—as hard as it is—to control entry and prevent wasteful capitalization. We talk about the New England area where the fisheries have collapsed, but even if you go to Alaska, because of the same issues, some of the fishery seasons are so short, such as in halibut, it is the same problem, overcapitalization. The existing gear and people can take the whole catch in a week.

This isn't a good way to manage. It is around the border on all the other sites.

We felt that on the institutional structure embodied in the Act that there were needs for improvement. The Management Councils were a good idea. We do want the people that are involved in these fisheries to be involved in making the decisions. That was a very creative thing in the Act. Nobody wants to get rid of it, but you need to protect people from themselves. You need to provide recusal or prevent people from voting on things of direct benefit to them economically. You have to provide that protection. It is unfair to put them in that position.

In addition, we didn't have additional oversight. We didn't have a mechanism built up for conflict resolution, and occasionally the NRC is called in to help out in conflict resolution on some of the severe ones.

I will end there for now.

Mr. SAXTON. Thank you very much.

Mr. Young.

Mr. YOUNG. Whoever is running that light, it was five minutes total time not five minutes for each one.

Two things: One is that I appreciate all your testimony. I will go into some other questions.

One question that rang a bell there—and I heard it from John and from Rolland—about habitat; I have been caught in that trap before. What is your definition of habitat?

We have to recognize that habitat is not the problem; overfishing is the problem. So tell me how you suggest that habitat plays a role and what would be the definition? I see some people in the audience salivating now, legal people for certain groups.

What is habitat?

Mr. SCHMITTEN. Mr. Chairman, we support the definition of essential fish habitat——

Mr. YOUNG. What is habitat? Don't give me the runaround. What is your definition of habitat?

Mr. SCHMITTEN. Those areas necessary for fish to survive through all cycles of their life. That would be, in Alaska, in the spawning beds, on the high seas, that could be considered habitat. I am thinking specifically of salmon.

Mr. YOUNG. Salmon is not under the jurisdiction of the Magnuson Act. Let's be very careful about that. That is why I want you people in the audience and you people—you are not going to have the term "habitat," Rollie, if that is what you define. If it is under the Magnuson Act, we are talking about bottom fishery, halibut, pollock and the rest of the fisheries.

What is your definition of habitat out in those areas? How do you defend it? Where have we destroyed the habitat for our fisheries?

Mr. SCHMITTEN. Mr. Chairman, in the Northwest, for instance, we have destroyed the habitat with the introduction of barriers and hydrosystems.

Mr. YOUNG. You are talking about migratory fishing; you are not talking about bottom fisheries.

Where have we destroyed the habitat in the bottom fisheries?

Mr. SCHMITTEN. You recall in the north, we have the FMP for salmon.

Mr. YOUNG. Let's get away from salmon.

I am asking for an answer here.

Mr. SCHMITTEN. In bottom fishing, I will cite one I am familiar with. We have spoiled some of the beds by dumping carcasses overboard; it is a practice we have since stopped, but we soured some of the fishing grounds with the carcasses that were caught on the high seas and dumped out.

Mr. YOUNG. We are in agreement about that, but I want to suggest to you, before you make that statement, you give me documentation where we have done that. I see what will happen down the line about taking care of the habitat. What have we done wrong? I am talking about the Northwest.

You may have done something in the East, where you dump the garbage from New York—I don't know; but I am suggesting before you use that term, don't let us get caught in that trap about "habitat." I can just see people filing suit against every fisherman because the motor is too noisy and it is destroying the habitat.

Second, Rollie, again, the ITQs. You are promoting this, but I don't support it for two reasons. One, it is a financial gain by those who receive it as such and have the ability to dispose of those for financial gain. Are you in support of that or how would you suggest that work?

Mr. SCHMITTEN. Mr. Chairman, I have been very careful not to promote ITQs. I promote limited effort.

Mr. YOUNG. That is an ITQ.

Mr. SCHMITTEN. That is just one of the management tools for a limited effort, yes. I have been careful not to do that. I think the previous administration was very aggressive about ITQs in certain parts of the country where there are some independent fishermen and independent thinking; anything that government wanted, they shied away from. I think—and you have heard a consensus from this panel—to control effort. I look at the broader picture, not just ITQs. If the fishing community wants ITQs, we should provide the service. We should do the economic and social work for the Councils, but we should not gripe. That is my position.

Mr. YOUNG. I happen to agree with you, Joe; I think the Councils are correct. They can work. We give them the tools to work, and they can achieve the goals of the Magnuson Act.

One of the biggest concerns I have—all of you said something about conflict of interest—I happen to believe the best people to be on the Councils are those that understand the issues. And we have written into this bill, I believe, a sound proposal that will eliminate conflict; but what I don't want, very frankly—in all due respect, Joe,—is a bunch of college professors on the Council excluded because they don't have an understanding of every element of this Magnuson Act that was created.

You have to keep in mind, when we passed this Act, it was because of the foreign intrusion onto our waters. If you think you see problems now, there were worse problems then.

We have the opportunity now to solve those problems, and when you write this bill, our difficulty—with Mr. Studds and myself—is, frankly, you have problems in New England. We could have problems in Alaska. But I want to give the Council the strength to make sure those problems do not occur.

I will not sit here and allow this Congress or an agency to manage the fish, because I think we would lose sight of where we are going. I happen to believe this Congress does not have access to all the brains in the world. I don't believe the agencies do either.

What we have to do is make sure, when we write this Act, Mr. Chairman, that we stop the bycatch as much as possible; and we must try to lower the pressure. That is one of the biggest problems we have, even in Alaska, of catching so many fish in such a short period of time and actually not looking at the long-term results.

Thank you, Mr. Chairman.

Mr. SAXTON. I thank the gentleman from Alaska.

The gentleman from Maryland, Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

I would like to ask each of you to quickly respond. I have a couple of questions, the first deals with overfishing.

Pretty much—in the State of Maryland, not the coastal fisheries but the State and Chesapeake Bay—the Department of Natural Resource scientists pretty much set what they feel for a variety of species—especially rock fish and striped bass—what is the maximum sustainable yield. What is MSY for that particular fish? Then they talked amongst the watermen and recreational watermen and so on, what their allocation will be. But the science of it is the ground upon which this species is protected.

If you could—my question is—how can we ensure that there is some threshold for MSY upon which each of the Councils will then deal and, for example—I wish I had a chalkboard; I wasn't the school teacher Mr. Studds was referring to earlier, but I was a historian in my better former life. Imagine on this chalkboard you have NMFS gathering the data, you have the scientific statistical committee interpreting the data, then an advisory panel that has input into the data, and then the SSC and AP giving this information to the Council.

Now, as it stands, and in this bill as I understand it, the Council interprets the scientific data with the socioeconomic conditions of the community, and then they create a management plan which—and I don't want to pick on New England, but to a certain extent New England, even the Gulf and other Councils—they have taken into consideration more of the economic, short-term economic conditions as opposed to the long-term sustainable yield.

In this framework could we say in your opinion that the scientific statistical committee interpreting NMFS recommendations will then give the MSY to the Council, and the Council will take that information—they can't go above the threshold, but they will have the ability to deal with the problem of a species in that particular fishery?

I know this isn't the only problem, you have got overcapitalization and all the rest, but it seems to me if we start off with this fundamental position, a lot of the other things could fall into place.

Could each of you respond to that?

Mr. MAGNUSON. I will start on this end. I have a very short response to that. I think that is very consistent with recommendations that you would see in the National Research Council's report.

Recommendation one—let me read it quickly—fishery managers should promote the full realization of optimum yield as envisaged

by the Magnuson Act, not as played out, by ensuring that harvest does not reduce stock abundance below levels that can sustain maximum yields over the long-term.

In H.R. 39 that is beginning to appear and you have a statement about a rebuilding plan for ones that are below. That is essential.

And that we should——

Mr. GILCHREST. What I am saying is that—I know there is a great deal of latitude into whatever exact science is, and I understand we make mistakes. I would rather err on the side of the stock than err on the side of decimation of the stock.

In your opinion, would it be workable for that recommendation from NMFS to the scientific statistical committee to say, OK, Council, here is the maximum sustainable yield, this is what you have to work with for the next year or whatever, make your allocations accordingly, instead of going above the threshold which sometimes is often the case?

Mr. MAGNUSON. It is a hard bullet to bite. It is the one you will have to bite to make this work.

Mr. BRANCALEONE. I guess we pretty much work that way now. We are not held to a finite number. Yes, it would be a good thing if that finite number is reached under the proper science.

I mentioned earlier, we are still waiting to hear the data from this past year and the year before. We put in measures that right now the industry is saying, there are more fish out there than what the scientists are saying to us. You can't take into account what you did by shutting down a fishery in the Gulf of Maine; you can't tell us what you know about the effects of shutting down Georges Bank for the past six months. If the information is there and it is timely—personally, I am speaking—yes, I think that is the way to go.

Mr. GILCHREST. Mr. Schmitten.

Mr. SCHMITTEN. I fervently believe that to help fishermen, which we all want to do, you have to help the fish first. In many cases, the Western Pacific Council, and the Pacific Council, and the North Pacific Council have used the SSC report as the ceiling. In fact, the North Pacific Council on two different occasions have gone under what was recommended by the scientists.

Would I support that? You bet I would. That is part of the definition, I think. All the bills—the Administration's, H.R. 39 and S. 39—establish MSY as a goalo, and make it sacred.

Mr. GILCHREST. Thank you.

Thank you, Mr. Chairman.

Mr. SAXTON. Before I call on Mr. Farr let me just state that it is the intention of the Chair in the future to call on Members according to the following plan:

Members who are here at the time the committee begins the hearing will be called on in order of seniority. Following that, Members who appear will be called on in the order in which they appear. In other words, we will—once we make the first round, we will call on Members in the order of their appearance; and I think that is the fairest we can do.

In this case, since I had not announced that before, I will yield to the gentleman from California, Mr. Farr.

Mr. FARR. Thank you, Mr. Chairman. I appreciate the moment to make an observation and ask a question.

Right now, on the Floor, we are debating a moratorium on regulations. I can't think of an industry that deals more with how we manage the resource than this industry. We manage it by regulation rather than by statute. I am just wondering if there are regulations that are pending or regulations that are on the books that need to be revised, that would be affected if we slammed the door on them and said there would be no more regulations adopted pursuant to the bill being debated right now.

Mr. BRANCALEONE. We have—you can help me on this—we have an emergency action which is in place now and, we have just requested an extension of another 90 days, and it has been approved by the Service. I am not sure if this happens that that would do away with that. We are also right now writing Amendment No. 7 to the New England groundfish plan. If that were the case, I would assume it would jeopardize that amendment.

Mr. FARR. Would that hurt the industry or hurt the biomass?

Mr. BRANCALEONE. It would hurt—well, you save the fish, you do something for the industry. It would hurt the biomass as well as the industry.

Mr. FARR. You wouldn't be supportive of us adopting those regulations if that is what it is going to do?

Mr. BRANCALEONE. That is right. I wouldn't, no. We would not be supportive of that.

Mr. FARR. Thank you.

Mr. SAXTON. Thank you.

Mr. Torkildsen.

Mr. TORKILDSEN. Thank you, Mr. Chairman.

First, I would like to ask unanimous consent to submit a statement at the beginning of today's hearing.

Mr. SAXTON. Without objection.

Mr. TORKILDSEN. For the witnesses, thank you for your testimony.

Thank you, Mr. Brancaleone, for coming down and bearing the brunt of criticisms on the Councils. You do represent the New England area, and clearly, as everyone knows, New England has taken the brunt of whatever people want to attribute for the disaster up there, but it is nothing short of a disaster that is happening right now.

A few specific questions for Mr. Schmitten. Did I understand you to say that one way that habitat was destroyed was the spoiling of beds by throwing carcasses overboard?

Mr. SCHMITTEN. Yes, I was aware of instances on the West Coast where that occurred. They call it "souring the beds." That has been corrected since that time, but that was an example I provided to Chairman Young.

Mr. TORKILDSEN. What do you define as "carcasses"; is that any dead fish or what?

Mr. SCHMITTEN. No, these were fish that had been filleted, so it was head, backbone, tail, and thrown over in large masses.

Mr. TORKILDSEN. So throwing over dead fish you would not see as spoiling a bed?

Mr. SCHMITTEN. It could easily qualify as spoiling a bed.

Mr. TORKILDSEN. My concern there directly, in New England now we have a requirement, I believe, from NMFS that any boat that catches more than 500 pounds of haddock throw over any catch in excess of that. Those fish are almost always dead.

If indeed throwing over dead fish is spoiling beds, why do we have a regulation in place that requires fishermen to spoil beds we are all trying to replenish?

Mr. SCHMITTEN. It is an age-old regulation that we have tried to replace. We have promulgated that and——

Mr. SAXTON. May I interrupt before the Members leave? This is a 15-minute vote. Normally, we would be back in 15 minutes to resume. However, we are going to extend this 15-minute vote for an additional 15 or 20 minutes to allow everyone to get some lunch, so we will reconvene at approximately 12:35 or thereabouts.

We may finish with Mr. Torkildsen's questions at this point.

Mr. SCHMITTEN. What the Councils face is whether to close, a fishery, completely shutting people out of any opportunity to catch, or whether to try and find an equilibrium to allow an incidental bycatch level without going beyond what would harm the stocks. It is a very delicate balance; it requires as much scientific input as the Councils can receive, and each and every Council faces this. We operate a bycatch system on the West Coast, too.

Mr. TORKILDSEN. To me, that is just one problem; our regulations are not coordinated with other regulations or laws, and I do think it needs to be straightened out. I want to get a few points in during the rest of the five minutes that I have.

The overall point my colleague from Massachusetts made, the option of doing nothing is always an option. Usually, it is a bad one; certainly it is in this case, too. Simply closing Georges Bank and doing nothing else is also an equally bad option.

While you could starve out some fishermen, it would be the least efficient fisherman who could not afford to wait out for whenever that reopening will be. As soon as you reopen the Bank, whether it is one, two, three years or whatever the plan, you would still have the most efficient fishing boats there to go back and cause the same damage again. So doing nothing is not an option.

Simply closing the Bank without anything else is not an option either, but I would like to ask, when are we going to see some long-term plan? I have asked this question before, Mr. Schmitten, but for the record, when are we going to see some type of long-term plan so the inefficient industry will know what timeframe they are talking about? How many years will they have to go through what are very painful steps—and I don't see any way around that—but how long do they have to go through that so they can plan their lives. Will be a number of years?

The closing of Georges Bank is done on 90-day cycles now. Is that going to be long range in Amendment 7 when it is approved?

Can you address that question a little bit more, please?

Mr. BRANCALEONE. The groundfish committee is wrestling with that now, Amendment 7, and we will be setting the fishing mortality rate; and from there, we will determine exactly what fishing will be allowed to take place.

How long is it going to take? I have heard numbers from five to ten, twelve years. I don't know whether that is exactly what is

going to happen, but again, we still don't know what the actions that we have already taken under the emergency action have done or contributed to bringing the stocks back.

Personally, as a fisherman, I believe they are doing more than the Service is saying they are doing, but hopefully within eight months to a year, I would say, Amendment 7 will be finalized. We are looking for the amendment as soon as possible but six to eight months, possibly a year at the most.

Mr. TORKILDSEN. OK.

Mr. Chairman, because of the yellow light, I would ask unanimous consent to submit further questions for the record and have the witnesses respond.

Mr. SAXTON. Thank you.

[The information may be found at end of hearing.]

Mr. SAXTON. After conferring with the Ranking Member, we will reconvene at 12:45, thank you.

[Recess.]

Mr. SAXTON. If our witnesses will resume their position. The Chair at this time yields to Mr. Gilchrest for a second round of questions, and as the others return, we will recognize them.

Mr. GILCHREST. Mr. Chairman, all of the Republican Members have yielded me their time, so I have about 25 minutes.

Mr. SAXTON. Good luck.

Mr. GILCHREST. I would like to go back, because I was somewhat confused by the question of the Chairman of the full committee when he asked about habitat protection. So I would like to address the question of specifically what is habitat and what fish that happen to be spawned in tidal estuaries, marshes, riverine environments or whatever come under the jurisdiction of the Magnuson Act; and is putting habitat protection to a degree on the backs of the Councils, which is something that Mr. Saxton asked, too much for the Councils to be expected to handle?

Whoever wants to respond.

Mr. SCHMITTEN. I will go ahead and start. First of all, the example that I should have used, probably the best example that comes to mind, is the relationship of shrimp to the estuarine environment. At one time this was our largest fishery in the Nation. It now vacillates between first and second with the North Pacific fishery. It is absolutely dependent upon good estuary conditions, and that is a good example of the need for protecting the habitat.

How do we help the Councils? Each Council should have a habitat committee; I think most do at this point. I believe the National Marine Fisheries Service should be responsible for helping staff those committees. These Councils do not have the money to do the full job. We have done that on various Councils and we are prepared to assist if the habitat amendment passes. I will stop with that.

Mr. MAGNUSON. Well, I think the shrimp example is an excellent one. As you know, also, many of the species that occur along the Atlantic seaboard use the estuaries, and the estuaries also are affected by many other users. Part of the problem here comes as individual activities occur in these habitats. The fishery interests probably don't have enough say in the way the decisions are voiced, and

there are many different organizations of government involved in habitat involvement.

I think part of the issue is, how do you get the fisheries, the habitat protection for fisheries, to be a more significant part of the decisionmaking when all of these habitat decisions are made?

Mr. GILCHREST. Thank you. Mr.—I will say Mr. Joe.

Mr. BRANCALEONE. I really don't have anything to add, Mr. Gilchrest, except that again it would just tie our hands even more. With our staff, I have people working six, seven days, twelve, thirteen, fourteen hours, just in writing the plans. And we would be happy to do it if there were more money forthcoming, but until that time, it just ties our hands even further.

Mr. GILCHREST. Thank you.

Is there ever a time when it is good policy to exceed maximum sustainable yield as far as a fishery management plan is concerned?

Mr. BRANCALEONE. There has been some—yes, sir.

Mr. MAGNUSON. I will start, but I think you would all like to comment.

First of all, maximum sustainable yield, in the way it is calculated, is also probably an overestimate of what many fisheries can bear. In addition, maximum sustainable yield is a dynamic thing. It is not the kind of thing that we can set it and it is good for the next decade. It goes up and down and we need to have a dynamic response system.

One can picture that there may be a few cases where you might wish to exceed maximum sustainable yield. The key here, though, is to make that much harder than it has been in the past.

Mr. SCHMITTEN. I couldn't improve on that.

Mr. GILCHREST. The gentleman from New England?

Mr. BRANCALEONE. There is nothing I could add to it. He has hit it right on the head.

Mr. GILCHREST. The last question is somewhat vague and philosophical and we are never going to pinpoint it, I suppose, but I will ask anyway; and it is, not one of those things that is in any way an exact science, but it gives us some sense of the fishery as far as long-term planning is concerned, that is, where does ecological integrity or biodiversity enter into the picture of fishery management planning? As far as species interrelationships are concerned, is there some sense of, well, we have this living planet here, we have living organisms, they interact with each other, they have evolved over millions of years, and there is a certain balance that, granted, fluctuates periodically, but is there some sense of that when we talk about fishery management planning?

Mr. Magnuson.

Mr. MAGNUSON. I think the easiest way for us to answer that in the context of the Magnuson Act is to look to the sections dealing with how to implement or how to move toward an ecosystem approach. An ecosystem approach is a fairly simple kind of idea where you put into the system that you are trying to manage the components that really belong in it. And the way that we have done this in the past is, many of the components that are important to fishery management are left out, and so one has to look carefully.

If one goes the other way and says, every fish management plan should include everything, this becomes unmanageable. And so it becomes a matter of specification and how detailed you can specify this problem so that you can solve the one you are dealing with without complexing it past the point of being able to do something.

Certainly diversity, ecosystem integrity are all words that have meaning to certain parts of individual fish management plans; from a pragmatic point of view, it is probably easier to make a very strong and flexible ecosystem approach to fisheries management that pulls in the pieces you need for a specific fisheries.

Mr. SAXTON. The gentleman's time has expired.

The gentleman from Washington, Mr. Metcalf.

Mr. METCALF. Thank you, Mr. Chairman. My question isn't vague and philosophical.

Congressman Studds did in my estimation a magnificent job of framing the problem for discussion today, earlier in this hearing. Everyone agrees we are dangerously overcapitalized in the North Pacific, and I am deeply, deeply concerned about this. Our civilization now has the technology to totally wipe out any resource on earth in a short time. And so my question is for my friend Rollie Schmitten, and it is not perhaps the easiest question, but—and I am asking in your professional opinion—are we on track now to prevent in the North Pacific what Congressman Studds so clearly described off New England?

Mr. SCHMITTEN. With the best scientific data that we have, we are on track to sustain the fishery as it is. Now, that is not taking into account unexpected turns in environmental conditions or fluctuations of the stocks which we often see. The North Pacific has been very conservative in their management, and they are the one Council that I cited as an example that twice has said they want to fish below the MSY level, even though our scientists say that they can fish at such a level. The concern has been that runaway technology, the ability to harvest; and frankly, until recent times, no limit on effort, haas not capped this growth. We have the ability in the North Pacific to take those fisheries in very short order if we don't have tight constraints on setting of quotas.

Mr. METCALF. Have the government-backed loans on gear and so forth, has this added to the problem?

Mr. SCHMITTEN. Yes, it certainly did in the near-term. In recent years, we have not allowed any government loans in overcapitalized fisheries. But initially, the fisheries guarantee program certainly contributed. If you think back to the Magnuson Act, that is exactly what we were intending—displace the foreigners with our own fleets, encourage them to come into these displaced fisheries—and I think that we should have put the constraints on before we opened up the fisheries.

Mr. METCALF. OK. I have another sort of a question.

We are talking about IFQs or ITQs, and as I understand it, that ITQs means transferable. And I guess I would like to have your thinking on this. I have come kicking and screaming, dragged, believe me, to the conclusion that we have to go in this direction—that is my opinion—but I don't think that they should be transferable. I think that that is an asset granted by the government which becomes very, very valuable, and I don't think that they should be

transferable. I am going to get a lot of heat for saying that, obviously, but it is just my opinion. It is a gain that I think is beyond what you can reasonably expect.

What is the thinking about IFQs now? You mentioned something about that earlier and I would like to have you expand on it. Because I really, as I say, didn't like this, but I think we are coming toward it, necessity.

Mr. SCHMITTEN. Well, my personal goal is that we need to cap effort. Some of the preference should come from the fishing community through the Councils. There is a role for government, and that role is to be the referee, to make sure that it is as fair and equitable an allocation as it can be. For government, though, to impose its own will, to suggest that IFQs or ITQs is the best thing for a fishing community, I think, would be the first thing that will kill it. The misconception that we had earlier is certainly not something that I have supported.

I do support ITQs if they come out of the Councils that we have had a chance to participate with. We have three programs in this Nation. We have a Clam, a Surf Clam ITQ program, a wreckfish program in the Southeast, and that which will be the test for this Nation, the major sablefish-halibut IFQ in Alaska, which has around 3,800 vessels involved in it.

Mr. METCALF. OK, thank you.

Mr. SAXTON. Mr. Longley.

Mr. LONGLEY. Thank you, Mr. Chairman. I would like to pick up on Mr. Metcalf's questions and be more specific with reference to New England.

Where does it stand now, where does the concept of ITQs stand with respect to problems in New England?

Mr. BRANCALEONE. The Council has wrestled with ITQs for a long time. There are some members of the Council in New England that feel it is a good idea; there are some members who are not ready for it. It is not out of the question, but I can tell you, right at this point, it is not on the table.

Mr. LONGLEY. Based on opposition from within the Council?

Mr. BRANCALEONE. Council, industry, yes.

Mr. LONGLEY. What, if any, initiatives or how does H.R. 39—does it have any language at all that deals with the problems of New England, or should it contain any language that deals with the problems of New England? And I want to just kind of preface my question by—from a lot of my conversations with fishermen, frankly, it has become clear to me that the perception that they have of what is happening with the fisheries Council is, it is total chaos, there is no agreement, there is no consensus, and they are sitting there worrying about their livelihood, worrying about the diminished resource and, frankly, are in a total quandary as to exactly what they should be doing with their lives or what they should be doing to try to deal with the problem. And I am just looking for a little more specificity or leadership from the Council; I am searching for it.

Mr. BRANCALEONE. Well, you are hearing from the industry, and I will give you my point of view; I don't think there is chaos on the New England Council.

I was Chairman of the Groundfish Oversight Committee for two years. I attended two rounds of public hearings. And it is not easy to go to public hearings, and frankly, I did not realize there were that many fishermen in New England, because everyone came. And the first round on Amendment No. 5, we proposed a 50 percent reduction in effort; 50 percent of those vessels would be out of the fishery. Nobody in the industry wants to hear it, no one.

Now, on Amendment No. 7, we are looking at as close to zero as practicable on Georges Bank, possibly in the Gulf of Maine. I don't know if I want to go to these public hearings because they again are not going to want to hear it. We are doing something for the resource that, in turn, will turn it around and there will be fishermen for the future.

So if you talked to the industry, you have heard the same thing that I heard. It is not chaos; it is that we are about to dip into their pockets, we are about to put a lot of people out of business, and we know that. We are not looking forward to it, but we are intending to turn the stock around. I don't see that as chaos, I don't see that as chaos at all.

Mr. LONGLEY. Well, let me ask you this. With respect to the reduction of effort, could you kind of give me a sense of the steps you are trying to take to achieve that? I am assuming it is more than a conceptual——

Mr. BRANCALEONE. Well, as a matter of fact, if this committee could do anything, it would benefit us. There are some of us on the Council who feel Amendment No. 5 is going to go a little further. We understand the——

Mr. LONGLEY. Amendment 7?

Mr. BRANCALEONE. Amendment 5, which is in place now. We have reduction of days at sea. We have shut down small mesh fisheries and a whole host of things. And the days at sea, we reduced boats in five years down to 88 days. Boats have already told us, we cannot live on 88 days. Yet we cannot get from the Service where we are at this present time.

Granted, it is on a short-term, we are only about a year and some piece into it, but the fishermen are asking what have you done for us so far. We can't give them the answer. That is where the chaos is.

Mr. LONGLEY. Now, does the $23 million request for data collection have anything to do with the days-at-sea requirement in New England?

Mr. SCHMITTEN. It has spread through every geographic region. So there is a piece that would go to New England. And I couldn't identify for you at this point, but I will get back to you, how much of that goes to New England.

[The information follows:]

DATA COLLECTION AND DAYS-AT-SEA REQUIREMENT IN NEW ENGLAND

Data collection is a separate issue from the days-at-sea provision in the fishery management plan. The FY 1996 budget proposes an increase of $22,684,000 for data collection activities to help meet our stewardship responsibilities for building sustainable fisheries and recovering protected species. Under our fisheries programs, as part of the data collection request, $14,764,000 will be used to improve assessments of fishery resources, with $4,464,000 of that amount targeted for New England. Under our recovering protected species programs, $7,920,000 of the data collection funds will be used to improve assessments of the status of protected species, with

$1,520,000 of that amount targeted for New England. Therefore, a total of $5,984,000 of the $22,684,000 for data collection is targeted for New England.

Mr. LONGLEY. The reason for that question is, how effectively is the days-at-sea requirement being administered?

Mr. BRANCALEONE. Well, again, this is another administration; this is before Mr. Schmitten. We were assured when we were writing Amendment No. 5 that the Service would have all the manpower and all the money to implement that program. We are still waiting.

We required VTS, vessel tracking system, in both the groundfish plan and the scallop plan. We are still waiting for a VTS system. It is not there, there is no money. They are putting it together, we are told.

Mr. LONGLEY. When you say ETS——

Mr. BRANCALEONE. VTS, vessel tracking system. And a year has gone by, over a year, and we still don't have a vessel tracking system not only in the groundfish fishery, but in the scallop fishery.

Mr. LONGLEY. But yet the fishermen are still submitting all their reports and I am assuming the information is going into a black hole.

Mr. BRANCALEONE. If anybody is into chaos, it is the Service; and it is no fault of this gentleman. It is the lack of personnel. People are being pulled off the wharf—the people that can interview fishermen—to try to put together the log books. Log books are coming in, the data is coming in; they don't have the manpower or the money to compile that, to get it back to the Council in quick enough fashion so we can move quickly on anything.

Mr. LONGLEY. Is it any wonder that from the fishermen's point of view that there is chaos?

Mr. BRANCALEONE. Again, I don't see that as chaos on the part of the Council.

Mr. LONGLEY. Well, if I were asked to fill out a log book and found out that it was being submitted and not used, I would be pretty upset.

Mr. BRANCALEONE. It is being used, but the compiling of the data is taking longer than everyone would like to see.

Mr. SAXTON. Thank you. The gentleman's time has expired.

I would now like to recognize Walter Jones. If the name is familiar to those of you who have not met Walter yet, his father sat in the seat that I occupy here today for many years; and it is a pleasure to have him with us. The room was recently named after Walter's father, and so I yield to the gentleman.

Mr. JONES. Mr. Chairman, thank you. And again I want to express my appreciation to you and others that were strong advocates of having this room named for my father. I very much appreciate it. He certainly did love the Congress and the people that served in the Congress.

My question deals with these Councils—I don't know which of the two gentlemen would want to answer, maybe both. The State of North Carolina is a member of the South Atlantic Council, although the Mid-Atlantic management plan extends to Cape Hatteras, which is the midway point of the coastal area of North Carolina. Knowing that Florida is a member of two Councils, do you see

any problem in North Carolina being part of two different Councils? Do you see any problem at all?

Mr. BRANCALEONE. My personal opinion? I don't see any problem. But I would also like it expanded so that Rhode Island would be on the Mid-Atlantic Council.

Mr. JONES. Well, let me also, if I may, Rollie, then how many of these Councils have commercial fishermen? I know they are appointed by the State, but how many commercial fishermen serve on these Councils that come to mind?

Mr. SCHMITTEN. It varies Council by Council, but every single Council has commercial fishermen serving on them.

And I would like to return to your question, because I too support the concept of adding another member. I think we would want, with you, to look at whether the voting number shifts and even whether you should have two; are there other States, such as Rhode Island, we should consider? And look at it in its totality. Conceptually I support that.

Mr. JONES. OK. Thank you.

Mr. SAXTON. I thank the gentleman from North Carolina. And I thank the panelists for their indulgence today and for sticking with us while we took our short lunch break.

The Members of the subcommittee may have some additional questions which we may request you to respond to in writing. The hearing record will be held open for these responses.

[The information may be found at end of hearing.]

Mr. SAXTON. It has also been indicated that some Members may have opening statements that they would like to have made part of the record, and I ask unanimous consent at this point that those statements be made part of the record at the beginning of the hearing record. Thank you very much. I appreciate it.

And I will now introduce the next panel. The next panel consists of six individuals, many of whom are well-known to us. Rod Moore, who is very well-known to us, former minority staffer here with Mr. Young and is now the Executive Director of the West Coast Seafood Processors Association; also Nels Anderson, Jr., Executive Director of the Bristol Bay Economic Development Corporation; third, Jeff Hendricks of Alaska Ocean Seafood; fourth, Nelson Beideman, a constituent of mine, who is Executive Director of the Blue Water Fishermen's Association, his home is in Barnegat Light, New Jersey, a commercial fishing community which, of course, is in my district; fifth, Chris Nelson, Vice President of the Bon Secour Fisheries, Inc., and Mark Sosin of the American Sportfishing Association.

If you would all take your places and while you are getting arranged, let me remind the witnesses that under our committee rules, we must ask you to limit your statements to five minutes, but that your entire statement will appear in the record. Because we will be hearing from so many witnesses, once again I regret that we cannot be more generous with time. When the yellow light comes on, please begin to wrap up your testimony and conclude promptly when the red light appears.

In addition, we will also allow the entire panel to testify before we question any of the witnesses.

I now recognize the gentleman who is very well-known to us, Rod Moore, Executive Director of the West Coast Seafood Processors Association.

Good to have you with us.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. SAXTON. Again or still.

STATEMENT OF ROD MOORE, EXECUTIVE DIRECTOR, WEST COAST SEAFOOD PROCESSORS ASSOCIATION

Mr. MOORE. It is good to be able to refer to you as Mr. Chairman. Sort of good-news-bad-news kind of feeling here: It is good to be here, to be able to testify before the subcommittee; it is in a way sort of bad that I am not testifying before the committee that used to occupy this room for a number of years that most of the Members who are here today served on for so many years.

West Coast Seafood Processors Association is relatively new as an association, although the members themselves have been around for a number of years. Our association represents the major shore-based processors of species caught in the Exclusive Economic Zone off the coast of Oregon, California and Washington. Our members own processing plants, restaurants, transportation facilities, a whole wide variety of fisheries interests. Some of them even have ownership in boats.

What we are hoping is that—by being here today—we want to make you aware of the importance of the shore-based processing community to the fisheries of the United States and especially to the local communities of which they are a part. Our processors sometimes serve as the major employers in some of these communities.

Westport, Washington, for example, in Mrs. Smith's district, one of our members is the biggest employer in that district. I was recently in Fort Bragg, California, visiting one of our members, and Fort Bragg has got a nice tourism industry, used to have a timber industry some years ago, but not lately; but all the motels were vacant, the tourist shops were closed, the only thing that was keeping that community open during the winter months were the three fish plants that were processing fish on shore. Without those, that whole community would be shut down.

And so as I go through here and talk about things, and as we talk to the committee further on, we hope the committee recognizes that the shore-based processors are a vital part of what goes on in the economics of coastal communities and in the fisheries of the United States.

Going to the legislation, generally speaking we support H.R. 39. We think it is a well-written bill. There are some technical and clarifying provisions that we would like to see made in there, which are discussed in the written testimony; I won't go into them here and get into that.

Looking at some of the things that have been said by other witnesses, I do want to stop for a minute and talk about the conflict of interest issue. The Councils cannot operate properly unless fishermen, processors, everybody who is involved in the industry is allowed to serve on them.

I think Mr. Studds and Mr. Young mentioned it earlier, that when the Councils were created, it was recognized that bureaucrats in Washington, D.C., aren't going to be able to understand what is happening in the fisheries in the West Coast, the fisheries up in Alaska, the fisheries up off of New England. If you don't have involvement of fishermen and processors on those Councils, you are not going to get the information you need.

And to whatever extent the committee decides to impose new restrictions involving conflict of interest, make sure that you don't hamper the commercial fishing industry from participating in the management decisions.

We are not suggesting that anybody be allowed to vote their own pocketbook. But if you take away the ability of the commercial fishing industry to participate in the management decisions, you are not going to have a Council system and you might as well turn everything over to the Secretary of Commerce.

In regard to some things that aren't in the bill, Mr. Metcalf, on behalf of at least one of your constituents up in Bellingham, although we don't like ITQs and wish they would go away, if there is a way to make them nontransferable, that would be just great and you would be appreciated by some of your constituents up there.

The House bill is silent on the issue of ITQs. While we would like to not have any ITQs, quite frankly, we recognize that they are occurring. So what we are suggesting is that you adopt something along the lines of the Senate approach, which would be to impose a moratorium on new ITQ plans, develop some guidelines so that we make sure that the public interest is protected, the people are protected, and so forth, and then use those guidelines when developing new ITQ plans.

We also have a couple of new provisions that we want to have the committee look at, and I will just touch on one of them very briefly. Mr. Saxton, you mentioned it earlier, the issue of what is happening with stock assessment on the West Coast. As Mr. Schmitten explained, stock assessment is sort of a haphazard kind of thing on the West Coast, and we hope that there will be an opportunity for some contracting out of local fishermen to do this, because we think that is going to lead to better data at less cost to the taxpayers. And we are willing to live with whatever that data shows, but we want better data out there so we know what we are dealing with.

And, with that, my time is almost up; I will wrap up. Again, it is a pleasure to be here. Thank you.

Mr. SAXTON. Thank you very much, Mr. Moore.

[The statement of Mr. Moore may be found at end of hearing.]

Mr. SAXTON. Mr. Nels Anderson, Executive Director of the Bristol Bay Economic Development Corporation.

STATEMENT OF NELS ANDERSON, JR., EXECUTIVE DIRECTOR, BRISTOL BAY ECONOMIC DEVELOPMENT CORPORATION

Mr. ANDERSON. Thank you, Mr. Chairman, Members of the committee. My name is Nels Anderson, I am the Executive Director of the Bristol Bay Economic Development Corporation. I am here today to speak for the four CDQ corporations that comprise the

membership of the Western Alaska Fisheries Development Association. They represent 96 percent of the population of the CDQ-eligible region and have received 74 percent of the community development quota.

I wish to begin my testimony by describing the situation in western Alaska and how it relates to the CDQ program. Fifty-six communities are eligible for CDQs. According to the 1990 Federal census, the combined population is very close to 25,000 people today. The official unemployment rate is over 50 percent, one of the highest levels in the Nation; in some villages, it is as much as 75 percent. The average annual income is less than $11,000 per annum. The number of people living below the poverty line is as high as 40 percent in some regions.

Subsistence puts food on the table from hunting and fishing. Local commercial fisheries provides some income, but there are few opportunities for economic growth, and alcoholism and other self-destructive social behaviors are prominent, and social problems such as those are commonplace. The most ironic aspect of this tragic situation is that all of these problems occur in a region that is immediately adjacent to one of the world's richest fisheries, the Bering Sea.

The Bering Sea is home to millions of metric tons of pollock, crab, Pacific cod and many other commercially valuable species. In most cases, our people have had no access to these resources because of the high capital investment required to participate in these fisheries. Even though the first CDQ fishery occurred in December, 1992, this program has developed a track record of being one of the most innovative and successful economic development programs created. At the end of 1993, the CDQ program accounted for 8 percent of the region's entire economy and 18 percent of the region's private-sector economy. Imagine that, almost one-fifth of the private economy in less than two years.

By the end of 1993, the CDQ program had created 556 jobs. By the end of 1994, the total was 1,676. We wish to stress that this is a jobs opportunity program, not an entitlement program. This is not welfare; it is welfare reform. The benefits are only available to the communities and individuals who have the initiative to utilize this program to their best advantage.

Another important aspect is that the idea for this program came from western Alaska, not from outside. Local people have a vested interest in seeing it succeed. One person who deserves much of the credit for CDQs is your colleague, Congressman Don Young of Alaska. He supported the idea for many years and worked with the Federal fisheries administrations to make CDQs a reality, and we truly appreciate this.

And then also a brief reference we would like to make is to Harold Sparck, whom we in western Alaska recognize as a leader who also helped to make the CDQ program become a reality.

Before we got into this program, and even now, there was some speculation that once we became participants in Bering Sea large-vessel fisheries, we would lose our enthusiasm for conservation. If anything, our participation has only intensified our interest, because we now have a direct stake in the resource and because we believe we can make a difference. And I think we have.

We want to see this industry remain viable, not only for this generation of western Alaskans, but for the next generation and the one after that. We want to reduce bycatch to the lowest level possible, because our villages depend on those bycaught salmon for sustenance and income.

The CDQ program has set a new standard for conservation in the North Pacific. We have demonstrated that a community development quota, when fished by a conscientious skipper and seafood company, can result in low bycatch, waste and discards.

In order to provide the Federal managers with the most reliable data possible, all CDQ vessels carry two observers, report catches daily, and have fish holds that are equipped for mandatory volume metric measurements. The CDQ corporations pay the cost of these additional requirements. We don't mind, because we want to be part of the solution in making this a better fishery. We believe these standards should be met by all participants in the North Pacific fisheries.

Mr. Chairman, at the current time, WAFDA is participating in an expensive lawsuit that challenges the existence of the CDQ program under the Magnuson Act. In December, the Federal District Court in Alaska ruled that CDQs are authorized by the Magnuson Act. However, the challenge is pending appeal. Because the intent in H.R. 39 is not readily apparent, we respectfully request that language be added to reinforce the point that the existing western Alaska CDQ program with the existing eligibility requirements is authorized. According to Congressman Don Young and Senator Ted Stevens, this is what Congress intended, and this language will clarify that this was always the congressional intent.

Before I conclude, Mr. Chairman, if I may, H.R. 39 includes a new national standard for minimizing bycatch. We request that this standard be strengthened by saying "to the maximum extent practicable," rather than just "to the extent practicable."

And in conclusion, Mr. Chairman, I would like to state very clearly that we believe that we can reduce bycatch, waste and discards. We can follow fishing practices that preserve this resource for future generations. We can utilize our fisheries in a manner that is in the best interests of the Nation. And we can do all this with an allocation of Federal fish, not with the appropriation of Federal dollars.

Mr. Chairman, I again wish to thank you for the opportunity to testify. Thank you.

Mr. SAXTON. Well, we thank you for your eloquent testimony.

[The statement of Mr. Anderson may be found at end of hearing.]

Mr. SAXTON. Before we get to our next panelist, I would like to yield to the gentleman from Washington, Mr. Metcalf, to introduce our next panelist.

Mr. METCALF. Thank you very much, Mr. Chairman. And it is my pleasure and honor to introduce today Jeff Hendricks, who is the General Manager of the Alaska Ocean Seafood Company of Anacortes, Washington.

And just as an interesting thing, they operate the *Alaska Ocean*, which is the largest and one of the most modern factory trawlers in the United States. They operate basically in the Alaska groundfish industry, with a target species being the Alaska pollock.

It is a real pleasure to have you here today.

Mr. SAXTON. Mr. Hendricks.

STATEMENT OF JEFF HENDRICKS, ALASKA OCEAN SEAFOOD

Mr. HENDRICKS. Thank you, Mr. Metcalf. And thank you, Mr. Chairman, and Members of the subcommittee. As Mr. Metcalf introduced me, I am Jeff Hendricks, General Manager of Alaska Ocean Seafood Limited Partnership. My family has participated in the North Pacific and Bering Sea fishery since 1924. I personally have been involved in these fisheries for some 25 years and began fishing groundfish in 1982 as owner and captain of joint-venture trawlers that delivered to foreign processor motherships.

During the 1980's, we were a part of the Americanization of these fisheries with the construction of two stern trawlers that deliver their catch directly to shore-side processors in Dutch Harbor, Alaska. We also introduced the *Alaska Ocean* that Mr. Metcalf mentioned, which is the largest and one of the most modern surimi factory trawlers in the U.S. fleet. This state-of-the-art vessel enjoys a strong reputation throughout the industry for its overall quality and emphasis on safety. As principal captain of the *Alaska Ocean*, I am particularly proud of her and I have included a recent photograph with my written testimony.

We are keenly interested in the Magnuson Act and its implementation by the North Pacific Fishery Management Council. The fundamental purpose of the Magnuson Act was to prevent overfishing, and thus conserve our fishing resource for future generations. I believe the Act has indeed prevented overfishing and promoted conservation in our groundfish fishery resources of Alaska. For that reason alone, the Magnuson Act should be reauthorized, and we applaud Chairman Young for the introduction of H.R. 39.

While our written testimony contains detailed comments on the bill, I would like to focus on an important issue that the bill does not address. The Magnuson Act was written in the context of the tradition of open access, the idea that the fisheries are open to all comers. At that time, open access provided a strong invitation for Americanization of the fisheries, but now the fisheries are fully harvested and processed by Americans. On the opening day of the season, each and every vessel and processor enters into a highly competitive race to harvest as large a share as possible before the government gives its 24-hour notice of the season closure. Unfortunately, the consequences of open access are now overcapitalization and fisheries that are not viable because there are simply too many vessels and processors for the resources available. The seasons are now measured in terms of days rather than weeks or months.

Among the untenable results of this race are those directly related to safety, discard, bycatch, inefficient resource utilization and economic instability. Put another way, open access in the context of an overcapitalized fishery is obviously the very antithesis of good fisheries management.

It seems equally obvious that the North Pacific Council can fulfill its management responsibilities only by moving away from the open access system and implementing a system of individual transferable quotas, or ITQs. Briefly, an ITQ system is one in which individual participants in a fishery are allocated a specific percentage

of the total allowable catch. As a result, each vessel and processor-owner is individually accountable for his catch and its utilization.

Our reasons for believing the ITQ system is the best and really the only viable solution to the overcapitalization problem in the Bering Sea groundfish fishery are set out in detail in the written testimony. By way of summary here, I would like to emphasize that the North Pacific Council staff and other analysts have concluded that ITQs are the most effective way to address the problems of the race for fish, safety, bycatch, discards, utilization and economic instability.

The North Pacific Council has begun consideration of ITQs, but it appears constrained, at least in part, by actual or perceived legal and political barriers to such a program. We therefore request that this committee approve legislation that would eliminate these barriers.

One barrier that is of major importance to us are the criteria that should be used to determine initial allocations of quotas, that is, how can the Council avoid creating huge windfalls and losses when it implements the programs? We suggest that this is a problem that can be avoided by simple concept where a harvesting vessel in the fishery would receive a quota, the percentage of which is no less than 95 percent of its current percentage of the harvest. Likewise, allocations to each processing sector should be authorized and be no less than 95 percent of current levels.

Other barriers which we request the committee address include unequivocal authorization of ITQs, authorization of processor sector quota shares, and clarification that ITQs are not a property right. We therefore respectfully request that this committee move to address the issues of safety, bycatch, discard, utilization and economic instability by implementing these changes, and finally, that these legislative changes include a requirement that the North Pacific Council implement an ITQ system for the Alaska groundfish fishery no later than two years from now.

My partners and I very much appreciate your kind attention to our views. Thank you.

Mr. SAXTON. Thank you, Mr. Hendricks.

[The statement of Mr. Hendricks may be found at end of hearing.]

Mr. SAXTON. We are now going to hear from Nelson Beideman, who, as I mentioned earlier, is from Barnegat Light, New Jersey, a vibrant little fishing port in New Jersey. Nelson is the Executive Director of the Blue Water Fishermen's Association.

Nelson and I first got to know each other a number of years ago when he became my support line, my lifeline to the fishing industry; and a lot of information that we have exchanged has been very helpful to both of us over the years.

Nelson, we are anxious to hear from you.

STATEMENT OF NELSON BEIDEMAN, EXECUTIVE DIRECTOR, BLUE WATER FISHERMEN'S ASSOCIATION

Mr. BEIDEMAN. Thank you, Mr. Chairman, Members of the subcommittee, for asking me to speak. I am Nelson Beideman. I have been a fisherman since childhood and began fishing commercially

year-round after graduating from Maine Maritime Academy in 1975.

Blue Water represents commercial fishermen, vessel owners, fish dealers and supply companies involved with Atlantic highly migratory marine species. These family-run small businesses are proud to carry on the tradition of providing healthy seafood to other Americans who cannot or do not want to catch their own.

On behalf of Blue Water's membership, I thank the Chairman and this subcommittee for delaying the scheduled markup of the Atlantic Tuna Convention Act. This allowed time for staff and industry to improve the bill by adding comparable enforcement provisions for all Atlantic harvesters and a sense of Congress to clarify congressional intent regarding our participation in ICCAT.

Today I will confine my remarks to highly migratory species issues. My written testimony contains Blue Water's general comments on H.R. 39 and the Magnuson Act. Since National Marine Fisheries Service can choose either the Magnuson Act or the Atlantic Tuna Act to implement regulations for highly migratory species, you must also incorporate comparable enforcement provisions into the Magnuson Act to ensure fairness and equity for U.S. fishermen who harvest internationally shared resources. The 1994 ICCAT commission meeting proved that ICCAT can produce a winning turnaround for Atlantic bluefin tuna. ICCAT's progressive measures to ensure compliance with international bluefin recommendations bring hope to Atlantic fishermen who depend on these resources. We must ensure that similar provisions are established for all species under ICCAT's jurisdiction, not just bluefin tuna.

In Madrid last year, fairness to American fishermen was separated from conservation of the Atlantic swordfish resource. In reality, these two issues cannot be separated. Congress must ensure that fairness in conservation guides our renegotiation of the swordfish recommendations at ICCAT in 1995. The United States must not condone ICCAT actions which reward noncompliance and punish those who have abided by conservation agreements.

Strengthening the Magnuson Act is critical to the revised management program for highly migratory species that Congress initiated with the amendments of 1990. Congress did the right thing then and now must reaffirm its commitment to a balanced approach that requires a careful integration of domestic and international perspectives.

National Marine Fisheries Service has made progress. However, many areas still need higher priority and focus. The proposed amendments in H.R. 39 will strengthen this important Act. National Marine Fisheries Service has resisted establishing a more formal public forum around the U.S. ICCAT advisory committee. We think the plan development teams will fulfill what many see as a missing ingredient to the current HFS public process. If properly implemented, plan development teams will allow conveniently located open debate among all interested parties.

If Congress wants to effectively address their priorities in the Act, they must be funded. For example, in the proposed bill, there is a new national standard to minimize bycatch, yet in the President's budget proposal, there are decreasing dollars for gear engineering and bycatch research.

We appreciate congressional efforts to hold all nations that harvest international fish stocks accountable to a similar degree as American fishermen. We ask you to continue and strengthen that policy for the sake of the resource, the benefit of the Nation and the American fishermen.

I thank the Chairman and the subcommittee for the opportunity to testify.

Mr. SAXTON. Well, we thank you for being here, Nelson. Your testimony is very articulate and we appreciate it very much.

[The statement of Mr. Beideman may be found at end of hearing.]

Mr. SAXTON. We turn now to Chris Nelson, Vice President of the Bon Secour Fisheries, Inc.

Mr. NELSON. Thank you, Mr. Chairman. That is better that time. I appreciate it.

STATEMENT OF CHRIS NELSON, VICE PRESIDENT, BON SECOUR FISHERIES, INC.

Mr. NELSON. Thank you, Mr. Chairman and Members of the subcommittee. I appreciate the opportunity to be here. I am Chris Nelson, Vice President at Bon Secour Fisheries. Back at Bon Secour, "vice president" means "little brother." I have got two older brothers and a dad in the business. I am fourth generation. We have been in the seafood business, the Nelson family has, for over a hundred years. We operate shrimp boats down there, as well as a shrimp and oyster packing plant.

I have seen a number of different sides of these issues that we are dealing with. I have some academic training in fisheries, I have a Master's degree in oceanography. I also worked on the Hill for a year for Mr. Stevens, Senator Stevens, on the other side, as a sea grant fellow, and got to see some of the legislative perspective on a number of these things. So I appreciate the difficulty and the complexity of a number of these problems.

I would like to thank particularly on this committee some of the members from our region—Mr. Tauzin, Mr. Ortiz are unfortunately not here—but I appreciate their efforts in the past and will continue to look forward to working with them on these issues.

As I said, the problems that we are facing on a national basis and certainly in our region, in the Gulf, are very complex, and I don't have any easy answers for any of them, no quick fix. But one thing that I can present as a theme, that I hope we will all adhere to, and when I talk to the people in the National Marine Fisheries Service, what we need to do is fix—there is a lot of talk about rebuilding fish stocks, and that is certainly an important, important part of the Act. However, I would also like to focus on the people that we are managing.

You know, Service always says we are really managing people, a lot of lip service to that. But I would like to focus on rebuilding the confidence of the people that we are managing in the process. And specific to our region, we have got the issue of bycatch and shrimp trawls. It is certainly a concern to all users of all the resources in the region; whether their perceptions of the issue are different from others, it is a concern to everyone. The 1990 Magnuson Act had some provisions to deal with that particular issue.

I would like to see continued regionalization of dealing with bycatch—rather than trying to deal with it on a national basis, the Councils be allowed to deal with it on a more regionally specific basis. I participated in the Gulf and South Atlantic Foundation Bycatch Steering Committee, and helped to design their research program in cooperation with the Fisheries Service. And I felt very good about that effort. A number of different interests came together and forged a plan to do research on characterizing the bycatch—what are we bringing up in the trawl? How much of it is there? And also we planned to do gear research.

Now, currently it is my feeling, and a number of the other people in the industry feel that maybe the gear research is receiving a little too much focus and that we still don't know all we need to know about what is being caught, and particularly what are the impacts of what is being caught on the ecosystem.

For instance, there is a concern in the commercial industry that red drum are taking a lot of the crab, blue crab resource, as well as the shrimp resource; and we would like to see some research from the Service on what are the effects of excluding some of these predators on the resources that we depend on, what are the atrophic level interactions. It is a big word, but what are some of these things that are going on? Dr. Joan Browder at Miami has done some research on that, but we don't see much emphasis on further research there.

As far as the data goes, I would like to see, and everyone in the industry, I think—certainly in the Gulf—would like to see some fundamental changes in how data are gathered from the shrimp fishery. Currently, there is a lot of dependence on port agent interviews of captains. And unfortunately, with the TED issue being so hotly contested in the Gulf, there is—suffice it to say—a poor relationship between Federal Government employees and even State government employees and the fishermen. So a lot of those interviews are not happening.

There has been a tremendous decline in the number of interviews, and I would like to see that addressed, possibly through a workshop or task force-type environment where a number of different ideas could be presented on dealing with the data, or lack of data.

Second, I would like to see a process put in place for the Gulf of Mexico where fish stock assessment could be scientifically peer reviewed from outside the Service.

There are a couple of other things I wanted to mention. The net ban situation in Florida is something that I feel like the Councils in the Gulf and the south Atlantic need to address, the impact that that is going to have on FMP species such as white shrimp and Spanish mackerel need to be addressed.

Habitat concerns—another way we can build confidence in the fishermen that the process is working to their best interest is to see more involvement on habitat issues by the Federal Government, fisheries management agencies, sort of from a supply side rather than the restriction-side point of view.

Thank you again, Mr. Chairman. I appreciate the opportunity to make these comments and look forward to working with Members

of the subcommittee on moving forward on this very important bill. Thank you.

Mr. SAXTON. Mr. Nelson, thank you very much. We appreciate your being here.

[The statement of Mr. Nelson may be found at end of hearing.]

Mr. SAXTON. So far in this panel, we have heard from the commercial fishing industry, which is obviously of great importance to us for a number of reasons; and when we think about the commercial fishing industry, it is certainly easy enough for us to think in terms of the economics of the industry.

We are now going to hear from a representative from the recreational sportsfishing industry, Mark Sosin. When we hear from Mark and others from his side of the fisheries industry, it is good for us to all keep in mind—and I can bear true faith to this—that the recreational industry is also a very important industry from an economic point of view.

I represent 40 miles of coastline, and I can tell you that the tackle shops and the restaurants, the small boat rental places, the boat sales places, the motor sales places all add up to be a humongous industry in my district.

And so I am very pleased to have you with us today, Mark, and we are anxious to hear from you.

STATEMENT OF MARK SOSIN, AMERICAN SPORTFISHING ASSOCIATION

Mr. SOSIN. Thank you very much, Mr. Chairman. My name is Mark Sosin. I came to Washington this morning to testify on behalf of the American Sportfishing Association, the sportfishing industry, and obviously I am the only representative at this table of the Nation's 17 million salt water anglers.

I have been a recreational angler myself for over 55 years. In my professional life, I have been involved in the recreational fishing industry for more than three decades, and reported on it as a journalist during that time. Currently, I produce and host Mark Sosin's Saltwater Journal, now in its eleventh season, and broadcast nationwide on ESPN.

My testimony will address the provisions of H.R. 39.

Let me say that we support this legislation, but intend to offer some suggestions on how certain provisions could be strengthened to improve recreational fishing and fisheries management across this country.

Let me take a minute to tell you about ASA and the recreational industry. The American Sportfishing Association was created in November of 1993 for the sole purpose of representing the resource and trade needs of the recreational fishing industry. The first goal of this new association is to ensure that we have a healthy, sustainable fishery resource, because without that resource, we are all out of business.

Recreational fishing plays a significant role in the lives of one in five Americans. Over the decades, this fishing activity has given rise to a wide-ranging industry dedicated to meeting the fishing needs of the country's 60 million anglers. These anglers, who collectively spent over 500 million days pursuing freshwater and salt water species, support an industry with $24 billion in retail sales

annually. This spending encompasses a wide cross-section of the American economy, including fishing equipment manufacturing, travel and transportation services, boat and vehicle manufacturing, and fishing and boat licenses. This activity generates a total economic impact of nearly $70 billion throughout the manufacturing, wholesale and retail sectors of the American economy.

Likewise, Mr. Chairman, the marine recreational fishing industry has played a valuable role in the economies of local coastal communities. In 1991, 17 million Americans spent 64 million days fishing in salt water. The economic impact of this activity exceeded $5 billion at the retail level, and generated $15 billion in overall economic activity.

Mr. Chairman, in my oral comments, I would like to speak to just one issue, for I am afraid that if we fail to deal with it, none of the other changes may matter. My concern here is overfishing. As you all know, the Magnuson Act mandates that conservation and management measures must prevent overfishing. But in most cases, managers react to overfishing after it occurs. A report by the National Marine Fisheries Service disclosed that 67 species are overfished, representing 43 percent of those species assessed. Due to overfishing, the same report says, U.S. fisheries produce only about half their potential yield, resulting in losses of about $3 billion a year to this Nation. This year, you have the opportunity to amend the Magnuson Act and fix what time has proven to be the single most ineffective element of the Act, its failure to prevent overfishing.

Almost all of the changes proposed in H.R. 39 regarding Council structure and operation are targeted at improving conservation. However, in order for any of these efforts to work, there has to be a conservation baseline that limits harvest in favor of the resource. H.R. 39 advances the most significant improvement in all of the bills today. However, it would still allow for the manipulation of optimum yield to increase harvest in excess of maximum sustainable yield.

Two simple amendments will significantly improve the conservation basis of this statute. The first is to include a definition of maximum sustainable yield similar to the existing 602 guidelines. The second is to prevent harvest from exceeding maximum sustainable yield in any fishery. Our recommended definition for maximum sustainable yield is included in our written comments.

In addition, Mr. Chairman, there should be a restriction on the ability to increase harvest above conservative levels. The following amendment to H.R. 39 is suggested. Delete the word "jeopardize" from the definition of overfishing in section 4 of the bill, and replace it with the word "reduce."

Mr. Chairman, do not underestimate our fishermen's ability, be they commercial or recreational, to overharvest our fisheries, or the fishery manager's inability to control it. We need your help to impose a conservation ethic in the fishery management system.

Thank you very much, Mr. Chairman, for the opportunity to address this subcommittee.

Mr. SAXTON. Thank you, Mr. Sosin.

[The statement of Mr. Sosin may be found at end of hearing.]

Mr. SAXTON. The gentleman from Maryland, Mr. Gilchrest. Let me say before Mr. Gilchrest, you are noticing, I am sure, that there have been people in and out, and that is because there are a number of other hearings going on at the same time. There are hearings that are being carried out by other subcommittees of our full committee, as well as other committees. And so we apologize for that, but it is just part of life on Capitol Hill.

Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

Mr. Nelson, you expressed some interest in allowing the flexibility for each Management Council to come up with its own plan for bycatch and things of that nature; and I agree with you 100 percent on that. And then you also made mention of an ecosystem approach, which is a term that I guess some people understand, some people don't understand, the bulk of us in the middle have some vague notion of it.

It would seem to me that if we are looking at an overall fishery management plan, as far as overfishing, bycatch, and all of the related problems that we have to deal with, that an ecosystem approach would make—now I am not a scientist—but it would seem to make some sense to me. And I would just like you to comment on, can we inject an ecosystem, which is not an exact science, wording or philosophy or mentality into the planning for the management plans, especially for bycatch?

Mr. NELSON. I can't comment on the ability of the scientists necessarily to put—how fine of a point they can put on it. We already see the shortcomings in many cases of working with the data sets that we have to even come up with what is OSY or MSY or any of these things, or the status of the stock. So as far as being able to word an act so that certain things would take place, based on an overall look at the ecosystem and how well it is doing, I would like to see that as a goal.

I always felt like the Fisheries Service was moving in the right direction, looking at it that way, because fundamentally you look, you know, from a science background; you can't just single out any one species and try to manage for that species. The case I gave with red fish, we really don't know what the effect of not fishing red fish in the Federal zone is having on some of the prey species that that fish preys on. The Council down there is asking for reassessment of that stock. That is at least a step in the right direction, to look at what the size of the stock is.

There are a number of other examples, for instance I mentioned Dr. Browder's study. It showed that there were actually some negative impacts on some fish stocks which, doing some things with bycatch, reducing bycatch actually impacted negatively some of the apex predators. So I think that is foolish to go forward with some of these management plans before we do know what these effects are. And that is why I mentioned it.

I think it is important that we do some of this research, as best we can. I am certainly not an atrophic level interaction type scientist, didn't have any training in that, but I know that it can be done from a modeling standpoint.

Mr. GILCHREST. But that is the direction, I guess what you are saying, we need to move in?

Mr. NELSON. Yes, sir.

Mr. GILCHREST. Mr. Sosin, could you comment on the same question, relating ecosystem approach to management plans ecosystem approach when we are thinking about bycatch, the discards?

Mr. SOSIN. I am not sure I have the kind of answer you want to this, Mr. Gilchrest, but you know, obviously it is all tied together. But by the same token, you can look at shrimp as a bycatch, even though that is the primary thing.

Mr. GILCHREST. I didn't hear you.

Mr. SOSIN. You can look at shrimp as a bycatch. Even though that is their primary mission, to catch shrimp, they are catching one pound of shrimp to seven or eight pounds or nine pounds of something else.

So I think it is very hard to control an entire ecosystem. I think it is going to be very hard for the Councils to do it, because I don't think they react fast enough.

Mr. GILCHREST. It is difficult, I understand, and my next question will be about the structure of the Councils; and I understand it is difficult to do the ecosystem approach. And I am sort of coming from the Chesapeake Bay where we have a number of clams and oysters, and to a certain extent they filter out the water and to a certain extent they are tied to the grass, the subaquatic vegetation; the grass is tied to the protection of the crabs, the crabs are a source of food for the rockfish. I mean, all of it, the wetlands have an impact, and all of this setback as part of a perspective on a management plan, this is how it is connected. And I think it is incumbent upon us to begin the rigorous mental effort that is required in order to understand the ecosystem as far as fishery management plans is concerned. It is timely for us to begin to do that.

Mr. SOSIN. Absolutely. You know, I agree 100 percent. I just looked at video footage, we edited a show this week in Barnegat Bay, New Jersey, in which we show sanding grass shrimp out of the eel grass, and all of the creatures that live in that eel grass. And I made a comment in a voice-over on the show, that because they brought the eel grass back in greater quantity, you have all these creatures in there which then, in turn, will support the larger predatory species and give you what you are asking about in the ecosystem.

I was also in Chesapeake Bay this year, and I am very well aware of some of your problems. So, yes, it is all tied together.

The question this morning that was asked about habitat. Habitat is a key to fish stocks. Without the proper habitat, you are not going to have the fish stocks, whether it be in the Grand Banks off of New England, or down in the south where I live, or anyplace else.

Mr. GILCHREST. I see my time is up. Thank you.

Mr. SAXTON. Ask your other question.

Mr. GILCHREST. The other question did related to habitat. And I don't want to pick on Mr. Nelson, but you made a statement that was fascinating to me.

First of all, we don't have shad in the Bay anymore, and to a large extent it is due to the Conowingo Dam that was built there some years ago. The shad can't swim upstream so there are very few areas now where they can spawn. So it was due to overfishing,

but the major problem with the shad is the fact that they can't have little babies anymore. So even though we have stopped fishing for shad, they haven't come back. So, Mr. Nelson, you made a comment that we need to begin to explain habitat from a supply side versus restricted point of view. Could you explain that?

Mr. NELSON. Well, I guess fishermen always—the management programs on fishermen usually result in making them less efficient in order to protect the fish stocks. And I have always thought that is backwards from what we should be doing.

We should be encouraging all industries to be more efficient. Anything else is encouraged to be more efficient. Fishermen, particularly commercial fishermen, are encouraged to be less efficient. And I think it is a shame that fishermen have to endure that without also seeing some real commitment on the part of the same fisheries managers and agencies to the supply side, which is—I mean, habitat protection theoretically could lead to more fish being available for everyone—recreational, commercial, all the users of the resources. And it is too bad that we can't—that would, again, build confidence among the fishermen that they are not being unfairly singled out as the sole cause for the fish stocks being down.

And in many cases overfishing can occur very, very quickly, for the fish stock is already compromised because of habitat destruction.

Mr. GILCHREST. Fascinating perspective.

Thank you, Mr. Chairman.

Mr. SAXTON. Thank you, Mr. Gilchrest.

Mr. Moore, as you recall, one of my pet peeves about the way we make policy is that we oftentimes ignore or don't make the best use of scientific data, and sometimes we question the validity of scientific data. And I can see from reading your written testimony that you have some questions about the scientific fish data that are used to make policy with regard to the Magnuson process.

Would you care to elaborate on that?

Mr. MOORE. Thank you, Mr. Chairman. You got into this a little bit earlier with Rollie Schmitten, and he sort of half answered the question.

The area in particular that my members obviously are concerned about is the West Coast, but this is kind of applicable to a lot of other places around the country. The stock surveys on the West Coast, which is sort of what the harvest guidelines for fishermen are based on, are conducted once every three years. And because of the size of the area being covered, the amount of time they have, so forth and so on, you have one vessel that once every three years covers a few different places on the West Coast; and then they extrapolate all that data and come up with something that, frankly, is only good enough to be used as an abundance index. It will tell you that maybe there were more fish there three years ago, maybe there were less fish there three years ago. It doesn't tell you anything about the numbers of fish, the sex of the fish, the size, what kind of shape the stock is in.

There is a very good model that has been done by a NMFS scientist out of the laboratory in Seattle, but if he doesn't have good data to put in that model, it is a garbage-in, garbage-out situation.

What we are suggesting is something that I think is going to be supported around the industry, and we hope in the environmental community as well. We also hope it is going to save some money for the taxpayers and address, potentially, some of the overfishing issues; and that is, allow the industry to be chartered out to perform these stock surveys in those areas where they want it to be done.

I know there is a different situation up in New England that Mr. Studds faces that they have got some real good data that has gone on for a lot of years. We are not as fortunate as having that.

But allow fishermen to be chartered out by the National Marine Fisheries Service; allow them to retain their catch as a way of offsetting the costs. And whatever data you get is going to be, we think, better data than something that is done once every three years. And that data may show that there are fewer fish out there, in which case we need more restrictions on our fishermen and our processors, or it may show that there are a lot more fish out there and we need to be able to harvest more, which is better for the fishermen, better for my processors.

So that is what we are proposing as sort of a trial thing for the West Coast, and we hope you will take a look at that.

Mr. SAXTON. Do you have support from anyone in the scientific community or anyone in the current administration for that kind of approach?

Mr. MOORE. I had a brief discussion with Mr. Schmitten about it sort of during the break between panels here, and we are going to discuss it a little bit more. It is being discussed quite a bit amongst the fishing industry—fishermen, processors, even the factory trawlers. This may be one of the issues where the factory trawlers and the shore-based processors may actually agree on something.

I have also had some discussions with one of the West Coast representatives of one of the major environmental organizations, and I think there is some interest there on the part of environmental community, as well, to at least try this out on the West Coast, see if we get some better data.

Mr. SAXTON. Thank you.

Mr. Beideman, you come from a unique perspective because you deal with migratory species—basically, your livelihood is dealing with swordfish—and as a result of that, you have extensive experience with not just the regulations imposed through the Magnuson process, but also with regard to the international fisheries conventions.

Can you share with us your perspective of how that process, those processes, work together? Do we need to do anything with Magnuson to take account of the dual process and the dual regulatory authorities that you deal with?

Mr. BEIDEMAN. Well, I believe it needs to remain under the Secretary and that we need to formalize the ICCAT advisory committee, into more of a Council-like public setting. The scoping meetings that National Marine Fisheries Service has been conducting have been good, however, the fishermen don't have an opportunity to debate with the actual policymakers, decisionmakers, in the plans, to give these managers the knowledge of what is going on in our fish-

eries. They get asked questions, and National Marine Fisheries Service comes around, and everybody puts their input in; but unlike the Council process, what we lack is that open debate in front of some of the people that are actually working on developing the fishery management plan.

So right at this time, I think that the next step is to open up the public process a little wider and to allow these plan development teams.

Mr. SAXTON. Thank you very much, Nelson.

Let me ask Mr. Studds if he has any questions at this point.

Mr. STUDDS. Mr. Chairman, let me simply apologize to the panel. I have mastered being in three places at once, but four sometimes is tricky. I did a double-take when I saw Mr. Moore down there. What the hell is he doing with the witnesses?

Mr. MOORE. Mr. Studds, it is strange seeing you on that side of the dais, too.

Mr. STUDDS. I know. Same thing has occurred to me on more than one occasion.

Let me just note—I did, of course, read your testimony carefully; and I couldn't help but note that you seem to have a strong preference for the House bill over the Senate bill. I am inclined to ask you which one you wrote, but I——

Mr. MOORE. Mr. Studds, all I can say is that the Chairman's name is on the bill.

Mr. STUDDS. As always. Still a staffer, I may say.

No, it is a delight to see you there, and it is a delight to see you less stressed and obviously more affluent.

Mr. MOORE. I wish the latter were true.

Mr. STUDDS. Thank you, Mr. Chairman.

Mr. SAXTON. Thank you.

Mr. Torkildsen.

Mr. TORKILDSEN. Thank you, Mr. Chairman.

For the witnesses, given that you all have your specific problems in the fisheries that you deal with, I think none perhaps quite as severe as what we see up in New England, I would just ask for your general comments about what type of stands or steps would you be willing to accept to avoid the catastrophe we have in New England? I mean, can you just share your thoughts on that a little bit?

Because the success of a fishing industry can be too successful, as New England has demonstrated, what steps would you be willing to accept from your local Councils to avoid going through the disaster that has happened off the coast of New England?

Mr. MOORE. If I can start off real briefly, as far as the West Coast is concerned, we are already accepting steps and, you know, we would certainly accept more. The difficulty with the situation in New England, and this is no offense to Joe Brancaleone or anybody on the Council who has worked so hard up there to try to deal with the problems that you have in your area, on the West Coast we have a tradition of having quotas, reporting, in many cases observers on vessels or in processing plants, and strong enforcement.

The New England fisheries for a long, long time were managed without quotas and without any good reporting. And it is our contention on the West Coast—and I think Jeff will probably agree

with me on this—that if you don't have quotas saying, you have got to stop fishing when you are getting close to taking too many fish, and you don't have good reporting, so the managers don't know what is being caught out there, you are going to run yourself into the ground.

Mr. ANDERSON. Mr. Chairman, as far as we are concerned in Alaska, we would encourage you folks to encourage the Councils to take a very conservative approach. If you wait until too late, you have to take some very drastic measures that hurt everyone. And I think it is really important for you to set some very good national standards that give the necessary guidance to the Councils so that they can manage the fishery correctly, so that there is something for the future.

Mr. HENDRICKS. Well, I have to agree with what was said and re-echo that I think with respect—well, my experience for the fisheries in the North Pacific, in the Bering Sea, is that I think most will agree that the National Marine Fisheries Service and the scientific community in the north and the North Pacific Management Council have in fact conserved that resource and protected it from overfishing. I believe that is a fact. And we are thankful for that in the industry, on both sides of the fence, and that should be applauded; that is the North Pacific fishery.

Mr. BEIDEMAN. This is a little difficult question for highly migratory species, because the fact of the matter is until we have cooperation across the entire range of a stock of fish by all the harvesters, cooperating together to keep yields at or below MSY and to rebuild the stocks to maximum levels, we have got very little.

We are watching as highly migratory species decline. And the more that we do, the more it relieves international harvesters from doing their share. We have to be careful to do all of what we should be doing, but not do too much, because it actually relieves their responsibility and undermines the shared burden necessary to be effective for the fisheries.

There are a lot of things that need to be done. One of the areas is much more data collection and attention across all the highly migratory species. All the businesses involved in these fisheries should be at the same level of reporting and at present, they are not. We have charter boats and head boats that are not reporting at the moment, while the commercial boats have daily log books. Our dealers have mandatory reports—our boats have mandatory observers, and we have three different cross-checks on for data collection; while other businesses haven't even gotten started reporting yet. Plus recreational surveys, as we have learned, are nothing better than guesstimates. We need to enhance recreational monitoring.

Mr. NELSON. Is there still some time?

Mr. TORKILDSEN. There is, if anyone else would like to respond.

Mr. NELSON. OK. First of all, I guess the situation in New England is somewhat foreign to me being in the shrimp industry, strictly looking at shrimp. And incidentally, Mr. Sosin mentioned shrimp are a bycatch; I have to respond to that.

When I go recreational fishing, I tend to catch a lot of topsail catfish and hardhead catfish, maybe ten of those for every speckled

trout I catch, so I guess the speckled trout are a bycatch when I go to doing that, too.

Incidentally, the number is down to around three or four pounds to one now; we are learning more about what actually comes up.

Anyway, as far as specifically what would we be willing to accept in the Gulf of Mexico, I hope that, given the same circumstances, we would look at a limited entry scheme. I think that that is certainly a reasonable fall-back; and maybe even way before you get to crisis mode, look at limited entry schemes as possibilities. As long as you look at limiting the entry for all users of the resource.

And, again, I am aware of a shrimp fishery in South Carolina where inshore recreational cast-net take on the shrimp is beginning to limit what the offshore commercial take is. That is a very difficult situation. So looking at limited entry on just the commercial side, without the recreational side in that case, and in the Gulf as well, would be a real tough situation.

I am not sure how we would go about dealing with it, but that, I would say, a limited entry scheme in the Gulf would be something I would hope we would look at.

The gentleman's time has expired.

I would like to just note for the record that Mr. Pallone is with us today. Mr. Pallone is not an official Member of the committee, but we are very pleased that he is here; and I was going to recognize him for questions, but in the interest of time, he has volunteered to pass at this time, and so we appreciate that very much. He is an active participant in these proceedings, and we appreciate it very much.

[The statement of Mr. Pallone follows:]

STATEMENT OF HON. FRANK PALLONE, JR., A U.S. REPRESENTATIVE FROM NEW JERSEY

The Fisheries Management Subcommittee of the old Merchant Marine and Fisheries Committee spent a considerable amount of time addressing a number of concerns that this important legislation contains.

As in H. R. 780, which was marked up in the Fisheries Subcommittee last Congress, I was pleased to see that user fees were not included in this bill. Implementation of user fees would result in a loss of income and jobs, severely hurting an industry that is already in dismal shape.

Additionally, I was pleased to see that an amendment I sponsored and the Fisheries Subcommittee adopted in the 103d Congress has been incorporated into H.R. 39. The amendment was included as a discretionary provision that states that any fishery management plan which is prepared by any council may assess and specify the effect which conservation and management measures of a fisheries management plan will have on stocks of fish in the ecosystem of the fishery which are not part of the fishery.

I was disappointed not to see language in the current bill to ensure that the Secretary will make appointments to the councils that are fair and balanced. It is important to have a balanced council composition and have equal input from the participants in the commercial and recreational fisheries, as well as non-user groups that have displayed an in depth knowledge of fisheries.

Furthermore, I still feel there is room to strengthen the habitat language in the bill. I had a situation in my district where a Federal agency was engaging in an action detrimental to marine fish habitat and the council and NMFS Northeast Region wrote letters to the agency expressing their concern over the action, yet their letters were ignored by the agency. In the current bill, the offending agency must provide a detailed response within 15 days after receiving a recommendation from the Secretary. However, the agency is not required to follow the Secretary's recommendation.

I realize that many believe that giving the Secretary veto authority over Federal projects that adversely affect fish habitat was too extreme a position. However, I

believe that there can be a middle ground reached in a situation where an impasse arises between a Federal agency and NMFS with regard to a Federal action that might jeopardize essential fish habitat. It may be possible to require the Secretary of Commerce and the head of the other agency to enter into a mandatory consultation period.

Mr. SAXTON. I would like to thank this panel at this time for being with us today. The information that you have shared with us today and the information that you will share with us on an ongoing basis is very much appreciated.

And I would also note that the Members of the subcommittee may have some additional questions for the witnesses, and we will ask you to respond to them in writing and the hearing record will remain open for those responses. Thank you for being with us.

[The information may be found at end of hearing.]

Mr. SAXTON. At this time I would just like to say that in approximately 10 minutes there will be another vote. Mr. Gilchrest is going to leave here a few minutes before the vote, and he will come back in very prompt order so that he will take over for me so that I can go, so that we won't have to take a break in the proceedings. So I thank the gentleman from Maryland for his cooperation on that.

I will now introduce the next and final panel of witnesses: first, William Amaru, who is a commercial fisherman; Ellie Dorsey of the Conservation Law Foundation; Margaret Hall, Treasurer of United Catcher Boats; Paul Seaton, President of the Alaska Marine Conservation Council; and Tom Casey, of the Alaska Fisheries Conservation Group. That was quick, thank you.

I would once again like to remind our witnesses that under the committee rules, they must limit their oral statements to five minutes, but that their entire statements will appear in the record; because we are conducting this hearing with so many witnesses, I once again state that we can't be generous with time, and when the yellow light goes on, please proceed to conclude your statement and when the red light comes on, please conclude it.

In addition, we will also allow time for the entire panel to testify before questioning the witnesses.

I now recognize Bill Amaru to testify. Mr. Amaru.

STATEMENT OF WILLIAM H. AMARU, COMMERCIAL FISHERMAN

Mr. AMARU. Thank you, Mr. Chairman. It is a pleasure to meet in front of the committee that has my Congressman, Gary Studds, on the committee—subcommittee. I am one of those commercial fishermen from New England we have been hearing about.

My speech is going to be more or less monothematic. It is going to be about resource and lack of it, which is what we are suffering from so dramatically in New England. I would rather not reiterate the problems the fishing fleets are having—I originally put down "around the country," but that doesn't seem to be the case, so I'll say "for New England." We all know what they are.

Instead, the best thing I can talk about to help fishermen and others who have an interest in our marine fish resource is to address resource as what it is, living. The living resource is composed of individual wild animals, not cubic tons or bushels ending up as catch statistics at NMFS's offices. The marine environment is a

world apart from ours, yet in it wild fish reproduce in mind-boggling numbers and give rise to new generations without any help from us. It has been a common resource available to all with very few limitations.

Along the way, fish have provided Americans with an ongoing supply of healthful food, outdoor recreation, and represent a substantial contribution to the national economy—a continuous, renewable resource, the only one we have that needs no maintenance from man.

Is this billion-dollar national treasure in jeopardy? In my area it is. Are my generation and this committee going to be remembered as failing to save it?

Until very recently, the surplus production of fish was enough to satisfy. What has happened, at least on Georges Bank? Have we forgotten some subtle understanding of the living resource? Are fishermen different today than they were a hundred years ago? I don't think so.

Fishermen are survivors, always have been, and especially the ones still operating today. To paraphrase Professor Garrett Hardin, as a rational being, each fisherman seeks to maximize his gain. We will continue to catch the common public resource until the cost of putting our nets and hooks in the water is greater than the value of what we catch.

What fishermen do is not wrong. To fish in the sea in open competition is rewarded by success in our society. But what you must do is set down new rules by which our common resource is protected. You must act on a mandate which government gave itself when it took up the responsibility for stewardship of this resource. I am not ready to accept the tragic loss of our last common, nor am I willing to see the end of my way of life because those whose responsibility it is to protect and conserve were unwilling to do so.

The changes you must make will not be fair and they will not be easy. They will take insight and tremendous courage. Many who are not responsible will suffer. Again Professor Hardin reminds me, we have increased without limit in a world with limits—at least in New England, we have.

Members of this committee, that pain will not be anything compared to the humiliation and the national economic tragedy of the failure to save our greatest renewable resource. Therefore, the following recommendations to the committee are based on my experiences over 20 years of fishing in New England, and may help to prevent the pain we are now suffering in the New England area in the rest of the country.

Number one, lower direct conflicts of interest on the Management Councils. Members must be present who are not necessarily conflict-of-interest free, but who simply represent divergent views for the good of the public resource. This can be accomplished by placing scientists, representatives of mainstream conservation organizations and consumer organizations, along with fishermen, on the Councils.

Number two, provide a means for vastly improved scientific research into fish populations and their interactions. You have been hearing that all day today; I don't think I need to reiterate it.

Number three, establish a dedicated fund, supported by industry and government, to enhance long-term management needs and to create a sense of ownership and, therefore, a sense of responsibility as well for the resource.

Increase substantially the enforcement of fisheries regulations. In our area, it is a tremendously underfunded budget, the Coast Guard's budget. Make the penalties for breaking fisheries laws more than an acceptable cost of doing business.

Number five, end government assistance programs that provide the private sector with initiatives that increase the catch potential of an user group. Let the private sector be responsible for the capitalization of private fleets.

Mr. Chairman, let me finish with this thought. The governmental department responsible for the management of a living resource should be one familiar with natural resource management, not trade. The Department of Commerce deals with the Nation's fishery as a reluctant parent to a stepchild, one it has never fully accepted as its own. An agency of government that looks upon the populations of fish as wildlife, to be used sustainably for the long-term good of the entire Nation should be favored over one that has as its goal an ever-increasing GNP.

Those are a few comments. I hope they can help you in your work toward reauthorization of the bill. There wasn't anything terribly specific about what I said, but I think in a general way you understand where I am coming from. Thank you.

Mr. SAXTON. Thank you.

[The statement of Mr. Amaru may be found at end of hearing.]

Mr. SAXTON. Ms. Dorsey.

STATEMENT OF ELEANOR M. DORSEY, CONSERVATION LAW FOUNDATION

Ms. DORSEY. Mr. Chairman and Members of the subcommittee, my name is Eleanor Dorsey. I am a marine biologist and a staff scientist at the Conservation Law Foundation, on whose behalf I am appearing today. The Conservation Law Foundation is a regional environmental advocacy group headquartered in Boston, Massachusetts; we are a member of the Marine Fish Conservation Network.

I am grateful for this chance to testify about the Magnuson Act, and I will focus my comments on overfishing and stock rebuilding, which are the most pressing fishery management issues in the New England region.

For almost six years now, I have closely followed the New England groundfish fishery. What I have seen can only be described as a gross failure of management. Cod, haddock and flounder stocks have collapsed from too much fishing, stocks which for centuries supported New England's fishing industry. We now need to close Georges Bank, one of the most productive fishing grounds in the world, and keep it and other fishing areas closed for a number of years to let the stocks rebuild.

You have all heard of the social and economic costs of this failure to prevent overfishing; as New England imports more cod from Norway and Iceland to replace the fish we can no longer produce

locally, the region is exporting the jobs and income that fishing families and communities used to depend on.

The resulting personal tragedies are all the more distressing because they were preventable. The fisheries collapse didn't have to happen. Biologists warned of the dangers of high fishing pressure, but management failed to respond until it was too late.

Mr. Chairman, when the Magnuson Act was first passed almost 20 years ago, we had a choice of where fisheries management would go for Georges Bank. There were two doors to choose from, but the choice wasn't between the lady and the tiger. Behind door number one, was 103 million pounds of haddock, the stock's potential yield, which we caught every year for almost 30 years before 1960. Behind door number two, was a mere 9 million pounds of haddock. That is the current yield for 1993, most of which goes to Canada, and that is the choice we made because of poor management on both sides of the Hague Line. The biologists told us which door we were reaching for. Had we chosen the other door, the U.S. and Canada could be catching more than ten times as much haddock from Georges Bank as we are now.

The essential reason why we made this foolish and irresponsible choice in New England was that the Magnuson Act allowed it. The laudable goal of preventing overfishing that is expressed in the first national standard of the Act needs to be buttressed by new language that assures that this goal is met, and additional language is needed to see that stocks depleted from overfishing are allowed to rebuild.

The United States must meet the stewardship obligation for fisheries that we took on when we extended jurisdiction out to 200 miles offshore. H.R. 39 contains several good provisions that move the Magnuson Act in the right direction. The bill's requirement that each management plan contain a definition of overfishing is an essential first step. The new section describing action by the Secretary on overfishing clearly and appropriately assigns responsibility for acting to rebuild overfished stocks within a set time limit.

But two critical changes to assure the prevention of overfishing are missing in H.R. 39. First, the definition of optimum yield must be revised to make it clear that harvesting at a level above the maximum sustainable yield is not optimum and is not acceptable, since that will inevitably lead to stock depletion. Second, provisions must be added to assure that corrective action will be taken before stocks collapse.

Once a fishery deteriorates as badly as groundfish in New England, the options for management are very few and the costs to society are huge. My written testimony contains some specific suggestions for these improvements.

I am very pleased to see the sections in H.R. 39 that are designed to identify and protect essential fishery habitat. The oceans will continue to produce a bounty of fish only if the habitats they need to grow, to feed and to reproduce are maintained; and I will be happy to help explain to Mr. Young what fishery habitats are.

Mr. SAXTON. We thank you. If you get through, you will be doing very well.

Ms. DORSEY. I also support the measures in the bill to reduce bycatch. We cannot afford to continue the wasteful destruction of sealife that fishing is capable of.

I would like to make one final point, Mr. Chairman. Some people have been saying recently that all governmental regulations are bad. I hope that you and all the other Members of the Committee on Resources realize that in the realm of fisheries management, such blanket criticism of regulations is sheer nonsense. With a publicly owned renewable resource like the fisheries governed by this Act, the only way to achieve continuing benefits to society from the resource is to have adequate regulations on fishing. This is especially true with the dramatic increases in harvesting efficiency that allow us now to catch the last fish in the ocean.

Thank you for your attention and for this opportunity to speak.

Mr. SAXTON. Thank you. We thank you for being here.

And you should be aware that in spite of the fact that Mr. Young has problems with the term "habitat," he is, as we speak, or was recently, on the Floor, where he entered into a colloquy to try to preserve the regulatory authority over the fisheries within the legislation which is being voted on later today or tomorrow. So we think we have been successful in regard to that.

We thank you for bringing that up.

[The statement of Ms. Dorsey may be found at end of hearing.]

Mr. SAXTON. Ms. Hall.

STATEMENT OF MARGARET HALL, TREASURER, UNITED CATCHER BOATS

Ms. HALL. Thank you very much. My name is Margaret Hall, and I am a member of a family of fishermen who range back 50 years on the Pacific coast, and more recently in the North Pacific waters. My family is unique in that I feel we are a regionalized family enterprise. My brother lives in Alaska and manages vessels there. My parents live in Oregon; my father is very actively involved in the vessels also. And myself, I live in the State of Washington.

I am representing today "United Catcher Boats," which is an organization of 50-plus trawl vessels who fish groundfish in the North Pacific and the west Pacific Ocean. These vessels have a tremendous history. They were the pioneers, particularly in the North Pacific. These vessels were also supporters of the original Magnuson Act legislation, and as you know, Don Young was instrumental in the initial passage of that legislation.

The open access fishery system used to work. Now there are double or triple the number of vessels that we need in the North Pacific. They are vying for the same limited number of fish. Seasons and fishing days have been reduced by 75, 80 percent of what they once were. For their economic survival, these boats now fight rough weather and life-threatening conditions, racing against time and each other to harvest the most fish that they possibly can.

The problem is exacerbated by economic costs. Those who expend the most fishing effort by investing more money to make their boats wider, as my family has done, to make their boats longer, as my family has done, to buy the biggest, the most equipment, not only to have the best on the boat, but to have backup available dur-

ing this very short fishing period. Then you sit, while you watch your investment sit idle during the rest of the year. This system is nuts!

To resolve the problems of the North Pacific, our organization, United Catcher Boats, supports the adoption of ITQs in the groundfish and crab fisheries. We are sharing in the support also by other catcher vessel organizations that, together, comprise 85 to 90 percent of the vessels who are harvesting those North Pacific fisheries. I think that is a very important number.

However, we are not asking for a legislative mandate through H.R. 39. What we are asking for is just an endorsement. We need a clear message to our North Pacific Fishing Management Council that says that "quota share" is a viable management system, and that it should be used in those fisheries where it is deemed most appropriate. A fishing vessel quota system presents a whole new scheme for effective fisheries management. Its principles are based not only on sound economics, but on resource conservation, backed up by personal accountability—and I think that that is an extremely important part of this issue—and through an observer program.

Moreover, an ITQ system shifts the competitive pressure from the fishing grounds to the marketplace. What better place? Although quota shares are a marketable commodity, fishing remains a privilege, and quota shares could be revoked for cause without compensation.

So what are the benefits of an ITQ system? First and foremost, I want to point out the benefit of safety. This last fishing season, at the beginning of our crab fishery, we lost six men on one boat. Fishermen would be allowed to slow down their fishing pace. They would be allowed to select when to fish; if the weather's bad, you don't have to be out there.

One of my captains lost a whole trawl net. He couldn't retrieve it because of the weather. This adds up in costs.

Other countries employing ITQ programs cite reduced morbidity and mortality incidence. Yesterday, in the P-I, the Seattle morning newspaper, Bruce Ramsey's editorial quoted: "British Columbia went to an IFQ system in halibut several years ago. Fisheries officials list safety as the number one benefit."

Second, improved resource conservation and accountability: A slower fishing pace will enable fishermen to be more selective in what they catch and how they catch it, thus reducing bycatch, reducing mortality handling, reducing ghost fishing.

I hope you understand the terms. Ask me if you don't.

Under a quota share system, each vessel would also receive a "bycatch quota," which puts the onus on the individual operator and gives the Councils still the power to determine catch levels.

ITQs would also result in a 100 percent observer coverage for most groundfish and crab to prevent high grading and guarantee accountability and compliance.

Third, enhanced product quality and improved markets: Absent the race for fish, the fleet's competitive challenge would be turned to delivering high-quality products for the American and international markets. Fishermen and processors can coordinate to-

gether the most opportune time to harvest fish and crab, depending upon the biological and market conditions.

Fourth, economic stability: ITQs promote efficient fishing. Fishermen could cooperate rather than compete. A quota system reduces operating expenses. There would be less concentration, as I was saying before, of costly investments—this, in particular, makes vessel owners susceptible to financial failure—and there would be less vessel damage and loss of gear.

I cannot tell you—I sit on two hull self-insurance boards and, again, there is so much damage done in bad weather when it breaks windows, damages electronic equipment, and you have to replace it because of the salt water. Why are we fishing?

The last one, I think, is of particular importance to government officials: Increased value of tax base. Quota shares would maximize fish value, and increased fish value would maximize taxable value, an economic benefit to the Nation. Members of our organization——

Mr. SAXTON. Ms. Hall, may I ask you to try to wrap up as quickly as you can?

Ms. HALL. Oh, I am sorry, I was looking right over it. Yes, OK. More safety and conservation regulations improves seamanship. Reduced seasons are not long-term solutions.

Please, just add quota shares as an opportunity to be explored in the Council deliberations.

Thank you. I am sorry.

Mr. SAXTON. Well, we thank you for bringing your very personal economic and other points of view, which are very meaningful to us. And thank you for being with us.

[The statement of Ms. Hall may be found at end of hearing.]

Mr. SAXTON. Mr. Seaton.

STATEMENT OF PAUL SEATON, PRESIDENT, ALASKA MARINE CONSERVATION COUNCIL

Mr. SEATON. Mr. Chairman, thank you for the opportunity to testify. For the record, my name is Paul Seaton; I am a commercial fisherman from Homer, Alaska, where I fish halibut, crab and Pacific cod. I am also President of the Alaska Marine Conservation Council. AMCC is a broad-based community organization comprised of Alaskans, many of whom live along the coast of Alaska in small, remote communities. We have seen alarming declines in Tanner crab, king crab, rockfish and halibut, fish that many Alaskans depend upon for their livelihood. We also see plunges in populations of indicator species such as Steller sea lions, harbor seals, fur seals, and bird species such as murres and kittywakes. These warn us of distressing changes in the North Pacific.

While the North Pacific has been managed more conservatively than other regions, it is clearly not good enough. Despite congressional intent, the Magnuson Act has not prevented fisheries across the country from being managed to the brink of ruin. We salute this committee's effort in amending this Act, and we are proud that our own congressman is taking a leadership role in strengthening the Act.

H.R. 39 makes great strides in placing emphasis on conservation. In our written testimony, we make five recommendations for fur-

ther strengthening the Act: one, clearly establish conservation over economics as a top priority of the Act; two, mandate a reduction in bycatch, discards and habitat disruption through economic incentives that reward clean fishermen; three, institute a precautionary multispecies approach to management and research; four, acknowledge the role that people and sustainable communities play in a healthy marine ecosystem; and five, make marine habitat protection a priority.

I will spend the balance of my testimony highlighting these first two recommendations. The Magnuson Act often uses the word "conservation," but in many instances, economic and other considerations override the conservation principles. For example, National Standard 1 states that "conservation and management measures shall prevent overfishing while achieving optimum yield."

Overfishing is not defined in the law. However, optimum yield is defined as maximum sustainable yield as modified by relevant economic, social or ecological factors. Fisheries managers are pressured to subordinate conservation objectives to short-term economic interests. The National Academy of Sciences found that the result is often an optimum yield higher than the sustainable biological yield. I can give you examples if you wish.

H.R. 39 takes important strides in defining overfishing for the first time. However, without changes to the definition of optimum yield, the job is only half done. AMCC recommends: One, amend the definition of optimum yield so that sustainable yield can only be lowered and not raised by social, economic or ecological factors; and two, define optimum yield in terms of sustainable yield over the long-term, rather than maximum sustained yield. We have provided suggested language in our written testimony.

In 1993, 16 million pounds of halibut, 16 million crab, and over 370,000 salmon, were discarded in the North Pacific. Amazingly, the 1993 figure was a 50 percent increase from 1992. AMCC proposes that Congress mandate reductions in bycatch through economic incentives. Such incentives would reward those fishermen who successfully minimize bycatch, waste and disruption in the habitat, by giving them access to a reserve portion of the total allowable catch. Rapid conversion to directed fishing practices and technology will result as fishermen come up with their own innovative solutions to minimize bycatch. The best fishermen in each fishery will push for further reductions in bycatch because such reductions provide a free market competitive advantage.

The Alaska Harvest Priority proposal has been endorsed by the Alaska House of Representatives, and by numerous other groups and agencies. H.R. 39 includes important new language designed to allow incentive programs to minimize bycatch in our fisheries. However, our experience before the North Pacific Council teaches us that even stronger language is required to overcome bureaucratic inertia. AMCC recommends that the H.R. 39 be strengthened by, one, requiring managers to minimize bycatch to the maximum extent practical; two, authorize incentive allocations both within and between gear groups; three, requiring such measures be implemented in the North Pacific by a certain date; and four, removing the priority for reduction of processing waste over bycatch.

Thank you for this opportunity to testify and I would be happy to answer any questions.

Mr. SAXTON. Thank you very much, Mr. Seaton.

[The statement of Mr. Seaton may be found at end of hearing.]

Mr. SAXTON. Mr. Clancy.

Mr. CASEY. I wish my name were Clancy, Mr. Chairman.

Mr. SAXTON. Casey, I am sorry.

Mr. CASEY. I think he is up to about 4 million a year now.

STATEMENT OF TOM CASEY, ALASKA FISHERIES CONSERVATION GROUP

Mr. CASEY. My name is Tom Casey. I am here with my friends. This is Dick Powell, his boat is in the Aleutians catching deep water king crab; Gary Painter and Mike King and his wife Karen—their boats just got into Dutch Harbor after finishing the Opilio Tanner crab season in the Bering Sea.

I guess we are the other 15 percent, Mr. Chairman, that Margaret Hall talks about.

Mr. SAXTON. Welcome to you all.

Mr. CASEY. I would like to refer to the document I submitted to you for the testimony. If you can just look at page 1, and if there is any way you can just substitute one word in this bill, Mr. Chairman—or add it, just the word "between" where we talk about it—it would do a lot of things real quick and real cleanly to reduce bycatch.

On page 2 and 3, you can see a proposal to make the selection of the industry advisory panel on the Council much more open. First time in 20 years, I saw the Chairman of the advisory panel call a fix on what happened in Alaska last January. He said the people got together and conspired to put industry people on the panel in a ratio that really hurt the fixed gear fishermen with pots and long lines. So we hope you will consider page 3.

Then I would like to talk about ITQs, because we are the silent minority, the 15 percent that Margaret talks about.

Mr. SAXTON. I am going to have to excuse myself. However, Mr. Gilchrest is here, and you may continue.

Mr. CASEY. OK. Just like to say a couple things about ITQs. We don't believe Margaret Hall. We don't think that ITQs will solve bycatch—I mean, solve vessel safety problems until Puget Sound becomes the Bering Sea. It is very dangerous to fish in the Bering Sea. Two members and one organization were fishing up there in January. One vessel sank, the other hid from the weather and had to be abandoned when the ice closed in around it. Either way, they had troubles. Being up there is very dangerous; it is not like Puget Sound.

Number two, the surf clam fishery, as you know, has shown that vessel safety problems there continue, even after ITQ implementation. And I hope that you will let me submit for the record this analysis of the problems they had with vessel safety there. On page 7, you can see what ITQ does to jobs; it just destroys them. And I thought Newt's "opportunity society" was about creating jobs.

Here is a guy in Kodiak who told us that he and five skippers with ITQs are going to get together and go fish their quotas together, and therefore they don't need any crews. So the net loss on

those boats is 20 jobs, right down the chute. And there is a Kodiak Island Borough resolution telling you what they think about it.

On page 10, you can see what happens when social conflict arises from these ITQs. The wives of two ITQ owners fought in the checkout line in Safeway. One broke the other's finger. I submit to you, this is not good for America. Number 4 on page 12, Mr. Chairman——

Mr. GILCHREST. [Presiding.] Nor their husbands, I guess.

Mr. CASEY. No.

We do not want to be responsible with the 85 percent of the fishermen in Seattle or elsewhere who conspire against the American consumer to increase prices. You know what Alan Greenspan does every time the CPI increases, he raises interest rates. That hurts our economy, we go in the hole.

If you look at page 13, you will see that the British Columbia fishermen engineer their market so that Americans pay record high prices for their halibut.

On page 14, you will see the guys in Homer have found out about that, and they want to work with the Canadians to keep the consumer prices record high. Our 15 percent minority is against that.

And lastly, on page 15, you see an expert saying fish supplies are getting fewer and fewer every year. So we submit to you that it doesn't make sense to conspire against the people with the most votes in America, consumers.

Page 16, we watch Newt Gingrich on C-SPAN every day, we love him, we believe in his "Opportunity Society." We don't see how any of this stuff, which comes right out of the Soviet Union's government plan, the central planning agency, helps get us there.

And I just submitted page 17 to show you that the government has told the Kodiak fishermen that the way of the past is over. You can deliver your fish from 6:00 in the morning until 6:00 in the evening and no other time. Call us before you get to town or you are going to jail.

And, Mr. Chairman, if the fisheries on the East Coast would like to be improved in a hurry, I recommend they contract the Alaska Department of Fish and Game, because they have learned a lot since 1959. They know what to do.

There is a guy here from Fish and Game. They could really help you get down the road to some real tough decisions that will increase the number of fish in the ocean. I hope you do that.

And if it is all right with you, Mr. Chairman, can we submit this stuff for the record? It is not really finished, but we would like to go over it with Dave Whaley and the others, see if we can't make some sense of it. Thanks.

[The statement of Mr. Casey may be found at end of hearing.]

Mr. GILCHREST. I think it is all right to submit it into the record. The staff, they are nodding their head; I guess it's OK.

I apologize for not being here. Has everyone given their testimony? I heard part of one, and all of one. Even though it will take more than five minutes, I think what I will do is we will sort of have a conversation until Mr. Saxton gets back, because I am sure he will have a couple of questions.

Mr. Casey, I can't see your——

Mr. CASEY. Yes, sir, I am.

Mr. GILCHREST. It is always compelling when you hear a personal story about the problems of regulatory reform of some sort causing two housewives to fight in a grocery store. And I suppose we can laugh at that, and to the extent that we are not close to it, it does sound humorous; but the personal tragedy that it inflicts upon people, that is a whole other story, and I think that is something we need to pay attention to.

And when I came in, I assume you were talking about ITQs or IFQs, and that you were apparently against the implementation of that particular policy. And it is my understanding that they have—we call them ITQs down here in Maryland, I guess you call them IFQs up there——

Mr. CASEY. We call them AIDS, sir, AIDS; once you get them, you are going to die before long. Like Charles Dickens, A Tale of Two Cities, between the haves and the have-nots, your society will change. It is the exact opposite of what Newt is trying to accomplish.

Mr. GILCHREST. Would you—it is my understanding, at least in part, that the AIDS or the ITQs or the IFQs or whatever are, to some extent at least, an experiment on how we can limit access to the limited fish stocks or reduce overcapitalization.

Would you agree that there needs, in this day and age, to be some policy of limiting the number of fishing boats that can catch the stock?

Mr. CASEY. No, sir, because right now we just finished a crab season in the Bering Sea where about 280 vessels fished. If we go to ITQs, guess how many vessels we get—480. It is a bureaucracy to create wealth for the haves versus the have-nots.

Mr. GILCHREST. You say how many?

Mr. CASEY. Two hundred eighty under open access now. If we go to the ITQs, in tanner crab we are going to have 480 boats, because of the way the vessels qualify.

Mr. GILCHREST. I see.

Ms. Hall, you are shaking your head. You don't agree with that?

Ms. HALL. There has been no allocation scheme formulated.

Mr. CASEY. Sir, one of the Council members is here, a voting member from the Alaska Department of Fish and Game. He had the staff at the North Pacific Council do all these scenarios to see how many boats would be in each category if you did such and such. And that is where I quoted the 480 from; I didn't make it up. The staff gave us the number.

Mr. GILCHREST. So, Mr. Casey, it would be your recommendation that there be no limited access at all to any of the fisheries?

Mr. CASEY. Yes, I was here 20 years ago when we wrote the Act, and we never guaranteed anyone's income. We never guaranteed anyone's investment. We just had an opportunity to fish. And see this guy right here? He had the best three years of his life in an open access fishery in the same fishery that Margaret Hall is crying wolf about. Margaret Hall's father is a 50 millionaire; her brother is a 20 millionaire. I mean, the haves and the have-nots like you have never seen it before, sir.

Don't buy this line. Let the natural cream of America's industry rise to the top and get what they can. If you insure investments on positive things——

Mr. GILCHREST. I think I am going to stick to the question about limited access or overcapitalization. And Mr. Amaru, is that how you pronounce that?

Mr. AMARU. Pretty good. Amaru. Always easier than it seems to be.

Mr. GILCHREST. Mr. Amaru, could you address limited access from a different perspective from Mr. Casey, being from New England? Is this something that, to frame the question, is this something that we in the Federal Government should administer? Should we be the ones to make a policy as far as coming up with the problem of overcapitalization?

Mr. AMARU. I think it is an issue that definitely needs to be addressed, but my way of addressing and answering to you would be that there are eight regional Councils, and there are eight regional Councils because there are specific regions that have different needs and different solutions.

I personally would believe that if the particular area, the Council, the individuals who participate in the fishery, feel that there is room for an ITQ in their particular fishery, that is up to them to decide. If in New England we feel that there is a need for a moratorium on new entrants into the industry, which is what we did believe and was passed, then we have a limitation on the number of new entrants into the fishery.

I certainly understand the issue that he is making, but I also understand that there is more than one way to conserve a resource. I don't agree with him that there should be open and unlimited access to a resource, not once that resource has been overcapitalized. In my case, it has been. I can't address their situation; it is quite different than mine. But in New England, we have to figure out ways to allow people to, yes, make a living, go out into the industry, support their families and the country itself for its fish needs, but not to the extent where you destroy the resource.

Apparently, their resource is doing quite well, amazing to me as it is. Maybe they are 20 years behind us or something, I don't really know; but I also know that in the theory of the loss of the commons, it will eventually get to the point where the capitalization will exceed the supply. It has happened on every other common we have ever had. It has happened in New England.

But to answer your question, I would say if their regional Council feels that this is an area that has merit, then that is the way it should be handled, through their regional Council.

Mr. GILCHREST. If we are looking at the regional Councils—and I would like everybody, anyone that wants to respond, just please feel free to jump in. But, Mr. Amaru, before I left, you made some comment about the makeup of the Councils as far as diversity on the Councils was concerned—from commercial fishermen, to recreational fishermen, I guess to people with science backgrounds and so on. Would you be in favor of a percentage of each of those categories on the Council?

Mr. AMARU. A percentage? I don't know how I would do it.

Mr. GILCHREST. Twenty-five percent marine science background, 25 percent commercial or whatever?

Mr. AMARU. I think that I agree with most everyone—I am a commercial fishermen—who has spoken here today, that there needs to be the ability to use the best potential for decisionmaking, for the interest of the economy, the regional economies that rely on the fish.

But at the same time there needs to be a way to present the alternative viewpoint. And I don't know about the specific numbers. Somehow—I would say that I would encourage there be 50 percent fishermen on a regional Council. And I don't know how you divide up the rest of it, 25 percent—we already have fairly good science, we have people from the National Marine Fisheries Service, we have our State regional fishery directors, all of the States of New England have their regional directors or their appointees on the Council.

What we don't have are conscientious consumers. We don't have people representing the resource for no other reason than they believe that the resource should be abundant and healthy.

Fishermen want to have abundant, healthy fish stocks, but for completely different reasons: so that they can harvest them. And unfortunately, because of the way we operate in our system, being an open system, we thrive and we do extremely well in efficiency, which is where we are. We have overcapitalized.

Mr. GILCHREST. You are saying there ought to be someone who is concerned about the resource but from a consumer perspective?

Mr. AMARU. One avenue, yes, one perspective.

The people in my town have to pay $9, $10, $11 a pound for a piece of flounder. Where I can show you catch statistics, I was only getting 30 cents a pound for it in 1981, when I was getting 4- and 5,000 pounds a day. Now I don't get 4 or 5,000 pounds a year of those fish.

Mr. GILCHREST. So you are saying it would be prudent for us to entertain the idea of saying, at least in general terms, the type of people that should be on the Council—certainly commercial fishermen, people with marine science background, academics, a consumer that may not have any experience in the fisheries, but——

Mr. AMARU. A consumer advocate, I would say—an individual who is not just a housewife, I think that is kind of going to the extreme; I mean, I would like to see a housewife, actually, but that is going to the extreme—a consumer advocate, a person who is trained in understanding the needs of the industry at the same time as representing those individuals who are going to pay the final price on the product.

I think in my testimony I state fishermen belong on the Council, no question about that. They represent the greatest economic impact, although maybe the recreational man, I include him under commercial fishing interests. However, there is room for conservation, mainstream conservation organizations, consumer organizations, and the best science available.

Mr. GILCHREST. I am going to let Mr. Torkildsen catch his breath and Mr. Studds—are you ready?

Mr. TORKILDSEN. Yes, I am ready.

Mr. GILCHREST. OK. I will yield to Mr. Torkildsen.

Mr. TORKILDSEN. Thank you, Mr. Chairman, and I appreciate the chance to question. I apologize, because in a few minutes I will have to again go across the street, but I will try to get back for as much of this as possible. Just a few quick questions.

For Ms. Dorsey, I noticed in your written testimony which I was reading through, you did say you thought that Georges Bank had to be closed for a number of years. I applaud your honesty, because that is at least a statement I have not been able to get from anyone for the record from NMFS or NOAA. Could you expand upon that a little bit, and what length of time period do you think is necessary for stocks to rebuild? Also, what steps would you advocate for transition?

Because obviously this causes a great amount of dislocation, some of which has already begun. But what is your long-range forecast? How many years do you see necessary to replenish the stocks and what other steps need to be taken, in your perspective?

Ms. DORSEY. The data that I have seen about this has come from the plan development team that is working for the New England Council on developing Amendment 7 to the groundfish plan. And the amount of time needed for the first step of rebuilding the stocks on Georges Bank varies from stock to stock for the three major stocks of cod, haddock and yellow tail flounder. Yellow tail flounder has the shortest time, and it is three or four years if fishing pressure is significantly reduced to get back to the minimum acceptable biomass, where average recruitment can be expected.

Haddock has the longest time period, about 13 years, though it is a little shaky because there hasn't been a recent assessment of haddock.

Cod is in the middle, about seven years. And one of the questions before the Council, of course, will be what to do when one of the stocks on Georges Bank has recovered and the others haven't. That is one of the problems with any multispecies fishery.

So, in any case, it is going to be a number of years before directed groundfish fishing can be allowed on Georges Bank again.

Mr. TORKILDSEN. And what would CLF, what are they advocating for a package of steps? I take it that you are not just saying, let's close the fishery and we can worry about the rest later on. I mean, do you have a comprehensive plan you have been advocating, or are you just taking—are you just offering an opinion on limited aspects of the problem?

Ms. DORSEY. Well, obviously, as I think you said earlier, you can't just close Georges Bank, because those boats will move someplace else and will create the same kind of problems in the other waters off New England and in the mid-Atlantic. Something has to be done to make sure that those areas aren't overfished as well.

The New England Council is talking about a quota approach, setting a limit on how much fish can be taken from those other areas and closing the fishery once that limit is established. And I think that is probably what is going to be needed.

There are difficulties with quotas in multispecies fisheries, it will have to be sorted out; but I think there have to be limits and the fishing has to stop when the biological limits have been reached.

Mr. TORKILDSEN. Another line of questioning I had with Mr. Schmitten, dealing with discarding of carcasses and whether—or to the extent that that poisons the habitat. From your knowledge, do you support his statement that, you know, discarding carcasses can harm or destroy a habitat for fish spawning?

Ms. DORSEY. I have to say I have never seen any good information about that. I have wondered what happens to all the fish that are thrown overboard. And it is not just haddock discarded for regulatory reasons. I think that number is relatively small compared to the number of fish discarded because they are below the minimum size limit or because they are species that can't be marketed. I am assuming that those carcasses are going to feed a lot of hagfish, which are detritus feeders, and going to feed some other detritivors on the bottom.

But there could well be times when there is a souring of the bottom, a buildup of acidic conditions or loss of oxygen because of all those fish. I would not expect this to be a problem on most of Georges Bank because botton currents are so strong. But I have never seen any good information to know whether or not we have any of those problems in New England.

Mr. TORKILDSEN. I see I still have the green light, so if we could talk a little bit more about haddock, you mentioned just a moment ago that you believe it takes 13 years to return to critical biomass for haddock; did I understand that correctly?

Ms. DORSEY. If I remember correctly, that is the figure. It is not a very sure figure because haddock has not had a recent assessment; that will come sometime this spring or summer, and there will be more information then. But it is going to be a very long time for haddock. It is a very discouraging situation for haddock.

Mr. TORKILDSEN. OK. My understanding is that haddock is ready to spawn in usually three to four years. Could you explain why beyond that cycle it takes longer to return to what you are defining as "critical biomass"?

Ms. DORSEY. I think the reason is that haddock seems to produce good year classes much less frequently than cod and yellow tail flounder do. Also, haddock has been reduced to such a very low level.

Mr. TORKILDSEN. OK.

Before, Mr. Chairman, if I could ask to submit written questions, because obviously I have many more questions than my time will allow. But I do appreciate Ms. Dorsey's answer and the testimony of all the witnesses.

Thank you. I yield back the balance of my time.

Mr. SAXTON. Well, thank you.

Mr. SAXTON. The gentleman from Massachusetts.

Mr. STUDDS. Thank you, Mr. Chairman. I want to apologize but explain to everybody, in case you are wondering why we are all constantly coming and going, it is not because we have no interest or respect or affection for you; it is because our life is beyond rational, and we all need to be literally in five places at once. And it is very disturbing, and I apologize. I know it may seem inattentive on our part. It is not.

I want particularly to welcome my constituent and friend, Bill Amaru, from Cape Cod. I understand you are having some serious

back problems, and I appreciate your being here. I assume that is for having been kept ashore. It couldn't possibly have happened on your boat.

Mr. AMARU. The muscles are weakening in the lower and upper back, especially where it is connected.

Mr. STUDDS. I know the feeling. You have a very—you are a small boat fisherman. Describe your boat and your gear and what you do.

Mr. AMARU. Certainly. I have a 45-foot, what we call in New England a "pocket trawler." It basically operates the same way as the larger vessels do, with the modified size of equipment. We run nets which are considerably smaller, less injurious to the habitat.

I would like to explain to——

Mr. STUDDS. It is OK to say that when Mr. Young is not here.

Mr. AMARU. I was hoping I would have an opportunity to explain to him what happens when you drag a 4-ton scallop rake across the bottom. It is 20 feet wide, and does do some habitat rearrangement. I don't know whether it is destructive in the long run. I mean, there was a glacier that plowed through the whole thing about 10 thousand years ago. There is a hell of a lot of fish on it now, or were. But I am certain that some of the things that we do affect the habitat. It makes the environment these fish need to live in less homey.

But at any rate, it is a small trawler. We operate in Chatham.

I also have a long line operation that I set up on the same boat. And we use hooks to catch cod and haddock with the long line equipment. And with the net equipment, we pretty much concentrate on the flatfish which live on bottom, very smooth, much like the hallway outside the door here. And the hard rocky bottom that we have, we use the hooks on—can't efficiently drag a net with a small boat like mine over it.

Mr. STUDDS. I suspect if those scallop trawls came through with the same frequency that the glacier did, that it might be acceptable.

Mr. AMARU. Exactly.

Mr. STUDDS. It is a little more frequent.

How far offshore do you fish?

Mr. AMARU. I used to fish out to the edge of the Georges Bank, and I don't fish that far now because it is closed. Most of my fishing takes place within 20 miles of the coast of Cape Cod, Nantucket Shoals.

Mr. STUDDS. Now, I mentioned earlier that my fear—where have all the big boats gone? Where are the big guys now they can't be on the bank?

Mr. AMARU. They are following us around.

Mr. STUDDS. Are they really?

Mr. AMARU. Getting our coordinates from our tows that we have worked over many years to establish, because they are closed off to the offshore grounds.

Mr. STUDDS. So, in fact, it is an increased concentration in the inshore grounds?

Mr. AMARU. There is no question about it. The danger that we are facing now is to relieve the pressure on the offshore grounds, they have deflected the effort to the inshore grounds. Georges Bank

will recover because it is an extremely aggressive conservation package that they put together; and at the time that those grounds have rebuilt, I have the feeling the inshore grounds will be virtually wiped clean. And I am very concerned about that aspect of the recovery plan.

Mr. STUDDS. Is the inshore fisherman represented at all on the Council at this point?

Mr. AMARU. The smallest vessel that I know of on the Council, I believe, is the dragger from—no, excuse me, there is a small boat operator from New Hampshire; I believe he has a 50-foot gill-netter. That is the smallest boat that I am aware of that is represented.

Mr. STUDDS. I first all want to compliment you. I actually read your testimony. I have a habit of doing that for people from Chatham. And as you can see, it is at least—it tends a little bit toward philosophy or even, I don't want to say poetry, but it is not your average congressional testimony. It is nice to read something like that. It must have been—I was going to say it was a severe winter, because you had a lot of time to do a lot of thinking, but it wasn't that bad a winter, was it?

Mr. AMARU. No. We can't fish. We have a lot of time on our hands.

Mr. STUDDS. It is a combination of that and winter, not much else to do.

Mr. AMARU. We wax philosophical quite often down on the dock. By the way, the dredging is coming along super.

Mr. STUDDS. Glad to hear that. It was too cold to look at last time I was there.

I looked at your set of recommendations, Bill. What else? You have got whatever time we have with the light there. You know what we are wrestling with better than we do. You are the first commercial fisherman I have ever heard say we ought to put more scientists and environmentalists on the Council. I hope you will be all right on your way out.

Mr. AMARU. You will be surprised how many closet fishermen are coming out of the closet on that issue, Congressman.

I also want to mention something about a means to raise money. I don't want the government to do anything further, as I pointed out in one of my recommendations, financially, to aid the industry. I think we are independent; I want to remain that way. I don't want to become like the Department of Agriculture where we are relying on stipends and grants. I would rather see the commercial industry, much like the Chatham Co-op did in the late 1970's, take 1 or 2 percent of our income and on a revolving basis—our period of time was three years—they would absorb 2 percent of our income to help defray the cost of running our co-op.

We own the co-op, but we need to be—we were cash short. We all contributed in for three years with no refund. After the third year, we started to receive back what we put in the first year. It worked out very well.

Mr. STUDDS. Excuse me. Just in case the winter is prolonged and unforeseeably severe and you can't fish and you have some more thinking time, I would really appreciate it if you would devote it to some imaginative and innovative ideas as to how in the world

we find the resources, perhaps part public and part industry, to get some of these big guys out of there.

Mr. AMARU. I will try.

Mr. STUDD. I will appreciate it. Take care of your back.

Thank you, Mr. Chairman.

Mr. SAXTON. Thank you.

Ms. Dorsey, we have asked, or particularly Mr. Gilchrest asked some previous panelists to describe their concept of environment and habitat as it relates to fisheries. And incidentally, I might note that I am now flanked on my right and my left by two people who definitely understand something about habitat. And I would like to think that I do as well.

But the void between us has permitted me to say that, because I can't say that when the gentleman from Alaska is here. And I say that kiddingly. He gets excited about things from time to time, but we really do—we really are interested. And I have had folks in my office and folks communicate with me who are interested in the fishing industry, fishermen who recognize how important habitat is; and we are very interested in your concept of, at least from your vantage point, what it is that we ought to do within or outside of Magnuson to address issues that have to do with habitat.

Ms. DORSEY. Well, I actually think that what you have in H.R. 39 is quite good. You say that the Secretary of Commerce should define essential habitat for each of the fisheries. If I understand it correctly, that would not put the burden on the Council, as Joe Brancaleone was fearing, but the work would be done by the scientists at the National Marine Fisheries Service, which are, I think, the appropriate people to do that. The first step is to figure out for each stock what is the essential habitat, so then we can make sure that we are protecting it.

And I would like to give one example of that, for herring on Georges Bank, which are just now coming back from being completely wiped out by the foreign overfishing in the 1960's. Herring on Georges Bank appear to spawn in quite a limited area along the northern edge that is gravelly on the bottom. They need areas that are swept by strong enough bottom currents, and the eggs of the herring stick to the bottom and stay there for the two or three weeks it takes before the eggs hatch. It is a restricted area where the herring eggs are, and it is a restricted time period when they are sitting there on the bottom waiting to hatch.

During that time period, it seems to me that no mobile gear should be allowed in that part of Georges Bank, to make sure that the eggs survive to hatch and then swim up into the water column. That is one example, with herring.

With groundfish, there is a lot of concern about what happens to the juveniles. Groundfish eggs are up in the water column. They are pelagic rather than benthic. After the eggs hatch and go through larval development, they settle down to the bottom. They are quite small and they are very tasty.

The job of the very young groundfish, when they first settle, is to hide from the hungry predators all around them. One of the concerns that I and other people have about the effects, again, of mobile gear on the bottom is that it destroys the small features on the bottom, the worm tubes, the sponges, the little algae perhaps, that

might provide cover for those young fish and might allow them to escape from predators and then grow and provide fish for the fishermen to catch. We need to know more about that to know what are the most important juvenile areas for young groundfish.

But that is another example of the kind of fishery habitat that we need to identify and then make sure we protect so the fish have what they need to complete their life cycle. I think that Mr. Young was acknowledging that anadromous fish need to have their rivers to spawn in, but I believe there are comparable areas out in the ocean, comparable to rivers for anadromous fish, that the ocean-dwelling fish need in order to complete their life cycle.

Mr. SAXTON. And I think you are saying that there are then—perhaps areas of habitat should be evaluated in terms of their critical importance to healthy fish environment. Is that a good way of putting it?

Ms. DORSEY. Yes, that is right. And depending upon the habitat and what is going on, there might be different protective measures needed. But the first step is to know what the habitats are, to identify them, and then figure out what we should do.

Mr. SAXTON. And do you believe that this bill moves in that direction?

Ms. DORSEY. Yes, I do, I think it is very good.

Mr. SAXTON. Thank you.

Ms. Hall, I was taken by your testimony, because you spoke from the heart in a very personal way about your situation. And I can't help but ask the question—again, I think I know the answer—I think you said your family has been in the fishing business for a hundred years. But the investment that you seem to make for harvesting a dwindling supply of fish seems to be a losing situation. And I guess the question is, why do you bother to do it? And I don't mean that in any kind of a flip way. It is just, from a business point of view, it seems like you are in effect throwing good money after bad.

Ms. HALL. Well, as I started to say in my testimony, those who put more capital into their vessels are the ones who do benefit and do get the most fish. So in order to keep up with the Joneses, you have to do that, continue to reinvest in your asset.

Mr. SAXTON. OK. Well——

Ms. HALL. Does that answer your question adequately? It is very simple.

Mr. SAXTON. I guess it does. And again, I didn't mean to ask a difficult question. I was just curious as to what the answer to that was.

Well, we thank you all for being with us today, and the gentleman from Maryland has one final question.

Mr. GILCHREST. I will make it quick; I don't want to hold everybody here too long. I would just like a brief response from each of you.

The question is, should we have an MSY threshold that Councils must abide by, given to them by NMFS via the SSC Councils, committees, so that when the Council gets what MSY threshold is—and I think we all want the Councils to be independent, we all want them to be flexible, we all want them to be sensitive to the complicated issues of the fisheries. It seems to me they could be

that way if the only thing we required of them specifically was that they—here is MSY, deal with your situation, whether it is New England, North Pacific, Gulf or wherever it is. And I would really be interested in just a quick response, starting with Mr. Casey.

Mr. CASEY. Since 1976, we have had to abide by an MSY in Alaska. I am unaware we have ever gone over it.

Mr. SEATON. Yes, MSY, unfortunately being maximum sustained yield, always pushes us at the edge. It is not a precautionary approach, and is not a multispecies approach. When we look at it as a single species, what is the absolute maximum amount that we can take, we allow no precaution. We are pushing ourselves to the edge.

Optimum yield, as reduced from MSY, makes a real good thing instead of being able to increase over MSY. But it should be reduced beyond the maximum, because we don't have firm enough data. In fact, in the Code of Federal Regulations, we will find optimum yield—there is a real good definition in there. Well, it is not a definition, it is an instruction that says optimum yield should not exceed the natural mortality of stock unless best available scientific data says—you know, allows that.

The only problem is that whatever data you have is the best scientific data—scientifically available data. We need to clean that up and say that unless we have credible scientific data or scientific data that we have some confidence in we cannot increase the optimum yield above the natural mortality. If we would do that and not let OY go above the natural mortality unless we have good scientific data to substantiate it, we would make great progress in reducing overfishing and getting down from where we are tending toward overfishing.

Mr. GILCHREST. Ms. Hall.

Ms. HALL. No, I don't know of any cases that it exceeded it. In some cases, as Mr. Schmitten said, the Council has elected to have a lesser amount as the TAC, from the recommendation of the scientific committee.

Mr. GILCHREST. Thank you.

Ms. Dorsey.

Ms. DORSEY. Yes, for New England, if we had been doing that, we wouldn't be in the trouble we are in now. If there had been a limit on the catch of groundfish since passage of the Magnuson Act, I think that the groundfish would be healthy today. And I think it would be appropriate for scientists basically to set how much fish can be removed from the ocean and then let the Councils decide how it should be caught and how that catch should be allocated.

What happened in New England is there were quotas which set a limit on catching groundfish until 1982, and there were lots of big problems with those quotas, and the Council chucked the quotas out the window in 1982 for understandable reasons. But the problem was, the New England Council did not then substitute any other limit on the catch of groundfish.

There was no limit on the number of fishermen, on the amount of time fishing, on the amount of fish landed or anything like that. And that is why the fish stocks have gotten so badly depleted.

So I think that what you are suggesting is indeed appropriate, that a level of catch—I don't know whether it should be MSY; it

may need to be adjusted downward from MSY in order to make sure that the level isn't too high over the long-term—but some level of catch be determined by the scientists, and let the Councils decide how to catch that amount.

Mr. GILCHREST. Thank you.

Mr. Amaru.

Mr. AMARU. Oh, gosh, this is a tough one for me. Frankly, I think the term is moot. If you can understand that I am coming from an industry that has been devastated by overfishing, and we understood, I think the people on the Council understood—you know, we come from an area that is the home of Woods Hole Oceanographic Institute. We had a tremendous amount of available research. And the people on the Council, the National Marine Fisheries Service, were putting the information on the line.

The right decisions weren't being made. Ellie just voiced I think what could have happened would have been better, could have stuck with what we originally had with the quotas, but for obvious reasons they didn't work.

What I would say about optimum yield is, you have to remember you are not talking about a forest where you go in and count the trees and you can project and say redwood takes this long to grow or blue spruce takes that long to grow. These fish operate within a system that we don't understand, not even in the slightest little bit do we understand how it works.

By the way, there are fish in our fishery back in New England right now, little tiny ones, showing up all over the place. And it really throws a lot of questions as to whether or not haddock are going to take 13 years to come back. I predict that in two years there will be a reasonably strong supply of haddock on Georges Bank again; and we are going to be right in the middle of Amendment 7, which will prevent us from being able to harvest any of them. The same goes for codfish.

It is extremely dangerous to deal with a sustainable maximum yield in terms of true, hard numbers. I don't believe they exist. It always has to be cautioned with an idea toward being extremely able to lower that—not to increase it, but to lower it. And if you err on the side of conservation, you are giving the fishermen a future, something we haven't been doing.

Thank you.

Mr. GILCHREST. Thank you.

Thank you, Mr. Chairman.

Mr. SAXTON. I thank the gentleman.

I want to thank this panel for not only your very useful and articulate testimony, but also for your patience in that we have been here now for in excess of four hours. And I guess I also should state at this point that there may be some additional questions that we will be in contact with you about if other Members of the committee have such questions, and the hearing record will remain open for your responses.

I guess I would also like to say at this point that it should be obvious to everyone that we have a difficult, but very important task ahead of us. And we will proceed to move forward to try to solve the many problems inherent in the fishing industry, and spe-

cifically with regard to the Magnuson Act and the Magnuson process.

So if there is no further business, I again thank all the Members of the subcommittee for their cooperation, particularly the Ranking Member; and the committee stands adjourned.

[Whereupon, at 3:17 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

TESTIMONY OF

ROLLAND A. SCHMITTEN
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND OCEANS
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1995

Mr. Chairman and members of the Subcommittee: I am Rollie Schmitten, the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). I appreciate the opportunity to present the views of the Department of Commerce (Department) on reauthorization of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and H.R 39, the Fishery Conservation and Management Act Amendments of 1995.

The Department supports reauthorization of the Magnuson Act and recommends enactment of H.R. 39 based on the following comments. I will comment briefly on several key provisions of H.R. 39 and provide limited suggestions for additions to the bill. Some additional comments of a technical nature are attached.

First, I would like to compliment Chairman Young for introducing this legislation. The Administration and the Committee appear to be of one mind regarding the most pressing needs for efforts to

build sustainable fisheries and reauthorize the Magnuson Act. We also commend the Resources Committee for its prompt action on H.R. 39. We look forward to working closely with the Chairman and the Committee in developing amendments to the Magnuson Act that will ensure the future of the Nation's marine fisheries.

Before I discuss our comments on the bill, I would like to describe our vision for the future of marine fisheries as background to and a context within which amendments to the Magnuson Act should be made. This vision will, hopefully, provide some common ground for discussions on proposed amendments to the Magnuson Act. Our goals are to seek the greatest long-term benefits possible to the American public from our marine fishery resources and to manage these resources. Meeting these goals will increase the Nation's wealth and, in turn, the quality of life for members of the recreational and commercial fishing industries and dependent communities. We will achieve this goal by building and maintaining healthy fish stocks and habitats within which the commercial fishing industry can operate to provide more jobs, increased economic activity, and produce safe and wholesome seafood. Recreational opportunities and related economic activity will also be greatly enhanced by our efforts in this area.

I believe that we must seek to realize this vision by concentrating on two areas: (1) refocusing on increased

scientific information to guide policy development and fishery management policy and planning, rather than letting controversy and uncertainty drive the decision-making, and (2) undertaking an aggressive approach to stewardship of our trustee resources to rebuild overfished stocks and maintain them at maximum sustainable levels, thereby avoiding the enormous economic and social consequences that accompany attempts to repair damage to resources after it occurs. This means being conservative in the management of fisheries today to assure sustainable levels of harvest tomorrow. It also means the use of management approaches that discourage both wasteful fishing practices and the investment in more fishing vessels than are needed to harvest the available fish.

The first area of action can largely be accomplished through in-house activities. We have improved, and will continue to improve, our scientific data collection activities, resource surveys, biological studies, analyses and modelling of fish stocks, and advanced fishery predictions. Our proposed Fiscal Year 1996 budget includes an increase of more than $23 million for our data collection programs, making them a top priority. Progress in the second area is critical and will require amendment of the Magnuson Act, as well as a refocusing of in-house efforts, to achieve our goal of sustainable fisheries.

Foremost, we support H.R. 39 for its attention to conservation issues. We strongly support the measures in H.R. 39 which address ending or preventing overfishing. Requiring action by a Regional Fishery Management Council within one year of notification that a fishery is in an overfished condition is a significant measure. Inclusion of definitions for overfishing and rebuilding programs which emphasize maintaining stocks at, or restoring stocks to, their maximum sustainable yield on a continuing basis are critical to ensuring the continued productivity of fishery resources. We cannot afford to continue the current practices permitted under the Magnuson Act where stocks are legally allowed to be fished down to, and managed at, the point where overfishing occurs. We can do better and the Nation deserves better.

The Department supports strongly the concepts of identifying essential fish habitat and providing for improved consultation with other agencies. We cannot rely solely on regulatory measures to restore our fisheries. Measures to increase protection of fish habitats will provide the long-term foundation necessary for viable commercial and recreational fishing industries. Progress in addressing the issues of overfishing and rebuilding depleted stocks will be short-lived if we do not ensure adequate fish habitat. Given the importance of this issue, we are pleased to note that conservation community and fishing industry representatives have been working together

towards enhancing habitat conservation as part of this reauthorization. We support these efforts.

I would like to highlight two specific recommendations regarding the habitat provisions of H.R. 39. First, the description of essential habitat in fishery management plans should include measures necessary to minimize adverse impacts on that habitat from all sources, not just those related to fishing activities. Second, the actions of the Secretary should be modified to require that the Secretary prepare guidance on the identification of essential fish habitat in general and provide a specific recommendation to the councils as to the essential fish habitat for each managed species, prior to incorporation of the description of essential habitat into the plans.

We also support the provisions in the bill that deal with bycatch. Much like habitat degradation, this is a very serious threat to achieving full benefits from our living marine resources. Large bycatches of undersized and non-target species which are not utilized have significantly reduced the populations of many of our marine fish stocks. The emphasis on bycatch, focused by the inclusion of a new national standard and the mandatory requirement for FMPs to contain information on bycatch, is well taken and essential in our view. The new standard, in particular, would allow fishery managers to develop measures that

significantly reduce economic and regulatory discards, and the bycatch on non-target species.

In addition to these amendments, we need to, and will, seek innovative ways to reduce bycatch, including the use of incentives. Incentives might include harvest preferences for those fishermen with low bycatch rates. However, we are concerned that measures such as incentives and harvest preferences must be designed carefully to prevent "due process" problems. For example, we do not believe that such programs could prohibit some fishermen from receiving allocations of, or access to, fish stocks because of their individual bycatch levels without also providing for some sort of administrative hearing in advance of the agency decision.

While the Department supports the majority of the provisions in H.R. 39, it is opposed to the finding in section (5)(b) that no surplus exists in the Atlantic mackerel or herring fisheries. The provision is inconsistent with the United Nations Convention on the Law of the Sea, which the United States has signed. Additionally, the provision may prevent establishment of joint ventures between the U.S. fishermen and other countries for these species, is likely to affect negatively our GIFA relationships, and may affect current fishing agreements between the U.S. and other countries regarding U.S. fishing vessels in foreign waters.

With the collapse of the New England groundfish fishery, we expect U.S. fishermen to harvest an increasing amount of these underutilized species in the coming years. Therefore, we do not foresee the designation of a total allowable level of foreign fishing for these species in the next few years. In fact, the Mid-Atlantic Council recently recommended, and the Secretary of Commerce published, a proposal for a zero total allowable level of foreign fishing for Atlantic mackerel. The Department understands the need to allow U.S. fishermen to harvest these species and develop markets for them.

We strongly encourage the Committee to include user fees associated with individual harvest share programs in H.R. 39. Establishment of an annual fee on the value of fish allocated under individual harvest share programs, such as individual transferable quota programs (ITQ), would recover costs associated with this specific form of management. Effective implementation of ITQ programs requires additional strict enforcement and other measures to ensure that the recipients of ITQs receive the benefits that are expected to accrue from such programs. Since such benefits will accrue directly to the holders of ITQs, to the exclusion of others, it is more equitable to fund such measures from fees paid by the beneficiaries rather than the general receipts of the Treasury that represent all tax payers. The costs associated with administering ITQs are substantial -- an estimated $3.5 million per year for the Alaska halibut-sablefish

program alone -- and should not be borne solely by appropriated funds.

As part of its Fiscal Year 1996 budget request, the Department is proposing authority to collect a fee on the value of the fish authorized to be harvested under ITQ programs. We estimate that such a user fee would generate approximately $10 million when fully implemented. It is important that these fees be dedicated to the management and conservation of marine fisheries with a large portion of the funds going back to the region from where they were derived. Specifically, the Department suggests that such funds be used for programs important to, and directly benefiting, the fishing industry, including: collecting, processing, and analyzing scientific, social, and economic information; placing observers onboard domestic vessels; improving enforcement; and educating resource users.

The Department supports inclusion of strong provisions that would address the appearance or possibility of a conflict of interest on the regional councils. With regard to the conflict of interest provisions in H.R. 39, we are concerned with the definition of a "significantly affected" interest in section 8. As written, the definition is too narrow and we do not believe that it offers adequate protection against conflict of interest. We are also concerned that the bill leaves entirely within the discretion of the voting member whether or not to consider

disqualification. While the provision in H.R. 39 is a step in the right direction, we would like to work with the Committee to develop appropriate language to strengthen this provision.

We strongly urge the inclusion of a nation-wide data collection program similar to that proposed in last year's Administration bill. Our current authority is limited to either the voluntary submission of data or to individual fishery management plan recordkeeping and reporting provisions, and individual fishery data collection programs in advance of a plan. To improve the management of our marine fisheries, there is a need to gather data in a consistent form and manner across the nation to provide an underpinning for the various analyses of impacts the Magnuson Act and other applicable law require. Our intent with such a program is not to increase the reporting burden on fishermen; rather, we seek to simplify and reduce it. One significant benefit of a nation-wide program to fishermen would be to prevent the use of various logbooks that are often redundant, complex, and collect data in different formats. This amendment would provide the Secretary with the ability to integrate the current data collection programs of NMFS, other federal agencies, the states, and the fisheries commissions into a comprehensive, consistent, nation-wide data collection and management system.

Finally, we suggest that the Committee consider several other additions to H.R. 39 as detailed in the attachment to my testimony. Briefly, we recommend addition of provisions to: (1)

extend the applicability of criminal penalties to assaults on persons employed by or under contract to NMFS and involved in collecting fishery information; (2) provide for judicial review of permit sanctions; (3) allow the sums received as fines, penalties, and forfeitures of property for violations of any fishery resource law to be used for the enforcement of all statutes dealing with living marine resources, instead of just for fisheries; (4) provide observers with the same lien priority for past-due wages as is currently provided for seamen's liens under admiralty and general maritime law; (5) create a rebuttable presumption that a vessel with gear capable of use for large-scale driftnet fishing is engaged in such fishing; (6) clarify the ability to pay provision; and (7) specifically protect observers from harassment.

Thank you, Mr. Chairman. This concludes my testimony. We support reauthorization of the Magnuson Act, and we look forward to working with you and the Committee in crafting meaningful improvements to H.R. 39. I would be happy to answer any questions you or other members of the Subcommittee may have.

SPECIFIC COMMENTS ON H.R. 39, THE FISHERY CONSERVATION AND MANAGEMENT AMENDMENTS OF 1995

When setting deadlines, we suggest that the Committee consider including more general timeframes (e.g., one year, 18 months) following enactment rather than specific dates.

Section 3. FINDINGS, PURPOSES, AND POLICY

Section 3(a): The current language restricts the findings and purposes statements regarding habitat losses and increased protection in section 3(a)(1)(B), 3(a)(3), and 3(b)(3) to "essential" fish habitats only. We recommend that the bill be broadened by referring to fish habitat in general.

Section 4. DEFINITIONS

Several of the definitions are vague and should be clarified. For example, in the definition of a "fishery dependent community," the term "substantially dependent" on the harvest of fishery resources should be more specifically defined. It is not clear what percentage of the community's income would need to be derived from fishing to be classified a fishery dependent community.

Section 5. FOREIGN FISHING

Section 5(a): We suggest that permit approvals be addressed within section 204(b)(6) of the Magnuson Act.

Section 5(a)(2): We suggest deleting section 204(d)(3)(D), which requires a determination of the capacity of vessels of the United States, or intention of these vessels to utilize their capacity, to transship fish products before issuing a permit to a foreign vessel. Our understanding is that capacity to transship is a variable function of space and time. Schedules in the shipping industry change from moment to moment, and, therefore, the available capacities to transship fish products at a specific time and geographic location change virtually instantaneously.

Establishing U.S. capacity at a time and location might require only notice of an application to transship fish products in the Federal Register. However, this process would delay issuance of such permits, and work against the basic purpose of this provision, which is to provide additional options whereby U.S. fishermen may transship their production to foreign markets in a timely manner.

In addition, section 307(3) should require a U.S. fisherman to verify that the foreign vessel possesses the appropriate permit to conduct a transfer within State boundaries, prior to

conducting the transfer. The existing prohibition applies to the EEZ only and should be extended to transfers within State boundaries as well.

Section 5(d): Public Law 102-251 already amended section 201(e)(i)(E)(iv) to add "or special areas." This will become effective when the U.S. and Russian boundary agreement takes effect.

Section 8. REGIONAL FISHERY MANAGEMENT COUNCILS

Section 8(a): We do not support allowing a Governor to appoint a non-state employee as the "principal State official." The principal State official should be a State employee and in the State's policy-making chain.

Section 8(b)(3): We note that the mandatory removal provision does not apply to the Indian representative on the Pacific Council or to a non-State employee designated by a Governor under 302(b)(1)(A).

Section 8 (c)(1): We suggest that the phrase "who are required to be appointed by the Secretary" be joined with an "and" to the phrase "who are not employed by the Federal Government or any State or local government."

Section 8(e)(2): We recommend inclusion of a provision that would allow Councils, at their discretion, to extend the deadline in proposed section 302(i)(2) for major actions or upon request of the Federal agency.

Section 8(i)(7): We support a strong conflict of interest provision that protects the official processes of the councils. We are concerned with the language in this section, however, and would like to work with the committee to develop more appropriate language.

Section 9. CONTENTS OF FISHERY MANAGEMENT PLANS

Section 9(a)(1)(B): The Department recommends that the description of essential fish habitat in fishery management plans be modified to include the major threats to that habitat, as well as the actions necessary to conserve such habitat. Additionally, the Department does not support limiting the development of management measures to minimize adverse impacts to essential habitat to only those impacts "caused by fishing," as they are not a major problem for habitat on a national scale.

Section 10. AMENDMENTS RELATING TO MISCELLANEOUS DUTIES OF SECRETARY

Section 10(b)(3): The purpose of the amendment to section

304(f)(3)(E) to provide a reasonable opportunity to harvest a "fishing mortality level" is unclear.

Section 10(b)(5): Proposed section 304(f)(4)(A) would establish a plan development team (PDT) for each fishery management plan or amendment. The PDT would consist of at least 7 members of the advisory committee or working groups established under the Atlantic Tunas Convention Act (ATCA), and is exempt from Federal Advisory Committee Act. The PDT would "participate in all aspects of the development of the plan or amendment." The Department supports the establishment of this additional group, but requests flexibility in having the membership include some knowledgeable individuals who are not members of the ATCA committee. This would allow the Secretary to fill in the gaps if ATCA members do not have knowledge of all highly migratory species.

Section 10(d): The sequence for description/identification of essential fish habitat, and resulting actions by the councils and the Secretary, is confusing. The language should be modified to provide a streamlined mechanism for identifying essential habitat and subsequently commenting on, or making recommendations regarding, activities adversely affecting the identified habitat. The Department recommends that this section call for issuance of general guidance and specific species recommendations for the identification of essential fish habitat by the Secretary *prior* to incorporation of a description of these habitats by the councils in fishery management plans. This sequence utilizes the information and expertise available to the Secretary and the resource-use balancing capabilities of the councils. It would permit review of and comment on Secretarially-identified essential fish habitat by the councils and draft fishery management plan reviewers (e.g., fishing groups, environmental interests, governmental agencies, general public) as part of the plan development and amendment processes. In addition, the deadline for amendment of plans to incorporate descriptions of essential habitat should be replaced by a requirement for the Secretary to publish guidelines within a year of enactment to aid the councils in describing essential fish habitat in fishery management plans that includes a schedule for the amendment of the plans.

We recommend inclusion of a provision that would allow, at the discretion of the Secretary, the extension of the deadline in proposed section 304(h)(3) for major actions or upon request of the Federal agency.

Section 10(d): The regulatory amendment provision, proposed section 304(j), contains a mandatory 30-day comment period and a deadline for publication of the final rule on Day 60. Regulatory amendments can be as complex and as contentious as fishery management plan amendments and have been more frequently used.

The schedule provided is not sufficient to allow proper review, analysis, and deliberation of some of these actions. Complex regulatory amendments might require 45 days of public comment; many routine ones could require only 15 days. We recommend that the section be amended to provide for a public comment period of 15-to-45 days. Additionally, requiring a decision by the Secretary within 60 days on all actions is unrealistic.

Section 12. STATE JURISDICTION

Section 12(3): We believe the submission of data from internal waters processors required in proposed section 306(c)(1)(C) should not be restricted to submission to Councils, but rather should include the Secretary as a recipient.

SUGGESTED ADDITIONS TO H.R. 39

FEE PROVISION

User Fee Associated with the Individual Harvest Program: This amendment would establish an annual user fee on the value of fish allocated under individual harvest share programs, such as individual transferable quota programs (ITQs), to allow for the recovery of costs associated with this form of management. Effective implementation of ITQ programs require additional strict enforcement and other measures to ensure that the recipients of ITQs receive the benefits that are expected to accrue from such programs. The Department's Fiscal Year 1996 budget request proposes such a fee and estimates that it would generate approximately $10 million.

CONFLICT OF INTEREST AND DATA COLLECTION

Conflict of Interest: The Department supports the inclusion of strong provisions that would address the appearance or possibility of a conflict of interest on the regional councils.

Data Collection: We strongly urge the inclusion of a nation-wide data collection program similar to that proposed in last year's Administration bill.

ENFORCEMENT PROVISIONS

The Department recommends adoption of sections 12 through 15 of the Administration bill (H.R. 4430/S. 2138) introduced last year. These amendments are critical to providing adequate enforcement of the Magnuson Act in the future.

Extension of criminal penalties: This amendment would extend the applicability of criminal penalties to assaults on persons employed by or under contract to the National Marine Fisheries Service and involved in collecting fishery information in their official duties. Unlike observers, who were afforded protection under the Amendments of 1990, no prohibitions or criminal sanctions explicitly address assaults on statistical agents.

Judicial review of permit sanctions: This amendment would provide for judicial review of permit sanctions except when the sanction is imposed for nonpayment of a penalty or fine. Although the Magnuson Act provides that any person who is assessed a civil penalty may obtain a review of the penalty in U.S. district court, it does not provide explicitly for such review of permit sanctions. The two should be treated the same, especially since they may be imposed together in the same administrative hearing. However, judicial review should not be available when the sanction is imposed for nonpayment of a penalty or fine because the issue of liability has been litigated

previously. The amendment would also delete language regarding service to ensure consistency of service procedures with other district court actions in accordance with the Federal Rules of Civil Procedure. The amendment would add nonpayment of "any amount in settlement of a civil forfeiture imposed on a vessel or other property" as potential grounds for permit sanctions.

Enforcement: The amendment would allow the sums received as fines, penalties, and forfeitures of property for violations of any fishery resource law enforced by the Secretary to be used for the enforcement of all statutes dealing with living marine resources, instead of just for fisheries. The Magnuson Act does not currently provide for such monies to be used for enforcement-related activities associated with various living marine resource statutes such as the Marine Mammal Protection Act. Additionally, it would provide that any person found in any enforcement proceeding to be in violation of the Magnuson Act or any other marine resource law is liable for the costs of the sale, storage, care, or maintenance of fish or property seized as a result of the violation.

Observer wages as maritime liens: The amendment would provide observers with the same lien priority for past-due wages as is currently provided for seamen's liens under admiralty and general maritime law. This addresses the problem of vessels, or parties to an observer contract, not paying for observer services.

PROHIBITED ACTS

With regard to enforcing the prohibition against large-scale driftnet fishing, we suggest section 307(1)(M) be revised to clarify what vessels are subject to U.S. jurisdiction, by including foreign vessels whose nation authorizes the United States to exercise jurisdiction, and stateless vessels. It would also create a rebuttable presumption that a vessel with gear capable of use for large-scale driftnet fishing is engaged in such fishing.

ABILITY TO PAY

We recommend that the ability to pay provision in the Magnuson Act be clarified by deleting the phrase "ability to pay" from the last sentence in section 308(a) and the following sentence be added at the end of the paragraph: "In assessing a penalty, the Secretary may also consider facts relating to ability to pay established by the alleged violator in a timely manner."

HARASSMENT OF OBSERVERS

The Department suggests that observers be specifically protected from harassment by amending section 307(1)(L) by adding after the

phrase "interfere with" the following: ", or harass (including, but not limited to, conduct which has a sexual connotation),".

Statement of
John J. Magnuson, Ph.D.
Chairman, Committee on Fisheries
Ocean Studies Board of the National Research Council

Before the

Committee on Resources
Subcommittee on Fisheries, Wildlife and Oceans
United States House of Representatives
February 23, 1995

Mr. Chairman and Members of the Subcommittee: I am John J. Magnuson, Director of the Center for Limnology at the University of Wisconsin, Madison. I have participated in several National Research Council (NRC) studies on fisheries, recently as chairman of the Committee on Fisheries and the Committee to Review Atlantic Bluefin Tuna. Currently, I am chairman of the NRC's Committee on Protection and Management of Pacific Northwest Anadromous Salmonide and serve as a member of the NRC's Ocean Studies Board.

On behalf of the NRC, I appreciate the opportunity to testify before this Subcommittee on H.R. 39, a bill to amend the Magnuson Fishery Conservation and Management Act (MFCMA).

First, as background, in 1992 the NRC's Ocean Studies Board established the Committee on Fisheries to assess the effectiveness of present U.S. fisheries management. The committee's charge was to study and report on means of improving our nation's capability to manage its marine fishery resources. Committee members were selected with a wide range of expertise—resource economics, commercial fishing, fisheries policy, fisheries science, oceanography, marine ecology, marine technology, and fisheries management—and viewpoints, to ensure balance and fair treatment. The study resulted in the NRC report, *Improving the Management of U.S. Marine Fisheries,* which recommends changes specifically for consideration during the reauthorization of the MFCMA. The primary focus of my comments will be on the report findings and recommendations that are relevant to H.R. 39.

I will address both success and failure of the MFCMA and recommend changes needed to prevent overfishing, improve institutional structure, improve the quality of fisheries science and data, and move towards an ecosystem approach to fishery management.

The Committee's Findings: Success of the MFCMA

The study committee determined that "the MFCMA was successful in reducing the amount of foreign fishing in the U.S. Exclusive Economic Zone (EEZ). Foreign fishing comprised 61% of the total EEZ catch in 1981 and only 1% in 1991, as U.S. fishing expanded (p.14)." In addition, "the MFCMA successfully established a framework for fishery management that gave preference to U.S. fishing over foreign fishing in the EEZ, and provided for public participation in the decision-making process. Within the established framework, the Secretary of Commerce and the regional fishery management councils have made substantial progress in implementing fishery management (p.14-15);" 33 fishery management plans have been put into effect.

Failure and Inadequacies of the MFCMA

The stated purpose of the MFCMA is to conserve and manage U.S. fishery resources. Overall, the study committee determined that "fisheries management in the United States has not achieved the conservation of fish stocks that was anticipated when the Act was passed originally in 1976 (p. 16)." The National Marine Fisheries Service (NMFS) of the U.S. Department of Commerce's National and Oceanic and Atmospheric Administration (NOAA) reviewed the status of 231 species. NOAA/NMFS reported that 65 were over-utilized, 71 were fully utilized, 27 were under-utilized, and the data were inadequate to determine the status of 68 other species (*Our Living Oceans*, 1993).

"The MFCMA could hardly have anticipated the rapid rate of expansion of the U.S. industry, and did not provide for adequate controls on capitalization and fishing effort. Furthermore, the expansion of the U.S. industry was accelerated when Congress passed the Processor Preference Amendment, which gave priority to U.S. fish processors over foreign floating fish processors, and the American Fisheries Promotion Act, which stimulated the export of U.S. fish products. The implementation of federal programs for financing fishing vessels, for example, the Fishing Vessel Obligation Guarantee Program and the Fishing Vessel Capital Construction Fund Program, also contributed to the rapid expansion of the U.S. fleet. As a result, domestic fishing quickly replaced foreign fishing in the U.S. EEZ, and the stocks depleted by foreign fishing did not have sufficient time to rebuild before the U.S. fishing pressure increased (p.15)." Not only did U.S. fishing replace foreign fishing in the U.S. EEZ, for some stocks, U.S. fishing exceeded the foreign fishing resulting in more depleted stocks.

The report specifies several inadequacies in fisheries conservation and management that contributed to the current status of U.S. fish stocks. "These inadequacies include not only failures to identify and regulate the development and growth of fishing industries, but also failure to reduce fishing capacity and effort in

response to conservation needs and environmental changes. Consequently, stock are overutilized and depleted, and are not allowed to recover. Often, political pressure for absolute certainty about the status of an overexploited population deters managers from taking prompt remedial action. Unfortunately, such certainty is rarely attainable under present conditions, given the limited resources available to managers and scientists, the lack of adequate fishery data for the assessment of stocks and the effects of fishing mortality, and the lack of proper statistical treatment of uncertainty. Additional factors contributing to inadequate management and conservation actions include a lack of understanding of, or the information on, what features and processes at the ecosystem level are important to fisheries management; an unwillingness to plan or respond to relevant information on the fishery ecosystem; and/or a failure of managers to adequately define the attributes of an ecosystem that can and should be managed (p.17)."

Recommended Changes to the MFCMA

The report recommendations address four important topics, determined by the NRC committee: prevent overfishing, including controlling entry and capitalization and further specifying the definition of optimum yield; improve institutional structure; improve the quality of fishery science and data; and move toward an ecosystem approach to fishery management, including reducing bycatch, and protecting fish habitats. Provisions within H.R. 39 adequately address only one of these issues—moving toward an ecosystem approach to fishery management by adding requirements for fishery managers to reduce bycatch and protect fish habitats. I will address the four topics considered by the committee.

Prevent Overfishing

Two recommendations in the NRC fisheries report relate to preventing overfishing. The committee recommended that:

> Fishery management should promote full realization of optimum yields as originally environment in the MFCMA by ensure that harvest does not reduce stock abundance below levels that can sustain maximum yields over the long term. For currently overfished stocks, harvest levels must allow rebuilding the stock over specified periods of time to a level that can support sustainable maximum yields. Any departure from the above must be supported by persuasive evidence regarding natural variability, ecosystem interdependence, sustainable national income gains, or truly exceptional socio-cultural considerations. (p.32)

H.R. 39 amends the MFCMA by adding a provision that requires fishery management plans to "include a measurable and objective determination of what constitutes overfishing in that fishery, and a rebuilding program in the case of a plan for any fishery which the Council or the Secretary has determined is overfished."

H.R. 39 also includes a definition of overfishing that is consistent with the NRC's report recommendation for managers to prevent stocks from being reduced below levels that can support maximum sustainable yield over the long term.

In addition, the NRC report recommends:

> Fishery management should control entry into and wasteful deployment of capital, labor, and equipment in marine fisheries. (p.33)

A finding in the NRC report was that the MFCMA did not contain adequate measures to control entry and wasteful capitalization in order to prevent overfishing. "It is increasingly apparent that a remedy for the overfishing problem caused by open-access fisheries is to be found in some controls on entry. However, limited entry alone has not prevented and will not prevent overcapitalization or reduce the pressure to exceed acceptable biological catch levels; some form of control of fishing effort and/or total catch is also needed. To be effective, the methods used to control entry and capitalization must be responsible and equitable, and have adequate phase-in periods. (p.3)"

The report also discusses briefly the problem of the current definition of optimum yield. "Unfortunately this definition is so broad that it can be used to justify almost any quantity of catch. Consequently, an optimum yield might easily conflict with conservation goals. The implementing regulations, known as the '602 guidelines,' do not provide the specification and guidance needed. (p.19)"

Congress should consider strengthening the MFCMA to prevent overfishing by adding specific provisions for managers to control entry and capitalization in marine fisheries and by further specifying the definition of optimum yield so that it will not conflict with conservation goals.

Improve Institutional Structure

The NRC report discusses several inadequacies in the current institutional structure for fisheries management, including lack of independent oversight of fisheries management, unclear delineations of authority and responsibility between the Secretary of Commerce and the regional councils, lack of a satisfactory mechanism for conflict resolution involving objection to specific management measures and/or actions, possible conflict of interest by voting members of a

council, inadequate use of scientific and statistical committees by councils, lack of a consistent organizational process for scientific decision-making, and insufficient process for developing, approving, and implementing fishery management plans.

The report includes several recommendations to address these inadequacies, however, time does not permit me to describe them all in detail. Therefore I refer you to the section in Chapter 4 of the report on "Improve Institutional Structure (p. 34-40)," but I will highlight some of the recommendations:

> An Oversight body should be established as an independent mechanism responsible for strategic planning, review of management decisions and actions, and conflict resolution. (p.39-40)
>
> The Magnuson Act should be amended to specify that acceptable biological catches be set by scientific advisory committees to the regional Councils. Each Council should be mandated to establish a scientific advisory committee that could be the Council's Scientific and Statistical Committee, and that would be subject to membership and operational provisions to be specified in amendments to the Act [provisions specified in report]. National standards to guide the operations of the Committee should be promulgated by the Secretary of Commerce. (p.36-37)
>
> Congress should consider subjecting council members to more stringent provisions to prevent conflict of interest, but should examine the impact that such provisions might have on participation by interested parties and on the efficiency of the council decision-making process. Administrative remedies exist, including reimposition of the Federal Advisory Committee Act, adoption of a recusal mechanism where financial interests conflict, and extended financial disclosure. (p.38)

H.R. 39 amends the MFCMA to include a recusal process to prevent council members from voting on a matter in which they have a financial interest that would be significantly affected.

Although H.R. 39 includes a measure to prevent possible conflict of interest, there are still a number of inadequacies that are not addressed by provisions in this bill. Congress should consider strengthening the MFCMA to improve institutional structure by adding specific provisions, such as those suggested in the NRC report—establish an independent oversight body, require that acceptable biological catches be determined by scientific experts, clarifying the lines of authority and responsibility between the Secretary of Commerce and the regional councils, and expediting the process for developing, approving, and implementing fishery management plans.

Improve the Quality of Fisheries Science and Data

The NRC report describes several inadequacies of the science and data used in fisheries management that relate primarily to insufficient financial and personnel resources. These adequacies include lack of fishery independent data, unknown mortalities caused by bycatch/discard, and insufficient information about the effects on the environment and multispecies interactions. For the most part, the recommendations are directed to NOAA/NMFS, and don't require congressional action with regard to amending the MFCMA. However, this issue would benefit from additional financial support from Congress for the NOAA/NMFS budget.

In particular, the report specifies funding issues of importance:

> Current funds are insufficient for conducting appropriate stock assessment surveys. In addition, the necessity of finding observer programs to collect bycatch/discard information is paramount. Finally, in some situations, both the personnel and time required to process information collected for management purposes are lacking, resulting in long delays in getting the needed information to the fishery managers. (p.27)

Another important issue which would benefit from congressional action is that often insufficient economic and sociological data exist to determine the socio-economic effects of management actions—which is mandated by the MFCMA. In particular, reliable information is lacking on "fishing costs, supply and demand relationships, and effects on macro- and micro-economic impacts." (p.25)

Another finding is that accurate catch data is essential. The NRC report recommends that:

> All fishermen should be obligated by law to report their catch (including bycatch, fishing effort, and related biological information) to the program, and confidentiality must be assured. (p.42)
>
> Economic information on fishermen's catch is very useful; it must be obtained by methods that provide reliable data. (p.42)

Congress should consider amending the MFCMA to mandate confidential reporting of catch and to promote collection of reliable socio-economic data. Also, NOAA/NMFS' budget should provide for funds to improve the quality of science and data used in fishery management.

The NRC's recent scientific review of Atlantic bluefin tuna assessments is an example of the need for improving the quality of science and data used in management. Atlantic bluefin tuna have been managed for over 20 years by the

International Commission for the Conservation of Atlantic Tunas (ICCAT) and the assessments showed continuing decline in the abundance of Atlantic bluefin tuna in the western Atlantic since the mid-70s—despite strict quotas imposed for conservation measures. The NRC conducted an independent review of the science and the results are reported in *An Assessment of Atlantic Bluefin Tuna*. Recommendations were made to improve data management, analyses, and to improve statistical treatment of the data. An important recommendation was the recognition that the fisheries for bluefin tuna in the eastern and western Atlantic Ocean were not independent, due to significant movement of tuna between these two fishing areas. ICCAT responded positively to the NRC recommendations, incorporating some recommendations immediately. The most recent ICCAT assessment determined that there are more bluefin tuna in the western Atlantic Ocean than previously calculated—this resulted in a management decision to increase the quota, thus providing a significant economic benefit, estimated to be $26 million in 1995, to the U.S. tuna fishing industry.

Move Toward an Ecosystem Approach to Fishery Management

The NRC report describes the importance of the interdependence between the maintenance of fish stocks and maintenance of the integrity of the ecosystem in which the fish live. "Fisheries can directly affect an ecosystem's structure through removals or habitat damage, and thus have the potential to alter its productivity or the quality of its products. Fisheries also can be affected by habitat alterations resulting from damage by other users or from pollution. The most serious forms of coastal degradation are the physical destruction of important habitats, water pollution, and the introduction of exotic species. (p.27)"

The report presents several recommendations for addressing these issues, and thereby move towards an ecosystem approach to fisheries management:

> Fishery management should increase the use of the ecosystem approach to management, and include environmental protection goals in the development of fishery management plans. (p.43)
>
> The Secretary should provide adequate funding for collection of reliable discard data and for a major new fishery technology program to improve gear and fishing techniques needed to reduce the bycatch/ discard problem. (p.44)
>
> The Secretary of Commerce, through the NOAA/NMFS and under advisement from regional fishery management councils, should be empowered to protect the habitats necessary to sustain fishery resources. A major national program should be developed to determine what habitats

are critical for fish reproduction and growth, and how they can be protected. (p.44)

In particular, the report recommends some first steps toward implementing multispecies management: incorporate bycatch/discard information into fishery management decisions; include procedures in management plans to reduce wastage; investigate possible direct and indirect effects of bycatch on nontarget commercial, endangered, and protected species in addition to target species; and incorporate provisions in plans to minimize both bycatch and waste. (p.43)

H.R. 39 contains several noteworthy provisions aimed at reducing bycatch problems and protecting fish habitats: a requirement for fishery management plans to include conservation and management measures necessary to minimize bycatch including incentives and harvest preferences within a fishing gear group to promote avoidance of bycatch; a requirement for the Secretary of Commerce to identify the essential fishery habitat for each fishery and for the council to include a description of the essential habitat in management plans along with conservation and management measures necessary to minimize adverse impacts on that habitat caused by fishing; an opportunity for councils to comment and make recommendations to any State or Federal agency concerning any activity that may have a detrimental effect on the essential fishery habitat of a fishery under its jurisdiction, with a requirement for a response from the agency within 15 days; and inclusion of a discretionary provision for allowing managers to assess and specify the effect which conservation and management measures in a plan will have on stocks of nontargeted fish in the ecosystem of the plan's targeted fish.

Congress should consider further steps to move toward an ecosystem approach to fisheries management: including promoting multispecies approaches to fishery management—factoring in nontarget species and ecosystem interactions among target fish and other species, such as marine mammals and birds; developing a major national program to define the environmental components essential for fish reproduction, survival, and production and to identify and understand current causes of habitat degradation; and promoting various agencies with shared responsibility under different federal and state laws to coordinate their efforts and programs for habitat protection and management of habitat resources.

Some of the changes specified in H.R. 39 are similar to those recommended in the NRC's report and if enacted, will take an important first step in moving toward an ecosystem approach to fisheries management, which is a noteworthy goal. However, there is still an opportunity to make further improvements in the MFCMA based on the NRC report recommendations—which would make it less likely that we will be returning to these issues in a few years facing a further decreased fish supply.

Thank you Mr. Chairman and Members of the Subcommittee for your interest in the NRC's recommendations for improving fisheries management and for the opportunity to discuss them with you with regard to H.R. 39. I would be pleased to answer any questions.

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Testimony of Joseph Brancaleone
New England Fishery Management Council
On Behalf of the
Chairman of the Eight Fishery Management Councils
Before the House Subcommittee on
Fisheries, Wildlife and Oceans
February 23, 1995

Mr. Chairman and Members of the Subcommittee:

I am here today on behalf of the Chairmen of all eight of the management Councils. The Chairmen have not met since HR 39 was introduced and my own Council, even now, does not have Senate Bill S.39.

However, over the last two years the Chairmen have considered a number of draft bills and proposed changes to the Magnuson Act. Following our May 1994 meeting, we prepared testimony covering a wide range of proposed amendments. I think the testimony was never delivered to the Subcommittee but I am submitting it today as our most recent agreed position. Keep in mind that the Chairmen have reached consensus on that testimony but it does not necessarily reflect a full consensus of the eight Councils themselves, even though there is substantial agreement by the Councils to most of it.

The general view of the Chairmen is that Magnuson is a good law and does not need basic revision, although minor adjustments may be helpful. We believe the perception of conflicts of interest on the Councils is greater than any actual conflict. We are opposed to mandatory recusal and to NOAA General Counsel determining when a conflict exists. We urge you to consider the alternative language proposed in our draft 1994 testimony.

We believe Councils should have discretionary authority to establish fees related to data collection programs and limited entry programs. A requirement for bycatch data (as in HR 39) would make fees even more necessary.

The Chairmen agree with lowering compensation for appointed members to the GS-15 level but there was concern that a large reduction would discourage some very qualified and able individuals from serving as appointed members.

We are all concerned about possible habitat degradation but believe that a requirement to define or identify essential habitat would burden Councils beyond the limits of their funding and staffs.

Likewise, we are gravely concerned about overfishing but we doubt that defining overfishing in the Act would be helpful. The 602 guidelines are adequate in this regard. Overfishing and rebuilding issues are best dealt with at the Council level with NMFS guidance.

We support a 180 day period for emergency actions and for extensions of such actions.

We are in favor of reducing the time required to implement regulations for fishery management plans. I believe the 60 day time limit in HR 39 on secretarial review of proposed regulations is a step in that direction.

Mr. Chairman, this is clearly a very brief summary of our views. We did not specifically consider the HR 39 proposal that all persons presenting oral or written statements must state their interest and their qualifications. Neither did we consider the adding of items to a Council's agenda upon the request of two members or the defining of Fisheries Dependent Communities. Our view, however, was that flexibility and latitude within the parameters of Magnuson are preferable to very detailed prescriptions and proscriptions in the Act. The Councils were created to exercise judgement.

I expect that in the next several weeks most, if not all, of the Councils will consider HR 39 and submit specific comments on that bill. I will be happy to answer any questions that I can.

Thank you for inviting me here today.

This paper accompanied the testimony of Joseph Brancaleone before the House Subcommittee on Fisheries, Wildlife and Oceans - February 23, 1995

PROPOSED TESTIMONY FOR LEE ANDERSON ON BEHALF OF THE CHAIRS OF THE EIGHT REGIONAL FISHERY MANAGEMENT COUNCILS BEFORE A POSSIBLE HEARING OF THE HOUSE OF REPRESENTATIVES FISHERY MANAGEMENT SUBCOMMITTEE

COUNCIL COMPOSITION/CONFLICT OF INTEREST

The Council Chairmen oppose giving lower priority to paid association representatives in making Council appointments, because industry representatives have experience and time to study issues and materials associated with Council decisions. They also oppose the Gilchrest bill requirement for 25% of appointed members to have university, environmental or other non-user group affiliation. The Governors and the Secretary can nominate and appoint from a broad variety of interests. Advisory Panels and Scientific and Statistical Committees also provide input from diverse backgrounds.

The Chairmen oppose mandatory recusal and abstention requirements which would deprive the Council of expertise in debating issues and may even rule out most Council members from voting on certain key issues.

The Council Chairmen suggested alternative language to NMFS' procedures:

1. A Council member may not vote on any FMP, FMP amendment, or regulation proposal which would disproportionately advantage that Council member beyond other individuals participating in a particular fishery.

2. Upon request of any Council member, a Council shall make a determination whether an individual may have a disproportionate interest in the decision.

3. Council may authorize participation if the need for the individual's participation outweighs the potential disproportionate interest.

4. Any interested person with a substantial grievance may submit a request to the Assistant Administrator, within 15 days after the vote, to review the interest in question and the Council action. The Assistant Administrator shall be required to act not later than 30 days after receiving the grievance.

OTHER COUNCIL PROCEDURES

The Council Chairmen agree with proposal to amend compensating rates to reflect new Federal compensation levels, that is, the fact that there is no longer a grade 18.

They agreed that Councils should be allowed to retain independent legal counsel.

They oppose the proposed requirement for a minimum number of Scientific and Statistical Committee and Advisory Panel meetings. This should be left to each Council to determine

according to their agenda, the issues being discussed, and budget concerns.

They also opposed the 2/3 vote proposal and the proposal to require roll call votes on all decisions.

OVERFISHING/RECOVERY PLANS

Council Chairmen agreed that the current overfishing definition in 602 Guidelines is sufficient. The Council Chairmen and Executive Directors expressed concern over legislating rebuilding programs, saying that overfishing may not necessarily be a result of fishing practices. For instance, the Pacific Council cited Pacific salmon where a significant amount of their mortality is non-fishing mortality.

The Chairmen agreed that all Councils should move toward an ecosystem approach. However, a Congressional mandate will only make management more difficult without adequate funding to achieve the desired result.

With regard to rebuilding plans, this is best left to each Council to determine for each fishery based on information on the specific fishery and region.

OBSERVERS

Regarding the Gilchrest amendments, The Council Chairmen believe the Councils already have the authority to initiate observer plans. It is not necessary to amend Act.

HABITAT

Council Chairmen believe the Magnuson Act should allow for discretionary (rather than mandatory) designation of essential habitat in FMPs. If essential habitat is designated in an FMP, project proponents would be required to consult with NMFS (similar to ESA Section 7 consultation) on impact on species in FMP.

Activities by all entities receiving federal funding for anadromous fish should be required to be consistent with FMPs and the Act; activities would be audited at least biannually.

Chairmen agreed that Councils need to respond to the need to provide long-term protection for essential fish habitats, but they need the regulatory tools to accomplish this goal, including the additional funding required.

OTHER FEES

The Council Chairmen concluded that Councils should be allowed to establish fees for implementation and maintenance of data collection programs and controlled access systems. Fees should be assessed on regional basis through Council plans or

amendments and put in a dedicated fund to be used specifically for program for which collected. A cap on fees should be set.

If the Secretary imposes fees, a substantial amount of the fees collected in a region should go to that region's programs and the fees collected from foreign imports could be used wherever needed in that particular budget cycle. If the Secretary imposes fees, Councils should have input as to the collection and use of the fees.

BYCATCH/WASTE

The Chairmen favored the bycatch demonstration program. They felt that options to reduce bycatch, waste, and high-grading should be included in the discretionary part of Act.

The Chairmen recommended the new National Standard 9 should read: "Minimize discard of fisheries resources." Some discards are unavoidable and a cost of doing business. Chairmen feel the real issue is reducing discard mortality.

602 GUIDELINES

The Council Chairmen believe the 602 Guidelines already seem to have the force of law and the Secretary can reject any recommendation which does not conform to the Guidelines and National Standards.

CITIZEN SUITS AND CITIZEN PETITIONS

The Council Chairmen concluded that providing for citizen suits and citizen petitions in the Magnuson Act is not necessary. Citizens already have a myriad of ways to have input into the fishery management process.

FMP IMPLEMENTATION

The Council Chairmen recommend that the Magnuson Act be amended to extend authority to impose emergency rule to 180 days, with one 180 day extension. The Administration's suggestion of 90 days followed by 270 days would not solve the problem. If the first period is 180 days, there will be fewer instances for the need to extend.

With regard to the recommendation for "interim measures" in the Gilchrest bill, Chairmen indicated that a 180 day emergency rule with possible extension of 180 days would make the interim measure unnecessary.

Regional Directors should not vote on any emergency action in any fishery. A unanimous vote, without the RD, on emergency actions, should compel the Secretary to act.

The Act should be amended to impose 90 day time limit for Secretarial action on regulatory amendments and require written response detailing reasons, if disapproved. In general, the Council Chairmen would like some kind of time frame for processing and implementing regulatory actions, similar to FMP amendments.

Additionally, FMPs and amendments should be exempt from the impact analyses required by other applicable law. If exemption is not possible, require consistent reviews and time schedules for MFCMA/NEPA. In other words, facilitate review and approval of amendments by having the MFCMA and NEPA (and other) review periods concurrent.

OVERCAPITALIZATION

The Council Chairmen believe the Councils need the tools to deal with overcapitalization, but should not be required to take specific action. Give the Councils authority to research and establish buyback programs if they are feasible for the fishery involved. It was suggested that NMFS develop a revolving fund for buyback programs.

ALLOCATIONS

The Chairmen agreed that Congress should not take a position on whether or not ITQs, CDQs, or other allocative programs should be allowed, but rather section 303(b)(6) should be amended to give the Councils clear authority to use ITQs, CDQs, processor quotas, etc., with sufficient guidelines to protect the national interest, existing participants in the fisheries, and conservation of the resource.

GEAR

Council Chairmen voiced concern that gear restrictions could be a deterrent to research and development of new and possibly more efficient gear. Councils should preserve the right to determine whether to prohibit certain types of gear. A particular gear may be acceptable in one fishery or area and totally inappropriate for another. The ability to apply for experimental permits now exists and, along with Council oversight, can provide protection yet allow new gears to be tested.

FISHERIES UNDER MORE THAN ONE COUNCIL JURISDICTION

The Chairmen of 3 out of 5 affected Councils recommend return of Highly Migratory Species in the Atlantic EEZ to the Councils. Those opposed cited budget concerns as the reason to leave authority with NMFS. Four out of 5 affected Councils recommend that actions be approved by a simple majority of voting members of all 5 Councils combined.

BEST SCIENTIFIC INFORMATION AVAILABLE

The Council Chairmen concluded that no action is required in this area. The Secretary may already disapprove actions based on whether or not the best scientific information was utilized. The Gilchrest amendment indicates any scientist, not just members of the Scientific and Statistical Committees, could object to Council recommendations and the Secretary would be compelled to disapprove.

OTHER ISSUES

The Chairmen supported a limit on disclosure of information collected pursuant to the North Pacific Fisheries Research Plan (Section 313) when information is not relevant fishery management information.

RELATED TO ATLANTIC TUNAS CONVENTION ACT

Council Chairmen made no recommendations concerning changes to the Atlantic Tunas Convention Act.

FOREIGN FISHING PERMITS FOR TRANSSHIPMENT

The Chairmen had no recommendation in the area of foreign fishing permits for transshipment, but stressed the need for NMFS to consider specific requirements in their areas, that is, vessel tracking systems.

ECONOMIC DATA FROM PROCESSORS

With regard to the proposal that processors be required to submit economic data, the Council Chairmen felt that this information was very specifically exempted from the Act to protect confidential economic data.

3-YEAR LIMIT ON CONFIDENTIALITY OF STATISTICS

The Council Chairmen oppose the recommendation that statistics not be considered confidential after three years. Disclosure of any confidential information, particularly after only three years, could deter fishermen and processors from divulging reliable information. It was also pointed out that States may not be willing to share confidential data if a future release is against their policy.

NATIONAL DATA COLLECTION PROGRAM

Concerning the NMFS proposal for a National data collection program, the Council Chairmen concluded that the Councils already have the authority to initiate data

collection programs, and several have. Most fish are landed within the States' jurisdiction and their data gathering programs should be sufficient. One suggestion was to set national standards for recordkeeping and getting States to agree and comply.

DATA FROM INTERNAL WATERS PROCESSING OPERATIONS

The Chairmen agreed on no recommendations on the issue of requiring data from internal waters processing operations.

ASSAULT AGAINST DATA COLLECTORS

The Council Chairmen did not oppose the proposal to protect data collectors.

LARGE SCALE DRIFTNETS

The Chairmen did not oppose to the proposal concerning large scale driftnets.

PERMIT SANCTIONS

There were no recommendations or comments on the permit sanctions proposals.

PENALTY AND FORFEITURE FUND

There were no recommendations or comments on the penalty and forfeiture fund proposal.

PACIFIC COUNCIL SEAT FOR TREATY INDIAN

The Chairman of the Pacific Council said he would prefer it not be restricted to one term. If tribal leaders concurred, a member should be able to serve more than one term. There was discussion of whether the Secretary of the Interior should be involved in the appointment process.

STREAMLINED FISHERY MANAGEMENT PLANS

The Chairmen are in favor of increasing efficiency and reducing the time required to implement fishery regulations. There is some concern, however, over the amount of latitude NMFS would have in interpreting Council intent.

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February 13, 1995

TESTIMONY ON H.R. 39
"FISHERY CONSERVATION AND MANAGEMENT AMENDMENTS OF 1995"
BEFORE THE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
U.S. HOUSE OF REPRESENTATIVES
FEBRUARY 23, 1995

Mr. Chairman, Members of the Subcommittee, I appreciate this opportunity for the West Coast Seafood Processors Association (WCSPA) to present its views on reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA).

Our Association represents the major shore-based processors of species harvested in the Exclusive Economic Zone off of California, Oregon, and Washington. In addition to their processing plants, our members have warehouses, distribution offices, restaurants, and other seafood related facilities in these and other States, including the State of Alaska. They employ thousands of workers and bring millions of dollars to their local economies through payrolls, the purchase of goods and services, and payment of taxes. Most of the processing plants have been operating for decades, and you will often find the top management to be made up of the sons of the company founders, or workers who started out cutting fish and now run the daily operations. In at least one case, the company is owned by its employees, with fishermen and processors sitting on the board of directors. Many of our members also own or have a financial interest in fishing vessels.

I'm boring you with all of these statistics because too often the shore-based seafood processors have been the forgotten sector of the seafood industry. Yet it's the

processors who buy fish from the fishermen and convert it into the products you find in the grocery stores and restaurants. It's the processors who purchase water and power from local utilities and thus often help reduce the cost of those utilities to the home owner. It's the shore-based processors who hire local residents at all skill levels, from top management to the young man or woman driving a forklift on the plant floor. When you think about the American fishing industry, when you think about the economy of the coastal towns in your district, remember the shore-based processor who is such an integral part of both.

I hope that the importance of what I'm saying here will become more apparent as I get further along in my statement, but for the moment, let me turn to the bill that is before you today.

Generally speaking, WCSPA strongly supports H.R. 39 as introduced by Chairman Young. We recognize that H.R. 39 reflects all of the hard work performed by Mr. Young, Mr. Studds, Mr. Saxton, and Mr. Manton in the 103rd Congress and we appreciate your decision to deal with these issues rapidly and concisely in the 104th Congress. In most instances, we much prefer the House approach over the confusing and unnecessary rewrite of the Act as proposed by the Senate.

There are a few changes we would recommend to resolve problems unintentionally created by the bill and some clarifications that we think are necessary in the legislative history. We also would recommend that the House adopt some of the proposals made by Senators Stevens and Kerry in S. 39 (and reject others). Finally, we have a few new ideas that we think would enhance the conservation and management of our fisheries, as well as improve the operation of the Act.

In regard to the definition of "fishery dependent community", we need to recognize a range of possibilities. Dillingham, Alaska, and Warrenton, Oregon, and Westport, Washington, are obviously dependent on the fisheries. San Francisco is not. However, there are gray areas. Astoria, Oregon has several processing plants and a fishing fleet. It also has a thriving tourist industry. Is Astoria "fishery dependent"? We believe some report language needs to be developed to get at what is intended.

The definition of "overfishing" also needs clarification in the legislative history. As I read the definition, it means that you might harvest above or below maximum sustainable yield in any one year, as long as the stock stays above MSY over a sustained period. However, what if you have unavoidable incidental harvest of a species that is below MSY, a species which perhaps everyone agrees is overfished? This issue will come up again in the discussion on Secretarial and Council action on rebuilding, but for the purposes of the definitions section, we think appropriate guidance in legislative history is essential. We would be happy to work with the members and staff to help clarify these issues.

Turning to section 7 of the bill, we again hope you will clarify in the report the intent of the new national standard. We believe that the phrase "to the extent practicable" allows recognition of economic and social constraints when Councils develop measures to minimize bycatch. We share the concern of this committee, of fishermen, and of the environmental community that fish stocks need to be conserved. After all, if there are no fish, we're out of business. At the same time, we all face one irrefutable fact: there is not a single fishery in the world, commercial or sport, that never has any bycatch or waste. Even the most conscientious and careful fisherman cannot avoid getting a fish that is the wrong species, size, or sex on his hook or in his net, or having a fish fall off that hook or harpoon when it is being landed. Minimize bycatch, but don't shut down the fishing industry while you do so.

We also hope that you will adopt the Senate's new national standard regarding the recognition of the impact of conservation and management measures on fishery dependent communities, however that term is clarified. Again, shore-based processors are part of those communities and we don't want to see communities ruined by application of fisheries management measures.

Finally, we ask that you reject the proposed Senate changes to national standard 1. We believe that the House's approach to handling overfishing and rebuilding, with a slight change, is much better than this one taken by the Senate. We also strongly object to the Senate's deletion of the phrase "for the United States fishing industry." This phrase was originally added to the Act to recognize the importance of the American fishing industry. To quote from the Committee Report filed by the late Chairman Jones in 1982:

> "Thus, specific authority is granted to consider the best interests of the domestic industry in the establishment of optimum yield."

Now that the United States government has indicated its support of the Law of the Sea Treaty - a treaty which was opposed by some members of this committee because of its potential to undermine the priority accorded American fishermen and processors under the MFCMA - we believe that it is not in the best interests of the American fishing industry to erode the support previously provided through Congressional action.

In regard to section 8 of the bill, dealing with Regional Fishery Management Councils, we strongly support the House approach of not changing Council composition. Various interests have had, and will continue to have, opportunity to participate in all levels of the Council process. We see no reason to provide special

treatment to any one group.

Further, we believe that the House approach to the conflict of interest issue is preferable, with one minor exception: The House requires the Secretary to establish rules for conflict of interest; the Senate requires establishment of guidelines. Due to the diverse nature of Councils and the fisheries they manage, we think the Senate's requirement for guidelines is more practical.

In regard to section 9 of the bill, we believe that the change to section 303(a)(5) of the Act should be dropped. We understand that this was included to help address the bycatch and waste issue. Unfortunately, the language as written imposes a burden on smaller fishing vessels that they simply cannot carry. Small shore-based vessels, such as those that operate off the West Coast, in Kodiak, and in the Alaska Peninsula have no ability to record the number and weight of all species taken on board. In fact, this requirement could be counter-productive to attempts to reduce mortality by returning fish to the ocean as soon as possible. The Councils already have the authority to require this data if it is needed in specific instances, and we would be happy to work with you to develop report language addressing this subject. However, the statutory mandate envisioned here is one that the average small fishing vessel cannot meet.

In section 10 of the bill, a new section 304(l) is added to the Act to address overfishing. Here again, one small set of changes is needed. At several points, reference is made to the need to "halt" overfishing. As I mentioned earlier, in some cases that may be impossible. For example, the West Coast stocks of Pacific Ocean Perch may be below MSY. Nobody knows for sure, because much of the historical stock data is based on old foreign fishing reports compiled at a time when there was no way to determine exactly what species were being harvested. Nevertheless, the Pacific

Council treats them as overfished and has adopted specific measures to avoid depleting the stocks. Unfortunately, even if all commercial and recreational fishing was banned on the West Coast, those stocks might not increase above MSY for 10 to 15 years. Thus, the only way to "halt" overfishing for Pacific Ocean Perch is to shut down all fishing for an entire generation. We suggest substitution of some other term or phrase - perhaps "appropriately address" or "reasonably reduce" overfishing, both of which the Pacific Council has done - in order to avoid an inadvertent problem. Please understand, we are not trying to suggest that overfishing be ignored; we merely wish to make sure that the cure isn't worse than the disease.

Also in this section of the bill, in new section 304(j) of the Act, provision is made to expedite issuance of regulations. While the House language is acceptable, we hope you will add one additional component included in the Senate bill, which requires the Secretary to discuss his concerns on proposed regulations with the appropriate Council, rather than rejecting the regulations outright. Often, further discussions between Council and NMFS staff can resolve difficulties before final action is taken.

Before turning to new issues, there is one further set of Senate provisions that must be examined: those dealing with individual transferrable quotas, or ITQs.

Frankly, WCSPA would be more than happy if ITQs went away. While they are an interesting study in economic and social policy - and NMFS has spent lots of money studying them and appears to want to spend more, based on their current budget submission - ITQs are completely unnecessary for the conservation and management of our resources. ITQs are tools for economic allocation - they dictate who gets the fish, not how we make sure that there's enough fish in the ocean to get. ITQs are based on protecting economic investments, not on conserving fish stocks.

Unfortunately, we find ourselves in a dilemma. ITQs are in place in several fisheries, and are being considered for others. If we simply ignore them, they won't go away. So, our only choice is to make them as reasonable as possible.

While there are several technical and substantive flaws in the Senate language, the approach makes sense. The Senate bill calls for a moratorium on new ITQs while guidelines are established to protect the public interest. The bill requires all new ITQ plans to meet the guidelines when the moratorium is lifted, and requires existing ITQ plans to be amended to meet those guidelines. Finally, and very importantly to shore-based processors, the bill allows processors to receive ITQs. This is a crucial component of the Senate language, one that will make a tremendous difference to shore-based processors and coastal communities.

It's not a matter of simple greed; my members are frightened of what will happen to their businesses, the investments they have made, and the economic well-being of the coastal communities of which they are a part, if one segment of the fishing industry is granted economic protection while another isn't. Remember what I said earlier about employment, the tax base, the purchase of goods and services and the interrelationship of shore-based processors with the local economy and the rest of the fishing industry. A shore-based processor can't pick up his plant and move it when the fish run out, taking all of his employees with him. He can't suddenly decide to process chickens if the select group of fishermen who get ITQs - and the tremendous financial windfall they bring - all decide to join together and custom process their own fish at a new location. A plant in Washington isn't going to keep paying property taxes when the fishermen all decide to sell to a plant in Oregon. Having an ITQ won't provide an absolute economic guarantee to a shore-based processor, but it will provide more protection than having nothing. We hope you will look carefully at the Senate approach and consider appropriate language to address these concerns.

I suppose I should also take the opportunity to talk about fees. We oppose having fees for no reason other than to fatten the budget. We oppose fees that bear no relation to what is harvested. We oppose collecting money in one part of the country and spending it in another, or collecting money from one fishery and spending it on a different fishery in the same region.

We recognize that - if ITQs are established - there needs to be a way to pay the costs and provide some return to the public for the exclusive use of the public's resources. When setting fees, however, be careful not to impose a double burden on processors. If a fisherman pays a fee for his ITQ, he will attempt to recover his costs by selling his fish at a higher price. If a fee is also imposed on a processor for a processor ITQ, then the processor winds up paying twice for the same fish and - most likely - finding that his products are no longer competitive in the world market. If you decide to impose fees, make them reasonable, and have them meet the standards I suggested above.

Last, but not least, some new ideas. First, we would like to see a requirement that - when an economic analysis is being conducted of a proposed plan, amendment, or regulation - the analysis doesn't simply stop at the point where the fish is sold to the processor. Currently, NMFS and OMB require that an economic analysis be a simple cost benefit including what it costs to catch a fish and what price the fisherman gets for that fish. This completely ignores the costs and benefits experienced by the processor, which will have a far greater impact on the economic health of the local community. Use of a simple cost / benefit analysis was a clever approach taken by certain Federal officials to demonstrate that the inshore / offshore allocation plans developed by the North Pacific and Pacific Councils were economically deficient. I note that the plans were approved anyway. Nevertheless, if we are going to look at the true costs and benefits to the fishery, you need to extend that web of information to the point that the

processed product goes out the back door of the shore-based plant. Since NMFS and OMB have traditionally been reluctant to follow simple Congressional guidance on these matters, we hope you will accept an amendment to the Act to make it clear.

Next, we want to help reduce the Federal budget, prevent overfishing, and provide better data for conservation and management. At present, NMFS does a resource survey on the West Coast once every three years. The survey is conducted by the large and expensive-to-operate vessels of what we call the "NOAA Navy". Given the size of the coastline, not all of it can be surveyed, so the results are sort of patched together, assumptions are made, extrapolations are performed, and out comes a resource abundance index. Now, in spite of the fancy name, that doesn't tell you how many fish are out there - it simply tells you whether there are relatively the same number of fish there compared to the last time you went through this exercise. The data is also plugged into a resource assessment model - which, by the way, was developed by a NMFS scientist and is generally a pretty fair model - is further massaged, assumptions are made, and you come up with a WAG - that's a wild-ass guess - of how many fish you can catch without destroying the stocks.

As neat as that model is, and no matter how many good assumptions you make, if you pour water in one end, it isn't going to come out as wine on the other. So, the question is: how do we get better data at less cost to the taxpayers?

For the fisheries on the West Coast, the answer is simple. We propose that you mandate formation of a group consisting of NMFS, State, and University scientists; Council representatives; fishermen; processors; and environmental representatives to come up with a stock survey plan using private vessels and processing facilities. Have NMFS charter the vessels, just as they do in Alaska, and put a scientist on board. Perhaps the group will decide that there's a better reporting mechanism for discards or

that better sorting by species at processing plants will provide more data. Regardless, we want to see such a plan in effect for three years, so we can get the data we need to prevent, rather than address, overfishing.

The second part of this proposal will also help fisheries in other areas where vessel chartering is already used. Right now, a vessel that goes on a 3 month survey cruise isn't going to make a lot of money, because the fishery is closed by the time the cruise is completed. We propose that the Councils have explicit authority to reserve a portion of the total allowable catch in a fishery - including, if necessary, any prohibited species - for research purposes. By catching his own fish, or retaining what he catches while on the research cruise, a fishermen won't lose money or be left out when an ITQ is established for his fishery in the future. If the catch is sold, the processor will be able to pay for the additional cost of doing extra sorting at the dock. This proposal will also help obtain better and more frequent surveys in the Gulf of Alaska. The taxpayers will benefit because it will cost them less. The fishing industry will benefit because they have better data to work with. And the fish will benefit because better data means a better ability to stop resource problems before they start.

Last, I want to return again to my main theme: the shore-based processor is an integral part of the commercial fishing industry. The term "United States fish processor" is defined in the Act, but it covers everything from factory trawlers to floating processors to shore-based plants to the guy who buys shrimp at the dock and sells it out of his pickup truck. While this definition works in the narrow context for which it was developed - U.S. processor preference when joint venture fishing applications are being considered - it does not reflect the realities of the fisheries, especially since we are now dealing with allocations among processors, as well as among fishermen. Further, NMFS conveniently argues that they have no authority to regulate processors, while at the same time putting observers in plants, collecting data, and enforcing

management regulations at the dock. We are willing to do our share to conserve the resource and obey the law; but we want to be recognized as part of this industry as well.

I will be submitting language on all of these new proposals and will be happy to work with all of you and your staff to come up with reasonable amendments.

Again, thank you Mr. Chairman - we look forward to supporting your efforts to enact responsible changes to the law.

Testimony of

Nels Anderson, Jr.
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Bristol Bay Economic Development Corporation
Dillingham, Alaska

For the
Western Alaska Fisheries Development Association
Anchorage, Alaska

Thursday, February 23, 1995

Subcommittee on Fisheries, Wildlife and Oceans
Committee on Resources
U.S. House of Representatives

H.R. 39
"A Bill to amend the Magnuson Fishery Conservation and Management Act to improve fisheries management."

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE . . . ON BEHALF OF THE MEMBERS OF THE WESTERN ALASKA FISHERIES DEVELOPMENT ASSOCIATION, I WISH TO THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

FOR THE RECORD, MY NAME IS NELS ANDERSON, JR. I AM THE EXECUTIVE DIRECTOR OF THE BRISTOL BAY ECONOMIC DEVELOPMENT CORPORATION, ONE OF SIX CORPORATIONS FORMED TO PARTICIPATE IN THE WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM. TODAY, I SPEAK FOR BRISTOL BAY AND FOR THE THREE OTHER CDQ CORPORATIONS THAT COMPRISE

THE MEMBERSHIP OF THE WESTERN ALASKA FISHERIES DEVELOPMENT ASSOCIATION . . .

- THE YUKON DELTA FISHERIES DEVELOPMENT ASSOCIATION
- THE COASTAL VILLAGES FISHING COOPERATIVE, AND
- THE NORTON SOUND ECONOMIC DEVELOPMENT CORPORATION.

THE WAFDA MEMBERS REPRESENT 50 OF THE 56 COMMUNITIES THAT PARTICIPATE IN THE CDQ PROGRAM, 96 PERCENT OF THE POPULATION OF THE CDQ-ELIGIBLE REGION, AND HAVE RECEIVED 74 PERCENT OF THE COMMUNITY DEVELOPMENT QUOTA.

I WISH TO BEGIN MY TESTIMONY BY DESCRIBING THE SITUATION IN WESTERN ALASKA AND HOW IT RELATES TO THE CDQ PROGRAM.

FIFTY-SIX COMMUNITIES ARE ELIGIBLE FOR CDQ'S. ACCORDING TO THE 1990 FEDERAL CENSUS, THE COMBINED POPULATION IS 21,400. TODAY, IT WOULD BE CLOSER TO 25,000. THE OFFICIAL UNEMPLOYMENT RATE IS OVER 50 PERCENT, ONE OF THE HIGHEST LEVELS IN THE NATION. IN SOME VILLAGES IT IS AS MUCH AS 75 PERCENT. THE AVERAGE ANNUAL INCOME IS LESS THAN $11,000. THE NUMBER OF PEOPLE LIVING BELOW THE POVERTY LINE IS AS HIGH AS 40 PERCENT IN SOME REGIONS. SUBSISTENCE PUTS FOOD ON THE TABLE. LOCAL COMMERCIAL FISHERIES PROVIDE SOME INCOME, BUT THERE ARE FEW OPPORTUNITIES FOR ECONOMIC GROWTH. ALCOHOLISM AND SOCIAL PROBLEMS ARE COMMONPLACE.

THE MOST IRONIC ASPECT OF THIS TRAGIC SITUATION IS THAT ALL THESE SOCIAL PROBLEMS OCCUR IN A REGION THAT IS IMMEDIATELY ADJACENT TO ONE OF THE WORLD'S RICHEST FISHERIES. THE BERING SEA IS HOME TO HUNDREDS OF THOUSANDS OF METRIC TONS OF POLLOCK, CRAB, PACIFIC COD, AND MANY OTHER COMMERCIALLY VALUABLE SPECIES. IN MOST CASES, OUR PEOPLE HAVE HAD NO ACCESS TO THIS RESOURCE BECAUSE OF THE HIGH CAPITAL INVESTMENT REQUIRED TO PARTICIPATE IN THESE FISHERIES. THEY ARE WELL BEYOND THE MEANS OF A FISHERMAN WITH A SKIFF, AN OUTBOARD, A NET, AND A LIMITED INCOME.

YEARS AGO, SOME OF WESTERN ALASKA'S COMMUNITY LEADERS WONDERED IF THERE WASN'T A WAY THIS RESOURCE COULD BE USED TO ADDRESS SOME OF THE REGION'S CHRONIC PROBLEMS.

AFTER WESTERN ALASKANS SPENT SIX TO EIGHT YEARS TESTIFYING AND WRITING LETTERS, THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL AND THE U.S. SECRETARY OF COMMERCE APPROVED AN ALLOCATION OF 7.5 PERCENT (APPROXIMATELY 100,000 METRIC TONS ANNUALLY) OF THE HARVESTABLE BERING SEA POLLOCK FOR 56 ECONOMICALLY-DISADVANTAGED COMMUNITIES LOCATED WITHIN 50 MILES OF THE BERING SEA COAST.

THESE 56 COMMUNITIES FORMED SIX CORPORATIONS AND SET UP PARTNERSHIPS WITH ESTABLISHED SEAFOOD PROCESSING COMPANIES. WESTERN ALASKA BENEFITS IN TWO WAYS. FIRST,

VILLAGE RESIDENTS CAN NOW OBTAIN EMPLOYMENT ON VESSELS THAT HARVEST BERING SEA POLLOCK. SECOND, THE REVENUES FROM THE SALE OF THE POLLOCK ARE INVESTED IN FISHERIES DEVELOPMENT PROJECTS IN WESTERN ALASKA, CREATING MORE JOBS.

EVEN THOUGH THE FIRST CDQ FISHERY OCCURRED IN DECEMBER, 1992, THE PROGRAM HAS DEVELOPED A TRACK RECORD AS ONE OF THE MOST INNOVATIVE AND SUCCESSFUL ECONOMIC DEVELOPMENT PROGRAMS EVER CREATED. AT THE END OF 1993, THE CDQ PROGRAM COUNTED FOR EIGHT PERCENT OF THE REGION'S ENTIRE ECONOMY AND 18 PERCENT OF REGION'S PRIVATE SECTOR ECONOMY. IMAGINE THAT, ALMOST ONE-FIFTH OF THE PRIVATE ECONOMY IN LESS THAN TWO YEARS. BY THE END OF 1993, THE CDQ PROGRAM HAD CREATED 556 JOBS. BY THE END OF 1994, THE TOTAL WAS 1,676 JOBS.

THIS YEAR THE POLLOCK CDQ'S WILL BE SUPPLEMENTED BY SMALL BERING SEA HALIBUT AND SABLEFISH CDQ'S, CREATED AS PART OF A NEW INDIVIDUAL TRANSFERABLE QUOTA PROGRAM.

THE CDQ CORPORATIONS HAVE ARRANGED FOR HUNDREDS OF WESTERN ALASKANS TO BE TRAINED IN NEW JOB SKILLS AND AWARDED THOUSANDS OF DOLLARS IN SCHOLARSHIPS. OUR GOAL IS NOTHING LESS THAN TO INVOLVE WESTERN ALASKANS IN ALL LEVELS OF THE BERING SEA FISHING INDUSTRY, FROM HARVESTING TO MANAGEMENT.

MANY PEOPLE WOULD SAY THIS PROGRAM IS THE BEST THING THE FEDERAL GOVERNMENT HAS EVER DONE FOR THE PEOPLE OF WESTERN ALASKA. AND THE GOVERNMENT DID THIS WITHOUT THE APPROPRIATION OF A SINGLE FEDERAL DOLLAR. WHAT WAS REQUIRED WAS THE ALLOCATION OF A SMALL AMOUNT OF THE NATION'S FISHERIES RESOURCE.

I WISH TO STRESS THAT THIS IS AN OPPORTUNITY PROGRAM, NOT AN ENTITLEMENT PROGRAM. THE BENEFITS ARE ONLY AVAILABLE TO THE COMMUNITIES AND THE INDIVIDUALS WHO HAVE THE INITIATIVE TO UTILIZE THIS PROGRAM TO THEIR BEST ADVANTAGE. IT IS STRUCTURED COMPETITIVELY SO THAT THE CDQ CORPORATIONS THAT ARE NOT USING THEIR QUOTA EFFECTIVELY MAY HAVE IT TAKEN AWAY AND AWARDED TO OTHER CDQ CORPORATIONS.

ANOTHER IMPORTANT ASPECT IS THAT THE IDEA FOR THIS PROGRAM CAME FROM WESTERN ALASKA, NOT FROM OUTSIDE. LOCAL PEOPLE HAVE A VESTED INTEREST IN SEEING IT SUCCEED.

UNDER PRESENT MANAGEMENT PLANS, THE POLLOCK CDQ'S WILL EXPIRE AT THE END OF THIS YEAR. THE NORTH PACIFIC COUNCIL IS CONSIDERING A PROPOSAL TO EXTEND THEM.

ONE PERSON WHO DESERVES MUCH OF THE CREDIT FOR CDQ'S IS YOUR COLLEAGUE, MR. DON YOUNG OF ALASKA. HE SUPPORTED

THE IDEA FOR MANY YEARS AND WORKED WITH THE FEDERAL FISHERIES ADMINISTRATORS TO MAKE CDQ'S A REALITY. ANOTHER PERSON WHO WAS INSTRUMENTAL IN CREATING CDQ'S IS FISHERIES ADVOCATE HAROLD SPARCK OF BETHEL, WHO IS NOW BEING TREATED FOR CANCER IN AN ANCHORAGE HOSPITAL. IN MANY WAYS, THE EXISTENCE OF CDQ'S IS A TRIBUTE TO HIS DETERMINATION AND ABILITY.

ONE SUBJECT THE WAFDA MEMBERS EMPHASIZE IS CONSERVATION. THE PEOPLE OF WESTERN ALASKA HAVE SPOKEN OUT FOR DECADES ON THE NEED FOR FISHERIES CONSERVATION. WE REMEMBER VIVIDLY THOSE TERRIBLE YEARS WHEN THE FOREIGN FLEETS FISHED OUT OF CONTROL OFF ALASKA'S SHORES TAKING SALMON, HERRING, CRAB, AND WHO KNOWS WHAT ELSE.

THERE WAS SOME SPECULATION THAT ONCE WE BECAME PARTICIPANTS IN BERING SEA LARGE VESSEL FISHERIES, WE WOULD LOSE OUR ENTHUSIASM FOR CONSERVATION. IF ANYTHING, OUR PARTICIPATION HAS ONLY INTENSIFIED OUR INTEREST BECAUSE WE NOW HAVE A DIRECT STAKE IN THE RESOURCE AND BECAUSE WE BELIEVE WE CAN MAKE A DIFFERENCE. WE WANT TO SEE THIS INDUSTRY REMAIN VIABLE NOT ONLY FOR THIS GENERATION OF WESTERN ALASKANS, BUT FOR THE NEXT GENERATION, AND THE ONE AFTER THAT. WE WANT TO REDUCE BYCATCH TO THE LOWEST LEVEL POSSIBLE BECAUSE OUR VILLAGES DEPEND ON THOSE BY-CAUGHT SALMON FOR SUSTENANCE AND INCOME.

THE CDQ PROGRAM HAS SET A NEW STANDARD FOR CONSERVATION IN THE NORTH PACIFIC. WE HAVE DEMONSTRATED THAT A COMMUNITY QUOTA — WHEN FISHED BY A CONSCIENTIOUS SKIPPER AND SEAFOOD COMPANY — CAN RESULT IN LOWER BYCATCH, WASTE, AND DISCARDS.

ALL CDQ VESSELS CARRY TWO OBSERVERS, REPORT CATCHES DAILY, AND HAVE FISH HOLDS THAT ARE EQUIPPED FOR MANDATORY VOLUMETRIC MEASUREMENTS. IN THE FUTURE, WE'LL BE MOVING TOWARD MANDATORY WEIGHT MEASUREMENT. THESE MEASURES PROVIDE THE FEDERAL MANAGERS WITH THE MOST RELIABLE DATA POSSIBLE.

THE CDQ CORPORATIONS PAY THE COST OF THESE ADDITIONAL REQUIREMENTS. WE DON'T MIND BECAUSE WE WANT TO BE PART OF THE SOLUTION IN MAKING THIS A BETTER FISHERY. WE BELIEVE THESE STANDARDS SHOULD BE MET BY ALL PARTICIPANTS IN THE NORTH PACIFIC FISHERIES.

MR. CHAIRMAN, I HAVE PROVIDED YOU WITH ALL OF THIS BACKGROUND INFORMATION ABOUT THE CDQ PROGRAM IN ORDER TO DEMONSTRATE THE IMPORTANCE TO US OF A REAUTHORIZED MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT. AS ACTIVE PARTICIPANTS IN EXCLUSIVE ECONOMIC ZONE (EEZ) FISHERIES, WE ARE VERY CONCERNED ABOUT THE LAW THAT GOVERNS FISHING ACTIVITIES IN THE NORTH PACIFIC AND DETERMINES THE LONG-TERM VIABILITY OF OUR INDUSTRY.

BECAUSE OF OUR PRIORITIES, WE STRONGLY ENDORSE H.R. 39. IT CONTAINS MANY PROVISIONS THAT WILL GREATLY IMPROVE THE MANAGEMENT OF OUR NORTH PACIFIC FISHERIES.

TURNING TO THE ISSUE OF MOST IMMEDIATE CONCERN, WE APPRECIATE THE LANGUAGE IN THE BILL THAT DEFINES A "FISHERY DEPENDENT COMMUNITY" AND THAT ALLOWS MANAGEMENT COUNCILS TO RESERVE A PORTION OF THE TOTAL ALLOWABLE CATCH FOR THE USE OF FISHERY DEPENDENT COMMUNITIES.

WE HAVE BEEN INFORMED BY STAFF THAT THE INTENT OF THIS LANGUAGE IS TO AUTHORIZE THE MANAGEMENT COUNCILS TO DEVELOP CDQ PROGRAMS AND THE SECRETARY OF COMMERCE TO ADOPT REGULATIONS IMPLEMENTING CDQ PROGRAMS, AS WELL AS ACCOMPLISH OTHER GOALS.

AT THE CURRENT TIME, WAFDA IS PARTICIPATING IN AN EXPENSIVE LAWSUIT THAT CHALLENGES THE EXISTENCE OF THE CDQ PROGRAM UNDER THE MAGNUSON ACT. IN DECEMBER, THE FEDERAL DISTRICT COURT IN ALASKA RULED THAT CDQ'S ARE AUTHORIZED BY THE MAGNUSON ACT. HOWEVER, THE CHALLENGE IS PENDING APPEAL. BECAUSE THE INTENT IN H.R. 39 IS NOT READILY APPARENT, WE RESPECTFULLY REQUEST THAT LANGUAGE BE ADDED TO REINFORCE THE POINT THAT THE EXISTING WESTERN ALASKA CDQ PROGRAM WITH THE EXISTING ELIGIBILITY REQUIREMENTS IS AUTHORIZED. ACCORDING TO CONGRESSMAN YOUNG AND

SENATOR TED STEVENS, THIS IS WHAT CONGRESS INTENDED AND THIS LANGUAGE WOULD CLARIFY THAT THIS WAS ALWAYS THE CONGRESSIONAL INTENT.

WE ALSO WISH TO PROVIDE YOU WITH OUR COMMENTS ON OTHER KEY SECTIONS OF H.R. 39.

THE BILL CONTAINS LONG OVERDUE DEFINITIONS OF "BYCATCH", "ECONOMIC DISCARDS", "ESSENTIAL FISHERY HABITAT", "REBUILDING PROGRAM", AND "OVERFISHING".

IN THE DEFINITION OF "ESSENTIAL FISHERY HABITAT", WE WISH TO SUGGEST THAT THE SUBCOMMITTEE ALSO ADD AREAS THAT ARE "ESSENTIAL TO MAXIMUM SUSTAINED YIELD" ALONG WITH THE SPAWNING, BREEDING, AND REARING GROUNDS. IN THE DEFINITION OF "OVERFISHING", WE WISH TO SUGGEST THAT THE SUBCOMMITTEE CONSIDER NOT ONLY THE "THE ABILITY OF A STOCK OF FISH TO PRODUCE MAXIMUM SUSTAINED YIELD" BUT ALSO "THE CAPACITY OF A FISHERY TO PRODUCE MAXIMUM SUSTAINED YIELD". WE FEEL THESE CHANGES WOULD STRENGTHEN THE DEFINITIONS.

WE SUPPORT GIVING THE SECRETARY OF COMMERCE A SPECIFIC ROLE TO PLAY IN THE PROTECTION OF ESSENTIAL FISHERY HABITAT.

WE SUPPORT THE PROVISIONS THAT GIVE THE SECRETARY OF COMMERCE THE AUTHORITY TO TAKE STEPS TO STOP OVERFISHING

AND TO REBUILD THE FISHERY IF THE AFFECTED COUNCIL WILL NOT TAKE APPROPRIATE ACTION.

H.R. 39 INCLUDES A NEW NATIONAL STANDARD FOR MINIMIZING BYCATCH. WE REQUEST THAT THIS STANDARD BE STRENGTHENED BY SAYING, "TO THE MAXIMUM EXTENT PRACTICABLE", RATHER THAN JUST "TO THE EXTENT PRACTICABLE".

TWO ADDITIONAL NATIONAL STANDARDS HAVE BEEN PROPOSED IN THE SENATE LEGISLATION. WE HOPE THE SUBCOMMITTEE WILL CONSIDER ADDING THESE SAME STANDARDS TO PREVENT OVERFISHING AND THE RECOGNIZE THE IMPORTANCE OF THE HARVEST OF FISHERY RESOURCES TO FISHERY DEPENDENT COMMUNITIES.

WE SUPPORT THE REQUIREMENTS THAT FISHERY MANAGEMENT PLANS ADDRESS "ESSENTIAL FISHERY HABITAT", THAT THEY INCLUDE FISHERY REBUILDING PLANS WHEN NEEDED, AND THAT THEY INCLUDE "INCENTIVES AND HARVEST PREFERENCES" TO PROMOTE THE AVOIDANCE OF BYCATCH. THESE ARE METHODS THAT WE ARE TRYING TO PROMOTE WITHIN OUR OWN CDQ FISHERIES.

CDQ'S ARE, IN FACT, A LABORATORY FOR CONSERVATION. WE HAVE DEMONSTRATED THAT THE INDUSTRY CAN MEET STRONG STANDARDS IF IT HAS THE PROPER INCENTIVES.

IN THE CDQ FISHERY, WE MADE OUR INDUSTRY PARTNERS AWARE THAT WE CONSIDER HIGH BYCATCH UNACCEPTABLE. WE WORKED WITH THEM TO INSTITUTE PRACTICES THAT ALLOW THE RESOURCE TO BE HARVESTED ACCORDINGLY.

WE SUPPORT THE REQUIREMENT THAT THE NORTH PACIFIC COUNCIL BE GIVEN DEADLINES FOR TAKING ACTION TO REDUCE BYCATCH AND TO ENSURE TOTAL CATCH MEASUREMENT.

TOTAL CATCH MANAGEMENT IS ABSOLUTELY ESSENTIAL FOR THE PREVENTION OF OVERFISHING. WE CANNOT HOPE TO DETERMINE THE OVERALL HEALTH OF A FISHERY OR STOCK OF FISH UNLESS WE KNOW EXACTLY HOW MUCH WAS CAUGHT.

THE CONFLICT OF INTEREST PROVISIONS IN H.R. 39 STRIKE THE PROPER BALANCE IN PREVENTING SELF-SERVING ACTIONS AND IN ALLOWING INDUSTRY PEOPLE TO PUT THEIR FIRST HAND KNOWLEDGE TO USE IN DETERMINING HOW FISHERIES WILL BE MANAGED.

FOR EXAMPLE, THE PRESIDENT OF ONE OF OUR CDQ CORPORATIONS NOW SERVES AS A VOTING MEMBER OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL. HE ALSO IS A COMMERCIAL SALMON FISHERMAN. DURING DELIBERATIONS, HE PROVIDES THE COUNCIL WITH INVALUABLE INFORMATION ON CDQ'S, SALMON FISHERIES, AND LIFE IN WESTERN ALASKA. IT WOULD BE EXTREMELY DETRIMENTAL TO THE COUNCIL'S ABILITY TO

MAKE INFORMED DECISIONS IF THIS INDIVIDUAL WERE PREVENTED BY CONFLICT OF INTEREST RULES FROM VOTING ON CDQ AND SALMON BYCATCH ISSUES BECAUSE OF THE POTENTIAL ECONOMIC BENEFIT TO THE THOUSANDS OF PEOPLE IN HIS SEGMENT OF THE INDUSTRY.

THE DEFINITION OF "AN INTEREST THAT WOULD BE SIGNIFICANTLY AFFECTED" OFFERS A COMMON SENSE APPROACH TO THIS PROBLEM. OUR ONE CONCERN IS THAT THE SECRETARY OF COMMERCE — BECAUSE HE HAS A VESTED INTEREST IN THE OUTCOME OF THE COUNCIL DELIBERATIONS — SHOULD NOT BE THE INDIVIDUAL WHO ESTABLISHES THE RULES THAT PROHIBIT AFFECTED INDIVIDUALS FROM VOTING ON SPECIFIC MATTERS.

THE BILL INCLUDES A CHANGE IN REPORTING REQUIREMENTS IN REGARD THE OPERATION OF LARGE-SCALE DRIFT NET FISHING FLEETS OUTSIDE ANY NATION'S EEZ. NOT LONG AGO, THOUSANDS OF PACIFIC SALMON DISAPPEARED ANNUALLY BECAUSE OF HIGH SEAS INTERCEPTIONS. AGAIN, IT WAS HAROLD SPARCK WHO HELPED BRING THIS PROBLEM TO EVERYONE'S ATTENTION AND FORCED ACTION TO STOP THIS DESTRUCTIVE PRACTICE. THE PROVISION IN H.R. 39 WILL ALLOW THE UNITED STATES TO CONTINUE MONITORING THE SITUATION AND, WE HOPE, PREVENT IT FROM AGAIN BECOMING A MAJOR PROBLEM.

MR. CHAIRMAN, IN CONCLUSION, I URGE THE COMMITTEE MEMBERS TO LOOK FAVORABLY ON THE WESTERN ALASKA CDQ PROGRAM DURING THEIR DELIBERATIONS ON H.R. 39.

WE'RE DOING THE BEST WE CAN TO INSTILL IN OUR COMMUNITIES A NEW SENSE OF HOPE AND SELF-ESTEEM. WE'RE CREATING AN ECONOMY WHERE NONE PREVIOUSLY EXISTED. WITH CDQ'S, WE'RE OPERATING PROJECTS THAT CREATE JOBS, AWARD SCHOLARSHIPS, RETAIN LIMITED ENTRY PERMITS, PROVIDE TRAINING IN NEW SKILLS, AND SO MUCH MORE.

AND MOST IMPORTANTLY, OUR PARTICIPATION IN NORTH PACIFIC FISHERIES IS HELPING TO SET A NEW STANDARD FOR CONSERVATION AND INNOVATIVE FISHING PRACTICES. WHERE OTHER MEMBERS OF THE INDUSTRY MAY SAY, "WE CAN'T", WE SAY, "WE CAN". WE CAN REDUCE BYCATCH, WASTE AND DISCARDS. WE CAN FOLLOW FISHING PRACTICES THAT PRESERVE THIS RESOURCE FOR FUTURE GENERATIONS. WE CAN UTILIZE OUR FISHERIES IN A MANNER THAT IS IN THE BEST INTERESTS OF THE NATION. AND, WE CAN DO ALL THIS WITH AN ALLOCATION OF FEDERAL FISH, NOT WITH THE APPROPRIATION OF FEDERAL DOLLARS.

MR. CHAIRMAN, I AGAIN WISH TO THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

TESTIMONY OF
JEFF HENDRICKS
GENERAL MANAGER OF
ALASKA OCEAN SEAFOOD LIMITED PARTNERSHIP
ANACORTES, WASHINGTON

BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

February 23, 1995

Thank you Mr. Chairman and Members of the Committee. My name is Jeff Hendricks. I am General Manager of Alaska Ocean Seafood Limited Partnership in Anacortes, Washington. I appreciate the opportunity to appear before the Committee on Resources and the Subcommittee on Fisheries, Wildlife and Oceans as you consider reauthorization of the Magnuson Fishery Conservation and Management Act ("Magnuson Act" or "the Act").

The Alaska Ocean partnership owns and operates the vessel ALASKA OCEAN, a picture of which is attached to this testimony. At 376 feet, the ALASKA OCEAN is the largest and one of the most modern surimi factory trawlers in the United States and represents an investment in excess of $65 million. The ALASKA OCEAN operates in the Alaska groundfish industry for a target species of Alaska pollock.

I am principal captain of the ALASKA OCEAN. In addition, I manage and through my companies have an ownership interest in the F/V AURORA and the F/V

AURIGA, which are 190-foot stern trawlers that harvest pollock and other species for delivery to Alaska shoreside processors.

My current involvement in the North Pacific fisheries is the culmination of a long family history of such involvement. My grandfathers operated halibut schooners in the Gulf of Alaska and the Bering Sea, beginning in the 1920's. One of my sons captains the AURORA, and another is employed as a fisherman on the ALASKA OCEAN. I personally have participated in the crab and groundfish fisheries for over 25 years. In the early 1980's, I owned and operated trawlers that delivered catch to foreign mothership processors in joint venture operations. Later, we contributed to the full Americanization of the industry by constructing the AURORA and AURIGA for delivery of catch to U.S. shoreside processors, and introduced the ALASKA OCEAN with at-sea harvesting and processing capability.

Given our large investment and long-term involvement in the fisheries, we are understandably concerned with the way in which the fisheries are managed. We believe that our years of experience have provided us with valuable insights on management issues, and we applaud Chairman Young's introduction of legislation to improve fisheries management.

Briefly, we would like to see a management system that rationalizes the fisheries, that insures the integrity of the Council system, and that prohibits the direct

or indirect exclusion of current industry segments from the fisheries. The following comments address particular aspects of H.R. 39 on the basis of these principles.

I. Rationalizing the Fisheries

(A) Overcapitalization. In our view, the major problem facing the Alaska groundfish fishery is overcapitalization. While the combined efforts of the National Marine Fisheries Service, the scientific community, and the North Pacific Fisheries Management Council have insured that the resource is healthy, there nonetheless are too many vessels harvesting the resource available.

The North Pacific Council has identified the following problems as flowing from that overcapitalization:

- A race for fish
- Allocation and pre-emption problems between industry sectors
- Pre-emption conflicts between gear types
- Excessive participation and surplus fishing effort on limited grounds
- Dead-loss such as with "ghost fishing"
- Bycatch loss
- Economic loss and waste
- Disregard of vessel and crew safety
- Economic instability within industry sectors and fishing communities
- Inability to provide a long-term, stable fisheries-based economy in adjacent coastal communities

- Reduction in ability to provide a quality product to consumers at a competitive price
- Possible impact on marine mammals, birds, and habitats
- Inability to achieve long-term sustainable economic benefits to the nation
- A complex enforcement regime

Our experience confirms the existence of all of these problems; we believe that their existence amply demonstrates that, in an overcapitalized fishery, an open access system -- one in which the fishery is open to all comers -- is the very antithesis of good fisheries management. Equally obvious, we believe, is the conclusion that the North Pacific Council cannot fulfill its management responsibilities under the Magnuson Act unless it moves away from an open-access system for the groundfish fishery.

(B) **The Council's Solutions To-Date**. The North Pacific Council has in fact recognized the inevitability of this conclusion and in recent years has moved to implement various mechanisms to address open-access problems. For example, in 1990, the Council announced its intent to establish a control date beyond which no new vessel would be allowed in the fishery. In 1992, the Council approved a moratorium on new entries; final regulations implementing that moratorium hopefully will take effect some time this year. Also in 1992, the Council made specific allocations of the resource to the inshore and offshore segments of the industry. Currently, the Council is in the process of implementing a license limitation program, which is basically a fine-tuning of the moratorium.

These piece-meal programs, which might constitute good first steps, all suffer from a common flaw -- they do not correct the problem of overcapitalization and the resultant race for fish. Each of these programs essentially attempts to curtail or limit one or more of the factors that go into the effort to fish. For example, the moratorium and the license limitation programs seek to limit the total number of vessels that are engaged in the fishing effort. But a vessel is only one of the "input factors" in the fishing effort. Our experience suggests that limiting one input factor simply encourages participants to expand other factors, to engage in what is called "technology creep" or "capital stuffing". For instance, a participant who wants to increase his share of the harvest, but is prohibited from adding a new vessel to do so, will find other ways, such as increasing horsepower, adding crew, improving technology, etc. As a result, the race for fish just continues -- and accelerates.

The same is true of industry-sector allocations. Under the inshore-offshore allocation, for example, it is true that those two sectors no longer race with each other, a desirable result. But the participants within each sector continue to race each other, and for a smaller amount of resource.

In other words, programs that limit the effort that can be put into fishing are akin to squeezing the air in a balloon. As one factor is "squeezed" or curtailed, the pressure -- the capital input -- simply shifts to another factor.

(C) ITQ's As The Solution to Overcapitalization. We believe that the only viable solution to an overcapitalization problem such as exists in the Alaska groundfish fishery is a system which limits output -- the amount of resource that an individual participant may harvest and/or process. Such a system is commonly called an Individual Transferable Quota, or ITQ system.

Briefly, an ITQ system is one in which individual participants in a fishery are allocated a specific percentage of the total allowable catch, or TAC. The advantages of such a system are myriad; the most basic is that it stops the race for fish. No amount of capital investment, capital stuffing, or technology improvement can alter the amount of a participant's harvest beyond that which is fixed in the quota itself.

Elimination of the race for fish of necessity eliminates the problems that flow from that race. It is for this reason that the staff of the North Pacific Council concluded that an ITQ program -- unlike the other measures the Council is trying -- would eliminate virtually all the problems listed above. Among the benefits that can be expected from an ITQ program are:

- Increased and enhanced use of the fishery resource
- Decreased by-catch and waste
- Rational and meaningful reduction of capitalization
- Increased safety and financial security for crew members
- Economic stability and improved planning capability for harvesters and processors

- Resolution of allocation disputes
- Improved market opportunities

In 1992, the Council implemented the Community Development Quota program, pursuant to which a percentage quota of the pollock resource is given to certain coastal communities. The CDQ program therefore is actually a "mini" ITQ program and its results can provide valuable insights. We understand that the Subcommittee will receive testimony from representatives of one or more CDQ communities. We fully expect that their testimony will confirm what we are suggesting -- that ITQ's are the rational way to manage the Alaska groundfish fishery.

(D) Legislative Changes That Are Needed. The North Pacific Council has begun consideration of ITQ's for the groundfish industry, but has deferred the immediacy of that consideration in favor of more piece-meal, less effective measures such as the license limitation program. Our observations of the Council's deliberations suggest that the Council feels constrained from implementing ITQ's, at least in part, by certain actual or perceived legal and political impediments to such implementation. We respectfully request that the Subcommittee amend H.R. 39 to remove these impediments as set out below.

1. **Authorize and Mandate ITQ's**. We believe that the Magnuson Act already contains authority for Councils to implement ITQ's, and it is our understanding that the existence of that authority has been affirmed in at least two

recent court cases. Nonetheless, concerns on this issue remain and can be put to rest by legislation that unequivocally authorizes Councils to implement ITQ's.

In addition, we ask the Subcommittee to approve legislation that requires the North Pacific Council to implement an ITQ program for the groundfish fishery, and to do so within two (2) years. The groundfish resource is healthy, but its future health and that of the entire industry are threatened by continuation of piecemeal, ineffective programs.

2. **Initial Allocation Parameters**. One of the most difficult factors in designing an ITQ program is devising initial allocation parameters that will survive legal scrutiny and political pressure. Various formulations have been suggested and some tried in other ITQ programs. Among these are allocation of equal shares to all participants, allocations based on vessel length, allocations based on catch history over various sets of years, allocations based on level of investment in the fishery, etc.

The legal and political problems arising from allocation formulations result from the tendency of those formulations to create winners and losers -- for some recipients to receive "windfalls" at the expense of other participants. We believe that winner-and-loser issues can be greatly minimized in the Alaska groundfish industry by a simple concept:

ANY INITIAL ALLOCATION SCHEME FOR A FULLY UTILIZED GROUNDFISH SPECIES SHALL NOT RESULT IN MORE THAN A FIVE PERCENT (5%) REDUCTION IN STATUS QUO FOR EACH PARTICIPATING HARVESTING VESSEL.

ANY INITIAL ALLOCATION SCHEME FOR A FULLY UTILIZED GROUNDFISH SPECIES SHALL NOT RESULT IN MORE THAN A FIVE PERCENT (5%) REDUCTION IN STATUS QUO FOR EACH INDUSTRY PROCESSING SECTOR.

The appeal of this concept is that it leaves those that are presently harvesting and presently processing the resource virtually where they are right now -- there simply are no winners and losers. Thus there are no windfalls. Nor is there any threat to the economic well-being of crew members and others who depend on those who would be losers under other formulations. In other words, the parameters are fair.

We therefore urge the Subcommittee to approve legislation mandating the use of these initial allocation parameters in the Alaska groundfish fishery ITQ system.

3. **Processor Quotas**. The shoreside processing segment of the groundfish industry has made clear that it cannot and will not support any ITQ system that does not include processor quotas. Unfortunately, the General Counsel of the National Oceanographic and Atmospheric Administration has opined to the North

Pacific Council that shoreside processor quotas are not authorized under the Magnuson Act.

As suggested by our discussion of allocation parameters, we believe that there should be offshore and shoreside processor quotas, and, in our view, the various industry segments are close to reaching a consensus on the details and mechanics of such quotas. We therefore ask the Subcommittee to approve legislation authorizing Councils to issue quotas to all processors, including both offshore and inshore processors.

4. Nature of ITQ's. There has been considerable concern and debate in the industry, in the government, and among environmental groups as to the legal nature of an ITQ. The basic issue is whether an ITQ is a property right. If it is, revocation of an ITQ could lead to "taking" claims under the Fifth Amendment and potentially subject the government to liability.

We suggest that the Subcommittee eliminate these concerns by approving legislation making it clear that an ITQ is not a property right.

II. Bycatch and Reduction of Waste Provisions

(A) Alaska Ocean's Efforts. We are proud of the measures we have taken to minimize bycatch and to utilize fully those fish that we do harvest. As a surimi vessel we target pollock and whiting. Because these species typically are found

concentrated with few other kinds of fish, and because they tend to swim in large schools, we are able to avoid much of the bycatch problem experienced in some other fisheries. This allows us to fish cleanly simply because of our target species.

Our commitment to sound bycatch management and to full utilization of the fish we catch is no better evidenced than in the design of our vessel. Like many vessels in the factory trawler fleet, in planning the ALASKA OCEAN we included not only state-of-the-art fish processing machinery to ensure high production efficiency; we also made the additional investment necessary to utilize as much of the fish as practical. Our vessel is of a size sufficient to allow for a modern fish meal plant on board which enables us to turn that portion of the fish that is not used in the production of surimi into fish meal. Although obviously lower in value than our surimi product, we believe that this capability is an important part of our responsibility to meet the efficiency objectives of the Magnuson Act. We also have an oil plant on board the vessel which gives us the ability, through a centrifuge process, to recover the fish oil from our processing operation. We are able to put that oil to good use to fuel our boilers to make fresh water and process fish meal. Finally, we have made the investment in state-of-the-art scales permitting us to weigh accurately the fish we catch. This allows us to determine with a higher degree of certainty exactly what we are doing in the fishery.

In turning to the bycatch provisions of H.R. 39 appearing in Sections 3, 4 and 7, we have no objection to the goal of minimizing bycatch to the extent practicable, nor

to the proposed additions to the policy section of the Act or to the National Standards of such language. Because of the differences among fisheries and in fishing conditions, however, we believe that any further effort to legislate bycatch issues should be left to the Regional Councils.

(B) Incentive Programs. As is evident from the design of our vessel, we support the goals of reducing fishing waste that appear to have motivated the addition of the waste provisions in Section 14 of H.R. 39. However, again we have reservations about efforts on the part of Congress to "micro-manage" issues that are more properly left to the Regional Councils. In particular, we are concerned with the provisions that operate on the basis of incentives rather than penalties. We see these as potential avenues for discriminating against the trawler fleet even though, on a percentage basis, ours is one of the cleanest fisheries. Section 14 of the bill would require the North Pacific Council to recommend for each fishery management plan under its jurisdiction incentive measures to reduce bycatch. Similarly, harvest preferences based on lower levels of discards create the same problems.

These kinds of incentives have been identified and are already under review by the North Pacific Council. Among the concerns are practical and legal problems in proving that one fisherman has in fact fished better than another sufficient to justify the kind of reward a harvest preference would reflect. It is one thing to penalize a bad actor, upon presentation of evidence of a violation of law; it is another to establish that someone else has acted sufficiently positively to warrant the benefit. This is

particularly true where data collection is an imperfect science and is potentially highly variable depending on the observers on board the vessel. These concerns are detailed in a Memorandum from Clarence G. Pautzke, Executive Director of the North Pacific Council, to Council, SSC and AP Members, re: Harvest Priority/Full Utilization (Apr. 17, 1994).

Given the already recognized administrative and other problems associated with incentive programs, we believe it unwise for Congress to mandate specifically the inclusion of such programs in all fishery management plans of the North Pacific Council. If they are to be mandated, however, we believe that the July 1, 1996 deadline contained in Section 14 (2)(f)(1) is insufficient to allow these to be formulated, particularly given the heavy schedule to which the Council is already subject in dealing with Comprehensive Rationalization Planning, the sunset of inshore/offshore, the moratorium implementation and other major issues already in the pipeline.

(C) "Targeting" the North Pacific Council. We have one final concern with the Section 14 waste reduction provisions of H.R. 39. It is widely recognized, especially compared to other regions, that the North Pacific Council has done a pretty good job in conserving and protecting the resources under its jurisdiction. Why then is it singled out for this micro-management? By their express terms, these reduction of waste provisions apply only to the North Pacific Council. There are certainly areas in the country where this kind of mandate might be warranted, although we see no reason why the North Pacific Council should even be on the list, let alone constitute

the entire list. To the best of our knowledge, today's hearings are the first in either the House or the Senate to address the so-called "waste issue". This is hardly the record needed to justify this kind of regulatory intrusion in the first place, let alone the discriminatory manner with respect to our region in which it has been proposed. If these kinds of provisions are to be required, they should be based on a sound record as to why they are needed and they should be required of every one of the councils.

III. Fishery Dependent Communities

We understand the benefits that Community Development Quotas can bring to a local community, particularly since our company is currently under consideration as a finalist to work with one such community in harvesting and processing its quota. To the extent there have been questions about the authority under the Act for the creation of CDQs, we understand that recent court cases have been read to uphold their legality. Should the Committee decide that more is needed in the form of a specific legislative grant of authority, we have no objection to such a change. It is not clear to us, however, that the new fishery dependent community provisions in H.R. 39 accomplish that objective.

Section 9 of the bill adds new discretionary provisions that a Council may include in a fishery management plan, including conservation and management measures reserving a portion of the total allowable catch for the use of fishery dependent communities. These are defined as communities which are substantially

dependent on the harvest of fishery resources to meet social and economic needs. That is all that is said, leaving a number of questions unanswered. Many in the industry from communities in all of the states under the Council's jurisdiction have been dependent on the fisheries for their economic and social needs. Yet it is not clear which communities would be eligible and which would not, with the answer varying greatly depending on the economic diversity in those areas. It is also unclear what the real objectives are and what standards are to be applied in determining the "conservation and management" purposes that appear to limit such allocations. Finally, we assume that this bill expands CDQs beyond pollock to all species because the provisions of Section 9 of H.R. 39 would give Councils new general authority to reserve a portion of any TAC for use by fisheries dependent communities. In short, if amendments to the Act are needed in this area, we recommend that general guidelines be developed to define the scope of the program and to be sure that any such allocations meet the intended needs and objectives of such a program.

IV. Council Reforms

(A) Background. The Regional Fisheries Management Councils are a unique experiment in the regulation of a natural resource and the industries that depend on it. The Council system brought public participation in the decision making process to a new level by allowing those who have an economic stake in the fisheries to sit on the Councils and to vote on matters that have a direct impact on their own wallets or those of their constituencies. The inherent tension between the Council

member's role as a trustee of the resource responsible for its conservation and sound management on the one hand, and the economic temptations, and indeed necessities, of that member's business on the other, has never been fully resolved. In fact, in the 1980's the Act was actually amended to exempt Council members from the federal conflicts of interest statutes -- the only such exemption on the books.

Because the Magnuson Act gives a statutory priority to U.S. vessels, for many years -- as long as foreign vessels were in our waters catching and processing fish -- allocation decisions were relatively easy. However, once the foreign vessels were displaced by U.S. flag vessels the decisions became much more difficult, as an increasing number of U.S. user groups competed for a larger piece of the same pie. With a billion dollar resource at stake, it has become important to avoid both actual and perceived conflicts of interest in the management process. The Inspector General of the Department of Commerce has studied the situation in the North Pacific, identifying a number of past abuses and problems and making detailed recommendations for amendments to the Act which were presented in hearings in the last Congress. Testimony of Frank DeGeorge, Inspector General of the United States Department of Commerce, before the Subcommittee on Fisheries Management of the House Merchant Marine and Fisheries Committee (March 23, 1994).

(B) **Recusal**. We are pleased to see that H.R. 39 takes a step in the right direction by incorporating some of these reforms. In particular, the adoption of a recusal mechanism, as well as the procedural improvements regarding roll call votes,

better notice of meetings, better identification of witnesses, detailed minutes, and the ability of members to add to agenda items will all help improve decision making in the Council system. Similarly, putting the Executive Director back under the federal conflicts of interest statute, like all other federal employees, is an appropriate change. There remains, however, room for improvement in several areas.

First, the recusal mechanism falls short of providing a full safeguard against conflicts of interest. The triggering event for a Council member to be recused is if the Council member (or a close relative or business partner) has "an interest that would be significantly affected". This in turn is defined to mean:

> a personal financial interest which would be augmented by voting on the matter and which would only be shared by a minority of other persons within the same industry sector or gear group whose activity would be directly affected by a Council's action.

By limiting the relevant "interest" to one that is "personal" it would appear as though actions benefiting an employer or corporate entity would not be included unless the voting member had an equity interest in the company or could earn a "success bonus" or had some other compensation arrangement that could be viewed as resulting in a "personal" benefit to the individual. Council members who, for example, are salaried employees of an environmental, trade, or other association -- which association would clearly benefit from the outcome of a management decision -- would apparently be free to vote for that measure without the need for recusal.

In addition, the reach of the regulations could also be escaped simply by defining the class to be benefited so narrowly that all would benefit. For example, a proposal to give an allocation preference to the industry sector described as "factory trawlers greater than 375 feet in length" would affect only one vessel in the entire fleet, the ALASKA OCEAN. Yet presumably if I were on the Council I would not have to recuse myself since all members (which in this case happens to be my company) of that industry sector (and not just a minority) would share in the benefit.

Finally, the practical problems with the recusal mechanism as proposed are very real. Because recusal is either voluntary with the individual member, or at the direction of the NOAA General Counsel, it provides no mechanism for another Council member to raise a conflict issue concerning a colleague on the Council. Significantly, there is no appeal mechanism, should the NOAA General Council's decision at the Council meeting be shown to be erroneous. Moreover, there would be no invalidation of a Council's action, even if the deciding vote were cast by a member who ultimately was found to have violated the conflicts prohibition.

(C) **Judicial Review**. In addition to refining the recusal mechanism, we recommend that the Committee consider some further changes. In particular, H.R. 39 does not address the appropriate standard of judicial review of Council actions. The integrity of the Council system cannot be fully insured without increased judicial scrutiny of Council actions to ensure that those actions are both in compliance with

the National Standards and other relevant law and are arrived at fairly and with full regard to due process.

Few would dispute the fact that the substantive decisions with respect to fisheries management are made at the Council level, not the Secretarial level. Fundamental fairness demands that those substantive decisions and the process by which they were made be subject to judicial review. Unfortunately the courts have failed to do this, choosing instead to evaluate only the ministerial actions taken by the Secretary in promulgating the Councils' substantive decisions.

Section 8(h)(4) of H.R. 39 takes an initial step toward correcting this problem by requiring the Councils to produce detailed, certified meeting minutes, and by specifying that those minutes are to be made available to the courts. We do not believe that this provision goes far enough, however; even in cases where courts have had Council records before them, they have declined to evaluate them and have viewed Council actions as being "cleansed" by the Secretary's ministerial functions.

We therefore propose an amendment which would clearly subject Council actions to review under the provisions and standards of the Administrative Procedures Act. By this proposal, we neither desire nor intend that Councils or Council members be subject to direct suit with respect to their actions on fishery management plans or proposed regulations. Our purpose is merely to ensure that Council actions on those matters are reviewed and evaluated by the courts in the context of legal challenges to

the Secretary's promulgation of regulations. This becomes even more important in light of the proposals in H.R. 39 that increase considerably the Council's authority.

We suggest an amendment to Subsection 305 (b)(1) of the Act that would insert between "act" and "and" the following: "Council actions upon which such regulations are based". We also suggest adding the following new subparagraph (b)(1)(C): "Nothing herein shall be construed as authorizing any suit against any Council or Council member on the basis of the actions referred to in this subsection."

This concludes my prepared remarks, Mr. Chairman. I would be pleased to answer any questions you or other Members of the Committee may have. And thank you again for this opportunity to appear before you today.

Testimony of
Nelson R. Beideman
Executive Director
Blue Water Fishermen's Association

Before the

Subcommittee on Fisheries, Wildlife and Oceans
Committee on Resources
United States House of Representatives

February 23, 1995

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to speak to you about the Magnuson Fishery Conservation and Management Act (MFCMA).

I am Nelson Beideman, Executive Director of Blue Water Fishermen's Association (BWFA). I had served as Blue Water's President from December 1989 until April 1993 when my boat and all hands were tragically lost at sea. I have been a fisherman since childhood and began commercial fishing year-round after my graduation from Maine Maritime Academy in 1975.

Blue Water Fishermen's Association (BWFA) represents commercial fishermen, vessel owners, fish dealers and supporting supply companies with an interest in Atlantic highly migratory marine species, with members from Maine to Texas and California to the Caribbean Islands. These family-run small businesses are comprised of hard-working Americans who are proud to carry on the tradition of providing healthy food for other Americans who cannot or do not want to catch their own.

Thank you for delaying the mark-up of the current reauthorization of the Atlantic Tuna Convention Act (ATCA). The extra time has given your staff and industry the opportunity to work to improve the Bill. Because NMFS can choose either Act to implement regulations for highly migratory species, it is also necessary to incorporate comparable enforcement provisions in the Magnuson Act to ensure fairness and equity for U.S. fishermen who harvest internationally shared resources.

The reauthorization and strengthening of the MFCMA is a critical part of the revised management program for highly migratory species (H.M.S.) that Congress initiated with the last amendments to the MFCMA and the ATCA. Congress did the right thing then, and now it is essential that Congress reaffirm its commitment to a balanced approach that coordinates domestic and international efforts. Many of the proposed amendments to HR-39 will strengthen this important Act. First, I will review some concerns with the current bill and then raise some new ideas.

Current Bill: HR-39

Policy

"minimize bycatch, and"

The bycatch issue is one that affects all fisheries, commercial and recreational. It is most acute in the trawl and multi-species hook and line fisheries. The reality is that to a "fish" -- **a baited hook is a baited hook** and it does not recognize the political ramifications of choosing a hook that is at the end of a commercial longline or a hook at the end of a recreational rod and reel. The Atlantic pelagic longline fishery and the recreational deep-sea big game fishery use similar fishing methods and many times the exact same hook and baits in the same geographical areas, often within sight of one another. Why then is a commercially-caught unmarketable species deemed as *"Bycatch"* while the other fishery refers to such a catch as *"a Lucky Day"*?

Definitions

By-catch:

The important issue is to eliminate waste of fishery resources to the extent practicable. We need to address the regulatory waste in all fisheries. The focus should be to document all fish mortalities and eliminate waste of by-catch to the extent practicable.

Fishery dependent community:

This is to address what is mostly a regional issue in the Northwest. It could have unintended and unwanted consequences if applied over the entire country. A regional issue should have a regional solution.

While we have no objection to the proposed definition, we think that most communities with any amount of fishing and/or processing businesses could rightly claim to being dependent on fisheries. This may involve municipalities in these difficult allocation debates. How will this be applied to HMS vessels that migrate with the seasons?

Overfishing:

It is biologically impossible for all species to be at maximum sustainable levels all at one time. Fishery managers need flexibility to make choices for the benefit of the fisheries as a whole and to the Nation overall.

Regulatory discards:

While we support the proposed definition, the goal for fisheries management should be to move toward ecosystem management that will eliminate the need for regulations that cause wasteful practices. Regulations should not mandate waste. As far as we know, the U.S. is the only country that appears to be relying more and more on this wasteful practice.

Proposed National Standard #8

The present wording of the proposed *National Standard #8* could take our nation further down the road of regulatory discarding, depending upon how it is interpreted. Although that may benefit the political agendas of some groups, it will do little for conservation and nothing for addressing the problem of waste. U.S. management measures should begin to resolve the problems associated with implementation of wasteful regulations.

We suggest: *"encourage utilization of the fishery resources to the fullest extent practicable while reducing avoidable bycatch and discards as technologically and economically feasible."*

Conflict of Interest

Standards should apply equally to all Council members including those affiliated with private organizations that seek members with an interest in fisheries or other marine issues. Even the State representatives have potential conflicts of interest due to Wallop-Breaux funding derived primarily from the sportfishing industry. Proof of a direct significant financial impact will affect only commercial Council members. We think that recent proposals would nullify one of basic purposes of the Magnuson Act -- to have those who are managed be an integral part of the management process.

Discretionary provisions

We question the intent of allowing "allocation of a portion of the TAC to fishery dependent communities". We think that this will invite municipalities and states into the heated allocation debates. This will result in resource management that is less based on science and more based on politics. Again, this is a regional issue that has implications for the entire nation.

HMS section

We think that Congress should retain the subsection heading "Highly Migratory Species". We oppose the subsection heading "Fisheries Under Authority of More Than One Council" to encompass Atlantic highly migratory species because the Secretary has management authority for those fish. Due to the international nature of these species, their management requires different considerations apart from species that are harvested only within the U.S. EEZ.

Fishing Mortality Levels

We agree that by adding the term "fishing mortality levels" Congress has clarified its intent that U.S. fishermen should not be required to do more -- or less -- than foreign competitors for conserving these fish that migrate throughout the Atlantic Ocean. If an internationally negotiated management recommendation is phrased as a reduction in "fishing mortality levels", NOAA has determined that it does not have to follow this section because the recommendation is not specifically called a "quota or allocation".

Plan Development Teams

We support the current bill amendments that address the need for Plan Development Teams (PDTs) which include outside non-NMFS Scientists and members of user groups. NOAA has resisted industry requests for this type of approach based on perceived problems with the Federal Advisory Committee Act (FACA). This amendment will improve the Secretary's management process by opening it to more constructive outside involvement. All HMS user groups are interested in participating directly through an open public forum. By establishing teams from the ICCAT Advisory Committee, it will enhance the linkage between effective domestic and international management programs.

Actions by the Secretary

We are concerned with the Secretary's "requirements to halt overfishing". How would this apply to HMS that are harvested internationally? For HMS, overfishing definitions and 602 criteria must only apply if incorporated at the international level to all harvesting nations. Clearly with the small U.S. percentage of Atlantic-wide catches, the Secretary cannot effectively control overfishing without international cooperation.

New Ideas for MFCMA

Specific to Highly Migratory Species management

Despite the recent progress in highly migratory species management, we still have a long way to go, especially internationally. I hope that we will begin to see some benefits for our efforts soon. There are certainly indications of potentially good things to come for bluefin tuna. There must be a similar level of priority and focus to establish workable rebuilding regimes for other highly migratory species.

In October 1993, I reported to you that the scientific data indicated a gentle recovery occurring with the stock of North Atlantic Swordfish. As you may know, recent updated landings by many countries changed that prospect to one of considerable concern. This is a very serious situation, especially since the U.S. has been doing all of its fair share and then some while other nations have ignored the ICCAT recommendations and increased their landings. These increased landings are literally a "theft" of the resource causing the stock status to decline. The injury is compounded because many of these increased landings end up in the U.S. marketplace resulting in lower prices to American fishermen and long-term losses to the U.S. economy. This situation will require far more international cooperation then we have been able to gather to date. We hope that intense concentration on this issue will quickly turn this situation around in 1995.

Policy:

Congress should develop a formal policy directive that unilateral U.S. management actions must seek to maintain the existing U.S. share of international harvests to ensure fairness and equity for U.S. fishermen and the American seafood consumer.

According to NMFS and ICCAT's latest statistics, the total U.S. share of Atlantic highly migratory species landed is only 3.5% of the total Atlantic catch reported to ICCAT. BWFA fails to see how unilateral restrictions on U.S. commercial fishermen can have any significant impact on conserving most of these resources when our share is less than five percent of the total catch. This clearly illustrates the need for international management for effective conservation. Regulating only the U.S. commercial and recreational fishermen will not conserve these fish. How successful can conservation negotiations be if other countries across the table know (before we even sit down to negotiate) that the U.S. will sacrifice its own industry in the name of conservation even if they do nothing? What incentive do they have to agree to international management and conservation measures? Where will the U.S. be in the future when our ability to harvest food fish from the offshore waters has been reduced or eliminated? What further actions could the U.S. then take to conserve these species? What benefits will come from the lost jobs that will result?

*Amend the Act to include the **Highly Migratory Species Comparable Conservation Provisions** to encourage compliance with International Recommendations* (attached)

Congress should consider implementing mechanisms to ensure that access to U.S. markets does not provide incentives to circumvent conservation and management recommendations for species under international management agreements to which the U.S. is a party. This may prevent problems of overfishing international fish stocks in the future and offset the economic hardship to U.S. fishermen who already bear more than their fair share of the conservation burden. The proposed amendment will grant Secretarial authority to support and enhance international management of shared highly migratory species resources. The amendments require that the Secretary establish

reporting and compliance requirements for internationally managed stocks. Capping or restricting imports from these stocks to levels consistent with international management recommendations will encourage compliance and prevent the U.S. market from providing an incentive for competing international fleets to expand their catch and effort while U.S. fleets are restricted. Unlimited access to the U.S. market has encouraged fleet expansion in the Caribbean and Latin America where ICCAT management recommendations are not enforced. Swordfish landings and exports from "minor harvesting nations" have increased substantially in the period from 1989 through 1993, while U.S. landings have been reduced by 37%.

Most of these provisions are included in the current amendments to the ATCA. However, the difficult problem of notifying U.S. governmental and U.N. programs that continue to develop fisheries on fully exploited and over-exploited stocks of fish has not yet been resolved.

Grant flexibility to the Secretary to implement access controls for HMS

There appears to be a prohibition on implementing access controls for HMS managed by the Secretary unless there is Council approval -- yet the Councils do not have authority for HMS. The PDTs and ICCAT Advisory Committee should fill that role for HMS. These fisheries are in danger of being deluged with new entrants because they are one of the few that remain "open".

General Suggested Improvements to HR-39

Definitions

The Magnuson Act has references to several pertinent terms that should be defined. These include the terms: "commercial fishing", "recreational fishing", and "target species". Coast Guard regulations and various FMPs have provisions for commercial fishing vessels (or fishermen) and recreational fishing vessels (or fishermen). The Magnuson Act should also clearly define these terms. The language crafted to define "target species" must keep in mind that many U.S. fisheries are multi-species fisheries. Fishermen often intentionally catch a variety of species on the same fishing trip. All useable species are kept to comprise the total catch. Legislation should clearly promote a more holistic approach to management, not regress to species-specific management.

User Fees

If user fee discussions arise again, I encourage Congress to find a way that such fees would not fall solely on the harvesting sector. BWFA strongly opposes the "ex-vessel Fees" as described by some current proposals. Small businesses that are being strictly regulated cannot form a new tax base. We agree that NMFS needs adequate funds to improve the conservation and management of our living marine resources. Budgetary constraints demand that new funds be generated if government services need to be expanded. User fees must be fair and equitable for all fisheries users, recreational, commercial and include all consumers of seafood products including aquaculture and imported fish. An advisory group must be formed and consulted to direct funds to specific programs. A portion of these funds should be used to support programs of direct benefit to users such as national fishery associations, generic marketing and/or U.S. fisheries public relations.

Improved management processes

BWFA has testified several times since 1990 on management of H.M.S. and our efforts to support an open regulatory process that recognizes the necessity of an international focus. The public process continues to lack an open forum for debate with the actual policy makers and decision-making in open meetings. At the moment, this can only be accomplished by traveling to Silver

Spring if a meeting can be arranged. If properly implemented, the incorporation of PDTs may help to alleviate this situation; however, we suggest that all interested parties work toward a standardized public process for all necessary fishery forums, including the Regional Councils, International Advisory Committees and State Commissions.

National Scientific Data Collection Program

The almost complete absence of permit and reporting requirements for charter, party, and headboats is telling. These small businesses reap the same financial benefits that small family commercial fishing businesses gain by having access to these offshore resources. Commercial fishing businesses have mandatory permits, mandatory daily logs, mandatory dealer reports of sales and sizes of all species caught, mandatory observer programs, and several other voluntary research programs.

Congress should demand comparable regulations and monitoring requirements for all businesses that profit from access to these resources and demand that the Secretary enhance NOAA's research efforts and ensure fair treatment for all U.S. fishermen. To address the other issues, Congress could require licenses for all harvesters of H.M.S., mandatory permits, logbooks, and sampling sheets for all businesses, including party, charter, and headboat businesses, prohibit sale by non-commercially registered vessels, prohibit all purchases by restaurants and others from non-permitted commercial sources.

Allocation Issues vs. Scientific Issues

The issue of fishery allocations continues to be a difficult and frustrating area. As the debate continues to portray this as being commercial vs. recreational, where do the consumer's rights enter into the equation? For HMS, the primary focus must be on retaining the U.S. share of these international resources. How will the U.S. seafood-consuming public lose if we continue to diminish our capacity to harvest these food resources? If commercial fishermen have to pay fees to provide food for U.S. consumers, shouldn't recreational anglers have to pay when species are declared to be "gamefish" and the non-fishing public is therefore denied access to these resources?

We appreciate Congressional efforts to hold all nations who harvest internationally-sought species accountable to a similar degree as American fishermen. We ask you to continue and strengthen that policy for the sake of the resource and the benefit of the Nation.

I thank the Chairman and the Subcommittee for the opportunity to testify today and I will be happy to answer any questions that you may have.

BLUE WATER FISHERMEN'S ASSOCIATION

ummary: 1994 ICCAT Swordfish

Our country cannot afford to continually give away the rights to the U.S. share of these natural resources. U.S. fishermen have led the way in support of conservation and management for Atlantic Swordfish. We must seek to reward not punish compliance with ICCAT agreements.

The U.S. must not fully agree to the present 1994 ICCAT Swordfish Proposal.

Percentages of North Atlantic Swordfish Catch by Country in 1988 and Projections for 1995 and 1996

Country	1988	1995	1996	Percentage of Increase or Decrease of Share from 1988 compared to 1996
USA	31.4%	25.2%	24.3%	**22.6% Decrease**
Spain	49.9%	39.5%	38.3%	**23.2% Decrease**
Canada	4.6%	9.5%	9.7%	**110.8% Increase**
Portugal	4.2%	9.5%	9.7%	**130.9% Increase**
Venezuela	0.5%	0.7%	0.7%	**40% Increase**
Trinidad	0.2%	3.5%	3.9%	**1850% Increase**
Japan	3.2%	7.1%	7.8%	**143.7% Increase**
Morocco	1.0%	2.9%	3.1%	**210% Increase**
Chi-Taiwan	0.1%	0.6%	0.7%	**600% Increase**

We believe these essential ingredients must be included in future ICCAT Swordfish Recommendations:

Including but not limited to:

1). An International allocation Program that recognizes U.S. compliance with past ICCAT Swordfish Recommendations and that reinstates the past U.S. proportional share of harvest.

2). Mechanisms to monitor and ensure compliance among contracting parties and to encourage non-contracting parties to participate.

3). A rebuilding program (targets and timetables) for Atlantic-wide Swordfish.

It is unacceptable to us that those nations that did not comply with the previous ICCAT Swordfish Recommendations have been rewarded; while Spain but especially the U.S., due to our compliance, must suffer further reductions disproportionately to those nations that increased their harvest contrary to ICCAT's advice.

The United States should implement a 1995 Quota consistent with the 1994 ICCAT Swordfish Recommendation. Formal written objection must be made to the 1996 Country Allocations because they are inadequate to rebuild the resource and unfair in light of past compliance and historical international shares.

ICCAT must be informed that the U.S. intends to reopen Swordfish negotiations regarding quota allocations prior to and during the ICCAT Commission Meeting in November 1995. The U.S. fishery managers must aggressively pursue implementation of monitoring and trade measures to ensure compliance by nations using our marketplace. The U.S. Industry must be provided with confirmed evidence that all Atlantic harvesters are participating before further U.S. reductions are considered. The U.S. must begin today to develop a strategy to regain our rightful international share in a way that recognizes our past compliance.

an we move forward together and aggressively pursue a better future for U.S. Swordfish Fishermen?

For further information contact BWFA Executive Director, Nelson R. Beideman at; Voice: (609)494-4075, or Fax: (609)494-7210.

Much of the following suggested amendment was presented to Senate staff in the fall of 1994. Recent House and Senate drafts of the ATCA and MFCMA have partially incorporated these suggestions. Recent events at ICCAT relating to the management program for swordfish highlight the need for stronger compliance mechanisms that can strengthen the U.S. negotiating position when other member and non-member nations ignore ICCAT recommendations. BWFA thinks that it may also be necessary to develop specific provisions of the ATCA that would allow the U.S. to formally object to ICCAT recommendations that are inadequate in terms of stock protection or that unfairly place an excessive burden only on U.S. fishermen. The following suggested language will provide policy guidance to ICCAT Commissioners and help to ensure fairness to U.S. fishermen in international conservation. BWFA would like House Staff to re-consider the underlined portions of the following amendment.

Highly Migratory Species Comparable Conservation Provisions

The Secretary shall:

1) Ensure that the conservation actions recommended by international commissions and implemented by the Secretary for U.S. commercial and recreational fishermen provide fair and equitable sharing of the conservation burden among all contracting harvesters in negotiations with those commissions. Further, the U.S. policy shall be to maintain and protect U.S. international harvest shares that have been established since the extension of U.S. jurisdiction to 200 miles.

2) Provide Congress with a report within 6 months of the passage of this act on the catches and imports from 1982 through 1993 of tuna, swordfish, marlin, and sharks from nations fishing on Atlantic stocks of these species under ICCAT jurisdiction or Secretarial management authority.

3) Identify those nations whose production is increasing and determine if those harvests are compatible with existing management programs for highly migratory species. If production is incompatible with existing management programs, the Secretary shall issue a finding that continued harvests by that nation are diminishing the effectiveness of an international management program.

4) Identify those nations with expanding fisheries on fully exploited or over-exploited highly migratory species resources that have received economic aid from U.S. or UN developmental agencies. The Secretary of Commerce and the Secretary of State shall notify U.S. and UN organizations responsible for funding fishery development programs that these programs are diminishing the effectiveness of international management programs.

5) In those cases where ICCAT or a similar international organization has recommended that harvesting nations limit or maintain their catch levels or harvesting capacity at recent levels for a specific stock, the Secretary shall establish import quotas for that stock based on the average exports received during the time period referenced in the management recommendation.

6) In those cases where ICCAT or a similar international organization has recommended supplementary non-quota management recommendations (i.e. minimum sizes), the Secretary shall institute reporting requirements for imported production that will document compliance with the management recommendations as a condition for importation.

Rationale: The proposed amendment strengthens the existing language in the ATCA with respect to Secretarial authority to support and enhance international management of shared highly migratory species resources. The amendments require that the Secretary establish reporting and compliance requirements for internationally managed stocks. Capping or restricting imports from these stocks to levels consistent with international management recommendations will encourage compliance and prevent the U.S. market from providing an incentive for competing international fleets to expand their catch and effort while U.S. fleets are restricted. Unlimited access to the U.S. market has encouraged fleet expansion in the Caribbean and Latin America where ICCAT management recommendations are not enforced. Swordfish landings and exports from "minor harvesting nations" have increased substantially since 1989-1991, while U.S. landings have been reduced by 37%.

TESTIMONY OF CHRIS NELSON

BEFORE THE HOUSE COMMITTEE ON RESOURCES SUBCOMMITTEE ON

FISHERIES, WILDLIFE AND OCEANS

ON

H.R. 39

AND

THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND

MANAGEMENT ACT

FEBRUARY 23, 1995

Mr. Chairman and Members of the Committee, my name is Chris Nelson, Vice President of Bon Secour Fisheries, Inc. in Bon Secour, AL. Bon Secour Fisheries has been owned and operated by my family since 1945. My family has been in the seafood business for more than 100 years. I am the fourth generation in the business.

Bon Secour Fisheries is both a shrimp and oyster packing house and a vessel owner. We buy oysters from dealers in Louisiana and Texas, using our own refrigerated trailers to haul the product to Alabama for further processing. Gulf shrimp boats unload at our plant in Bon Secour. We have 37 vessels in the fleet, most of which are independently owned. Bon Secour Fisheries also owns and operates a fleet of 11 Gulf shrimp boats.

I appreciate this opportunity to provide testimony regarding the Magnuson Fishery Conservation and Management Act of 1976 and HR 39. I will preface specific remarks regarding the reauthorization of the Act and the provisions of HR 39 with general comments concerning federal fisheries management in the Gulf of Mexico.

General Comments

Although the Magnuson Act was effective in the other regions through the Americanization of fisheries, the average Gulf fisherman did not benefit from enactment of this law. In fact, prior to the Magnuson Act, our fishermen were able to shrimp Mexican waters during the slow production of winter and early spring. Once Mexico exercised her 200 mile limit permits had to be obtained to shrimp in Mexican waters in a U.S. flag vessel. The conditions for obtaining such permits made operation unfeasible. The same can be said of U.S. snapper fishermen who traditionally utilized Mexican fishing grounds in the winter.

There is some anecdotal evidence to suggest that a portion of the pre-1976 landings of Gulf red snapper were actually caught in Mexican waters and landed and recorded as being caught in U.S. waters. These mistaken landings may be causing current targets for red snapper stock recovery to be unrealistically high.

The Act has been improved in recent reauthorization bills. These improvements have primarily focused on the Council process, such as providing for a balance in the seats on the Council between recreational and commercial fishermen. It is time we made the Act work for the Gulf fishermen by providing for more equitable management, based more soundly on science.

Although tropical shrimp in the U.S. Gulf of Mexico are FMP species, they are not terribly hard to manage. Being an annual crop the production of shrimp is more closely tied to annual variations in oceanographic and atmospheric conditions than to the size of the spawning stock. Therefore, conservation measures designed to preserve the spawning stock are largely inappropriate for management of this fishery. Current management measures focus on mitigating potential impacts of this fishery on non-target species such as finfish and turtles as well as on maximizing economic yield from the fishery through the Texas closure. This regulatory environment will change with the implementation of any measure to address shrimp trawl bycatch.

Bycatch

Although this hearing will not address endangered species, it is appropriate to mention the impact which the turtle/TED issue has had on industry/government relations in our region. We learned two basic lessons from the TED issue: (1) that accurate, consensus data must be available before credible, and effective management measures are possible (2) that fishermen must be part of the development of a management program from the beginning.

Whatever working relationship the NMFS had with the shrimp fishery prior to the implementation of turtle conservation regulations was largely destroyed when industry was forced to implement TEDS all year throughout the Gulf. Particularly in the offshore Northwestern Gulf, shrimp trawl/turtle interactions were and continue to be rare. Thus, it has been difficult to convince shrimpers to accept a device designed to perform in the event of one of these rare interactions and in the meantime causes his fishing gear to work well only under the best of conditions. The effectiveness and necessity of TEDs are still hotly contested issues between the industry and the Agency. Feelings remain strong enough that industry is pursuing the application of GIS technology to the shrimp fishery data base in order to develop more effective and practical turtle conservation measures in the Gulf.

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One of the key provisions of HR 39 is that of addressing bycatch in fisheries. Both commercial and recreational fisheries have unintended or non-target catches associated with them. For many years fishermen have referred to the non-target catch in shrimp trawls as "trash fish". Shrimpers used this term because in their view the bycatch was made up primarily of a mixture of finfish and invertebrates of no commercial value. Recently, the amount, makeup and impact on the ecosystem of this bycatch has become a popular issue among sport fishing and environmental groups as well as within other commercial fishing groups.

As a member of the Gulf and South Atlantic Fisheries Development Foundation's Bycatch Steering Committee I was personally involved in organizing the Foundation's bycatch research efforts. My family's company has also been involved since the early 1980's in taking NMFS observers and gear specialists aboard our shrimp boats. Most recently this has been in cooperation with the Foundation for the purpose of characterizing the magnitude and composition of shrimp trawl bycatch as well as the development of effective BRD designs. Although we are compensated for providing an observer platform, there is a net cost associated with these efforts. However, we have always felt that these efforts will pay off in the long run with better gear being available and perhaps better understanding of those gear by our captains.

Although those aspects of the Foundation's bycatch research dealing with bycatch characterization are fundamentally complete, some significant work remains in the gear research and development portion of this effort. This is not to say that up to now the gear research results are not extremely encouraging. Bycatch reduction rates are overall quite high in many of the trials with currently developed devices. There is also some evidence which suggests that significant numbers of juvenile red snapper, the bycatch species of particular concern in the Gulf of Mexico, can be excluded from a shrimp trawl. These are important results which deserve our attention and should be recognized by the public as steps taken by the industry and the Agency toward reducing bycatch.

NMFS, however, may be rushing to conclusions about which devices are best fit for incorporation into shrimp trawls for the purposes of overall bycatch reduction. Other more appropriate gear, which could have higher rates of shrimp retention and require less maintenance may be rejected due to their failure to exclude red snapper at an acceptable rate. Also there seems to be continuous confusion regarding the goals of such gear research. A 50% reduction in bycatch has been suggested as a goal. However, there is considerable disagreement regarding the baseline from which that reduction should be measured. If the baseline is bycatch levels prior to the implementation of TEDs then more work must be done to quantify the level of bycatch

reduction achieved by currently certified TED designs. Some research suggests that TEDs exclude more than 50% of the total bycatch under certain conditions. However the Agency has been extremely reluctant to allow comparisons of bycatch in TED equipped nets with that in unmodified or "naked" nets. Gear research at the University of Georgia entitled "Credit for TEDs" should be continued and expanded into the Gulf in order to understand more fully the bycatch exclusion characteristics of TEDs.

One BRD design which has shown some promise is referred to as the "extended funnel". As with early TED designs, there remain fundamental disagreements between the Agency and the industry regarding the degree of shrimp loss experienced when using this gear under conditions routinely experienced during commercial operations. Meanwhile, the Agency has produced video tapes of this gear under ideal conditions - as they did with the TED. After viewing footage of juvenile red snapper being released by this BRD, the lay public will perceive any industry resistance to implementation of this device as foot dragging. Industry was placed in the same position with TED designs which could be shown to release turtles but were, on closer examination, also releasing significant numbers of shrimp.

The Agency and the Foundation should finalize and report their findings relative to the characterization of the bycatch. This work should continue, but on a less intensive scale than before. Further work on bycatch characterization should focus on obtaining data for areas and times not covered in the initial program.

Regarding gear development, the Foundation's efforts in conjunction with NMFS should continue and will need additional funding. Any efforts to implement current BRDs or to take other steps to reduce bycatch should be prohibited unless comparable measures are enforced throughout the range of the bycatch species.

Another key question yet to be addressed in the overall scope of bycatch research is that of the impact on the ecosystem of reducing bycatch mortality on species which are predators of shrimp? Earlier work by Dr. Joan Browder, with NMFS in Miami, indicated that bycatch reduction could have serious and unintended consequences for the ecosystem as a whole. NMFS so far has down played any need for addressing these very real questions through research, even though the Service has for at least a decade been a proponent of "ecosystem approaches" to fishery management. The Agency should be directed to conduct such studies and report their findings to Congress within 24 months.

Fisheries Management Data

The characterization effort within the Bycatch Research Program provides important data regarding the composition and catch per unit effort of non-target species. In general these data were sorely lacking from the NMFS shrimp fishery data base. Poor quality data and data collection methods continue to plague all aspects of the data base. The current bureaucracy imparts too much credibility to poor data and takes inadequate steps toward improving it or addressing legitimate analytical concerns. Poor data skew public perception of the problem and handcuffs fishery managers with the best available but operatively useless data.

Industry, in cooperation with the Agency, should be involved in a complete overhaul of the current method of gathering data from the shrimp fishery. Currently, many of the shrimp fishery data are collected by a mixture of state and federal employees through direct interviews of boat captains. This system depends on a good working relationship between the data collection agent and the fishermen. Due to strained relations between the industry and NMFS stemming from the TED issue, this relationship does not exist in many important areas.

The total number of interviews conducted decreased by more than 70% from 1981 to 1992. In 1981, Texas interviews represented less than 50% of the total while landings in Texas ports accounted for 33% of the total Gulf landings. In 1992, interviews along the rest of the Coast, especially in Louisiana, had dropped off precipitously and Texas interviews represented 75% of the total while landings in Texas ports still accounted for only 33% of the total. Louisiana ports, accounted for 45% of the landings in 1992, but experienced less than 10% of the total interviews.

These interview data are used to extrapolate Gulf wide shrimping effort. Too few interviews are being conducted in Louisiana where a high percentage of the catch is landed. Texas interviews which are an increasing percentage of the total, may not be representative of other areas. In general Texas ports have larger boats which make longer trips. These boats catch larger shrimp and expend more effort per pound of catch. If catch per unit effort data from Texas is over-represented in the data base then it is likely that overall Gulf effort will be overestimated.

Currently, the fishery service estimates that the amount of fishing effort conducted by the Gulf shrimp fishery is constant or rising. This analysis flies in the face of information regarding numbers of fishing licenses and documented vessels now fishing to those numbers 10 years ago. At our dock alone in 1979 there were 81 shrimp boats which routinely unloaded with us. Now

there are less than 40. I have not talked to another unloading facility which has more boats now than they did 10 years ago.

At our unloading facility we operate a very successful data collection effort by interviewing captains as the trip is "shared" (distribution of revenue from the trip among the captain and crew). Data regarding the length of the trip, the amount of time spent trawling, the areas and depth zones where trawling was conducted and the amount of shrimp caught within each area and depth zone are gathered directly from this captain interview. We feel this information is more reliable than that which a government employee can gather from the boatmen. Similar programs should be encouraged at other docks. Fishermen could also record, on a voluntary basis, such data in a log book similar to those kept in other fisheries. The quality of this data could be controlled by comparison with a limited number of direct observations aboard cooperation vessels.

To address this data problem, the Agency should be directed to establish a task force, in which federal, state, academic and industry interests are represented, to assess the efficiency and effectiveness of the present system for collecting and reporting catch and effort data in the commercial and recreational fisheries for the Gulf of Mexico and submit to Congress a proposed new system within one year.

Conflict of Interest

Regarding conflict of interest within the Council voting process I feel that this is not a problem on the Gulf of Mexico Council. Furthermore, if steps are taken to address the conflict of interest issue, the original intent of the Magnuson Act to involve participants from the fishery in Council deliberations and actions must be preserved. As currently proposed in HR 39, conflict of interest provisions focus on financial interests alone and are so broad as to potentially preclude commercial interests from voting on any issue relating to the fishery in which they participate. This is particularly true of fisheries and gear groups with many participants. I would recommend that the definition for a conflict of interest be more narrowly defined. In particular, "a minority of other persons" directly affected by a Council's decision should be defined as less than 10 percent of the total participants in the fishery or less than 10 people whichever is larger. This should provide for adequate protection from conflicts of interest while allowing participants in the fishery to vote on the vast majority of issues affecting that fishery.

Net Bans/State-Federal Jurisdiction

Although this issue is not addressed by HR 39, the Committee should be aware of the massive disruption in fisheries,

particularly the redistribution of effort and reallocation of stocks, caused by the net ban in Florida. White shrimp and spanish mackerel, both of which are FMP species, will be impacted and are under the jurisdiction of both the Gulf and the South Atlantic Councils. The situation in Florida will at best be inconsistent the goals and standards set forth in the Magnuson Act, and at worst will work at cross purposes with efforts to achieve optimum yield.

At a minimum both Councils should be directed to report on the status of the impacted fisheries and potential impacts in the Federal waters caused by this disruption in Florida state waters. Specifically the report should include the economic and social impacts created by the displacement of effort and reallocation of stocks to other gear groups within those fisheries.

Scientific Peer Review of Stock Assessments

It is becoming more common that industry members in various fisheries are asking scientists outside the Fisheries Service to conduct reviews of data or analyses gathered or performed within the Agency. The distrust of Agency gathered data and analyses stems from a growing distrust of government in general as well as a specific lack of faith in the methods used to gather data for use by Agency analysts. Examples of independent review of Agency analyses are the 1990 National Research Council review of the sea turtle issue and the more recent National Academy of Sciences review of the bluefin tuna stock assessment.

I believe that the process in the Gulf would benefit from independent peer review of stock assessments and ESA biological opinions. The Agency should establish a procedure for assessing and reporting each year on the status of significant fish stocks in the Gulf of Mexico to fishery managers and the public. This process would provide for the systematic peer review of stock assessments as well as ensure that qualified scientists outside of the Service are consulted in a timely manner.

Immediately, the stock assessment for Gulf red snapper should be subject to just such an independent assessment. Serious concerns exist within both the directed snapper fishery and in the shrimp fishery regarding the status of the stock given the rapidity with which the commercial quota is reached each year and the fact that the recreational quota has been exceeded by greater than 2 million pounds for the last two years.

Habitat

Efforts to conserve fishery resources must include habitat conservation. Although there is a growing public awareness of the need for preserving estuarine and wetlands habitat, fishermen

do not see fishery management agencies taking action or participating in efforts to conserve habitat. This inactivity conveys to the fishermen a lack of concern by managers for the impact which habitat destruction has on the status of a fish stock; while these same managers seem overly concerned about the impact of the fishermen and potential overfishing.

In particular I have three recommendations regarding how this may be remedied through the Magnuson Act. First, fishery management plans should identify the essential habitat for the fishery based upon guidance and recommendation from NOAA. NOAA should also use present authorization to conserve essential habitat. Finally, federal agencies whose actions pose potential adverse impact to essential fishery habitat should be required to consult with NOAA.

Regarding specific references in HR 39 to essential fishery habitat I recommend that you strike the requirement for FMPs to describe specific management measures for minimizing adverse impacts on habitat as described in Section 9,(a)(1)(B) paragraph (7). These are research oriented activities outside the expertise of the Councils. Fishery related impacts are not well known nor are management measures to address them.

Artificial Reef Construction

Shrimp production off Alabama and Mississippi has been hampered significantly by illegal offshore dumping activity associated with the recreational reef fish fishery. Recreational reef fishermen are continuing to dump "junk" (tires, old car bodies, old boat hulls, etc.) in highly productive shrimping grounds making shrimp trawling in these areas hazardous to gear and crews. TEDs have made shrimp nets more easily damaged and much more expensive to replace and repair. The recreational dumping continues unabated despite appeals and threats by the Corps of Engineers. Years ago shrimpers gave up a 1000 square mile area of productive shrimping ground off Alabama that was designated as a permitted artificial reef building zone. Even with the existence of this zone illegal dumping continues outside the designated area. On shore we refer to such areas as unauthorized landfills. In the ocean they are known as artificial reefs.

"Trawlable bottom" (i.e. ocean bottom suitable for shrimp trawling) in the Gulf of Mexico is becoming a scarce resource. Artificial reefs as well as oil and gas structures and their pipelines continue to restrict trawling areas. Some effort should be made to conserve this fishery "habitat" through more effective control of reef construction and mapping of known obstructions. The Act should also reflect the awareness that habitat construction for one fishery can result in habitat destruction for another.

Conclusion

I believe that fisheries management can work to benefit fishermen as well as all participants in the fishery. Fishermen, who should be the target of management, need to have confidence in the management process and methods. It is time we began taking steps through the Magnuson Act to make that happen for the Gulf of Mexico. First we should foster progressive programs to develop trust and a sound working relationship among federal and state fisheries managers, commercial and recreational fishermen and non-consumptive users of the resources. These programs should include greater opportunity for industry and public participation in all aspects of fisheries management including data collection and analyses. Fisheries are too valuable to allow mismanagement to continue for lack of reliable data. Once an atmosphere of trust and cooperation is established we can move toward practical solutions for conserving and managing the fisheries in our waters.

AMERICAN SPORTFISHING ASSOCIATION
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STATEMENT OF MARK SOSIN

FOR

AMERICAN SPORTFISHING ASSOCIATION

ON

THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Presented to

Subcommittee on Fisheries, Wildlife and Oceans

February 23, 1995

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Good afternoon. My name is Mark Sosin. I am here today to testify on behalf of the American Sportfishing Association (ASA), the sportfishing industry, and the nation's 17 million saltwater anglers. In my professional life, I have been involved in the recreational fishing industry for more than three decades. Currently, I am president of Mark Sosin Communications, and host *Mark Sosin's Saltwater Journal*, which now in its 11th season is broadcast nationwide on ESPN. My testimony today will address the provisions of H.R. 39, "The Fishery Conservation and Management Amendments of 1995". Let me add that we support the legislation and intend to offer some suggestions on how certain provisions could be strengthened to improve recreational fishing and fisheries management across this country.

But first, let me take a minute and tell you about ASA and the recreational industry. The American Sportfishing Association was created in November of 1993 for the sole purpose of representing the resource and trade needs of the recreational fishing industry. Through the leadership of the American Fishing Tackle Manufacturers Association (AFTMA) and the Sport Fishing Institute (SFI), a number of industry organizations including the Future Fisherman Foundation, United Sport Fishermen, the Sportfishing Promotion Council, as well as AFTMA and SFI, were consolidated under one umbrella organization, ASA.

The first goal of this new association is to ensure that we have a healthy, sustainable fishery resource, because, without that resource, we are all out of business. Mr. Chairman, the point I want to make is that unlike many other industries in this country, the sportfishing industry is solely dependent on the success of federal and

state managers providing an abundant fishery resource. Without that healthy resource, the sportfishing industry and America's 60 million anglers are in trouble.

Let me speak for a minute on the sport of fishing. Recreational fishing plays a significant role in the lives of one in five Americans. Over the decades, this fishing activity has given rise to a wide-ranging industry dedicated to meeting the fishing needs of the country's 60 million anglers. These anglers, who collectively spent over 500 million days pursuing freshwater and saltwater species, support an industry with $24 billion in retail expenditures annually. This spending encompasses a wide cross-section of the American economy including fishing equipment manufacturing, travel and transportation services, boat and vehicle manufacturing, and fishing and boat licenses. This economic activity generates a total economic impact of nearly $70 billion throughout the manufacturing, wholesale and retail sectors of the American economy.

Angler expenditures give rise to several important economic "products" such as jobs and taxes. The U.S. recreational fishing industry in 1991 supported 1.3 million jobs through the payment of wages and salaries of over $19 billion. This income generated state income tax revenues of $227 million and federal tax revenues of $2.1 billion. Furthermore, angler retail expenditures generated some $1.1 billion in state sales taxes.

Likewise, marine recreational fishing has played a valuable role in the economies of local coastal communities. In 1991, 17 million Americans spent 64 million days fishing in saltwater. The economic impact of this activity exceeded $5 billion at the

retail level and generated $15 billion in overall economic activity. Further, marine recreational fishing supported 300,000 jobs, many in small rural coastal communities.

OVERFISHING

Mr. Chairman, this year you have the opportunity to amend the Magnuson Act to fix what time has proved to be the single most destructive element of the Act -- its failure to prevent overfishing. The major impetus for the passage of the Act was the failure of negotiations at the Law of the Sea Conference and a national uneasiness with the exploitation of the coastal marine resources by foreign vessels. Most of those vessels fished off the coasts of Alaska and New England and targeted the high-priced fisheries, crab, salmon, cod and haddock.

World fish stocks in the 1970's experienced a downturn principally due to improvements in harvest and production technology. The fishing industry was rapidly turning away from canning, salting and shoreside processing to at sea processing. With the advent of the 200-mile limit, the National Marine Fisheries Service began to transfer this technology to domestic operations as part of a comprehensive plan to dislodge foreign fleets. The effort was a success but has left this country with a highly sophisticated industry capable of decimating almost any fishery.

New England is only one example of the industry's ability to decimate otherwise healthy stocks. Redfish in the gulf, King and Spanish mackerel in the south Atlantic, surf clams in the mid Atlantic and salmon in the Pacific have all been negatively affected by highly efficient gear and detection technology. The same technology

enhancement can be found in the recreational sector where technology has significantly improved recreational anglers ability to locate fish.

The failure of the management system has been its inability to adjust to the new technology and while maintaining the economic viability of all of the sectors of the fishery. The management system has failed in certain regions because of the managers inability to instill and maintain a conservation ethic. In those regions where we have seen conservation successes, the councils have been able to put stringent measures to rebuild stocks hit hard by technology or prevent technology from overfishing the stocks. The Gulf of Mexico and Alaska are excellent examples. In the Northeast, fishing pressure has caused the economic extinction of their fisheries.

The problem faced by the fishery manager is relatively straight forward. Fishermen, both recreational and commercial, argue that the resource is available to them as a public resource. Limitations on access can only come about if there is clear evidence that the fishery is being overharvested. The evidence of overharvesting is usually a decline in the catch per unit of effort or the complete collapse of the fishery. The net result is that although the fishery manager thinks the resource should be protected, he faces tremendous political pressure to keep it unregulated.

Almost all of the changes proposed in council structure and operation are targeted toward improving conservation. The proposals to redefine optimum yield (OY) and overharvesting do the same. Further restrictions on gear have been authorized. In order for any of these proposals to work there has to be a conservation baseline that limits harvest in favor of the resource.

H.R. 39 advances the most significant improvement in all of the bills to date, however, still allows for the manipulation of OY to increase harvest in excess of maximum sustainable yield (MSY). Two simple amendments will significantly improve the conservation basis of this statute. The first is to include a definition of MSY similar to the existing 602 guidelines. The second is to prevent harvests from exceeding MSY in any fishery which is now overfished.

The following definition of MSY is suggested.

"MSY is the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions.

MSY may be presented as a range of values. One MSY may be specified for a related group of species in a mixed-species fishery. MSY shall not exceed the most recent six year average, it shall not be specified annually, and shall be based on the best scientific information available."

In addition, there should be a restriction of the ability to increase harvest above conservative levels. The following amendment to H.R. 39 is suggested.

Delete the word "jeopardize" from Section 4. (5) (39) and insert the word "reduces".

FIXING THE COUNCIL SYSTEM

Councils should be composed of a broad spectrum of knowledgeable individuals with varied backgrounds. Council members do not and should not represent

one particular interest. They should utilize information and make judgments about the best use of the resource for the nation, not the people who are paying their salary.

The public perceives that there is a conflict in the interests of the council members. This perception erodes the public's confidence in the institution that manages the resources and the regulations it produces. It is a perception that this Congress must erase. Give the NOAA General Counsel's office the tools to rule on conflict questions at meetings. They can rule based on the understanding of the action at hand and some familiarity with the financial disclosure forms now filed with the council. There action should not be appealable to the Secretary or in any subsequent court actions. This allows all members to participate but limits their voting to those issues where there is no clear conflict.

BYCATCH

The basic philosophy characterizing much of the management of our resources has allowed for the excessive exploitation of our fisheries. Some of this has come from the shrimp fishery. We have long been told that there is no need to limit the growth and harvest of the shrimp fishery since management limitations will have little or no effect on next year's abundance in the fishery. Although this is probably correct for shrimp, we are now recognizing the significant impact that the shrimp trawl bycatch is having on other resources, notably red snapper. The philosophy in the shrimp fishery seems to have permeated the management strategy of most of the federal and state marine fishery managers and many of the user groups. This "exploit it to the end of the

season" view, coupled with a concept that the fishery is open and free for the taking, has created a management philosophy that is causing substantial resource impacts.

Fishery managers must do more than take bycatch into account. They must manage it and prevent waste. We can't go on creating resource problems because an industry or the managers concluded that the resource being addressed was irrelevant and therefore thoroughly exploitable. Fishery managers have to prevent bycatch to the maximum degree practicable. Fishermen need to be encouraged to do this through management incentives, gear restrictions and advancements in technology.

There is a specific problem with the definition of bycatch in HR 39. Recreational fisheries are often times less species selective than commercial fisheries. As a result, many of them become catch and release fisheries particularly those fisheries which may not be the directed fishery but because of intermixing are caught and released. The definition addresses this but does not promote catch and release fisheries, in fact, it makes the directed billfish fishery in the Atlantic a bycatch fishery. We suggest that the insertion of the word "routinely" after the phrase "but which are not sold or" in section 4. (5)(34).

HABITAT

Many of this nation's recreational fisheries are highly dependant on marine habitat. These fisheries have suffered as greater populations move to the coast and resulted in more development. Many more than any other cause is responsible for

the decline in estuarine dependant fisheries. Locating the cause is far easier than crafting the solution. Your bill takes an important step in the right direction by requiring the identification and the consideration of habitat modification as part of a fishery management plan. It recognizes that there are other important federal statutes, like the Clean Water Act that may be a better place to provide remedial action. We support the approach taken by the committee.

AUTHORIZATION

This is a period of great change in the Congress and only time will tell what the effect of this change will be. But if the effects are great, then fisheries management as we know it will be affected and a number of questions will need to be answered. For example, why can't a state manage most of the fisheries off its coast? Could anyone argue that the salmon fishery in Alaska is poorly managed by the State? Other than billfish, what recreational fishery needs to be managed through the Magnuson Act? What are the least cost alternatives to fishery management? Do they result in shoreside enforcement and individual fishing quotas? Do they require gamefish laws to enhance the economic return from predominately recreational fisheries? How long will Congress allow the exploitation of a federal resource for profit without recovering any cost for it?

The answer to these questions is not apparent today but will become increasingly focused in the near future. This Committee should force the debate about these issues by limiting this reauthorization to October 1, 1997. During that time, it

should bring the community together to discuss ways to address these changes to ensure that fisheries management and conservation of our marine resource continues.

Do not underestimate the commercial and recreational industries ability to overharvest fisheries or the fishery managers inability to control it. We need your support to encourage efforts to impose a conservation ethic in the fishery management system. There is more at stake than just the livelihood of the users, both recreational and commercial. There is a need to conserve the resource for tomorrow by using it wisely today. Conservation needs to be the paramount concern of the Congress, the Administration and the users. We all must be cognizant of the resource's limitations and resist the pressure to allow it to be exploited for short-term gain.

Production/Conservation

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Fisheries Production Through Conservation Research

February 23, 1995

US House of Representatives
Committee on Resources
Subcommittee on Fisheries, Wildlife & Oceans
Washington, D.C. 20515

Mr. Chairman, Committee Members:

Thank you for inviting me to speak today. Instead of reiterating the many problems the fishing fleets are having around the country, it seems the way to help you help the marine resource, and therefore fishermen, is to first address the resource somewhat differently, that is, as a living entity. This living resource is composed of individual, wild animals, not cubic tons, bushels, or board feet. Their world is removed from ours, out of sight and mostly out of mind. Yet wild fish reproduce in mind boggling numbers, grow, and give rise to new generations, apart from any help from us.

Unlike the agricultural products we raise, wild fishes need no direct cultivation or help from man, doing best when left alone; they feed themselves. All we need do is harvest wisely, gleaning the excess hundreds of millions of pounds that can be taken annually, without hunting the base populations.

Along the way, they provide Americans with an on-going supply of wonderfully healthful food, outdoor fun, employment, and wealth, no strings attached, except the ones to which hooks are placed at the ends. I liken it to a field of invisible oil wells along the coast of our country. These underwater wells never leak, or blowout. They don't pollute--everybody loves having them off their coastlines--and (this is the best part), they never, never, run out... An endless supply of high quality protein. Catch it wisely, and its always there -- or is it? The miracle of continuous wild protein production and a renewable natural resource worth billions of dollars to our economy, are both in very real jeopardy.

It wasn't always so. Until very recently, the surplus supply of fish was enough to satisfy. We have not forgotten any subtle understanding of the living resource. Fishermen are no different today than they were one hundred years ago. What has happened? Where were we while our last commonly held public food resource neared exhaustion?

The way we catch our fish today has evolved more in the last twenty five years than in the preceding centuries. Twenty years ago, I used a cast-iron sash weight, attached to a piece of line to see how deep the water was. With a dab of grease on the tip of the weight, I could tell if the bottom was mud, sand or gravel by what little bit of sediment stuck to the grease at the end. Now, I use a ten thousand dollar sonar. Not only does it give me the depth, it reveals virtually everything about the ocean floor. It has literally given me eyes under the sea: the kind and number of fish about to enter the net, the size, species, and density of their school -- everything that no one could see before, is revealed to anyone now. Nearly all bottom fishermen used a sash weight once, as I did; just about every commercial user has a sonar, a video plotter, loran, and satellite navigators now.

There is nothing inherently wrong with these tools. Indeed, they have made the work of commercial fishermen safer and far more productive. The problem is these tools and our own efficiency give us the ability to catch too many fish. We have gone beyond taking the excess and have cut deeply into the base of the populations of nearly all our important marine fishes.

Fishermen are survivors. They have to be. They will continue to catch the common, public resource, until the cost of putting their nets in the water is greater than the value of what comes up in them. That fishermen fish is not wrong; efficiency in open competition is rewarded by success in our society. What you must do, is set down new rules by which our common resource is protected. You must act on the mandate which government gave itself when it took up the responsibility for stewardship of this public resource.

I am not ready to accept the "tragedy" of our last "common", nor am I willing to see my way of life lost because those whose responsibility is to protect and conserve were unwilling to change "the way it was always done". The changes you must make will hurt. But that pain will be nothing compared to the humiliation, the economic loss, and the failure to save our greatest natural treasure: our marine fish resource.

The following recommendations to the committee are based on experiences over my twenty five years of commercial fishing in New England. Therefore, they address problems I have experienced in my region. The recommendations which follow, along with others, will help the resource in New England recover and remain healthy and could save other regions from the terrible difficulties which we have experienced.

1) Eliminate direct conflicts of interest on the Management Councils.

Management Councils are appreciated in any free enterprise system. The fishing industry is fortunate to have had them introduced into the original Bill (Studds-Magnuson Act), in 1976. However, representation should not favor commercial fishing over others. Members must be present who are not necessarily conflict-of-interest-free, but who simply represent divergent views for the good of the public resource. This can be accomplished by placing scientists, representatives of main-stream conservation organizations, and consumer organizations, along with fishermen, on the Councils.

2) Provide a means for vastly improved scientific research into fish populations and their interactions.

A more comprehensive understanding of the marine fish resource must be gained to enable managers and fishermen to work together to meet the goals of conservation and sustainable yield. Catch techniques for the lowering of wasteful discards must be a priority.

3) Establish a dedicated fund, supported by industry and government, to enhance long term management needs and to create a sense of ownership and therefore responsibility for the resource.

The fund could also be used for the recovery and enhancement of important coastal marine habitat. The cost should be met by primary and secondary natural resource user fees and agency appropriations.

4) Increase substantially the enforcement of fisheries regulations.

Make the penalties for breaking fishery laws more than an accepted cost of doing business. Fines for violations should be added to the enforcement budget; speed the process by which a repeat offender loses his privilege to benefit financially from the natural resource.

5) End government assistance programs that provide the private sector with initiatives that increase the catch potential of a user group.

Let the private sector decide how to capitalize the fleets; it is now government's responsibility to protect the public resource from over-harvesting and habitat destruction, not to accelerate catch capacity.

6) The governmental department responsible for the management of a living resource should be one familiar with natural resource management, not trade.

The Department of Commerce deals with the nations fishery as a reluctant parent to a step-child, one it has never fully accepted as its own. An agency of government that looks upon the populations of fish as wildlife to be used sustainable, for the long term good of the nation, should be favored over one that has as its goal, an ever increasing GNP.

Respectfully submitted, February 23, 1995

William H. Amaral

William H. Amaral

South Orleans, Massachusetts

TESTIMONY OF ELEANOR M. DORSEY
CONSERVATION LAW FOUNDATION
before the
U.S. HOUSE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
on the reauthorization of the
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

February 23, 1995

My name is Eleanor Dorsey. I am a marine biologist by training and a staff scientist at the Conservation Law Foundation (CLF), on whose behalf I am appearing today. The Conservation Law Foundation is a regional, environmental advocacy organization headquartered in Boston, MA. CLF has over 8000 members, and its mission includes improving the management of natural resources throughout New England. CLF is also a member of the Marine Fish Conservation Network.

I am grateful for this chance to testify about the Magnuson Act, and I will focus my comments on overfishing and stock rebuilding, which are the most pressing fishery management issues in the New England region.

For almost six years now, I have closely followed the New England groundfish fishery and its management. What I have seen can only be described as a gross failure of management. Stocks of cod, haddock, and flounder have collapsed due to years of overfishing, stocks which for centuries supported New England's fishing industry. We now need to close Georges Bank -- one of the most productive fishing grounds in the world -- and keep it and other fishing areas closed for a number of years, to let the stocks rebuild.

I'm sure you have all heard of the social and economic costs of this failure to prevent overfishing. As New England imports more cod from Norway and Iceland to replace the fish that local stocks can no longer produce, the region is exporting the jobs and income that fishing families and communities used to depend on. The resulting personal tragedies are all the more distressing because they were preventable. This fisheries collapse didn't have to happen. Biologists warned of the dangers of high fishing pressure, but management failed to respond until it was too late.

When the Magnuson Act was first passed almost 20 years ago, we had a choice of where fisheries management would go for Georges Bank. There were two doors to choose from, but the choice wasn't between the lady and the tiger. Behind door #1 was 103 million pounds of haddock, the stock's potential yield, which we caught every year for 30 years before the foreign fishing of the 1960's. Behind door #2 was 9 million pounds of haddock. That is the current yield, most of which goes to Canada, and that's the choice we made because of poor management, on both sides of the Hague Line. The biologists told us which door we were reaching for. Had we reached for the other door, the US and Canada could be catching more than 10 times as much haddock from Georges Bank as we are now. I have attached a graph of Georges Bank haddock landings for the past 100 years that shows how far we have fallen from the potential yield of this stock.

The essential reason why we made this foolish and

irresponsible choice in New England was that the Magnuson Act allowed it. The laudable goal of preventing overfishing that is expressed in the first national standard of the Act needs to be buttressed by new language that assures that this goal is met. And additional language is needed to see that stocks depleted from overfishing are allowed to rebuild. The United States must meet the stewardship obligations for fisheries that we took on when we extended jurisdiction out to 200 miles offshore.

H.R 39 contains several good provisions that move the Magnuson Act in the right direction. The new requirement that each management plan contain a definition of overfishing is an essential first step (how can you prevent overfishing if you can't tell when it is occurring?). The new section describing Action by the Secretary on Overfishing clearly and appropriately assigns responsibility for acting to rebuild overfished stocks within a set time limit.

I offer the following suggestions for small improvements to these sections of H.R. 39:

- On page 19, reword lines 10-14 as follows: "(10) include a measurable and objective definition of overfishing for each stock or stock complex in that fishery, with explicit links to management actions, and a rebuilding program in the case of a plan for any fishery which the Council or the Secretary has determined is overfished;"

- On page 24, line 15, insert ", if necessary," before the words "to establish". The reason for this small insertion is that a rebuilding program is needed only in those cases of overfishing that have resulted in stock depletion.

Two critical changes to assure the prevention of overfishing are missing in H.R. 39, however.

First, the definition of optimum yield must be revised to make it clear that harvesting at a level above the maximum sustainable yield (MSY) is not optimum and is not acceptable, since that will inevitably lead to stock depletion. Social and economic factors must be allowed only to reduce the harvest to a level lower than MSY. For depleted stocks, furthermore, the optimum yield must be specified to be a level of harvest that will allow the stock to rebuild to a size that can produce MSY in the future. I suggest the following redefinition of "optimum":

> "The term 'optimum', with respect to the yield from a fishery, means the amount of fish--
> (A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities;
> (B) is prescribed as such on the basis of the maximum sustainable yield from such fishery, as reduced by any relevant social, economic, or ecological factors; and
> (C) provides for rebuilding of a depleted fishery resource to a size that enables it to produce maximum sustainable yield."

Second, provisions must be added to assure that corrective action will be taken before stocks collapse. Once a fishery deteriorates as badly as groundfish in New England, the options for management are very few, and the costs to society are huge. Senate Bill 39 contains useful language on fisheries that are approaching a condition of being overfished. This language permits advanced identification of problems and requires action to prevent overfishing before serious stock depletion has occurred. I recommend that comparable language be folded into H.R. 39's section on Action by the Secretary on Overfishing on pages 24-25.

I applaud the extension of time for emergency actions provided on page 27 of H.R. 39. The existing time limit of two 3 month periods has proven to be too short, given that it almost always takes more time than that to amend a fishery management plan. I do not, however, support removing Secretarial discretion on emergency actions originating in a Council, as some commenters have suggested, by making such emergency actions contingent on a 3/4 vote of voting members rather than on a unanimous vote (the current law).

Absent from the list of tools that the Councils may use to develop conservation and management measures is negotiated rulemaking. Only federal bodies defined as agencies under the Administrative Procedures Act are authorized to employ this process to create regulations. Yet it is clear that Councils could also benefit from techniques which involve stakeholders in generating management proposals rather than in opposing them.

To rectify this situation, Senate Bill 39 has included provisions, originally drafted by the Conservation Law Foundation, which grant regional fishery management Councils the discretionary authority to employ negotiation techniques in the development of conservation and management measures. Limited only by the requirement that certain factors be considered prior to the use of these methods, this authority provides Councils access to tools readily available to all federal agencies charged with the development of rules and regulations.

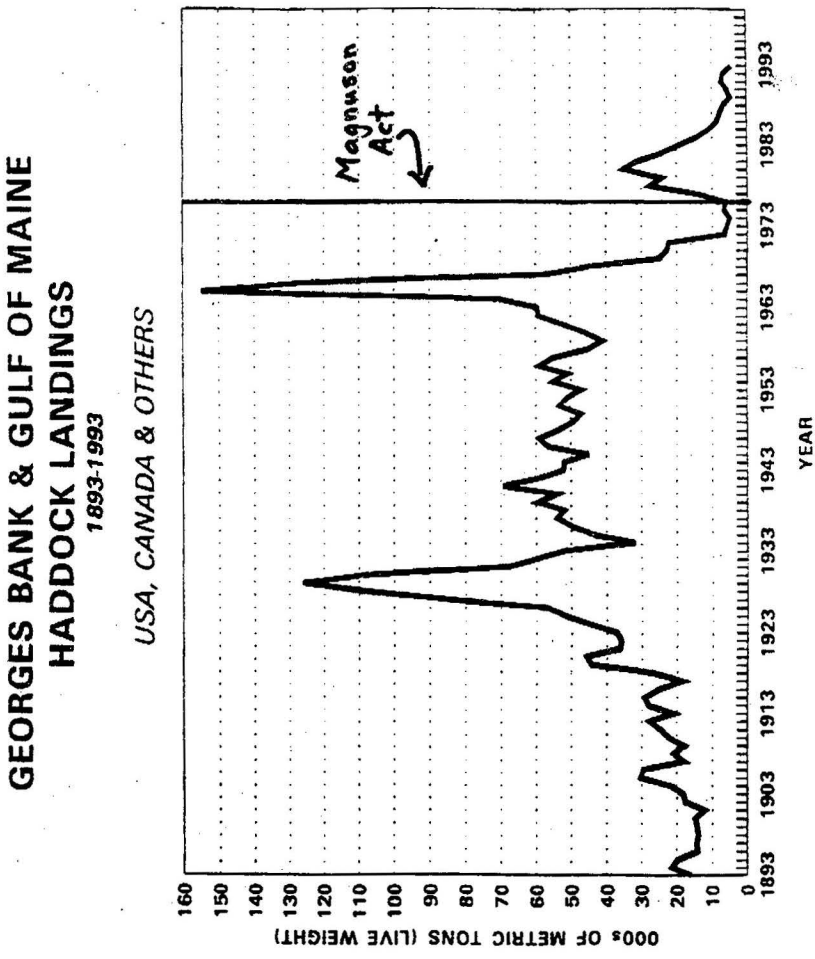
Closely modeled upon the provisions of the Negotiated

Rulemaking Act, 5 U.S.C.S. § 561-583 (Supp. 1993), the measures included in S. 39 have no parallel in H.R. 39. I recommend that you consider adding these measures to allow the Councils to use this process to create more effective and efficient regulatory proposals where necessary and appropriate.

I am very pleased to see the sections in H.R. 39 that are designed to identify and protect essential fishery habitat. The oceans will continue to produce a bounty of fish only if the habitats they need to grow, to feed, and to reproduce are maintained. I also support the measures in the bill to reduce bycatch. We cannot afford to continue the wasteful destruction of sea life that fishing is capable of. I ask one question in this regard: near the end of H.R. 39 is an excellent section on reducing waste in the North Pacific; why not apply the wisdom of this section to the entire country?

I would like to make one final point, Mr. Chairman. I hope that you and the other members of the Committee on Resources realize that the recent blanket criticisms of governmental regulations are sheer nonsense in the realm of fisheries management. With a publicly owned, renewable resource like the marine fisheries governed by the Magnuson Act, the only way to achieve continuing benefits to society from those resources is to have adequate regulations on fishing. This is all the more true given the dramatic advances in harvesting efficiency that allow us now to catch the last fish in the ocean.

Thank you for your attention.


GEORGES BANK & GULF OF MAINE
HADDOCK LANDINGS
1893-1993
USA, CANADA & OTHERS
Magnuson Act
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Statement of UNITED CATCHER BOATS

on

MAGNUSON REAUTHORIZATION, 1995

Submitted to:
The House Committee on Resources
Subcommittee on Fisheries, Wildlife and Oceans
Washington, D.C.

February 23, 1995

My name is Margaret Hall, and I am pleased to be able to present to you United Catcher Boats' views on H.R. 39. My family has a rich history, fishing in the Pacific Ocean since 1939. My father fished tuna, shark, shrimp, and dungeness crab off Oregon and North California until 1964, when he became one of the Kodiak King Crab pioneers. In the 70's, he entered into trawling for pollock. We now have interests in eight catcher vessels (some in partnership with the captains) and in All Alaskan Seafoods, Inc., which operates a mothership processor and until last month, the largest on-shore processor in Kodiak, Alaska. My parents live in Newport, Oregon; my brother in Kodiak, Alaska; and I live near Seattle, Washington. We are all actively involved in this industry.

I would like to begin by presenting you with a little understanding of my organization, United Catcher Boats, then present our views on the current crisis we are experiencing under the present management regime in my fisheries, and lastly finish my talk to you by highlighting some of the areas of concern we have in the present draft version on H.R. 39.

I. Background

United Catcher Boats is a fishermen's organization representing over 50 trawler catcher vessels active in North Pacific fisheries. Our members' vessels range in length from 75 to 190 feet, and while they are primarily involved in groundfish in the North Pacific, many also participate in the Alaska King and tanner crab fisheries and some are involved in the Pacific Whiting fishery as well. We are American owned, operated, built and financed through local lending institutions. Most of our members, who are based in Alaska, Washington, Oregon, and California, began operating in the groundfish fisheries in the late 1970's and early 1980's. Collectively, we have harvested roughly half of all the groundfish caught by Americans in the North Pacific EEZ since the passage of the MFCMA in 1976.

The members of our organization represent many of the pioneers of the North Pacific groundfisheries and crab fisheries. We were the actors of the original passage of the

Magnuson Act: we struggled to learn the fisheries, build the vessels and equipment necessary, develop new markets, risk our lives. What a success story! In less than twenty years we successfully gained control of our fisheries from foreign fleets, with an annual worth of over $2 billion. After all the work, all the risk, all the struggles it took to develop the Alaskan groundfish fisheries, we stand before you, roughly twenty years later, to once again ask for your help. Our fishery has gone from boom to bust overnight. We now find ourselves in a panic mode, not because the resource has been depleted; in fact, the groundfish stocks in the North Pacific are as robust and healthy as they ever have been. Rather we face a dire economic crisis that was created by ourselves and the management structure established by the Magnuson Act: open access fishery management.

II. Industry In Crisis

Many of the industry have been advocating to, and working with, the North Pacific Fishery Management Council since 1987 to address the problem of overcapitalization in our industry in order to achieve more productive and rational efforts and harvest levels. These groundfish fisheries, are the largest fishery in the U.S. both in value and in total tonnage.

Over the past five years, the Council has not addressed the problem of overcapitalization and the ensuing "race for fish." In 1992 the Council established an Inshore/Offshore allocation scheme as a four-year interim bandage measure, hoping that four years would allow them to develop a rational system of fishery management. Yet here we are today, with the Council poised to recommend extension of the Inshore/Offshore allocation because it was unable to do its work in a timely manner. The Council has also attempted, for the past five years, to establish a Moratorium to new entrants into the North Pacific fisheries, a tool we strongly recommended many many years ago. Has a Moratorium been implemented? No. We are told "soon".

Meanwhile, the overcapitalization spiral continues unabated in all sectors. Rational management has retreated further than ever over the horizon, while the Council has attempted to bail out a sinking ship with a leaky bucket. The industry is taking the hit: the race for fish causes us to waste fish and minimize the value of each fish. This is approximately an annual $300 million loss to the fleet. Nine bankruptcies have occurred within the past two years involving $300-$400 million in capital. Lives are being lost due to being forced to fish in unsafe weather conditions because fishermen are faced with choosing financial ruin or risking one's life.

United Catcher Boats
February 23, 1995

Our organization is committed to working with the NPFMC to develop and implement an Individual Quota system as rapidly as possible. We realize this work is properly addressed at the Council level, but due to years of gridlock and extensions of existing management measures within the Council, we see that the Council's solution, that of a License Limitation program, is not addressing the problem.

The crisis in the North Pacific will not be resolved until there is a reduction in the overcapitalization that results from the "race for fish". Freezing the number of licenses will not reduce or even freeze capitalization, because it does not end the race for fish. In fact, the capacity of the fleet will inevitably increase as harvesters find ways to circumvent attempts to regulate inefficiency. This response, known as "the catch-22 of license limitation" or "capital stuffing", has been experienced in every fishery throughout the world where license limitation has been adopted.

Under either open access or license limitation, the incentive is to maximize the production per unit of time, not to maximize the potential value per unit of fish. The impacts of the race are that it undermines the ability of the industry to produce value added products, seasons continue to grow shorter and shorter, quality suffers as does our ability to have control of the marketplace because all the product arrives in a pulse fashion.

Bycatch is another casuality of the race for fish. We firmly believe that reduction of bycatch can and should occur in our fisheries. The simplest solution to this problem is a system of individual incentives. Currently, the bycatch of any given vessel is a cost which is born by the fleet as a whole. No individual has any reason to clean up their performance, especially if doing so will slow down the harvest rate of their catch. Under an Individual Transferable Quota (ITQ) system, each vessel will be assigned quota for any species it harvests, including bycatch. If it exhausts its quota of incidental species it either: (1) buys or leases more of that species' quota; or (2) returns to port with unused directed species quota, foreclosing its opportunity to harvest the balance of its primary target quota. This is the simplest and more powerful of all possible incentives for an individual harvester to fish as responsibly as possible, and it is intrinsic in an ITQ system. It also allows for the Council to determine the level of acceptable bycatch, and allows for the Council to easily "ratchet" the bycatch levels down over time as the fleet learns to fish more cleanly.

ITQs also provide the opportunity for the industry to consolidate itself at optimum levels, a sort of 'industry buy-back' program with no federal assistance or allocation of buy-out funds. Under an ITQ system, those who choose to remain in the fishery

bear the cost of buying out those who leave. While we are concerned that there should be some limits on consolidation of quota to prevent monopoly control of the resource, some degree of reduction of effort is absolutely essential.

An additional concern that has been raised relates to the privatization of a public resource. We want to stress that what we seek from an ITQ management system is a long term access privilege to harvest fish, not the privatization of the underlying public resource.

A license limitation system does nothing to address the severe problems associated with the radical overcapitalization that has occurred in the North Pacific fisheries, including control of bycatch and the race for fish. The Council itself has realized this yet it continues on a coarse of license limitation. In so doing, our fisheries are being managed in a manner that fails to achieve the National Standards, in particular that of attaining the maximum benefit to the nation.

Therefore, we are before Congress requesting language in the Act that will encourage the Council to consider an ITQ system for North Pacific groundfish and crab. Granted this is a contentious issue. You will no doubt hear from others who do not share our point of view. However, I can say that over 90 per cent of the harvesting capacity in our fisheries are overwhelmingly in support of an ITQ program.

UCB has been working hard over the past year with other industry members and with the NPFMC on development of a fair and equitable ITQ system in our groundfish and crab fisheries. In so doing, many of the finer details of such a program have been debated and we would be happy to present to you or your staff this information at a later time rather than use up the Committee's time today.

I also have some suggested draft language you can consider that would advise the Council to consider more seriously the magnitude of the present day problems the industry is facing and encourages the Council to work aggressively in solving the problems I've presented earlier.

III. Specific Comments on H.R. 39

A. Community Development Quotas.
I would now like to focus my attention on other areas of concern in the present draft of H.R. 39. With respect to the issue of CDQ's (community development quotas) our Members recognize the important role they can play in helping rural communities

break into the fisheries. As you are aware, the North Pacific Council has included as part of the Inshore/Offshore allocation, CDQ's in the pollock fishery and also CDQs in the sablefish and halibut IFQ program. It is our view that if we are going to pursue CDQ's for societal reasons, the cost of this program should be spread among all the fisheries, not just the pollock fishery. All fisheries, like salmon, crab and halibut, ought to contribute their fair share to helping fishery dependent communities.

We also have concerns about the lack of federal standards or guidelines for this program. As you know, the North Pacific Council gave the Governor of Alaska the authority to distribute CDQ's as he sees fit. There are no guidelines, no standards, no checks and balances. Last year CDQ's were valued in excess of $20 million. We believe that the Councils or the Secretary should have a bigger role in assuring that CDQ's are distributed to the neediest and most deserving communities. We also think that Congress ought to incorporate into the law some guidance as to the purpose of this program.

Finally, we think that CDQ's should be incorporated into a broader market based on quota share system for the rationalization of the fisheries. As I mentioned earlier, UCB has steadfastly supported the adoption of an ITQ management program for groundfish. We support linking a CDQ program with an ITQ program. Implementing a stand-alone CDQ program gives preference to certain groups at a cost to others and also allows for increase in capacity of the fleet in a time when we are struggling to reduce effort.

B. Bycatch

UCB is proud of the efforts our members have taken to address the issue of bycatch over the past few years at the council level, including 1) the shift in accounting for halibut PSC from handled fish to mortality of fish and reducing the total allowable halibut PSC cap; 2) better accounting methods for counting and/or estimating bycatch; 3) voluntary programs like the Salmon Research Foundation where our fleet has contributed hundreds of thousands of dollars annually to fund research to assist us in reducing the incidental catch of salmon PSC and in determining the effects of bycaught salmon to streams of origin; and 4) gear modifications to reduce unwanted portions of the harvest, such as mesh size regulations and grid sorting devices. I would estimate that the NPFMC has spent more time and energy on issues concerning bycatch than any other issue. These programs I mention are just but a few programs implemented over the years by the Council. This is a good start.

UCB agrees with Chairman Young about the need for a new national standard which

addresses the issue of bycatch. We believe that this would be an appropriate indication by Congress about the importance of reducing bycatch nationwide. We would like to work with you on some improvements to the current language in H.R. 39 and have provided some suggestions in our legislative proposals.

Bycatch is also addressed in Section 9(a) of the bill. We understand that the proposed new language for Section 303(a)(5) of the Act is intended to require management plans to contain uniform or consistent methods of collecting data on bycatch. For the most part, this is currently being done in our fisheries. We agree with this intent and it is important to us that we have accurate data on amounts and types of bycatch, especially if we are successful in moving into a quota-based management system. However, we have a problem with requirements that we weigh or count all the fish we bring on board our boats. This would be impossible. Again, we would like to work with the Committee on perfecting amendments.

Section 9 of the bill also imposes a new requirement on the Councils to describe essential fishery habitat and prescribe management measures to minimize adverse impact on the habitat caused by fishing. We support efforts to protect valuable fishery habitat because our future literally depends on it. However, we think the proposed definition of essential fishery habitat is overly broad and could encompass the entire ocean. Further, we believe the councils currently have adequate authority to protect important fish habitat, we're already doing it in the North Pacific, and do not support the requirement that they must include measures in every plan to minimize impact on the habitat. UCB recently worked hand in hand with the North Pacific Council in designating a no-trawl zone around the Pribilof Islands in order to protect key juvenile blue king crab habitat. We've already talked with your staff about this and want to continue to work with you.

Because we support a new national standard on bycatch, we believe that the proposed new Sections 303(a)(11) and (12) are not needed.

Last year, the Subcommittee reported bill from the Merchant Marine & Fisheries Committee had a provision that allowed councils to prescribe management measures that were necessary to minimize the incidental catch of birds. We are curious as to why this provision was not included in H.R. 39. UCB believes that if there are problems with bird mortality in fisheries, that the management councils, not the Secretary of the Interior, should be the ones to recommend changes to fishing practices.

United Catcher Boats
February 23, 1995

Finally, Section 14 of the bill proposes to add a new Section 313(f) to the Act which imposes new responsibilities on the North Pacific Council to reduce "waste". This new section will greatly affect our members and concerns us deeply.

First, we believe that any program to reduce waste should be applied nationwide. UCB members participate in some of the "cleanest" fisheries in U.S. waters. We believe that if you compared our performance to other fisheries around the coast, you would see what we mean. Because our volumes of harvest are so large, very small percentages of bycatch tend to be big numbers. But they represent fractions of the biomass. While other fisheries may appear to have low levels of bycatch, when compared to the overall size of the stocks, it is significant. This is why we believe any effort to reduce waste should be nationwide. And as I stated earlier in my testimony, UCB believes the most effective way to reduce waste is through an ITQ program, where each captain is responsible for his vessel's performance.

STATEMENT OF PAUL SEATON
ALASKA MARINE CONSERVATION COUNCIL

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

HEARING ON THE REAUTHORIZATION OF THE
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

FEBRUARY 23, 1995
WASHINGTON, D.C.

INTRODUCTION

Thank you for this opportunity to testify today. For the record, my name is Paul Seaton. I am a commercial fisherman from Homer, Alaska. I am also the President of the Alaska Marine Conservation Council (AMCC). The Alaska Marine Conservation Council is a broad-based community organization comprised of Alaskans, many of whom live and work in small remote communities along the Alaska coast.

Our members come from diverse cultural and economic backgrounds and many of us depend on marine resources for sustenance, culture and livelihoods. From Ketchikan in Southeast Alaska to Unalaska in the Aleutian Islands to Tununak in the Bering Sea, our members are, or have been, gillnetters, seiners, crabbers, trollers, long-liners, trawlers, jiggers and other commercial fishers and fish workers.

Some of us come from Native communities where we still subsist on marine resources as our ancestors did before us. When marine ecosystems are at risk, not only are our livelihoods as fishermen threatened, so is our subsistence way of life. If declines in the health of marine ecosystems are allowed to continue, our very future is at risk.

Our membership also includes conservationists and scientists who track the health and decline of marine resources. The Alaska Marine Conservation Council is a diverse group. Although our personal interests in marine resources are very different, we share a dependence on, and commitment to, healthy marine ecosystems.

As coastal residents, we have seen alarming regional declines in Steller sea lions, harbor seals, fur seals, certain bird species including murres and kittiwakes, along with herring, king crab, dungeness, opillio, shrimp and rockfish. These declines concern us not only because of the adverse impact they may have on many of our livelihoods, but as indicator species they warn us of distressing changes in the North Pacific.

Although we do not fully understand the complex interactions which occur in the oceans, we must expand our vision to include food chain interactions as well as human harvest when exploiting marine resources. We must be conservative and we must proceed with caution.

Almost two decades ago, Congress faced a similar problem. Reckless foreign fishing threatened both the marine environment and the economies of Alaska's coastal communities. Congress responded with the original Magnuson Act, designed to Americanize the fishery while putting conservation in the forefront of fisheries management. Our own Congressman, Don Young, helped write that law.

Yet despite its strong language, somehow the Magnuson Act has been implemented in a way that puts economic considerations before conservation and pushes fisheries across the country to the brink of ruin. The time is ripe to amend the Magnuson Act to give a new direction to fisheries managers. It is fitting that Congressman Young is now chairman of this panel, charged with fixing the Magnuson Act. H.R. 39 takes important first steps down this path. AMCC would like to thank him for introducing such strong legislation.

We take this opportunity to let you know our recommendations for further changes to the Magnuson Fishery Conservation and Management Act (Magnuson Act). Where such suggestions are already incorporated in the Senate bill, S.39, we have so noted. Although generated from Alaskan fishing and conservation experiences, we believe they can be beneficially applied to all areas of the United States Exclusive Economic Zone (EEZ).

SUMMARY

Our specific recommendations are explained below. To summarize, however, we propose Congress amend the Magnuson Act to:

I. Clearly establish conservation over economics as the top priority of the Act;

II. Mandate a reduction in bycatch, discards and habitat disruption through economic incentives that reward clean fishermen;

III. Institute a precautionary, multi-species approach to management and research;

IV. Acknowledge the role that people and sustainable communities play in a healthy marine ecosystem;

V. Make marine habitat protection a priority.

I. CLEARLY ESTABLISH CONSERVATION OVER ECONOMICS AS THE TOP PRIORITY OF THE ACT

In human terms, the consequence of allowing wasteful, destructive fishing practices to continue is vividly portrayed in Newfoundland and Nova Scotia, where entire communities have been placed on welfare rolls and relocation programs are being examined. All this due to poor fishery practices and gear types, resulting in 30,000 men and women losing their livelihoods in just three years. The state of the cod fishery is so dire that the Canadian government has announced it is considering boarding "pirate" vessels fishing cod beyond the 200 mile Canadian EEZ.

In ecological terms the northern districts of that area are considered marine deserts unlikely to recover due to intense bottom dragging and destruction of fishery habitat. Alaska and the United States cannot afford to make these same mistakes. Nonetheless, we have and continue to do so.

According to NMFS, in the United States 65 species or species groups are overfished.[1] This amounts to 40% of all those species assessed. Even in Alaska, with the nation's most productive fishery, we have begun to see problems in the stocks. For example, a moratorium is in place on the Aleutian Basin Pollock Stock (Bogosolof District) in the Bering Sea due to its collapse, which was caused by rampant overfishing on the high seas as well as within the U.S. EEZ, including federally sanctioned fisheries on spawning pollock stocks

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[1] National Marine Fisheries Service, Our Living Oceans (1993) at 11.

Although the National Standards established in the Magnuson Act often use the word "conservation", in many instances economic and other considerations override the dictates of sound conservation principles. For example, National Standard 1 states that "conservation and management measures shall prevent overfishing while achieving the optimum yield from each fishery on a continuing basis." 16 U.S.C. sec. 1851(a)(1).

Overfishing is not defined in the law. However, optimum yield is defined as the maximum sustainable yield "modified by any relevant economic, social or ecological factors." Id. sec. 1802(21(B). The economic and social factors are put on an even footing with biological factors. Fisheries managers are pressured to subordinate conservation objectives to short-term economic interests. As the National Academy of Sciences has found, the result is often an optimum yield higher than the sustainable biological yield.[2]

We can see the interplay of these two often conflicting concepts -- overfishing and maximum sustainable yield -- in the Pacific Ocean Perch (POP) fishery in the Gulf of Alaska Overfished by the foreign fleet in the 1960s, POP has never recovered. However, facing increasing pressure from the now-domestic fleet, the North Pacific Fishery Management Council in 1993 instituted a rebuilding plan and no direct fishery was allowed that year. Despite the Council's conservative approach, NMFS felt compelled by its interpretation of the Magnuson Act to allow a trawl fishery for POP in 1994. Unfortunately, the biomass survey used does not give adequate information about the age structure of the growing POP stock. with this uncertainty given critical recruitment information, harvesting at this stage could jeopardize the rebuilding of POP. In the face of uncertainty, NMFS felt compelled by the concept of maximum sustainable yield to interpret the Council's action in the least conservative, most aggressive way possible. This is exactly the path that has lead our fisheries to ruin in New England.

H.R. 39 makes important steps in defining overfishing for the first time. However, without changes to the definition of optimum yield, the job is only half done. AMCC respectfully recommends the following further changes to establish conservation, and not economics, as the top priority of the Magnuson Act:

1) Amend the definition of "optimum yield" to:

- take into account the protection of marine ecosystems (S.39)
- allow sustainable yield only to be lowered not raised by social, economic, or ecological factors
- define OY in terms of sustainable yield over the long term rather than maximum sustainable yield

suggested language (new language is underlined, deleted language is bracketed and capitalized):

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[2] National Academy of Sciences, Improving the Management of U.S. Fisheries (1994) at 19

The term 'sustainable yield' means the yield of a fishery that can be maintained over the long term, taking into account scientific uncertainty and natural variability.

The term "optimum", with respect to the yield from a fishery, means the amount of fish--

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and taking into account the protection of marine ecosystems;

(B) which is prescribed as such on the basis of the [MAXIMUM] sustainable yield from such fishery, as lowered [MODIFIED] by any relevant economic, social, or ecological factor;

(C) provides for rebuilding of depleted and overfished fishery resources to a level consistent with providing sustainable yield.

(replace "maximum sustainable yield" with "sustainable yield" wherever it occurs in the Act)

2) Mandate actions to prevent overfishing before a stock actually reaches such a state (S.39).

II. MANDATE A REDUCTION IN BYCATCH, DISCARD AND HABITAT DISRUPTION THROUGH ECONOMIC INCENTIVES THAT REWARD CLEAN FISHERMEN

A guiding principle of the Alaska Marine Conservation Council is that our living marine resources have intrinsic value in and of themselves within the ecosystem. Among the most flagrant problems of abuse associated with commercial fisheries in the North Pacific is bycatch -- discarding of unwanted fish.

Every year more fish are discarded dead in our fisheries in the North Pacific than are landed by U.S. fishermen in the North Atlantic. Over ***740 million*** pounds of dead or dying fish were dumped over the side in 1993 including 16 million pounds of halibut, 770,000 pounds of herring, and 16 million crab; over 370,000 salmon were intercepted in the offshore, federal fisheries. Amazingly, the 1993 figure was a 50% increase from 1992. Unfortunately, both the 1992 and 1993 figures are rough numbers that are almost certainly under-reported.[1]

Faced with declining populations and potential Endangered Species Act listings of several marine species in the Bering Sea and Gulf of Alaska, many of our livelihoods and subsistence cultures are at risk. What dry statistics term "bycatch" is what subsistence users depend on to eat. What federal managers call "prohibited species" are what other Alaska fishermen make their living on. What some call the "cost of doing business" is what could bankrupt our coastal communities.

For example, the red king crab fishery in the Bering Sea was canceled in 1994 due to severely depressed stocks. In that same year, the rock sole and yellowfin sole bottom trawl [illegible]

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[1] Pacific Associates, Discards in the Groundfish Fisheries of the Bering Sea, Aleutian Islands and the Gulf of Alaska During 1993, prepared for the Alaska Department of Fish and Game (August 1994).

disrupted critical red king crab habitat and threw away 259,000 king crab caught as bycatch.[4] A recent study of the two trawl fisheries found that the lost value in bycatch vastly exceeded the value of the target fishery.[5]

Alaska Marine Conservation Council Proposal to Implement Clean Fishing

This unnecessary and inappropriate waste and disregard of marine life is a public disgrace. The government of the United States, under both Republican and Democratic administrations, has pledged itself within the international community to the goal of reducing bycatch.[6] Yet although there is consensus both within and outside governments that bycatch is a major problem, little has been done to minimize it because proposed incentives and disincentives are complex, expensive, difficult to enforce, or disruptive to the fisheries. We recognize that in these times of tight budgets and attempts to reduce bureaucracy, mechanisms must be used that are simple, cost effective, easily enforceable, as unobtrusive as possible to current fishing operations. They must also allow for individual choices and responsibility.

History shows us that the U.S. fishing industry, is highly inventive and flexible when there is an economic incentive or advantage to be exploited. The way to promote the development and use of selective gear is simply to give priority of harvest to selective gears and practices. Fishing operations would not be forced to change, but the economic incentive of priority harvest would lead to rapid, voluntary change to cleaner fishing now and into the future.

This is not a new idea and in fact was the most successful technique ever used under the Magnuson Act. Priority harvest was the centerpiece of the Americanization of the EEZ Alaskan waters. Each year it was determined how much the American segment of the industry could utilized through the fishing year, and that portion of the Total Allowable Catch (TAC) was reserved for the American fishers to harvest. The remainder of the TAC was allocated to the other segments of the industry. The rapidity with which the fishing industry responded and expanded its TAC requirements astounded all observers.

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[4] Ibid. at 26-27

[5] Discussion of the Impacts on Bristol Bay Red King Crab of Rock and Yellowfin Sole Trawling. Homer Ocean Group (Nov. 1994)

[6] On June 14, 1992, former President George Bush signed the United Nations Conference on Environment and Development (UNCED) Agenda 21, which included the following commitment

> Promote the development and use of selective gear and practices that minimize waste of catch [illegible] species and minimizes bycatch of non target species (Chapter 17 Program Area D, Sec. 79(d))

The Clinton administration's position statement presented to the United Nations on Straddling and Highly Migratory Fish Stocks states

> Regional organizations or bodies should promote environmentally safe technologies including [illegible] pollution, bycatch, and other forms of waste, as part of any conservation programme for the area [illegible] Assembly document A CONF 164 L. 3, Item 9)

The Alaska Marine Conservation Council proposes that we employ this technique to reduce bycatch. We propose giving a harvest priority allocation to those fishermen who successfully minimize bycatch, waste and disruption to habitat by giving them access to a reserved portion of the total allowable catch. Rapid conversion to improved fishing practices and technology will result as fishermen come up with innovative solutions to minimize their bycatch. Efforts to reduce bycatch will be institutionalized because the best fishermen in each fishery will push for further reductions in bycatch because they know they can be more selective. The reductions can be sequentially lowered in each particular fishery over time.

The Alaska Marine Conservation Council has proposed such a Harvest Priority system before the North Pacific Fishery Management Council. The proposal is supported by the Unalaska Native Fisherman Association, the North Pacific Fisheries Association, the Alaska Federation of Natives, the Association of Village Council Presidents, the Rural Alaska Community Action Project, the Alaska Sportfishing Association, the Alaska House of Representatives, and the Western Alaska Fisheries Development Association. This unique coalition of Alaska commercial, sport, and subsistence fishermen is unparalleled for a marine conservation proposal in Alaska. It also serves a useful guide for what could be accomplished in other parts of the country given the right leadership in fisheries management.

Determining the amount of TAC those fishermen could utilize projected throughout the coming year would be a straightforward Council process. Reservation of the priority allocation of the TAC would reduce the level available for less selective fishermen. Seasons for harvest would still be set using the same current Council process. As switching to selective practices continues, the proportion available for nonselective fishermen will decrease and be eliminated. The goal of reducing bycatch and economic discard wastage can be accomplished by allowing individuals and industry make these economic choices. There will be a real, ongoing incentive for industry to develop and use further selective practices.

The primary objective of any legislation aimed at reducing waste at sea must result in minimizing the catch and discard of non-target and juvenile fish. Subsidizing the processing of these fish into fish meal or oil does not solve the larger conservation problem of removing bycatch fish from the ecosystem and may, in fact, contribute to legitimizing dirty fishing practices. Once bycatch is reduced to acceptable levels, we can turn our full attention to increased processing and utilization of catch.

Another important factor to be considered is the importance of reducing bycatch of noncommercial species. Harvest Priority is distinguished from all other strategies to minimize bycatch, waste, and discard in acknowledging the role and intrinsic value that non commercial and low value species play in the maintenance of the ecosystem. Today, many species are discarded for economic reasons even though they are critical elements in the food chain. By providing fishermen incentives to fish deliberately and selectively for target species and minimize the catch of non commercial and non target marine life. Harvest Priority embraces the importance and ecological value of all marine resources.

The Harvest Priority proposal before the North Pacific Council would work within groups. The advantage of this approach is that it avoids a gear allocation fight that could from the conservation goal of minimizing bycatch. If, however, the Council and NMFS implement such a proposal, they still retain the authority under current law to make allo

decisions between gear groups based on a fishing gear's performance with bycatch. Such authority should not be undermined by the current reauthorization of the Magnuson Act because it may prove to be a valuable tool in persuading fishermen to switch over to cleaner gear without the perceived problems of rewarding clean fishermen within gear groups.

As a final matter, this Committee should be aware that all the discussion being focused on Individual Fishing Quotas (IFQs) misses one important point. IFQs address the problem of fleet overcapitalization, but do not solve the conservation problems of bycatch, highgrading and habitat disruption in most fisheries. Possible bycatch reduction is governed by the economics within a particular fishery. Harvest Priority does not prevent the eventual implementation of other programs such as IFQs. In fact, we designed our Harvest Priority proposal to work with any management scheme being considered for the North Pacific, ranging from IFQs to license limitation.In order for Harvest Priority to lower bycatch, however, it must come first. The allocation of harvest to status quo participants inherent in IFQs would preclude the use of Harvest Priority as an incentive to reduce bycatch. IFQs could institutionalize the high levels of bycatch and discard.

The Alaska Marine Conservation Council approaches allocation schemes from a conservation perspective. In considering IFQs, the board of directors of AMCC has articulated three major conservation concerns. First, no IFQ system in the North Pacific should be instituted until the fishery has been cleaned up with Harvest Priority or some other system. Second, no new IFQ system should be implemented until the conservation problems now surfacing with the halibut/sablefish ITQ system are fully identified and resolved. And, third, if an IFQ system is eventually adopted, quota should be limited in duration and not in perpetuity. *Congress likewise should not consider IFQs for the North Pacific until after these three issues have been resolved.*

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AMCC supports the important language in H.R. 39 admonishing the Councils and NMFS to minimize bycatch and waste. However, our own experience before the North Pacific Council teaches us that even stronger language is required:

1. The new National Standard on bycatch should require minimizing bycatch to the maximum extent practicable.

2. Allocation preferences for clean fishermen should be authorized both within and between gear groups to reflect such authority under the current Magnuson Act.

3. For the North Pacific, such measures should be mandated by a certain date in order to avoid foot dragging on the crucial issue of bycatch (S.39).

4. For the North Pacific, no preference should be made for reduction of processing waste over bycatch.

III. INSTITUTE A MULTI-SPECIES APPROACH TO FISHERY MANAGEMENT AND RESEARCH

Much of the attention on the Magnuson Act reauthorization has been focused on the need to prevent overfishing of single species. Unfortunately the implementation of this mandate may

not be effective in protecting the overall health of our marine resources unless Congress also requires regulators to manage ecosystems, not just single species. Noting the negative effects of such single species management on the complex interactions of the marine food web, the National Academy of Sciences has recommended that the Magnuson Act be amended to force managers to move toward an ecosystem approach to management.[7]

This is especially true in Alaska where we are experiencing alarming declines in regional populations of marine mammals and birds that depend on commercially important fish for food. For instance, Steller sea lions have declined 50–80% in the last 15–20 years[8] and are now classified as threatened under the Endangered Species Act. NMFS has developed three models to assess the population viability of Stellar sea lions in Alaska. Under all three models, NMFS reports that the Alaska population of these mammals will approach extinction within the next 100 years. The report states that the next 20 years are crucial to the survival of the Alaska population.[9]

In addition to declines in Stellar sea lions, there has been a 50% decline of the red-legged kittiwake population in the Pribilof Islands and the production of northern fur seal pups has declined 30% in the last ten years.[10] Harbor seals in the Bering Sea may be only 15% of their 1970's population and black-legged kittiwakes and common and thick-billed murres are also declining.[11] In Prince William Sound and outlying areas, populations of black-legged kittiwakes, pigeon guillemots, marbled murrlets, and arctic terns have declined 60–80% since 1972.[12]

We recognize and commend the North Pacific Council and its staff for the conservation measures it has taken over the years. Unfortunately, however, even their own Groundfish planning team admits that the effect of annually harvesting large amounts of fish (targeted and untargeted) on ecosystem productivity is not understood.[13] Nor do we know the biological consequences of fishing a group of species at or near maximum sustained yield values on community structure and predator – prey relationships.[14]

Given this uncertainty combined with the distress signals the North Pacific is sending out,

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[7] NAS, Improving the Management of U.S. Fisheries at 6, 28.

[8] National Academy of Sciences, Proposal No. 92-CGER-237 Scientific and Technical Understanding of the Bering Sea Ecosystem, July 1992 (quoting Lowery, et al., 1991).

[9] Alaska Groundfish Planning Team, North Pacific Fishery Management Council, Stock Assessment and Fishery Evaluation Planning Report for the Groundfish Resources of the Bering Sea Aleutian Islands Regions as Projected for 1994 (Nov. 1993) at 13-4.

[10] NAS, Bering Sea Ecosystems.

[11] U.S. Fish and Wildlife Service, Alaska Seabird Management Plan, Region 7, 1991.

[12] Ibid.

[13] Alaska Groundfish Planning Team, North Pacific Fishery Management Council, Stock Assessment and Fishery Evaluation Report For the 1993 Gulf of Alaska Groundfish Fishery (Nov. 1992).

[14] Ibid.

the only responsible course of action is a conservative one. Unfortunately, the Allowable Biological Catch ("ABC") is set by primarily considering only the single species being fished. The Groundfish Planning Team for the Gulf of Alaska noted in its assessment of the 1994 pollock catch that the ABC was defensible looking only at pollock recruitment. However, the Planning Team went on to note that a lower exploitation rate would benefit both the fishery and marine mammals and seabirds:

> Declines in some upper trophic level predators, such as Steller sea lions, harbor seals and marine birds, and increases in others such as arrowtooth flounder and halibut, over this period further suggest that *unexplained large scale changes are occurring*. While the pollock fishery/sea lion relationship is uncertain, the team feels that limiting removals of pollock may be appropriate given the current low pollock stock level and continued sea lion population decline.[15]

The complex web of life which exists beneath the surface of the oceans remains, in large part, a mystery. In what way is the harvest of over a billion pounds of pollock in the Bering Sea affecting marine mammals, birds and other species? What is the impact of dragging nets across the sea floor? Are we clearcutting the habitat of many species?

As Alaskans whose way of life and livelihoods depend on marine resources, a precautionary approach is warranted until we know the answers to these questions. We cannot afford to have any additional species become listed as threatened or endangered. Managers must begin to manage fisheries with an eye to an ecosystem's health and integrity, not just for the viability of single species. And we must aggressively step up our efforts at understanding the marine ecosystem. Focussing and funding research to accomplish this would be a solid investment in the future of many of our coastal communities.

For these reasons, we believe the Magnuson Act should be amended specifically — and forcefully — to develop a precautionary approach to fisheries management that considers the entire ecosystem of a region or species:

1) Amend the definition of overfishing to prohibit a level of fishing that compromises ecological integrity.

2) Require rebuilding plans for overfished fisheries to take into account interaction of overfished stock of fish within the marine ecosystem (S.39).

3) Amend the definition of optimum yield to require taking into account the protection of marine ecosystems (S.39).

4) Require fishery management plans to assess the level of bycatch occurring in a fishery and the effect of the fishery on stocks of fish to which the plan does not apply but which are associated with the ecosystem of the fishery (S.39).

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[15] Alaska Groundfish Planning Team, Stock Assessment and Fishery Evaluation Report for the Groundfish Resources of the Gulf of Alaska as Projected for 1994 (Nov. 1993) at 17 (emphasis added).

IV. ACKNOWLEDGE THE ROLE THAT PEOPLE AND SUSTAINABLE COMMUNITIES PLAY IN A HEALTHY MARINE ECOSYSTEM

As an organization of people who rely on a healthy marine ecosystem for livelihood and way of life, AMCC believes that sustainable coastal communities play an important role in the maintaining the well-being of our oceans and fisheries. The people closest to the resource are more likely to have a greater interest in the long-term sustainability of our resources than those who extract fish like a vein of gold and move onto other parts of the country or the globe for the next great boom. Yet too often in the North Pacific, NMFS makes decisions that help industrial-scale fishery corporations at the expense of local coastal residents.

The North Pacific Fishery Management Council has started to recognize the need to support small-scale, year-round fisheries rather than the boom and bust cycle of industrial fishing. The Council has allocated a portion of the Bering Sea pollock fishery for dozens of communities for Community Development Quotas (CDQs). In addition, in 1994, the Council set aside two percent of the Pacific cod allocation in the Bering Sea for the jig fishery, a small boat fishery with very little bycatch. H.R. 39 takes a good first step by allowing Councils to reserve a portion of total allowable catch for the use of fishery dependent communities. Congress should make sure this language not only encompass schemes such as CDQs, but also allocations for locally-based fisheries accessible to entry-level and small fishermen, particularly those using gear generating little or no bycatch such as jigging for cod. The Magnuson Act should also be amended to require Councils to more often consider how a decision will effect local communities.

1) Add a new national standard to take into account the importance of harvest of fishery resources to fishery dependent communities (S.39).

2) Allow a portion of catch to be allocated for the use of fishery dependent communities including locally-based, entry level, small boat fisheries using inherently clean gear.

V. MAKE FISHERIES AND MARINE HABITAT PROTECTION A PRIORITY

Alaska's marine environment continues to suffer from irresponsible development practices and both local and regional pollution. Oil and gas development alone contributes significantly to this problem. Habitat degradation is not limited outside the fishing industry. Closer regard needs to be given to fishing practices that destroy ecologically sensitive and critical marine habitats and their associated ecosystems. By disrupting sea floor habitat, sea mounts, and coral communities and disturbing spawning, nursery and forage areas, we are compounding the difficulties of establishing meaningful stock rebuilding programs or for providing plausible stock assessments.

The Magnuson Act provides no meaningful basis for controlling such detrimental and short-sighted practices. As the National Academy of Sciences has pointed out, fishery management efforts will fail without habitat protection. AMCC agrees with the Academy's recommendation to amend the Magnuson Act to provide NMFS and the regional councils the authority to protect habitat necessary to sustain fisheries resources.[9]

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[9] Ibid. at 8.

In addition, the Alaska Marine Conservation Council recommends that the Act be amended to:

1) Include habitat conservation in the National Standards on which conservation and management measures are based;

2) Require the Councils to describe essential habitat in fishery management plans and mandate the consideration of effects on habitat and other dependent marine life in those plans.

3) Implement a strong national habitat protection program to preserve the productive capacity of fish habitats. Give the National Marine Fisheries Service the authority to modify, restrict or deny development projects which will adversely impact important fish habitats.

CONCLUSION

Good management and a better understanding of the complex nature of our marine environment will help sustain our coastal communities over time. If managed carefully, fisheries offers one of the best hopes for sustaining both our subsistence and cash economies. While conserving and protecting commercial fish populations is crucial for our economic well being, the overall health of our marine resources and habitat is equally important. For many of us its why we chose to live here, for others of us its a matter of cultural survival.

For these reasons, it is important now more than ever to make conservation the number one priority in the Magnuson Act.

HR 39 Testimony of Thomas A. Casey

representing

The Alaska Fisheries Conservation Group
owners of
Twenty Bering Sea and Aleutian Islands
Crab Fishing Vessels

**"IFQ's are the worst thing
to ever happen
to Alaskan fishermen."**

Chairman Don Young
Kodiak Daily Mirror
Kodiak, Alaska
October 25, 1994

February 23, 1995

Subcommittee on Fisheries, Wildlife & Oceans
of the
U. S. House Resources Committee

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HR 39 Technical Recommendations

1. An amendment specifying the process for **Industry Advisory Committee appointments** would add credibility to the Council's decision-making. We recommend the enclosed text.

2. **Conflict of interest improvements** are over-do and well written in the bill. We favor a public recusal process at each meeting such as the Alaska Board of Fisheries follows at all of its meetings. We recommend that the Council's adopt the exact Board of Fish recusal procedure.

3. **Bycatch Reduction: Section 9 Page 19 Line 18**

   We recommend changing the word WITHIN to BETWEEN so that gear improvements and economics will become an natural incentive to minimize bycatch.

   In the 1950's red king crab were fished with on-bottom tangle nets. Bycatch survival was very low. After Alaskan Statehood in 1959, webbed-steel pots were determined by the State to be the best gear for the commercial king crab fishery because pots maximized bycatch-survival of females and sub-legal males.

   A Congressional policy of rewarding the "cleanest" gear type can be achieved soonest by making this one-word change.

-/-

January 11, 1995

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
604 West 4th Avenue
Anchorage, Alaska 99510

RE: ADVISORY PANEL COMPOSITION

Dear Rick:

Yesterday Washington State fixed gear representatives and Council members met to discuss the makeup of the Washington delegation to the Advisory Panel. Present were Bob Alverson, John Bruce, Kris Fanning, Thorn Smith, Arni Thomson, Morris Barker, Dave Fluharty, Al Millikan and Wally Pereyra.

For the second time fixed gear representatives expressed their deep concern regarding the removal of two fixed gear representatives from the panel, a freezer-longliner and a crab fisherman, and their replacement by two trawl gear representatives. The Washington Advisory Panel delegation of six now includes four trawl gear representatives. Fixed gear representatives emphasized the very real need of the different competing gear groups for representation on the Washington delegation in 1995, when many serious management issues will be decided. The Council members agreed to ask for an executive session of the Council to address this issue.

The GUIDELINES FOR COUNCIL OPERATIONS/ADMINISTRATION, at 50 CFR 605.23(d)(3), require that "balanced representation" should be maintained on the A.P. The Council's SOPP states that "The Council will attempt to appoint as broad a spectrum of interests as possible, including the various fisheries around Alaska...emphasizing fair representation of all fishing interests." It also specifies that the A.P. members "serve at the pleasure of the Council." (emphasis added)

Elimination of significant competing interests will seriously inhibit the ability of the A.P. to reach useful industry consensus.

It is our sincere hope the Council will take action now to rectify the imbalance on the Washington delegation to the A.P.

Thank you for your attention to this matter.

Arni Thomson, ACC

Thorn Smith, NPLA

John Bruce, DSFU

Bob Alverson, FVOA

Proposed Amendment To The
Magnuson Fishery Conservation And
Management Act

_____. Section 302(j), **PROCEDURAL MATTERS** (16 U.S.C. 1853), is amended as follows:

(1) By adding a new subsection (j)(4), "Each council shall appoint members of committees and advisory panels during an open meeting at which public testimony on the appointments shall be heard," and

(2) By redesignating current subsection (j)(4) as (j)(5), current subsection (j)(5) as (j)(6), and current subsection (j)(6) as (j)(7).

ITQ Recommendations

We recommend that HR 39 discourage ITQ's for at least the following reasons.

1. ITQ's do not assure vessel safety on the high seas. But seamanship, continuous vessel safety training/drilling and extreme caution by the skipper and the crew can reduce the odds of fishing vessel accidents.

Indicator

A. The past Bering Sea Opilio Tanner Crab fishery (January 15-February 17) was marked by record high ex-vessel prices, very cold weather and a rampaging ice-pack that constantly threatened to destroy gear on the best "hot spots".

Ironically, the same fate almost befell two different vessels, one that fished the treacherous open ocean and one that was sheltered at anchor.

On opening-day of the very stormy and cold Opilio Tanner Crab season last January in the Bering Sea, the FV NORTHWEST MARINER, operated by an experienced and safety- trained skipper and crew, capsized and sank with all hands lost.

On February 7th, the crabber ENTRANCE POINT, was sheltered in the lee of St. Paul Island in the Pribilofs. It was nearly lost when advancing ice trapped it against the shore. The USCG evacuated the crew because the risk of grounding became unacceptably high. Luckily, a nearby tug boat was able to free the crab vessel from the ice and tow it to harbor.

Conclusion: ITQ's are unlikely to reduce the high risks of winter fishing in the Bering Sea.

Crew abandons ice-bound ship

An H-65 from the cutter Sherman lifted six crewmen off a fishing boat trapped in the ice near St. Paul Island Monday.

Coast Guard spokesman Jeff Crump in Juneau said the 109-foot crabber Entrance Point was at anchor in English Bay near St. Paul when it reported it was trapped in floe ice. The six crewmen aboard elected to leave the boat.

The cutter Sherman was nearby and sent the helicopter to pick up the crew and transport them to St. Paul.

B. Atlantic Surf-Clam Report wishes claims that market forces caused fishermen to take high risks to maximize the value of their quota-shares.

EXHIBIT 2

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

Surf Clam/Ocean Quahog ITQ Evaluation

Based on Interviews with Captains, Owners and Crews

By

Kenneth L. Beal

Interviews with NMFS Port Agents and surf clam and ocean quahog fishermen, skippers and vessel owners were conducted in fishing ports in Maryland and New Jersey on February 10-13, 1992. The primary points which we focused on were the acceptablilty of the cage tags currently in use and the perception of whether enforcement has changed as a result of Amendment 8 to the Surf Clam & Ocean Quahog Fishery Management Plan. Most of the people interviewed offered additional comments on other aspects of Amendment 8, although these comments were not solicited. For purposes of reporting all observations, I will first address the key issues, followed by general comments.

CAGE TAGS

Plastic tags, each with a consecutive number, are issued to the holder of the individual transferable quota, and may be kept aboard the vessel, at home or elsewhere in a safe place. Tag numbers are recorded in the vessel logbooks and in the processor logbooks. The theft of tags is not a major concern, as the tag numbers would have to be recorded in the logbooks, and the thief would be easily identified. However, when quotas are transferred, this information is not reported to NMFS, so NMFS Port Agents are not aware when boats are fishing on a purchased or leased quota.

Tags are attached to the 32-bushel cages when the cages are unloaded from the vessel. Previously, tags were attached aboard the vessel, and this practice was both unsafe and resulted in greater tag breakage. Breakage of the plastic tags is generally caused when two cages rub together. Since the cages are fairly rigid steel frames with wire mesh, the tags are sheered off, normally breaking just behind the locking mechanism. When a cage without a tag arrives at the processing plant, the plant notifies the vessel owner and a search for the broken tag begins. Tags are usually found in the truck, on the wharf, and elsewhere in route.

extra quota is added to other operating costs, and crew share is reduced accordingly. The normal practice is for operators to assign a value of $4.00/bushel to the leased quota, and this is subtracted from the dockside price of $8.00/bushel. Obviously, crew share is less, and one owner of several vessels estimated a crewman earns about $20,000 less per year now. Some boats have cut crew size from 5 to 3. Most crews are working harder, and earning less.

Under the previous provisions of the FMP, with severely restricted fishing hours and days (6 hours every 2 weeks), boats had to go fishing in bad weather or lose their day. It was hoped that Amendment 8 would eliminate this danger, but unfortunately this has not happened. Processing plants now tell captains when they want a load of clams. Their demands are based on markets, and weather is not a consideration. So boats are often forced to go fishing in bad weather, or lose the connection with that processor. Two vessels which sank in late 1991 (the John Marvin and the Valerie E) were caught in a rapidly-building storm. The crew from the Valerie E were lost, but the crew from the John Marvin were rescued by the Coast Guard. Many people mentioned these sinkings as an indication of no change in the safety factor. #

2. ITQ's destroy coastal community jobs.

Indicator

A. Comparative Kodiak Halibut Fishing Strategies

	Vessels	Skippers	Crewmen	Total Jobs
1994 Open-Access	5	5	20	25
1995 ITQ Regs	1	1	4*	5
1995 Net Job Loss				**(20)**

* These "crewmen" are all former skippers and quota share owners.

Source: Proposal by several Halibut Quota Share-Holders to
Bill Alwert
P.O. Box 1711 Kodiak, Alaska 99615
Phone (907) 486-5511

B. Kodiak Island Borough ITQ Resolution

Introduced by: Assembly
Requested by: Assembly
Drafted by: Clerk & Community Development Director
Introduced: 11/03/94
Adopted: 11/03/94

KODIAK ISLAND BOROUGH
RESOLUTION NO. 94-37

A RESOLUTION URGING THE ALASKA MUNICIPAL LEAGUE AND ALL COMMUNITIES TO SUPPORT THE LAWSUIT AGAINST INDIVIDUAL FISHING QUOTAS

WHEREAS, the Kodiak Island Borough Assembly believes that Individual Fishing Quotas (IFQs) will lead to corporate-ownership of the North Pacific fishing industry; and

WHEREAS, this will have an adverse impact on tax bases and community structures; and

WHEREAS, IFQs would result in financial loss to both the public and private sectors of the economy; and

WHEREAS, the Kodiak Island Borough has contributed $30,000.00 to support the lawsuit against IFQs;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT the Alaska Municipal League, concerned communities, and individuals financially support the lawsuit against Individual Fishing Quotas.

ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THIS THIRD OF NOVEMBER, 1994

KODIAK ISLAND BOROUGH

Jerome M. Selby, Borough Mayor

Mary A. Monroe, Presiding Officer

ATTEST:

Donna F. Smith CMC, Borough Clerk

3. ITQ's breed social conflict and community dissension.

Indicator

Kodiak fishermen's wives fight over Halibut and Sablefish Quota Shares in the check-out line at Safeway.

Public safety blotter

Police received reports of two tire slashings.

One vehicle was parked outside Tony's Bar. The other was parked at Western Alaska Fisheries on Shelikof Avenue.

Police say nothing so far indicates the incidents were related.

A boat trailer, valued at $12,000-14,000, was stolen Saturday outside a residence on Mylark Street.

Owner Mortimer Moore said the theft occurred around 10 p.m. Police have no suspects.

A 1985 Kawasaki motorcycle was stolen Saturday from a residence on Kuskov. Owner Mark Ellis told police a key was left in the ignition.

The motorcycle, valued at $1,000, is gray and has a broken rear fender and no tail light assembly.

Police received two reports of items taken from boats over the weekend.

Mark Alwert, owner of the F/V Buccaneer, told police Sunday that firearms were stolen from the vessel, which was tied up at the Alaska Fresh Seafoods dock.

Marius Olsen, owner of the F/V Enterprise, told police Saturday that one survival suit and 20 video cassettes were taken from his boat, which is moored in Dog Bay.

Evert Schmelzenbach, owner of the Sandra Sue, reported Monday that items were taken from his boat.

Police said the series of thefts from vessels occur seasonally. They remind boat owners to keep their boats locked and check on them frequently.

A young boy missing without his coat for several hours was found Thursday in the Lilly Lake area.

A woman had her finger broken Thursday when another woman assaulted her at Safeway.

Police say a drunk driver hit the McDonald's restaurant Thursday afternoon. No one was injured but the building was damaged.

The court sentenced Victor Ramos, 31, to one day in jail and 16 hours of community service for a theft misdemeanor.

Gary Tuck Martin, 32, has to pay $250 and complete 80 hours of community service for driving with a suspended or revoked license.

Timothy Lee Dexter, 22, was ordered to pay $150 for driving with a suspended/revoked license.

Loyd C. Hires, 44, was ordered to pay $150 for driving with a suspended/revoked license.

Felipe Ramos, 22, was ordered to pay $50 for driving without a valid license.

Meredith D. Davis, 25, has to pay $50 and complete eight hours of community service for theft.

John Olsen, Jr., 21, has to pay $250 and serve three days in jail for refusing a breath test.

Loto Tith, 22, must complete 80 hours of community service for driving with a suspended/revoked license.

Noreen Simmons, 33, was fined $100 for possession of liquor. She also was ordered to pay $50 and restitution of $115.44 for criminal trespass.

Miguel Recinos, 29, must pay $100 and serve five days in jail for contributing to the delinquency of a minor.

4. ITQ's guarantee higher food prices to American consumers for decades to come.

Indicator

A. BC-export halibut prices under ITQ's

B. Homer fishermen's plan to "coordinate" with Canadian ITQ-fishermen to establish and maintain highest possible U.S. consumer prices for halibut

C. Honor Thy Supplier article

VANCOUVER, BC

B.C. Halibut Ends Upbeat

The weather was rough for British Columbia longliners making their last halibut deliveries of the season; but overall, it was smooth sailing for these fishermen whose quota share system allowed them to pick their fishing days and capitalize on market conditions. The preliminary end-of-season totals ran to 9,897,000 pounds for Canada out of a quota of 10 million pounds (compared to 44,957,000 pounds for the U.S.). Virtually all of Canada's fish were caught and sold fresh into a market which has expanded from 300,000 pounds per week several years ago to 600,000 pounds per week this year.

B.C.'s halibut season saw excellent prices with few fluctuations, according to Eric Wickham, past president of the Pacific Coast Fishing Vessel Owners Guild, which represents most of the halibut industry in B.C. "I had a great year. I fished the first of the season and got just over C$4.00/lb. (U.S.$2.60/lb.) and I thought that would be the best all season. In fact, it got better and fluctuated at just over C$4.00/lb. most of the time," said Wickham. He added that he heard reports of some fishermen receiving over C$5.00/lb.

In large part, the high prices and lack of fluctuation were a result of the Department of Fisheries and Oceans (DFO) hot line, said Wickham. "It is a real good service which has stopped the gluts." This service provides information to fishermen about landings throughout the province, allowing them to spread out deliveries and help prevent glutted markets that cause downward price fluctuations. Wickham explained that halibut fishermen have had to learn how, when and where to market their fish so they get the best value and avoid flooding the market. "It used to be it was 99% fishing and 1% marketing. Now it is 70% preparing the market and 30% fishing," he said.

Jana Sochy

Will Alaska IQs spoil high prices in B.C.?

Where halibut was once caught in short derby fisheries and delivered at the dock to large processors, the quota share system has favored smaller, leaner buyers who tend to specialize in these fisheries. In fact, said Wickham, there is one buyer who purchases about one-third of the weekly poundage. "He is a guy with three phones attached to his head and some employees to drive trucks, and he specializes in halibut for eight months of the year. The big companies can't match that kind of operation," Wickham said. The rest of the quota is spread out among a number of buyers, some operating out of single trucks and delivering to a small network of customers.

When asked how Canadian fishermen were preparing for the U.S. shift to individual quotas, Wickham said, "They aren't, and it has me worried." Ken Erikson, president of the Pacific Coast Fishing Vessel Owners Guild, said, "I brought it up at several advisory board meetings but there didn't seem to be much interest in the issue."

The main reason for this, Erikson believes, is that Canadian fishermen have been told by processors that if the price drops below C$3.00, it will be worthwhile freezing the halibut. That price is still significantly higher than prices were before the introduction of IQs in the Canadian halibut industry, so there may be little impetus to examine the upcoming impact of fresh American halibut on the markets which B.C. fishermen have been supplying. A measure of how little concern there is over the prospect of competition from American quota shareholders next season is the fact that the price of Canadian halibut quota has risen to about C$15.00 per pound.

Still, Erikson believes B.C. fishermen should be examining and reacting to the upcoming change, preparing themselves for a price drop and market gluts. Wickham added that the Americans could enter the fresh market with reduced impact on all concerned if they learn from the Canadian experience. He said Canadians have built up their market because they have learned how to smooth out the gluts. "The distributors want a constant amount . . . If the Americans try dumping 3 or 4 million pounds one week then none the next week, they will glut the market and drive the price down. Then we will have to live with it. But if they supply the distributors with [consistent amounts of] fresh fish every week, then we could build the market."

In the meantime, DFO continues to review the use of IQs in general in Canada and, as of yet, have not made them permanent. Given the amount of investment that most fishermen have in their quota purchases, however, it seems unlikely that IQs will be reversed.

On the international front, the International Pacific Halibut Commission had not yet set 1995 quotas as this issue went to press. These will be set during meetings of the IPHC in Conference Center, downtown Victoria, January 23-27. The shift to IQs in Alaska is not expected to have any impact on these negotiations. Said IPHC biologist Gordon Peltonen, "The IPHC will continue to set the overall allocations. How the catch is divided up is a domestic issue."

At press time, stock assessments for next year were not yet available. In general, however, Peltonen said, "The stock has experienced a gradual downturn over the past few years." He added that the stock was not threatened and "we have seen these kinds of cycles before."

—T.J. Doherty

ALASKA FISHERMENS JOURNAL FEB. '95 PG. 5

Drew Scalzi of Homer, owns the 63-foot *Anna Lane*. He longlines for halibut and blackcod, fishes crab and tenders salmon in the summer. Scalzi, too, was encouraged by Singleton's strong message and said of opposition funding, "The money would be better spent buying longline IFQ than paying it to an attorney."

As a fisherman, he said, he welcomes the opportunity to deliver fish when the market is right. "We'll look at the markets, talk to the cannery and see what the best time to deliver is," he said.

"RIGHT" = HIGHEST-PRICED

The next challenge for the fleet is to maximize the value of the fishery under the new management structure. And that, Scalzi said is going to take "a lot more work." One job will be to coordinate deliveries in both Canada and Alaska to ensure that the full market benefits of the new plan can be realized by the fleet. Scalzi added that the fleet should take a conservative, long-term approach to setting quotas, and "present a stronger front to the North Pacific Fishery Management Council to limit bycatch."

AMERICAN CONSUMER PAYS THE PR

The court battles may be over, he said, but the work for what he termed the new "owner-stewards" of the resource has only begun.

ALL THE FISH
YOU CAN SELL

Honor thy Supplier

I was just out of fisheries school at the University of Rhode Island, working wholesale seafood in the New York metro area. Thrilled with it all, I was, and as I approached the grizzly old timer out on that dock in Connecticut, it was with a sense of power. I was going to talk to him about doing business with his dock–about maybe letting him ship me some fish.

He wouldn't talk to me. He looked at me, but he wouldn't talk to me. I felt like a ghost–like the guy in the movie *Ghost* when he's first dead and hasn't figured out yet that nobody can see him or hear him.

It took me a couple of years and a couple of knockdowns until I figured it out. This guy had great fish–day-boat flounder and cod–and it was spoken for. Sure, there were times when he had too much fish and he could have used another customer or two, but then what would he do when bad weather came along and he had to piece the fish out? No, this old-timer knew what he had and he didn't need new customers, especially the kind that didn't get the picture.

That was then and this is now. Everything's changed and nothing's changed. That dock in Connecticut is probably a marina now, but good shippers are still good shippers, and there are still folks out there who don't get the picture.

There's a company in Ecuador that ships fresh mahi-mahi, sword, wahoo and mako that's so fresh you'd swear it was local. Think he needs new customers? He could sell twice what he produces. The people he does sell to know what they've got–gold–and they display their loyalty every day. They give fair returns for what they've received; they communicate any difficulties they're having (claims, soft markets) instantly; and they pay their bills on time.

Seafood supplies are tight. Don't kid yourself. And I'm not talking just North Atlantic cod, either. I'm talking shrimp, scallops and salmon–the horses that pull the wagon. Atlantic salmon didn't go in the tank this fall as expected. And tiger shrimp never got cheap. Sea scallops are priced like U/15 shrimp, and sure, there are some inexpensive Chinese scallops around, but how long will they last?

Fact is, our industry is maturing; production is smoothing out; and world demand for high-quality seafoods is rising rapidly. Third World nations are going First World in a hurry–and they love seafood. Witness China's almost overnight transformation from shrimp producer to shrimp consumer.

> There's less and less seafood available on the world market and more and more demand for it. This makes good suppliers more valuable than ever before.

There's less and less seafood available on the world market and more and more demand for it. This makes good suppliers more valuable than ever before. Those that realize it are strengthening their alliances in the world of production and positioning themselves for the future. Those that don't will find a rough road ahead, for the days of playing one producer against another are drawing to an end. Supply is King.

A consultant specializing in establishing and upgrading seafood lines for broadline and chain distribution centers, Phil Walsh has been buying and selling seafood for 20 years.

- 15 -

5. ITQ's undermine the "Opportunity Society" of the 104th Congress.

A. Creates Expensive Bureaucracy

1. Blanket Onboard Observers

2. Blanket At-Sea and Landing Enforcement

3. Ultra-Regulation (1995 ITQ Halibut Regs)

B. Oligopoly favors the richest citizens and companies.

C. Oligopoly discourages innovation compared to Open-Access history

NMFS officials: IFQs will change the way you fish

By CECIL RANNEY
Mirror Writer

This year's halibut and sablefish seasons will be very different because of individual fishing quotas. Just how different became a little clearer yesterday when a team of officials in charge of the program met with the public in the auditorium.

D. Jeffrey Passer, National Marine Fisheries Service enforcement agent, said the IFQ program was very restrictive.

"There's nothing in the world that I've seen so restrictive," he told a surprisingly small crowd of fishermen and processors. "It's going to change the way you fish."

Most of the changes deal with requirements and paper work that give NMFS information about the fish from where and when it is caught to its final destination.

Fishermen are just now getting their final quota share information in the mail. The halibut season will begin March 15.

Before the season begins they will be issued a card, much like a credit card. The card will track the fisherman's quota. Like an ATM card the fisherman will have a PIN to stop unauthorized use.

According to the new rules fishermen must notify NMFS by phone at least six hours before making a landing. Some fishermen at the meeting questioned Passer about how rigid these rules were.

"Sometime things come up that change when I can get to the dock," one said.

Passer said a landing was when the fish were actually transferred from the boat, not when the boat tied to the dock.

"We know things can change. If it is just a matter of a couple of hours, no problem. If it is the next day, we might have to start a new notification time," he said.

The fish must be delivered to a registered buyer with a transaction terminal. The terminal is a card machine that transmits the information to the computers in Juneau.

More rules govern transactions: The buyer must be registered and file a landing report within six hours. Landings must begin between the hours of 6 a.m. and 6 p.m. There are rules to cover dockside sales and shipping out of Alaska.

Passer was assigned the task of setting up the enforcement system to deal with IFQs. His main message seemed to deal with a need for communications.

"It's going to be an education for all of us," he said. "If you can't figure out what to do, call the local enforcement office and we'll come down and sit down with you and figure it out together.

"Something's are going to need changing. We need your feedback so we can go back to the council and make changes to things that aren't working," he said.

Passer said NMFS enforcement in Alaska doubled from about 20 people to 40 to deal with IFQs. New offices opened in Ketchikan, Petersburg, Yakutat, Cordova and Seward.

Lt. Bob Wilson gave the group a look at the Coast Guard's plans to help enforce IFQ's rules. He said there would be some increase in cutter patrols and aircraft flights.

When the Coast Guard conducts a boarding they will be looking at a safety check first but then they will want to see IFQ related permits and cards.

"We will be asking questions like, when you left port, where you are fishing, where you plan to deliver and when," he said.

"I see the frequency of aircraft asking fishing vessels questions going up."

Shawn Carey works in the Restricted Access Management Division of NMFS. His part to the presentation covered the quota shares and how they could be used, sold or transferred.

"The most frequent question I get is, how much are they worth? I can't answer that. Contact a broker," he said.

The questions from the fishermen revealed the many ways the shares may be combined and used.

Several fishermen with quota shares can get on one boat and fish together as long as their total doesn't exceed the vessel harvest cap. Initial quota share recipients can hire skippers to run their boat and catch their quota. A vessel may fish more than one IFQ area during the same trip but it is only allowed to have onboard the amount allowed for the area in which it is fishing.

These are but a few examples of the

See IFQs, Page 6

February 17, 1995

The Honorable Ted Stevens
Chairman
Senate Oceans and Fisheries
Subcommittee
Rm 428, Senate Hart Bldg.
Washington, D.C. 20510

The Honorable Don Young
Chairman
House Resources Committee
1334 House Longworth Bldg.
Washington, D.C. 20515

The Honorable Frank Murkowski
Chairman
Senate Energy Committee
Rm 706, Senate Hart Bldg.
Washington, D.C. 20510

Gentlemen:

These comments are being submitted on behalf of the Alaska Groundfish Data Bank ("AGDB") and the Aleutians East Borough ("AEB") on S. 39 and H.R. 39, legislation to reauthorize the Magnuson Fishery Conservation and Management Act through Fiscal Year 1999. AGDB represents the Kodiak shorebased fleet fishing fishing with trawl gear for groundfish, and the majority of the Kodiak groundfish processing companies. AEB is comprised of six Alaskan coastal communities located on the western region of the Alaska Peninsula and the Aleutian Islands. AEB's residents are primarily of Aleut descent and are active participants in the inshore groundfish fisheries. The AEB fishermen harvest groundfish using trawl, pot, longline, and jigging gear. AGDB and AEB together represent the major segment of the resident Alaskan groundfish fishermen operating in the Central and Western Gulf of Alaska.

Our comments are being offered to assist you in the ongoing effort to arrive at a Magnuson Act reauthorization which best promotes the wise use of the Federal fisheries resources off Alaska but in a manner which ensures that it is economically feasible for local fishermen to participate in the fisheries. While strongly supportive of the policy goals set forth in both bills, a number of our comments are directed at provisions of the bills which may adversely impact Alaskans. We believe that these provisions may be easily modified without doing damage to the objectives you hope to achieve. The comments set forth below are explanatory in nature. We will submit proposed bill language as necessary.

Additionally, both AGDB and AEB are requesting an opportunity to present testimony at the Senate and/or House field hearings. While the groups share common views on many issues, AGDB generally represents the mid-sized shorebased trawlers in the Gulf and AEB represents the Alaskan small boat fleet from the westward region. Each group brings a unique perspective to the challenges facing Alaskan fishermen in the Federal groundfish fisheries. We are requesting that the following written comments be included in the hearing record, and that AGDB and AEB be given an a time slot to provide oral testimony on select topics.

Reduction of Waste

S. 39 and H.R. 39 both seek to promote the wise use of the fisheries through better utilization and a reduction in the waste of the fisheries resources. AGDB and AEB **strongly** support these goals.

The two bills share common definitions of "bycatch", "regulatory discards", and "economic discards". These definitions are vastly improved from last year and have served to clear up confusion within the industry on the intent of many of the proposals. Moreover, the legislative language for the North Pacific Fisheries Conservation section emphasizes that any harvest preference to reduce bycatch should be accomplished "within each gear group". We believe that this language will prevent the bycatch proposals from being used as the basis for an allocation among competing Alaskan gear groups for Pacific cod and other species. AGDB and AEB support these changes to the bill.

We do, however, have strong feelings with respect to the methods in which the two bills seek to accomplish the policy objectives, as follows:

Harvest Priority

Both bills place too much emphasis on the use of the "harvest preference" or "incentives" in reducing bycatch in the North Pacific fisheries. S. 39 goes so far as to mandate either a "harvest preference" or "incentive" regime by 1998. Many Alaskan

fishermen do not support "harvest preference" as the preferred fishery management tool for reducing bycatch. The various harvest priority proposals **invite allocation tensions among Alaskan fishermen**. Harvest priority will be difficult to structure and impossible to enforce on a fair and equitable basis.

The Council should nonetheless be allowed to continue to work with the harvest priority as an option. There should be a clearcut distinction between the **policy goals** established by the Congress and the **measures** to be adopted by the Councils. The Councils should be given as much discretion as possible to experiment with a variety of management measures in seeking to accomplish the congressional policy goals in a highly complex fishery. Moreover, these policy goals should be established on a nationwide basis. The North Pacific should not be singled out as a region with higher standards than the other regions.

The current Senate and House bills may be modified accordingly to clearly identify mandatory policy objectives and discretionary management measures. AEB and AGDB support the proposed House language, with minor modifications, to Section 303(a) of the Act setting for the bycatch policy objectives (H.R. 39, page 19, line 15). We support the proposed Senate amendment to Section 303(b) of the MFCMA authorizing the Councils to include, as an expressly authorized discretionary measure, a harvest preference or other incentive program for fishing vessels within each gear group (S. 39, page 34, lines 15 through 21). This language will make it sufficiently clear that the Councils have the authority to recommend a harvest preference regime if they so desire. Our proposed bill language is as follows:

Amendment to Section 303(a)--

> "(xx) include conservation and management measures necessary to minimize, to the extent practicable, the harvest of bycatch within each gear group."

Amendment to Section 303(b)--

> "(xx) include, consistent with the other provisions of this Act, conservation and management measures that provide a harvest preference or other incentives for fishing vessels within each gear group that employ fishing practices resulting in lower levels of bycatch".

We propose, however, that you reconsider the harvest preference bill language in the "North Pacific Fisheries Conservation" section of each bill. This language duplicates the authority which would be added by an amendment to Section 303(b). Additionally, the language seeks to set up a priority schedule for reducing specific types of bycatch. While we appreciate and support the need to reduce fishing practices which discard fish for

economic reasons, establishing this priority schedule for any harvest preference regime **will slow down the Council's ongoing effort to reduce bycatch**.

Managing bycatch in the mixed-stock groundfish fishery is a highly complex task. "Economic discards", "regulatory discards", and "other bycatch" incur in most fisheries at some levels concurrently. Your proposal to set out a priority regime for "harvest preference" may in fact become the largest conceptual obstacle to a "harvest preference" allocation regime by adding another layer of complexity.

We therefore recommend that the specific "harvest preference" language in the North Pacific sections of S. 39 and H.R. 39 be dropped from the final bill. You may wish to consider using the "North Pacific Fisheries Conservation" section as a tool in promoting the **timing** of North Pacific Council actions to accomplish congressional policy objectives.

Full Retention and Full Utilization

Our fishermen and processors support the goal of achieving better utilization of the fisheries resources. We are currently participating at the regional fishery management council level to promote a utilization proposal for the Bering Sea. A rigid full retention requirement may, however, have unintended and potentially disastrous results. Examples of potential problems include:

1. Retention of undersized fish. For many fish species, it will be difficult to establish mortality rates for discards. A rigid full retention requirement would invariably require fishermen to retain undersized fish and reduce them to fish meal. There are no public policy or wise use reasons for requiring the retention and delivery of undersized fish.

2. Overburdening the fish meal plant capacity. The Kodiak processors are currently expending millions of dollars in upgrading the fish meal capacity. This is being done to avoid potential sanctions by EPA, which has informed the industry that ocean dumping of the waste overflow during high production periods will not be allowed to continue indefinitely. If these processors are required to handle large amounts of arrowtooth flounder and undersized target species fish which are harvested from time-to-time, their **new** meal plant capacity may not be sufficient.

4. Reduction in fish stock productivity. Scientists are beginning to investigate the impacts (both

positive and negative) of discards. There is some preliminary information that fish discards are an important food resource for many fish populations, including such traditional species as crab and halibut. Requiring the retention of fish for the meal plant may reduce fish productivity in the long-term.

We are not suggesting that the efforts to increase utilization be discontinued. This is an issue that should continue to be aggressively pursued by the North Pacific Council. A regulatory mandate with a rigid timeline may not be the best approach. AGDB and AEB therefore support Chairman Young's decision to leave the regulatory mandate out of H.R. 39. We instead suggest that a paragraph be added to the "Purposes and Policies" section of the Act reaffirming that need to move toward maximum utilization. This could be accompanied with explanatory report language directed at the councils and the Secretary of Commerce to make progress on the utilization issue.

Mortality

S. 39 would amend Section 303(a) of the Act by requiring that FMPs "to the extent practicable, minimize mortality caused by economic and regulatory discards in the fishery" (pg 33, line 12). We strongly support this amendment. It is important that more attention be placed on "discard mortality" of Prohibited Species and non-economic fish species. In the future, many of the more creative proposals for reducing bycatch and waste in the fisheries will focus on fishing practices which improve the survivability of Prohibited Species returned to the ocean. We strongly recommend that the House bill adopt the Senate's language on this issue.

Total Catch Measurement

This is another area which should be addressed in the "Purposes and Policies" section and promoted through report language. The North Pacific Council is currently investigating a total weight measurement proposal applicable to at-sea and onshore processors. Installation of scales may have serious safety problems for smaller groundfish boats. The decks are already short of deck space, and the loss of deck space associated with large scales may increase the chance of being washed overboard in rough weather. The North Pacific Council should be afforded with flexibility to look at both the positive and negative attributes of total weight measurement without a rigid Federal mandate. We instead recommend that you amend Section 303(a) of the Act to promote progress in the accuracy of harvest measurements, and use the "North Pacific" section to establish **reasonable** timeframes for action.

Monitoring of Undersized Fish

As described above, the promotion of better utilization through a retention mandate will likely result in an increase in the retention of undersized fish destined for the meal plant. The harvest of undersized fish is tracked through discard data by NMFS and the observer program. To the extent that this discard data disappears as a result of retention, NMFS needs to develop an alternative method of tracking the harvest of undersized fish. One such method may be to require processors (both at-sea and shorebased) to report the weekly tonnage of species of whole fish used for meal. This type of information would be very useful in determining the extent of the undersized fish harvest for certain target species (i.e. pollock).

You may wish to include bill language or explanatory report language to encourage improvements in the monitoring of undersized fish harvests.

Retained Catch Measurement for Prohibited Species Discards

One of the strongest tools of the councils in encouraging the reduction of bycatch is the public identification of fishing vessels which have poor bycatch histories. While enforcement regimes such as the Vessel Incentive Program are generally recognized as failures when the penalties are based on bycatch rates, the secondary benefit of public identification of boats with poor fishing records has been more powerful. The North Pacific Council may exert tremendous pressure on these vessel operators by threatening more traditional management measures (i.e. smaller quotas; time and area restrictions; etc.) for specific fisheries with unjustifiable bycatch rates.

A potential method of avoiding the "spotlight" is to produce a low bycatch rate on Prohibited Species. These rates may unfortunately be subject to manipulation. Prohibited Species bycatch rates are currently measured against the total catch of the vessel. A vessel may lower its bycatch rates by increasing the amount of fish it harvests during a trip, even though the additional fish are discarded and not retained. If a vessel in the Gulf fishing flatfish has a higher than desirable halibut bycatch rate, as an example, the vessel may lower the rate by catching and discarding pollock, a species with little halibut bycatch. This would increase the vessel's total catch for the week and decrease the halibut bycatch rate. The pollock discards would, however, be counted against the quota and reduce the fish available to vessels which are seeking to maximize their harvest through good fishing behavior.

One solution would be to develop and standardize the reporting of bycatch by requiring that bycatch rates be computed as a percentage of retained catch rather than a percent of total catch.

This may also be an area where bill language or report language is appropriate.

Conflict of Interest

Both S. 39 and H.R. 39 are substantial improvements over the proposals for handling conflicts of interest which circulated earlier in the process. It is imperative to the effective working of the Councils that a conflicts recusal process not be used in an anticompetitive fashion to hamstring the administrative process. Focusing on conflicts which benefit the few to the detriment of the many in a specific industry group will preserve the fisherman's role in the Council process while curtailing abuse of the process.

Suggestions have been made that the Office of Inspector General be given the lead role in making recusal determinations. We strongly oppose any role for the IG. The Inspector General has been seeking to eliminate the Council process in its entirety. We are concerned that the IG would distort recusal determinations in an effort to undermine the current administrative structure.

User Fees

The user fee issue has been the subject of much controversy. AGDB members and AEB residents are keenly aware of the public policy debate over a user fee aimed at IFQ holders. It would be counterproductive at this point to rehash this policy issue. We will instead focus our comments on the structure of a user fee in the event the House and Senate agree to levy it against IFQ holders.

The current shorebased groundfish vessel is paying taxes ranging from 7 percent to 9 percent on an ex-vessel basis. Such taxes include raw fish assessments levied by the State of Alaska, the boroughs, and individual communities and the 2 percent Research Plan assessment. These taxes are substantial components of the fisherman's operating costs. The Senate bill is proposing an additional 4 percent tax on production under an IFQ program and a 1 percent tax on transfers. The IFQ production tax, if enacted, will make it extremely hard for Alaskan operators of small and medium-sized vessels to survive in an IFQ fishery.

Most Alaskan fishermen were allocated small or modest amounts of halibut under the new IFQ program. For many fishermen, it is a very close call as to whether the harvest of their small IQ shares will pay for the cost of the trip and the crew. An additional 4 percent tax levied against these small holders, combined with the 7-9 percent already paid to the Research Plan and local governments, will be a strong disincentive against long-term participation in the fishery. The end result will be that many Alaskan fishermen will be forced to sell out of the IFQ Program.

To the extent that user fees must be included in the bill (and many of our fishermen oppose these fees), the Congress should instead consider a smaller tax on producers and a larger tax on transfers. We recommend that you consider a 1 percent ex-vessel tax on producers and a 4 percent tax on the transfer value of the IFQ as an alternative to the Senate numbers.

IFQs

We are informed that there is substantial controversy over the provisions contained in S. 39 to require the Secretary to develop criteria for any future IFQ regime. Notwithstanding any of the other policy comments associated with or against the use of IFQs in the Federal fisheries, AGDB and AEB do feel strongly that any existing IFQ program be made to conform to public policy criteria which would be developed by the Secretary.

It is patently unfair to impose conditions on future IFQ holders while exempting existing programs. Many of the public policy concerns that have been raised and are the subject of debate stem from the criticisms of the existing programs. Any general or specific criteria should apply to all IFQ programs. The North Pacific Council and the Secretary made it clear that an IFQ allocation does not confer a private property right on IFQ holders. The current IFQ owners have been given effective notice that the IFQ programs may be modified or terminated if the Council and the Secretary determine the system is a whole or partial failure. We therefore strongly support the language in the Senate bill that requires existing IFQ programs to be made to conform any policy guidelines and criteria developed by the Secretary.

Mandatory Observer Coverage

S. 39 includes mandatory 100 percent observer coverage on all vessels in the North Pacific. Since the entire offshore groundfish fleet already carries observers, this proposal effectively is directed only at the small and medium-sized trawl, pot, and longline vessels from Alaska, Washington, and Oregon.

AGDB and AEB remain opposed to mandatory 100 percent observer coverage. The North Pacific Research Plan is barely able to meet the observer coverage requirements designed for the existing program. A Federal mandate of this magnitude for the small and medium-sized boats will create a funding crisis within the Research Plan and trigger new requests to increase the Research Plan tax above the 2 percent ex-vessel threshold.

This is the first year that all vessels were charged the 2 percent Research Plan tax. There is widespread dissatisfaction among many of the small operators over this tax. We are not suggesting that the Research Plan tax be rolled back, however, the Congress may want to reconsider any action which would increase

observer costs for the fleet as a whole until the impact of the tax on the commercial viability of Alaskan fishermen is fully understood and the industry has had a chance to adjust to it.

Emergency Regulations

AGDB and AEB strongly support strengthening the authority of the Councils and the Secretary to use emergency regulations to provide short-term solutions to conservation and management problems. It now takes eighteen months to two years to amend existing fishery management plans. Much of the adverse impacts associated with these longer time lines may be minimized through the adoption of interim measures by emergency action.

S. 39 contains language authorizing the establishment of framework guidelines within FMPs for NMFS regional directors to close or restrict a fishery to prevent overfishing or reduce bycatch (page 63, beginning line 13). The ability to respond to bycatch "hot spots" would be a valuable tool in bycatch management of complex mixed-stock groundfish fisheries. If NMFS is able to close fisheries through time or area measures in response to higher than normal bycatch rates, the fleet as a whole will be able to fish longer and harvest more of the quota than is currently the case. The emergency "hot spot" bycatch authority would serve to promote achievement of the optimum yield in the mixed stock fisheries.

Gear Evaluation and Notification of Entry

S. 39 contains a process for Council consideration of new fishing gear and fishing technology before fishermen make major investments and introduce them into existing, fully capitalized fisheries. We are both members of the Marine and Fisheries Advisory Committee. During our tenure on MAFAC, we have heard the discussions surrounding the introduction of new technology into the East Coast fisheries. NMFS was forced to curtail or severely limit many of these new gear groups, such as the drift gillnet and pair-trawl vessels, that had begun targeting billfish species. We wish to avoid these situations in the North Pacific, and believe that the time has come for prior consideration of new technology or gear before introduction.

The Senate language would provide the Councils with the opportunity to review and act upon any new technology or gear. You may want to include clarifying language to allow for modifications of existing gear when such modifications are intended to reduce bycatch in the fisheries. We strongly urge that the House adopt the Senate bill language on this issue.

Overfishing and Rebuilding

We strongly support your efforts on the Overfishing and Rebuilding issues. As you know, the North Pacific has been operating under objective definitions of Overfishing for years, and has recently begun to implement a rebuilding program for various species of rockfish in the Gulf of Alaska. The regulatory impact of this system is harsh on fishermen because it closes fisheries down before many quotas are reached. It is nonetheless imperative that effective regimes to prevent overfishing and rebuild depleted stocks be implemented for all the Nation's fisheries.

We consider the differences in the two bills to be minor, and take no position as to drafting style.

Fishery Habitat

AGDB and AEB strongly support the initiative of the NMFS Chief, Rollie Schmitten, in seeking to highlight the need to increase protection of essential fishery habitat. We support Mr. Schmitten's initiative, as well as the language set forth in S. 39 and H.R. 39. The differences in the two bills are relatively minor.

National Data Program

NMFS has engaged in a long-term effort to standardize the fishery information databases. It is our understanding that NMFS, in a recent meeting, has clarified its intent that the agency is not seeking to centralize management and administration of databases in Washington, D.C. NMFS is instead seeking to integrate current data programs with the data gathering and database systems of the states and the interstate fisheries commissions.

We strongly support the agency's efforts to integrate the NMFS databases with those of the states and commissions. S. 39 provides a procedural framework for this long-term cooperative effort. We believe that the House Resources Committee should consider including the Senate language in its bill.

The AGDB members and AEB residents and fishermen appreciate the opportunity to provide detailed comments to you on S. 39 and H.R. 39. Your efforts to promote the interests of Alaskan fishermen and coastal communities are, as always, greatly appreciated. We look forward to participating in the field

hearings and being constructive advocates in the legislative process later this year.

Sincerely,

Chris Blackburn
Executive Director
Alaska Groundfish Data Bank

Beth Stewart
Director of Natural Resources
Aleutians East Borough

February 23, 1995

Honorable Don Young, Chairman
House Committee on Resources
U.S. House of Representatives
Washington, D.C.

RE: Proposed Magnuson Act Amendments

Dear Chairman Young:

Attached please find four letters from organizations representing fixed-gear groundfish and crab fishermen who work off Alaska. Topics include:

Reduction of Waste

Total Catch Measurement
Harvest Preference

Standard of Review

Advisory Panel Appointment Process

We hope you will give these proposals careful review, and that the Committee will adopt them in the current Magnuson Act reauthorization process.

February 15, 1995

Honorable Don Young, Chairman
House Committee on Resources
U.S. House of Representatives
Washington, D.C.

RE: Magnuson Act Amendment - Reduction of Waste

Dear Chairman Young:

The undersigned represent fixed-gear fishermen who fish for groundfish and crab in the Gulf of Alaska and Bering Sea. We are writing in regard to certain of the "Contents of Fishery Management Plans" and "Reduction of Waste" provisions contained in H.R. 39. In our view they need to be modified or clarified as they apply to fixed-gear fisheries.

The conservation advantages of fixed-gear fisheries are well known - particularly where bycatch and associated mortality are concerned. (Please see TRANSFERABLE QUOTAS UNDER THE MAGNUSON ACT, Serial No. 103-82, February 9, 1994, pp. 131-244). Longliners and pot fishermen are generally able to target effectively on desired species and to minimize the bycatch of nontarget species, prohibited species, or juveniles of the target species. They are also able to maximize survival of bycatch. The main cause of mortality in bycatch is "deck time" - the time the fish spends out of the water. Unwanted and prohibited species are released from longline vessels by "shaking" with the curve of a gaff, by cutting the gangion, or by straightening the hooks before the fish come aboard (please see NPLA Hook Straightening video). They are out of the water for only a few seconds, and their survival rate is good. Pot fishermen are likewise able to return their bycatch to the sea very quickly, and in very good condition.

These practices have come to be known as conservation-oriented fishing. The objective is first to avoid bycatch, and then to return any bycatch species to the sea in a healthy condition to maximize survival.

Total Catch Measurement

The bill would require that "the amount (in numbers or weight and species of bycatch taken on board a fishing vessel" be included in data submitted to the Secretary with respect to a fishery (page 18, lines 18-19), and would require the North Pacific Fishery Management Council to recommend measures to "ensure total catch measurement in each fishery...and...ensure the accurate enumeration of target species, economic discards, and regulatory discards" (page 31, lines 4, 6-8). If this language can be construed to mean that fixed-gear vessels would have to bring bycatch aboard and weigh it, we have a big problem.

It would be unthinkable for fixed-gear fishermen to bring bycatch aboard their vessels, kill it, weigh it, and throw it back dead. That would defeat the purpose of conservation-oriented fishing, and would substantially increase total bycatch mortality. Weighing operations are simply impossible, given the limited space on the vessels involved and the nature of the fishery (longliners catch their fish one-at-a-time).

The obvious solution is to have the observers estimate the amount and species of discards - just as they now estimate halibut mortality, by sampling and extrapolation. The amendment or its legislative history should clearly make such alternatives available on fixed-gear vessels. Weighing of bycatch is impossible and nonsensical.

Harvest Preference

Every attempt should be made to encourage fishing techniques which minimize bycatch and associated mortality. The time has come to recognize - legislatively - that different gear types have different bycatch and bycatch mortality characteristics. The Councils must be free to dictate the use of clean gear in particular fisheries - or we will never attain our waste reduction goals. On pages 19 and 31 of the bill, harvest priorities are authorized "within a fishing gear group" and "within each gear group." The quoted language should be stricken.

We cannot hope to significantly reduce waste unless the Councils are free to prescribe the use of clean gear.

We thank you for your attention to this matter, and hope for a favorable reponse.

Sincerely,

Linda Kozak
Kodiak Longline Vessel Owners' Association

United Fishermens' Marketing Association

Fishing Vessel Owners' Association

Deep Sea Fishermen's Union

North Pacific Longline Association

Alaska Crab Coalition

cc: Washington Congressional Delegation
Alaska Congressional Delegation

North
Pacific
Longline
Association

January 23, 1995

Honorable Don Young, Chariman
Committee on Resources
United States House of Representatives
Washington, D.C.

RE: Magnuson Act Reauthorization - Standard of Review

Dear Chariman Young:

The North Pacific Longline Association represents freezer-longliners which fish for groundfish off Alaska, processing and freezing their catch at sea. Several freezer-longliners are owned by Alaskans.

During last year's Magnuson Act reauthorization activities, a very broad group of fishing industry participants submitted a package of proposed amendments to the Magnuson Act, aimed at improving the council process. Chief among these proposals was one which would establish a more searching standard of judicial and administrative review (please see attachment).

We would be greatly pleased if you and your committee would adopt this new standard during this year's reauthorization process. It will benefit harvesters and processors throughout the nation.

Thank you for your attention to this matter.

Sincerely,

Thorn Smith
Executive Director

4209 21st Avenue West, Suite 300, Seattle, Washington 98199
TEL: 206 282 4430; FAX: 206 282 4484

Proposed Amendment To The
Magnuson Fishery Conservation And
Management Act

_____. Section 303 (16 U.S.C. 1853) is amended as follows:

(1) By striking the word "and" at the end of subsection (a)(1)(B); and

(2) By adding a new subsection (a)(1)(C), "based on a clear preponderance of the evidence in the record; and", and

(3) By redesignating current subparagraph (a)(1)(C) as subparagraph (a)(1)(D).

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 USC 1853

95-354, 99-659, 101-627

(a) REQUIRED PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both;

(C) based on a clear preponderance of the evidence in the record; and

(D) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

Proposed Amendment to the

Magnuson Fishery Conservation and Management Act

Purpose of the Amendment

Section 303 of the Magnuson Act sets out certain requirements to which regional fishery management councils must adhere when developing fishery management plans. Management plans are the basis for fishery regulations promulgated by the Commerce Department.

The proposed amendment would require that provisions of a fishery management plan be "based upon a clear preponderance of evidence in the record." The thrust of this change is to de-politicize council actions, requiring actions to be based on scientific, including biological, data. The council process includes public hearings, support from scientific and statistical committees, and industry advisory panels. However, nothing in the Act requires councils to base their actions on a preponderance of the evidence submitted. The purpose of this proposed change is to do just that.

Need for the Amendment

Many councils are now facing highly controversial conservation and allocation issues. Some of the measures being considered have the potential to change drastically and forever the way in which we manage our living marine resources. It is time to establish a more searching standard for analysis and review - every management action would benefit from this increased scrutiny.

Conflict-of-interest on the councils has been at issue. At the time the Magnuson Act was promulgated, it was assumed that we would need the specialized knowledge of fishing industry participants in management. We can retain this aspect of our system, while making it difficult if not impossible to pursue a conflicted agenda - by requiring substantial evidence on the record to support council actions.

In the original Act the councils' decisions were merely advisory - the Secretary of Commerce held decisionmaking power. The Act has since been amended to give most of the decisionmaking power to the councils. A more searching standard of analysis and review of council actions is required.

KODIAK LONGLINE
VESSEL OWNERS' ASSOCIATION

326 CENTER AVENUE, P.O. BOX 13
KODIAK, ALASKA 99615
(907) 486-3781 FAX (907) 486-247(

HALIBUT • SABLEFISH • PACIFIC COD • CRAB

February 17, 1995

Honorable Don Young
U.S. House of Representatives
2331 Rayburn House
Washington, D.C. 20515

RE: Magnuson Act Amendments

Congressman Young:

We would like to have you review and consider the following proposed amendment to the Magnuson Act.

To amend Section 302 under Procedural Matters by adding a new subsection (j) (4), "Each Council shall appoint members of committees and advisory panels during an open meeting at which public testimony on the appointments shall be heard."

We understand that this has become an issue with segments of the industry who are not currently being represented fairly on the Advisory Panel to the North Pacific Council from the state of Washington.

By having the appointment of committees conducted in a closed process, it does not provide the public an opportunity to fully participate in the process. This is a problem, especially when we see lopsided appointments being made on an industry advisory panel.

We believe that putting this process in a more public forum will help to alleviate some of the concerns that industry has expressed to us.

We appreciate the consideration you will give our proposal. Please don't hesitate to contact us if you need information or clarification.

Sincerely,

Linda Kozak

Linda Kozak
Director

February 13, 1995

Mr. Rolland Schmitten
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1335 East-West Highway
Silver Spring, MD

RE: Appointments to Council Advisory Panels; Magnuson Act

Dear Rollie:

Recently John Bruce, Chairman of the Advisory Panel (AP) to the North Pacific Fishery Management Council, wrote to you declaring that in a recent closed-door executive session the Council had allowed Washington State members to eliminate crab and freezer-longliner AP representatives and to replace them with trawlers. There was no forewarning of this action, no chance for the affected industry sectors to comment. Of the six Washington State AP representatives, four are now trawlers. Washington's freezer-longliners and crab fishermen - whose ex-vessel product is worth more than $400,000,000 annually - are disenfranchised. In John's words, this action "eliminated the credibility of the Advisoy Panel and has made a mockery of the requirement of fair and balanced industry representation." He demanded action to redress this injustice.

We have reviewed the NOAA PRIORITIES FOR REAUTHORIZATION of the Magnuson Act, published last Friday. We would like to ask you to recommend adoption of the attached amendment which would require that advisory panel appointments be made at <u>open</u> sessions of council meetings, with public testimony. In our view this process will prevent "packing" of the panels by particular interest groups.

It is not clear to us that the Magnuson Act currently authorizes the selection of advisory panel members at closed meetings. Please see attached inquiry to the NOAA Office of General Counsel, dated January 18, 1995 (we have not had the favor of a reply).

We believe that adoption of our proposed amendment will throw light on the advisory panel selection process, leading to fair and balanced representation. We hope you agree, and that you will share your thoughts with us.

Sincerely,

Fishing Vessel Owners' Association

Deep Sea Fishermen's Union

North Pacific Longline Association

Alaska Crab Coalition

cc: Washington Congressional Delegation
Alaska Congressional Delegation

Proposed Amendment To The
Magnuson Fishery Conservation And
Management Act

_____. Section 302(j), **PROCEDURAL MATTERS** (16 U.S.C. 1853), is amended as follows:

(1) By adding a new subsection (j)(4), "Each council shall appoint members of committees and advisory panels during an open meeting at which public testimony on the appointments shall be heard," and

(2) By redesignating current subsection (j)(4) as (j)(5), current subsection (j)(5) as (j)(6), and current subsection (j)(6) as (j)(7).

January 11, 1995

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
604 West 4th Avenue
Anchorage, Alaska 99510

RE: ADVISORY PANEL COMPOSITION

Dear Rick:

Yesterday Washington State fixed gear representatives and Council members met to discuss the makeup of the Washington delegation to the Advisory Panel. Present were Bob Alverson, John Bruce, Kris Fanning, Thorn Smith, Arni Thomson, Morris Barker, Dave Fluharty, Al Millikan and Wally Pereyra.

For the second time fixed gear representatives expressed their deep concern regarding the removal of two fixed gear representatives from the panel, a freezer-longliner and a crab fisherman, and their replacement by two trawl gear representatives. The Washington Advisory Panel delegation of six now includes includes four trawl gear representatives. Fixed gear representatives emphasized the very real need of the different competing gear groups for representation on the Washington delegation in 1995, when many serious management issues will be decided. The Council members agreed to ask for an executive session of the Council to address this issue.

The GUIDELINES FOR COUNCIL OPERATIONS/ADMINISTRATION, at 50 CFR 605.23(d)(3), require that "balanced representation" should be maintained on the A.P. The Council's SOPP states that "The Council will attempt to appoint as broad a spectrum of interests as possible, including the various fisheries around Alaska...emphasizing fair representation of all fishing interests." It also specifies that the A.P. members "serve at the pleasure of the Council." (emphasis added)

Elimination of significant competing interests will seriously inhibit the ability of the A.P. to reach useful industry consensus.

It is our sincere hope the Council will take action now to rectify the imbalance on the Washington delegation to the A.P.

Thank you for your attention to this matter.

Arni Thomson, ACC

Thorn Smith, NPLA

John Bruce, DSFU

Bob Alversoon, FVOA

Deep Sea Fishermen's Union of the Pacific

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Phone: (206) 783-2922
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Established 1912

January 20, 1995

Rolly Schmitten
Assistant Administrator for Fisheries
1335 East/West Hiway
Silver Springs, MD 20901

Dear Rolly:

Recently, through oversight or perhaps design, actions were taken to remove some key players from the North Pacific Fishery Management Council's Advisory Panel. Guidelines for Council operations require a balanced representation from all of the fishing industry. This year Washington State has upset the balance on the AP by appointing four trawl gear representatives to the delegation of six from Washington State. This is not an issue of personalities but one of fairness to competing gear groups. The interest of all users can not be fully represented because of the AP makeup of two AP appointments for each Council member but a better mix of representatives is essential. The situation we now have on the AP is horribly unbalanced and the credibility of the process is at stake.

Many industry representatives have approached me about this concern and have expressed dismay and outrage about "trawl stuffing" on the Advisory Panel. These concerns come not just from Washington State fishers but Alaskan Industry groups as well who are very concerned about the imbalance of fishing industry representation on this panel.

I, along with the Industry participants, Arni Thomson, Kris Fanning, Bob Alverson, Thorn Smith, voiced our concern to Washington State Council members at the Washington State Distant Water Committee Meeting the week prior to the Council gathering. Our appeal was that a correction to the removal of crab and freezer longliner representatives be made ASAP. When no apparent action was taken, we again met with Wally Pereyra,

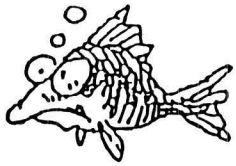
Al Milliken, Dave Fluharty and Morris Barker at the Council meeting in Anchorage and again asked for some remedy to this injustice. Here we are a week later with no solution or public discussion. What has happened to the process?

I believe the action of the Washington Council members has eliminated the credibility of the Advisory Panel and has made a mockery of the requirement of fair and balanced industry representation. As a member of the AP and Chairman, I deplore these actions and call for Council action to fix this injustice!

Respectfully,

John M. Bruce,
Executive Director

North
Pacific
Longline
Association



- FAX TRANSMISSION -

DATE: January 18, 1995

TO: NOAA GC - Maggie Hayes, Jay Johnson
cc: Lisa Lindeman

FROM: NPLA - Thorn Smith Thorn

SUBJECT: **Selection of A.P. Members During Closed Council Meeting**

PAGES: 5

You are both great Americans! Having said that, I would like to pose a question which vexes me sorely.

During its December meeting the NPFMC held a closed executive session at which it selected members for the industry Advisory Panel. To our great surprise, the freezer-longliner and crab fishermen who have sat on the panel for years were removed from the Washington delegation, and were replaced by two trawlers. We had no forewarning. The Washington delegation of six is now composed of four tralwers, a shoreside processor, and a longline crew representative. I am advised that in the past different gear groups were told if one of their representatives was to be replaced, so they could nominate replacements and maintain the balanced representation which is required by both federal regulation and the Council's SOPP (please see attachments).

Fixed gear representatives complained loudly of their disenfranchisement, and asked the Council to redress the wrong (please see attached letter of January 11). The Council held another closed executive session, after which it announced that the composition of the A.P. would not change.

My question relates to the selectin of Advisory Panel members during closed executive sessions. The Magnuson Act, at 16 USC 1852(J)(3) provides that

(A) Each Council, scientific and statistical committee, and advisory panel--

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears on a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested; and

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region...This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters....

Members of the Advisory Panel can hardly be considered employees of the Council, any more than members of the Scientific and Statistical Committee, working groups or committees. The Council SOPP reinforces this conclusion by stating that, "Members of the AP shall serve without compensation..."

Likewise, appointment of A.P. members can hardly be considered a casual "internal administrative matter." Balanced and fair representation is a major public question, and the selection process should be subject to public scrutiny and comment.

In the event, the representatives who were removed were told after the fact that poor attendance records were a prime motivation. They should have had prior notice of any such concern, and should have had an opportunity to present their side of the case. The disenfranchised fixed gear groups should have been told to nominate replacements. As it is, everything was done behind closed doors without warning of the possible outcome.

I cannot say whether notice of the first closed meeting was published; certainly notice of the second was not.

These occurrences do not appear to comply with either the letter or the spirit of the law. Could you comment?

March 24, 1995

The Honorable Jim Saxton
Chairman
Subcommittee on Fisheries, Wildlife & Oceans
House Resources Committee
United States House of Representatives
805 O'Neil House Office Building
Washington, D.C. 20515

Dear Chairman Saxton:

On behalf of Tanadgusix Corporation ("TDX") I would like to offer these comments on H.R. 39, the "Fishery Conservation and Management Amendments Act of 1995," and request that this letter be included in the Committee's hearing record on this legislation.

TDX is the Alaska Native village corporation for St. Paul, Alaska, one of the Pribilof Islands. The Pribilofs are located in the Bering Sea, approximately 250 miles from mainland Alaska and 250 miles from Dutch Harbor in the Aleutians. St. Paul has a permanent population of approximately 800, nearly all of whom are Alaska Natives and TDX shareholders.

TDX generally supports the provisions H.R. 39 as its provisions would bring important improvements to the management of fishery resources in Alaska. The wasteful bycatch practices of the industry need to be curbed and the role and authorities of the management councils must be more clearly defined. We believe H.R. 39 reflects meaningful steps towards achieving both these objectives.

At the same time there are other issues of particular concern to the Pribilof Islands which should also be addressed. The Bering Sea is unique in the world in the breadth and size of its fishery resources. Likewise, the Pribilof Islands and their Alaska Native residents are unique in both their history and position within the world's greatest fishery. The sad and painful history of the Pribilovians has been highlighted before. Forcibly brought to the Islands as slaves to harvest fur seals our people existed in a cultural and economic vacuum unique even in Alaska. Little changed with the United States' purchase of Alaska as their lives continued to revolve around a commercial seal harvest over which they had no control or direct economic stake. Throughout this time, all the way through the 1970s, we were practically and legally

restrained from taking advantage of the unmatched resources of the Bering Sea which surround us. Year in and year out, they watched as others from afar came in and reaped the wealth of this natural bounty.

Gradual progress was made towards the political and economic liberation of the Islands, especially through the Alaska Native Claims Settlement Act. Even so it was not until the early 1980s that the Federal government finally recognized its responsibility to the Pribilovians and the need to give them the means of managing their own lives. With the Fur Seal Act Amendments of 1983, Pub. L. No. 98-129, the Congress sought to make the Pribilofs active participants in the Bering Sea fishing industry.

The FSAA created a special Pribilof Islands Trust to manage the transition of the Islands away from a Federally managed installation and, ". . . to promote the development of a stable, self-sufficient, enduring and diversified economy not dependent on sealing. . . ." 16 U.S.C. e 1166(a)(1). The Trust was to provide the funds necessary for the Islanders to survive as commercial sealing operations were gradually closed out and while the State of Alaska constructed the boat harbors on both Islands that would enable the islands to participate in the fishery service/support industry. The legislative history of the FSAA is explicitly clear that Congress expected and intended the new stable and self-sufficient economy to be based primarily on a Pribilof fishing industry and fishing fleet service facilities.[1] The FSAA also provided for the completion of a Memorandum of Understanding (MOU) among the U.S. Secretary of Commerce, the State of Alaska and the Pribilovians.

The MOU was to set forth the respective responsibilities of the Federal Government, the Trust and the State during the transition from Federal management and the creation of a private enterprise economy. The MOU was completed on February 10, 1984, and in its most pertinent part states:

> All governmental entities signatory to this MOU acknowledge the difficulties inherent in creating a viable, long-term private enterprise economy in an environment which has existed heretofore as a governmental enclave. All government agencies should take special note of this fact in considering programs of assistance to the Islands and give special recognition to the many legitimate, educational, infrastructure, social, environmental, and economic needs of the people of the Islands.

MOU at d 7.

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[1] See generally, House Report No. 98-213, 98th Cong. 1st Sess. 7 (1983); S. Rep. No. 98-212, 98th Cong., 1st Sess. 1 (1983) ["The primary economic activity which is anticipated is fishing."] See also House Hearings on H. R. 2840 before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, 98th Cong., 1st Sess. 261 (1983); and 129 Cong. Rec. H 7444 (9/26/83) (Statement of Rep. Breaux: "[The Trust], . . . would supplement the islands' economy during the development of halibut, king crab and groundfish fisheries and other industries.").

Further on, the parties made the following binding commitment: "The signatories agree to take all actions that may be necessary and appropriate for carrying out the purposes of the [FSAA]. MOU at d 10. The Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration was the Federal signatory to the MOU. In this way the transformation of the Pribilofs from Federal "Company towns" whose residents possessed little or no control over their economic well-being into independent, economically self-sufficient communities was begun.

This re-creation of the Pribilofs was a difficult process and was not without its problems and unforeseen complications. Through it, the people of the Pribilofs and the communities have made great strides. Even now it is still far from complete and we still wrestle with many of the same problems, including high unemployment and development needs that far outweigh our financial resources.

Beginning in 1989 with the North Pacific Fishery Management Council's ("NPFMC") consideration of inshore/offshore and IFQ proposals, it was obvious to us that more was going to be necessary to secure the objectives of the FSAA and fulfill the obligations under the MOU. The Pribilofs were faced with the very real prospect of being effectively barred from participating in the fishery thereby nullifying all of the time and money invested in creating the infrastructure for doing so.

In 1992, NOAA created the Community Development Quota ("CDQ") program. The CDQ program was proposed so that the Bering's fishery resources would provide the financial means for Western Alaska's small coastal and island communities to improve the economic lifestyle of the residents through participation in the fisheries. At the same time they would encourage the establishment of onshore facilities that would benefit the overall Alaskan economy. Although we had serious reservations about the ability of the CDQ program to meet our very substantial economic and development needs in the Pribilofs and to otherwise fulfill the legal obligations and responsibilities of the Federal and State governments under the FSAA and the MOU, we were willing to give the CDQ program a chance and work with it.

There is no question that the CDQ program has been very beneficial to the coastal communities of Western Alaska. It has brought a much needed infusion of capital into many of these communities. It has also brought a measure of cooperation and mutual assistance between the communities and the commercial fishing interests which benefits both groups. But, that is not to say that the program is not without its problems and flaws. The program and its administration are marked by an inflexibility and subjectivity which reduce its effectiveness and fairness. Moreover, the business arrangements which the program has given rise to do not necessarily contribute to the long-term onshore development in Alaska the program aims to foster. Nevertheless, we believe the positive impacts in those other communities outweigh the problems and so we strongly support continuation of CDQs. While there is need for improvement, we recognize the value of the CDQ program to the other communities and we urge the Congress to include such authorities in S. 39 or any other Magnuson Act reauthorization measure.

Unfortunately, however, the CDQ program has not adequately met the needs of the Pribilof communities. The Pribilofs, which have by far the greatest development needs and potential, are currently allocated less than 1% of the Bering Sea's total allowable catch of groundfish. This level falls well short of what is necessary for the Islands to become truly self-sufficient. What's more, the CDQ program and its regulatory restrictions on the recipient organizations does little that meaningfully benefits the communities. Having a processor locate on the Island does little to meet the real needs of the Islanders. Moreover, the lack of meaningful resource control dilutes the ability of the Pribilovians to direct and control their own destiny and leaves the promises of the FSAA unfulfilled.

The simple fact remains that it is not possible for the unique development needs and economic rights of the Pribilofs to be addressed through a State-run program which is and must be designed to deal with the more generic issues facing the coastal communities in Western Alaska. Nor is it fair to force the Pribilofs to give up their legal and economic rights simply to make it more convenient to serve the needs of other communities.

There is a legal and moral obligation owed to the Pribilofs which can only be properly satisfied through a special allocation of Bering Sea resources. Only in this way can we be assured of the means of permanently establishing the congressionally-mandated fisheries-based economy. Such an allocation would finally give the Pribilovians the means and ability to control our own economic destines. It would be more than just a property right, it would be a source of independence and self-sufficiency that would put us on a level playing field with the giant corporate processing interests that have moved into our communities. It would enable us to complete the harbor and dock improvements which are still needed and it would provide capital for the establishment of a real local participation Pribilof fishing industry.

An allocation could and should also serve as a source of funding of the much needed Bering Sea Scientific Research Center which is authorized, but not funded, under the Marine Mammal Protection Act. No one better appreciates the need for a greater understanding of the Bering Sea and all of its resources, including birds, marine mammals and fisheries. We have used CDQ funds and our partially-owned vessel to support the development of scientific information and data about Pribilof waters for the National Science Foundation studies. A research center focused in the Bering Sea is imperative if we are going to be able to manage and protect those resources wisely. However, in these times of budgetary difficulties, it is not clear if and when Federal dollars will be available. But a small portion of a Pribilof allocation could be targeted to provide the funding, at no recurring cost to the government.

It is our position that the authority to make such an allocation already lies with the NPFMC. Under the Magnuson Act the Council is authorized to allocate resources and take other appropriate management and conservation measures. Moreover, the Magnuson Act requires the Council to develop its fishery management plan ("FMP") consistent with applicable law, of which the FSAA clearly is part. This is borne out by the fact that certain of the existing National Standards for the FMP are the same as the justification behind the FSAA: achieve optimum yield, promote efficiency and minimize costs.

Nevertheless, we believe that the authority to respond to the needs of the Pribilofs and other communities, through both a program like CDQs and other measures, should be expressly recognized in the Magnuson Act, which is why we strongly support the inclusion in H.R. 39 of authority to make special allocations for fishery dependent communities. Certainly no place in Alaska better meets the definition of "fishery dependent community" than St. Paul and St. George Islands. However, the needs of the Pribilof communities were overlooked in the larger inshore/offshore debate, and buried in the scope of the State-administered CDQ program. Our needs are specific and unique and difficult to address in such generic programs. For that reason, we ask that the Committee amend the existing language of H.R. 39 to include a provision to amend the Magnuson Act to include a specific reference to the FSAA as a required consideration for the NPFMC in the development of its FMP. Through such amendments the unique needs and rights of the Pribilofs can finally be addressed. At the same time the very real development assistance needs of other communities can continue to be served, as well.

The people of the Pribilofs have a history that is uniquely their own. Over the last 12 years much has been done to bring us to a point of a real and meaningful independence and self-sufficiency. However, much remains to be done and the fishery remains the key. Recognizing and securing our special place within the Bering Sea is the only way the commitment that was made by the Federal Government and the State can be kept.

We thank appreciate the opportunity to present these comments and look forward to working with you in the development of this important legislation.

Sincerely,

Ron P. Philemonoff

Ron P. Philemonoff, Chairman and CEO
Tanadgusix Corporation

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cc: The Honorable Don Young, Chairman
House Resources Committee

Testimony of
Walter M. Gordon, JR.
President
Mid-Atlantic Foods, Inc.

Before the

Fisheries, Wildlife and Oceans Subcommittee
of House Resources Committee
U.S. House of Representatives

February 23, 1995

Mr. Chairman and Members of the Subcommittee:

My name is Wally Gordon, and I would like to begin with a brief introduction of myself and my company. I began my career in the grocery products industry in 1966. For fourteen years, I held various positions in sales and marketing with both regional and national food companies. In 1980, I became involved in the clam business as the Director of Marketing for American Original Corporation in Seaford, Delaware. Currently, I am the President and majority stockholder of Mid-Atlantic Foods, Inc., located in Pocomoke City, Maryland, and Gordon's Seafood, Inc., located in New Bedford, Massachusetts.

Mid-Atlantic Foods was formed in 1982 to process canned clams, clam juice, chowders, and various seafood products for the retail and foodservice markets. I believe that we are currently the second largest supplier of canned clam products to the foodservice industry. Gordon's Seafood was formed in 1993 and is a clam shucking operation which processes both fresh and frozen products. Combined, these operations employ approximately 150 people.

I am active in a number of trade organizations. At present, I serve as the Chairman of the National Fisheries Institute's Clam Committee, as well as a member of its Board of Directors. I am also an appointed member of the Surf Clam and Ocean Quahog Industry Advisory Committee to the Mid-Atlantic Fishery Management Council. Additionally, I am the immediate past president of the Mid-Atlantic Food Processors Association.

I appreciate the opportunity to testify on the revision of fisheries programs under the Magnuson Act, particularly Individual Transferable (Fishing) Quotas (ITQs) and their effects on the Atlantic surf clam and ocean quahog fisheries. Although no provisions for ITQs are currently in H.R. 39, in the following testimony I will describe how ITQs are affecting my company as well as the entire industry, and make recommendations which should be considered before the implementation of ITQs in other fisheries. I will also state my views about the possibility of user fees and overfishing definitions.

First, the method of initial quota allocation is of great interest to all industry members. If quota is distributed without fee to the recipient, the allocation process may create instant wealth and huge advantages to some, while creating serious financial obstacles for others. In our industry under Amendment 8 to the fishery management plan (FMP), for instance, vessel owners received all of the initial quota based primarily on historical catch. Most processors, such as myself, owned no vessels and therefore received no quota.

However, a few processors owned vessels and thereby received quota. Thus, following the introduction of the ITQ program, most independent processors were immediately put at an

economic disadvantage to these vertically-integrated processors. In the long run, this ITQ program will probably shrink the industry into a few vertically-integrated corporations controlling every aspect of the industry from harvesting through marketing.

Under any ITQ program, in order to allow traditional fishing families and independent fishermen and processors the opportunity to become more efficient, ITQs must be structured differently. First, quota shares must be bankable -- it must have stability, transferability, a viable marketplace and a tangible value. Otherwise, efficient vessel owners and processors who cannot afford to purchase additional quota and are unable to borrow against the value of quota, may be forced out of the industry. This is a loss to all of society.

Likewise, ownership limits of ITQs should be imposed, as well as reasonable constraints to prevent price manipulation and the creation of artificial shortages. Currently, people can use quota as a speculative financial vehicle. Furthermore, foreign nationals/corporations may control the quota rights to ITQ-regulated resources.

Finally, the scientific basis of the FMP must be very sound. For example, in the surf clam and ocean quahog fishery, a distinct possibility exists that the scientific community has underestimated the size of the resource for the past thirty years. If so, industry members who invested in quota and based their decisions on the previous estimates of the resource, may now incur the financial ramifications of errors in science.

In reference to user fees, I submit that the ITQ program, as implemented under Amendment 8

to the FMP, has already created a user fee system. Unfortunately, the fee is being paid by the American consumer. This user fee on surf clams greatly exceeds the costs of harvesting the clams. In any competitive marketplace such as our industry, additional taxes on inputs will be passed on to the consumer.

Finally, pertaining to the proposed overfishing definitions defined in the Act, I submit that the science is insufficient to create such a definition for the surf clam and ocean quahog fisheries. Currently, scientists are uncertain about what constitutes 'significant' recruitment within the fishery. Until this is resolved, any estimations of proper sustainable yield are speculative. I also add that industry members have offered to assist the scientific community in resolving this problem through the establishment of a long-term, industry-involved resource survey program.

In conclusion, I suggest the following recommendations for any ITQ program:

1. Any plan must be bankable. To be bankable, financing must be available through normal commercial sources. ITQs:
    a. Must be a "property right" not subject to revocation.
    b. Must not be threatened by confiscation, otherwise quota is 'unbankable'.
    c. Must not be subject to micro-management in an effort to right every grievance.
    d. Must have a method to readily transfer ownership and thereby, establish reasonable value.

2. Ownership by any one entity must be limited.
3. Ownership must be limited to entities who own or operate vessels, thereby keeping

speculators out of the resource.

4. The value of the ITQs must be in "the right to fish, free of unnecessary restrictions", rather than in speculative ownership.

5. The plan must prevent the ability of an ITQ holder to withhold product from the market to manipulate the price.

6. The plan must have a method to initially distribute allocation on a fair and equitable basis. Inflation of catch, or a history of cheating, etc. should not enhance an owner's initial ITQ receipts, as it did under Amendment 8.

7. There should be an initial cost to ITQ owners, or a way to prevent a windfall to the recipients and an untenable burden to non-recipients.

8. Any future ITQ plan must be suited to the particular fishery which it will manage.

9. The science must be very solid, and stock size estimates must be as accurate as possible given the available information. If the precision of these estimates is not within 20%, ITQ introduction should be delayed until more reliable estimates are available.

On behalf of Mid-Atlantic Foods and Gordon's Seafood and all of its 150 employees, I thank you for this opportunity to address this subcommittee on these vital fishery management issues.

Fishermen's Finest

North Pacific Fishing, Inc.

4039 21st Ave. W. #201 ▪ Seattle, WA 98199
TEL: (206) 283-1137 ▪ FAX: (206) 281-8681

February 22, 1995

The Honorable Don Young
Chairman, Natuaral Resources Committee
U.S. House of Representatives
Washington, DC

Fax: (202) 333-1340

RE: Magnuson Act Reauthorization

Dear Congressman Young:

Last June members of the Washington State fishing industry met with our congressional delegation to discuss an industry consensus proposal for amending the Magnuson Fishery Conservation and Management Act. Our proposal, dated May 31, 1994, represents a great deal of work on our part and I believe is a clear statement of the views that we all can support.

The Washington State industry proposal was developed to ensure fair treatment in the management of U.S. fishery resources:

Our operations are conducted in the 3-200 mile Exclusive Economic Zone off the coast of Alaska. The participation of a variety of gear and processing types from several states make the fishery management process an often contentious political process. By implementing the proposed changes to the Act, Congress can ensure that all participants will be treated fairly and that the existing statutory National Standards will be given the necessary weight to ensure that they are observed.

The Washington State Fishing Industry's unanimous proposal does not include support for IFQ/ITQs:

As you are also no doubt aware, some members of the Washington State industry are seeking your support for amendments beyond the scope of our unanimous agreement. They are claiming unanimous industry consensus in favor of giveaway Individual Fishing Quota (IFQ/ITQ). These programs do not have unanimous support and indeed are viewed skeptically by a large number of Washington and Alaskan fishermen. I urge your caution in viewing these proposals. Amongst the nonunanimous proposals are plans to allow the Secretary of Commerce to order the regional councils to submit IFQ plans or to allow the Secretary to write and implement such plans without council authority. The absence of such recommendations from the Washington State industry proposal demonstrates the lack of a clear consensus on this issue within Washington State.

These groups claim broad-based support for their plan to solve our industry's problems. In making this assertion they ignore the fact that they have been unable to achieve consensus on the blueprint for IFQs even amongst themselves. Further, at the January 1994 North Pacific Fishery Management Council meeting, the Council and its Advisory Panel, composed of industry and public representatives, voted to table the IFQ plan in favor of developing a license limitation plan and enhancing the current traditional regulations to reduce bycatch and waste in the fisheries. These votes underscore our assertion that there is no industry consensus supporting IFQs.

IFQs would cause a dramatic increase in the size and cost of federal fisheries management:

An IFQ program would greatly increase the bureaucracy and expense needed to manage our fisheries. The current reporting system already requires many hours a day from our vessel operators and office staff. The added burden of regulation and reporting already being looked into by the National Marine Fisheries Service (NMFS) staff would be staggering. At a minimum NMFS estimates that each vessel would need to purchase a $75,000 scale system to weigh each fish harvested. The scale industry has stated on the public record that scales meeting NMFS requirements do not even exist and will take years to develop. This is not a recipe for reducing government bureaucracy. It is a recipe for enhanced government regulation and waste. Mr. Steven Pennoyer, the director of the Alaska Region of NMFS, has said that an IFQ program will not be simple and will entail at least a 10,000% increase in the number of individual fisheries his staff must manage.

IFQ programs will cause severe economic hardship for many midsized and small independent fishing operators:

Prior to taking any action I strongly suggest that you review the testimony presented to the North Pacific Council (NPFMC) by the public. Not only will you find the voices of the large lobbying organizations that support the giveaway of the public resource, you will also find the testimony of private citizens who traveled to the Council to voice their opposition to an IFQ plan. One young man testified that he was a third-generation fisherman and that he and his brothers had been completely disenfranchised from the halibut fishery due to not having followed the complicated political machinations which lead to the sablefish/halibut IFQ plan. (NPFMC, January 1994.) The sablefish/halibut plan was approved by Commerce Secretary Brown amidst an intense Washington DC lobbying effort, not because of grassroots support.

IFQs would create a fisheries management system that only very wealthy investors could afford to enter. Last year a much less restrictive limited-entry permit system was recently put in place by the Pacific Fishery Management Council that regulates the low-value whiting fishery off the coasts of Washington, Oregon, and California. Within one week after we received the permit for one of our small 101-foot catcher-only trawl vessels, we received an offer of $114,000 for the permit. The value of a similar permit in the Canadian Pacific coast fisheries one and one-half years after the implementation of their limited-entry program was $700,000. If a limited-entry permit system places this significant a burden on the fishing fleet, it does not take an economist to show that the economic value of an IFQ, which not only grants limited access but a specific share of the total annual harvest, is vastly greater than limited-entry permits. If a license limitation program is adopted, Congress or NMFS should consider the option of having licenses revert to the federal government when the licensee ceases their involvement in the fishery.

The great financial value of an IFQ share combined with the security granted by the program would attract investors not normally interested in owning and operating fishing vessels. This program would destroy the small and medium-sized fishermen and with them destroy the ability of our fishing fleet to respond to economic and ecological changes. None of us in the industry today is smart enough to know what type of vessels and equipment we will need to meet the conservation requirements of the future. By giving away a resource under an IFQ plan euphemistically called a "market-based solution," Congress would be destroying the dynamism of our fleet. It might also be giving our fisheries to the foreign banks that have underwritten many of the overextended factory vessels. Indeed, in the case of the Mid-Atlantic Council's IFQ plan, the majority of the IFQs are in the hands of major corporations and foreign banks. The chairman of the National Marine Fisheries Service (NMFS) Surf Clam/Quahog Review Committee summarized this concern in his final memorandum outlining the committee's findings:

> **"[T]here is unanimity in their real fears of a monopolistic control of the fishery in the relatively near future."** (Confidential memorandum from Ed MacLeod, NMFS, to Richard Roe and John Rittgers, page 1, February 25, 1992)

A better method of managing the economics of the fishery is allowing the current truly market-oriented system to continue: the survival of the most efficient fishermen. The failure of investors who neither understand fishing nor are capable of safely managing a fleet without the government guaranteeing their financial security is capitalism working normally. It is the government's place to assure sound ecological management of the fishery, not to change the rules to choose the winners.

Giving away or selling the public resource is not the answer to our management problems; it is the answer for the economic problems and greed of a group of individuals and companies who made bad business decisions and who are not interested in the long-term viability of our newly Americanized fisheries. Even so, IFQs will not put more fish into the ocean; they will only create an asset that can be put on a balance sheet. It has been suggested by the American Factory Trawlers Association that IFQs are the answer to the unfair Magnuson-Act-mandated Alaskan majority on the council. If the State of Washington wishes to solve the problem of an Alaskan dominated North Pacific Fisheries Management Council, it will support a Magnuson Act amendment to eliminate that majority by assigning 2 of the seats that are currently filled with nominees of the Governor of Alaska to the States of Oregon and Washington.

IFQs will not increase the safety of fishing operations:

Safe fishing is attained by vessel operators who make their vessel and crew top priority and not by operators who make seamanship decisions based on economics and fisheries management. While many IFQ proponents claim that safety will be increased, past experience and common sense do not bear this out. In the NMFS review of the Atlantic Surf clam and ocean quahog ITQ program, NMFS officials found that vessels who leased quota were sent out in bad weather to maintain a steady production at processing plants; the result was a decrease in safety as captains had less control over their vessels. (Surf Clam/Ocean Quahog Evaluation Based on Interviews with Captains, Owners and Crews, Kenneth Beal, NMFS, (1992) page 4 (incorporated in MacLeod 1992).)

In many cases fishing seasons are determined by fisheries biology, when the fish are in the best condition for market and schooled together so that operations will be effective. A quota system will not change the biology or migration patterns of fish. If however, the quota program succeeds in giving vessels more flexibility in choosing when to fish, the incentive for preventive maintenance could actually decrease as vessels no longer are required by economics to be maintained in top condition. This returns me to my original point, proper safe operations are primarily dependent on vessel owners and operators, not fishery management plans.

Return to the broad based industry proposal for reforming the Magnuson act process rather than attempt to give the resource away as private property:

The Magnuson Act currently encourages maximum yield from the resource by providing public-access fisheries for which fees are not charged and exclusive rights to fish are not granted. I urge you not to destroy the unique character of our fisheries by making them accessible only to very wealthy investors. Following the Commerce Secretary's 1992 Inshore/Offshore decision the price of pollock paid to shoreside delivery vessels dropped due to the fact that a small group of processors were the only customers in the world who could buy that fish by US law. IFQs, Processor Quotas, and auctions will only exacerbate these problems for the fishermen. I do not advocate Congress writing the status quo into law; I am merely urging you not to mandate the drastic and crippling change from the status quo to solve the economic problems of a few businessmen and foreign banks who made bad business decisions.

Sincerely,

Rudy A. Petersen
CEO

Michael Markels, Jr., Ph.D.
6850 Versar Center
Springfield, Virginia 22151
(703) 750-3000
February 22, 1995

The Honorable Donald Young, Chairman
Committee on Resources
House of Representatives
United States Capitol
Washington, DC 20515

Subject: Proposed amendment to the Magnuson Fishery Conservation and Management Act

Dear Mr. Chairman:

The ocean within the 200 mile limit is owned by the U.S. Government, which has not granted private property rights to either its citizens or to the individual Fisheries Councils. Therefore, the ocean remains a "commons". There is presently no mechanism to reward actions which increase the productivity of the ocean through investment. The Councils can only increase landings from their current level by restricting the catch to eliminate over utilization of the resource.

Recent experiments have shown that the addition of fertilizing elements, specifically, iron, have increased the growth of algae in the tropical Pacific Ocean near the Galapogas Islands by a factor of four. Much greater increases, up to a factor of 30, could be realized by the use of engineered designs based on fertilizing elements that occur naturally in ocean upwellings. Calculations indicate such an approach could increase the fish production of the Gulf Stream along the Atlantic coast up to as much as 50 million tons a year from an investment of approximately $100 million a year.

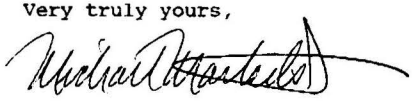
The required investment can be provided directly by the U.S. Government which would contract through the Department of Commerce to have fertilizers added to costal waters to increase biomass and therefore, fish production. The individual Fisheries councils would continue to regulate the catch in their jurisdiction in order to match landings with the production of fish. This approach suffers from the separation of the productivity enhancement operation from the fisherman. It also ignores the fact that different approaches to increase productivity may be required to maximize the return in the jurisdictions of individual Fisheries Councils. A better approach gives the authorization to each Fisheries Council to levy a landing fee of up to 4% of the first sale value of the catch from their jurisdiction. This levy would be at the discretion of each Fisheries Council. The levy would be used to fund programs to increase ocean productivity. Councils with adjacent ocean boundaries will probably find it advantageous to cooperate in their productivity enhancement programs. The

Councils would contract with private industry to provide the technology, fertilizers and application with costs and incentives paid for by the levy on the landings. Both the private contractor and the Councils would have an incentive to work towards obtaining the maximum sustainable landings of fish which, with fertilization would be many times the present sustainable catch.

Therefore, I recommend that the Magnuson Fishery Conservation and Management Act be amended to authorize a levy of up to 4% of the first sale value of U.S. commercial landings of fish and shellfish at the discretion of the individual Fisheries Councils for the purpose of enhancing the basic productivity of the ocean in their jurisdiction. This would ensure that the Councils can act to increase the basic productivity of the ocean through the impetus of new technology and private property rights. Based on $4.1 billion in first sale value of current U.S. fish landings, this levy could generate as much as $164 million annually, if used by all regional Fisheries Councils. The increase in fish production from ocean farming and fertilization could increase this production by an order of magnitude or more. The increase in the levy to the Councils would be passed on to the providers of the technology, including the fertilizer and its application to the ocean.

Almost all of our country was once owned by the government. We have long understood that private ownership increased productivity where investment is required. We need to do the same to increase the productivity of our coastal oceans.

Very truly yours,



Michael Markels, Jr., Ph.D.

Statement of Robert Alverson
Manager, Fishing Vessel Owners' Association

Subcommittee on Fisheries, Wildlife and Oceans

House Committee on Resources

February 23, 1995

Mr. Chairman:

I appreciate the opportunity to provide a statement to the Subcommittee on the subject of reauthorization of the Magnuson Fishery Conservation and Management Act. I am manager of the Fishing Vessel Owners' Association, which is a trade association representing owners of 80 hook-and-line fishing vessels. FVOA is based in Seattle. Our vessels operate from California to Alaska. I recently completed two terms of service as a Member of the North Pacific Fishery Management Council.

The current reauthorization process for the Magnuson Fishery Conservation and Management Act provides the Congress the opportunity to ensure that our system of federal fisheris management serves fundamental conservation goals and improves the safety of our fisheries. With that in mind, I am attaching to my prepared statement a number of proposed amendments which would accomplish those purposes. For the record, I would like to note that these proposals were developed in consultation with another trade association based in Seattle, the Alaska Crab Coalition. I urge the Subcommittee to give the proposed amendments sympathetic consideration.

I would also ask the Subcommittee to consider the usefulness of individual fishing quotas as a device for achieving conservation and management goals that are beyond the

effective reach of traditional regulatory measures. I am not proposing that the Act be amended to mandate the establishment of IFQs, because I do not regard IFQs (or ITQs--individual transferable quotas) to be a universal panacea. There may be many cases in which other management measures are more appropriate, or where IFQs cannot be rationally applied. However, because IFQs can be very helpful in addressing the problems of various fisheries, the amendments which I am proposing strengthen the existing legislative foundation for that sort of management scheme.

As the term suggests, IFQs provide specific quotas of fish to particular individuals. At the outset, quotas are based on historical participation in the fisheries and the prevailing condition of the resources. IFQs can be transferred, subject to conditions and restrictions calculated to achieve various management goals. Within broad parameters, IFQ holders may harvest their quotas when the weather is safe and the markets are good. The holders of IFQs thus enjoy fishing privileges that are aimed at effectively conserving the stocks, promoting safety of life and property at sea, and maximizing the value of the product. If a problem arises in the system, the responsible fishery management council and the Commerce Department may adopt changes--or abandon IFQs altogether. Since IFQs do not convey property rights that are subject to the due process protections of the United States Constitution, there is no right of compensation to holders, in the event that the system is changed or revoked. The public remains in full and effective control of the resource. I add that, with proper management, the harvest of renewable fisheries resources provides economic benefits to productive members of our society, while depriving the public of nothing. This, of course, distinguishes fisheries from non-renewable resources, such as oil and gas, and hard rock minerals.

I have put a great deal of effort into the establishment of an IFQ system for the halibut and sablefish fisheries in federal waters off the coast of Alaska. I supported that

system, because those fisheries simply could not be sustained with the continued use of traditional time and area closures and trip limits. There were too many vessels applying too much effort to the harvest of very limited resources. In fact, over the years, the fleet grew from hundreds to thousands of vessels, and the halibut season was reduced to a few days of hysterical fishing per year. The sablefish fishery also suffered from increasing pressure, and was destined to become as dangerous and wasteful as the halibut fishery. In both the halibut and sablefish fisheries, people lost their lives and their vessels, product quality declined, prices fell from episodic gluts in the market, and much of the catch was wasted by hasty and otherwise bad handling practices.

For me, the loss of life in these fisheries was the major consideration in my move toward a system of IFQs. I saw no alternative method of addressing compressed seasons and overcrowded fishing grounds, in which the fishermen's fatigue and nature's violence took an ever-increasing toll of human lives. From that standpoint, the prevailing management system could not be maintained, because its human cost was simply intolerable.

From the perspective of conservation, as well, the traditional management tools could not produce a sustainable fishery. With thousands of vessels operating in relatively small areas on discrete fish populations, time and area closures could not be tightly enough configured to avoid excessive harvests and massive waste. Shorter openings led fishermen to increase their gear and fish 'round the clock. Unlimited entry resulted in such great numbers of vessels that fisheries would spill over onto less productive grounds, where bycatch impacts were greatly aggravated. Trip limits led to "high-grading", that is, to the discard of large quantities of fish, in order to ensure that only the most valuable were retained. The sudden flood of product at the end of each opening led to oversupply and to depressed market prices. By way of example in relation to the last point, the prices for

U.S. halibut have typically been $1.50 lower per pound than for Canadian halibut that are harvested under an IFQ system. I will not go into detail concerning the additional benefits of the IFQ system, but I will call your attention to Congressional correspondence which called on the Secretary of Commerce to approve the new program. That correspondence is also attached to my prepared statement.

In closing, I would like to make it clear that I am not here as a missionary for IFQs in all fisheries. It will be up to responsible officials and fishermen to decide how the various fisheries should be managed. However, after years of experience in fisheries management and based upon close analysis, I have every reason to believe IFQs will ensure that the halibut and sablefish fisheries--and perhaps others--will be sustainable for the indefinite future.

ALASKA
CRAB
COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

Statement of Mr. Arni Thomson

Executive Director

Alaska Crab Coalition

Before the

Subcommittee on Fisheries, Wildlife and Oceans

Committee on Resources

U.S. House of Representatives

February 23, 1995

Mr. Chairman:

I would like to express the appreciation of the Alaska Crab Coalition ("ACC") for the opportunity to provide a statement on reauthorization of the Magnuson Fishery Conservation and Management Act. The ACC, which was formed in 1986, now represents the owners of 60 crab harvesting vessels that operate in the federal waters of the Bering Sea/Aleutian Islands off the coast of Alaska. The ACC also represents 10 fish processing companies and 50 other associate companies that provide services to the fleet. Ours is a major industry. The first wholesale value of the crab harvest off Alaska was $650 million in each of the years, 1992, 1993, and 1994, and our fleet employed over 3000 people.

It is fair to say that the ACC, since its inception, has been in the forefront of industry efforts to achieve improved management of the fisheries in the Bering

Sea/Aleutian Islands. Our goal has been straightforward: sustainable fisheries. In the pursuit of this objective, the ACC has sought increased safety of fishing operations, enhanced conservation of fisheries resources, and credible scientific research.

The ACC has promoted scientifically based, responsible regulatory administration of the fisheries, and where the existing legal framework has proved demonstrably inadequate, we have sought remedial legislation. We have not lightly advocated government intervention. Our objective has been to achieve essential improvements to safety and conservation, with the minimum necessary regulatory burden and cost to the taxpayer.

The ACC supported the enactment of the 1990 amendments to the Act, including particularly the North Pacific Fisheries Research Plan, which led to improvements in our system of fisheries management. However, as reflected by our recommendation for further amendments, the ACC and many other industry groups believe that the nation remains some distance from achieving the goal of ensuring that our valuable fishery resources are exploited in a responsible manner.

I am proud of the record of achievement of the ACC. The Magnuson Fishery Conservation and Management Act reflects important conservation-related amendments for which our organization led the way among responsible industry groups. Legislation introduced in the last Congress contained both safety and conservation proposals that were originally conceived by our organization.

In the 104th Congress, the ACC will continue to promote safety and conservation. However, we assure you that we will not support misguided proposals, such as those

launched in the last Congress, that would entail new layers of bureaucracy or undue regulatory burdens. A copy of our proposed amendments is attached to this statement. They enjoy the support of other organizations, including the Fishing Vessel Owners Association and Deep Sea Fishermen's Union. We are also preparing amendments that would provide an improved statutory foundation for individual transferable quotas ("ITQs") for crab in the Bering Sea.

An explanation of our specific proposals is in order. The ACC proposes amendment of the Act to include a National Standard requiring that fisheries management measures promote safety of life at sea. This is a vitally needed provision. Fishing is, in many contexts, a dangerous occupation. Lives are lost in the federally managed "Olympic" style fisheries each year. Sadly, some of our management measures actually contribute to the dangers encountered by our fishermen. In 1994, 18 people perished in fisheries off the coast of Alaska. In 1995, to this date, 8 have lost their lives and 3 vessels have been lost in the 37-day opilio crab fishing season, alone. Severe injuries have remained an everyday occurence.

In the sablefish and halibut fisheries off the coast of Alaska, lives have been lost each year in a mad scramble by thousands of vessels to harvest the available resource in a matter of hours or a few days. The "fishing derbies" have required that, for fishermen to earn their livelihoods, they would have to do so without regard to severe weather and sea-state conditions. The new system of individual fishing quotas ("IFQs") for these fisheries is expected to alleviate what has been a truly tragic situation.

Unfortunately, humane systems of management are politically difficult to devise, as they involve some element of allocation of finite, and sometimes declining, resources. In the public debates and policy deliberations, safety issues tend to be lost, as the focus all-

too-often falls on purely economic considerations. The Act must be amended to ensure that the priorities of our fisheries management system accord with the fundamental values of our society.

The enactment of our safety amendment would not mandate any particular system of fisheries management, such as ITQs. We recognize that some fisheries may not be suited to such a system. Accordingly, amendment would ensure that safety would be properly taken into account, without prejudice to the basic system of management that would apply in any particular fishery.

Our proposed amendments to the National Standards would also give needed focus to issues of waste in the fisheries which result from excessive bycatch of non-target species and discards of target species. The Members of the ACC are acutely conscious of the economic losses that have long been associated with the excessive levels of bycatch in certain fisheries of the Bering Sea. We are aware, as well, of the economic waste that has resulted from the massive discards of target species in those and other fisheries. Although we are compelled to accept the fact that there are forces at work in the marine ecosystem that are beyond the reach of human intervention, there is much that can and should be done to ensure that fishing gear and practices are employed in responsible ways, so that waste is minimized. The provisions of H.R. 39 relating to bycatch and discard waste reflect a recognition of need for remedial legislative action. However, the ACC believes that a strengthening of the National Standards, which are the touchstones of the Act, is needed to ensure a real commitment on the part of fisheries managers to address the problem of waste.

Some in the trawl industry make much of the assertion that all fishing groups, no matter what gear they employ, inflict bycatch mortality. What those people do not care to point out is the fact that the impacts vary greatly among the gear types. Trawlers, by the nature of their non-selective gear, inflict mortality, not only on their own target species, but also on the target species of most other gear groups. Thus, trawlers impose direct costs on other sectors of the industry by reducing the immediate and future harvests of the other gear groups.

It is true that fixed gear fishermen, employing pots or longlines, also have bycatch impacts. For example, the bycatch of crab pot gear, principally juveniles and females of the target species, represent foregone future harvests for fishermen utilizing that gear. Consequently, fixed gear fishermen have a vested interest in minimizing bycatch mortality through gear design and fish handling techniques, as well as through strict quotas and time and area closures. Fixed gear bycatch does not impose direct costs on the trawlers' target species.

Notably, in the crab and cod pot fisheries, the Alaska Department of Fjsh and Game and the National Marine Fisheries Service, based on authoritative studies, estimate the mortality of crab discards at only 8-10%. In addition, the National Marine Fisheries Service estimates the mortality rate of halibut in the Bering Sea pot fisheries for cod at less than 1%. As a result, the pot fishery for cod is exempted from halibut bycatch caps. By contrast, the estimated mortality rates for halibut in the trawl fisheries, again according to the National Marine Fisheries Service, range from 66 to 74%.

We in the crab industry have taken the initiative to propose crab fishing gear design requirements that greatly increase selectivity and minimize "ghostfishing". We have made gear modifications to provide for large mesh inserts that allow the escape of

undersized crab from the pots. We have added halibut excluder panels. We have built in biogradable cotton thread panels to minimize ghostfishing. In addition, when confronted with data suggesting declines in crab stocks, the ACC has been in the forefront of efforts to secure the needed time and area closures, reduced quotas, and other conservation measures. Unfortunately, fisheries managers have not always responded to our concerns, and as history shows, the resources have suffered under archaic management policies and practices.

I would like to highlight the fact that our proposed amendments would specifically require protection of vulnerable spawning and nursery areas. This responds to the effect of bottom trawling on the benthic environment, which is believed to be quite significant. Crab in the first instar stage of development find refuge from predators by crawling into the subsurface layer of the seabed. Therefore, bottom trawling in crab nursery areas may well have a very detrimental effect on crab survival rates. The damage is a matter of particular concern, where the large nets and heavy doors and chains of industrial factory trawlers are used.

It is easy to understand why habitat studies are especially important. The NOAA Outer Continental Shelf Environmental Assessment Program ("OCSEAP") has yielded useful data on the sensitivity of crab nursery areas. OCSEAP considers the North Aleutian shelf to be the primary habitat for king crab and is concerned about bottom trawling impacts. The Chairman of the North Pacific Fishery Management Council, in a letter to former President Bush concerning Lease Sale 92, acknowledged that the habitat in that area is critical to crab, and to halibut, as well. Alaska Governor Tony Knowles has pointed to the need for protection of ocean bottom crab and coral habitats off the shores of his State. On the far side of the Bering Sea, Russia has protected its crab habitat from

bottom trawling and has been rewarded with rich crab harvests. In fact, many U.S. vessels have moved to Russian waters to take advantage of the abundant crab resources there.

The ACC proposed amendments also focus on the problem of excessive fishing capacity in relation to the available resources. It is an unfortunate fact that rapid overcapitalization of major fisheries in the Bering Sea, as well as elsewhere in our federal Exclusive Economic Zone, has given rise to severe pressures on fisheries managers to permit exploitation that cannot be reconciled with basic conservation principles. Some statistics should be considered. Since January 1, 1990, the Bering Sea crab fleet has grown from 162 to 255 vessels, an increase of 57%. Concomitantly, fishing days on the crab grounds have declined during that period from 234 to 72 annually, a decrease of 320%. This compression of fishing seasons has had dramatic, adverse effects.

While this intolerable situation has been developing, the National Marine Fisheries Service and the Regional Fishery Management Councils have felt compelled to dedicate their meager fiscal and administrative resources principally to the development of systems for the allocation of limited, and all-too-often declining, fisheries resources among competing sectors of our industry. Our proposed amendment on excessive fishing capacity would compell fisheries managers to face up to the overcapitalization issue. It is true that ITQs would be a very effective means of reducing and avoiding overcapitalization, by encouraging the consolidation of fishing opportunities and a consequent reduction of fishing capacity. However, other methods than ITQs may be employed, such as government-run or subsidized vessel "buy-back" programs, if the public funding can be found to support them. I should observe that, in light of government budgetary constraints, there is a very strong case for giving industry the regulatory tools to finance its own "buy-out" scheme through the issuance of ITQs and the consolidation of individual quotas. A paper delivered at a University of Washington conference, June

14-16, 1994, Michael Sissenwine, Senior Scientist, National Marine Fisheries Service, detailed the harsh realities of excessive fishing capacity. In that paper, it was noted that the NOAA and National Marine Fisheries Service Strategic Plans both advocate "conversion of fisheries management from open access to controlled access, especially individual harvest rights, such as ITQs".

The Subcommittee should find it interesting that, in the international context, when our federal fisheries managers have been freed of the intense pressures of certain sectors of our fishing industry, conservation properly has been the center of attention. At the United Nations Conference on Environment and Development ("UNCED") in Rio, the United States Government played a highly constructive, leadership role in the articulation of conservation guidelines, principles, and commitments under the new rubric of "sustainable use". At a 1992 conference in Cancun, Mexico, the U.S. contributed importantly to the development of international standards of "responsible fishing". A paper prepared by The United Nations Food and Agriculture Organization ("FAO") for the 1992 Cancun conference stated, "The excessive level of fishing effort now existing in the world should be the primary concern in terms of sustainability of the fisheries resources."

I would like to flag some of the key points that emerged from the Rio and Cancun conferences. UNCED proclaimed that, "States commit themselves to the conservation and sustainable use of living marine resources under national jurisdiction". The Conference recognized "mounting problems" in the world's fisheries, including "overcapitalization and excessive fleet sizes...insufficiently selective gear, [and] unreliable data bases".

9

UNCED declared that, "[I]t is necessary to...promote the development and use of selective fishing gear and practices that minimize waste of catch of target species and minimize by-catch of non-target species...[and] preserve rare or fragile ecosystems as well as habitats and other ecologically sensitive areas...." UNCED further declared that nations should "...[t]ake measures to increase the availability of marine living resources as human food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation...[and] [d]evelop and promote the use of environmentally sound technology under criteria compatible with the sustainable use of marine living resources, including assessment of environmental impact of major new fishery practices...." In designating protected areas, "priority should be accorded, as appropriate" to specific kinds of areas, including "spawning and nursery areas".

The 1992 Cancun conference declared that "States should promote the development and use of selective fishing gear and practices that minimize waste of catch of target species and minimize by-catch of non-target species." The conference further declared, "States, in the design and subsequent introduction of new fishing gear and practices, should take into account qualified assessments of impacts on the sustainability of fisheries, giving due consideration to the specific characteristics and biodiversity of different fishing areas." "States should promote and enhance collection of data necessary for the conservation and sustainable utilization of fisheries resources." "States should take necessary measures to protect coastal wetlands and other areas of critical fisheries habitat from all kinds of degradation." And, "States should take steps to improve management systems as part of the practice of responsible fishing."

The Cancun conference proclaimed that nations "recognize the principle of sustainable utilization of marine living resources as the basis for sound fisheries management policies. In this regard, they consider as one of the most important

objectives the application of policies and measures which result in a level of fishing effort commensurate with the sustainable utilization of fisheries resources, taking into account the specific characteristics of particular fisheries."

The July 29, 1993 Communique of the Inter-American Conference on Responsible Fishing, Mexico City, stated that the planned International Code of Conduct for Responsible Fishing should provide for sustainable utilization of resources. Improved gear selectivity was a key focus of the Communique. In a December 1994 communication to members of the FAO, the Director-General circulated a highly elaborated, draft International Code of Conduct for Responsible Fishing. The proposed Code of Conduct embodies the principles and rules set forth at Rio and Cancun. Sustainable utilization is the touchstone. Reduction and avoidance of excess fishing capacity and improved selectivity of fishing gear and practices are heavily emphasized.

The ACC believes that the Congress and our fisheries managers should provide for legislative and regulatory implementation of the key elements of the international consensus reflected in the Rio and Cancun declarations, the Mexico City communique, and the emerging Code of Conduct. It is true that general provisions of the Magnuson Act relating to conservation reasonably may be interpreted to be consistent with the new international guidelines, principles, and commitments. From that standpoint, an elaboration in the Magnuson Act of the central points accepted by the international community would not represent a departure from the basic framework of the prevailing domestic management system. However, experience has shown that the Magnuson Act could usefully be strengthened to provide our fisheries managers with greater leverage--and a more clearly defined responsibility--to achieve conservation objectives in the public interest.

Certain industry groups in the United States will not welcome the express inclusion in the Act of provisions reflecting the international consensus that was achieved under U.S. leadership. The ACC would like the subommittee to recall that some industry groups were strongly opposed to the North Pacific Fisheries Research Plan enacted in the 1990 amendments, a plan that is now almost universally recognized as indispensable to the achievement of basic conservation and management objectives in the multi-billion dollar fisheries of the Bering Sea and Gulf of Alaska. It is a credit to the Congress that such opposition did not prevent the enactment of a highly worthy program.

Fees are currently being addressed by some public interest organizations and industry groups solely in the context of limited entry. However, it must be pointed out that any fish taken from the Exclusive Economic Zone by any fishermen represents a private gain for which a reasonable fee might well be charged. It must also be recognized that, in a fishery successfully managed for sustainable utilization, the public loses nothing when a private company or individual gains. Fisheries resources are renewable, and fees should reflect that nothing is being taken from the public that cannot soon be restored. We can accept a slightly higher fee for ITQs, insofar as it is demonstrated that there is a higher administrative cost to the government for such programs. However, it should be understood, at the same time, that ITQs should lead to improved resource conditions, which in turn, will lead to greater economic benefits for the nation. In addtion, it must be understood that ITQs convey only privileges that can be revoked by the government without compensation to holders. ITQs do not create property rights that are protected by the U.S. Constitution. Fees should reflect the fact that ITQs simply provide for the orderly utilization, not the permanent alienation, of public resources. For these and other reasons, including those related to improved safety and conservation, fees should not be imposed at levels that will deter the adoption of ITQ programs.

The ACC proposes that Congress place limits on allocations to "fishery dependent communities". In the Alaskan context, so-called "community development quotas" can serve legitimate social and economic purposes. However, in the absence of explicit limitations, abuses can prove to be very costly to those who are not the recipients of the special allocations of federal fishery resources. We must remember that our fisheries are, for the most part, seriously overcapitalized. To provide special quotas to one group, it is necessary to reduce the harvests or the harvest capacity of others. There must be a balance between providing for development of truly disadvantaged local communities and allowing the economic survival of the historical participants in the fisheries. It is interesting that the earlier-referenced FAO paper prepared for the 1992 Cancun Conference stated, "Further development of the fisheries sector cannot be achieved without an overall reduction of the [global] fleet size to a level where fishing effort, at the most, matches the maximum sustainable yield of the resources being exploited or, better, to an even lower level to ensure long-term profitability and sustainability of fisheries." This statement may be aptly applied to the case of the fisheries off the coast of Alaska.

I have described specific amendments proposed by the ACC to address the related, fundamental issues of safety, conservation, and overcapitalization. I have noted that the amendments would not mandate the establishment of ITQs, but that ITQs would be one means by which to achieve the results intended by the amendments, and such a system would provide additional, significant benefits.

- **The ACC vessel owners recommend that any amendments to the Act on individual transferable quotas ("ITQs") not create barriers or disincentives to their establishment in appropriate circumstances. The ACC vessel owners support the establishment of ITQs in the Bering Sea crab fisheries, for the following reasons:**

    - **Improved safety. Fishermen will be in the position to slow down the pace of their fishing activities. They will be able to fish when the**

weather conditions do not present unacceptable hazards. In the case of crab fishing, the load of pots on vessels will be reduced, because individual quotas will end the competitive race in short seasons to place and haul as much gear as possible. This will both improve vessel stability and reduce the hazards to gear handlers, benefits which would not be gained in a mere license limitation system.

- Improved resource conservation. With a slower pace of fishing, selectivity in targeting resources and sorting catches will be vastly improved. Discards, and the mortality of discards, will be reduced. Individual quotas will provide an incentive to fishermen to engage in practices that enhance stock rebuilding. Higher TACs will directly translate to higher catches for each fisherman who holds a percentage share of the available harvest. In a slower fishery, fewer pots will be lost, and ghostfishing will, therefore, be minimized.

- Improved individual accountability. With individual quotas, fishermen will feel and will be more accountable for their conduct. Responsible fishing will be the rule, not the exception, as each quota holder will have a tangible share of the resource. Where self-interest does not produce responsible behavior, observer coverage, which will be required for all vessels, will prevent high-grading and other irresponsible practices, and will guarantee effective enforcement in the public interest. ITQs would be privileges (not property rights), which could be modified or revoked without compensation to the holders by the government.

- Improved economic efficiency. Transferable ITQs, as marketable commodities, will provide a market-based industry buy-out program for overcapitalized fisheries, with no expenditures of public funds for the purchase of excess harvesting capacity. By leading to a reduction of fleet size through consolidation of quotas, the vessels remaining in the fisheries will achieve improved operating efficiency. Vessels (and processing facilities) will be idle for shorter periods of the year, and their productive capacity will be put to fuller use. With ITQs, there will be no incentive to make increasing investments in marginal improvements, with progressively diminished returns, simply to remain competitive in ever more compressed seasons, as occurs in the open access and license limitation systems. Mere license limitations halt the increase of capacity, but do not reduce it, nor do they address the law of diminishing returns on marginal improvements to fishing vessels and gear. For processors, as well as fishermen, longer seasons will provide steadier employment and consequent benefits to local communities.

- **Increased value of the tax base and new source of fees. With an economically more sound fishery, profitability will improve and, thus, the income tax base will increase. Increased harvests resulting from improved resource conditions will provide higher revenues from landing taxes. Fees on ITQs will provide revenues to the government from the private utilization of the resource. Fees should be set at levels that are reasonable in relation to the economics of the fisheries. Pending legislative proposals indicate that open access and license limitation fisheries will provide few, if any, fees for utilization of public resources.**

- **Reduced gear conflict. With less gear deployed at any given time on the grounds, conflict with other gear types will be reduced.**

- **Improved product quality. A slower paced fishery will allow the more careful handling of the catch to preserve quality, thus improving competitiveness against high quality imported fishery products, and increasing acceptance in quality-conscious export markets. Moreover, deliveries to shore will not be compressed into short seasons, thus allowing better handling by processors. In addition, processors will have more time to perform value-added secondary processing. To the benefit of the consumer, increased quantities of high-quality products in a more competitive marketplace will lead to moderation of premium pricing.**

- **Improved markets. Fishermen and processors will be able to coordinate the harvest and delivery of product to respond to market demand.**

In closing, I would like to tie a few points together. In the North Pacific region, the State of Alaska already charges very substantial fees and taxes on vessels that operete not only in State, but also, in federal waters. In addition, the fleets from outside Alaska pay a high price for benefits to the State from dedicated groundfish quotas for local communities. Clearly, these special quotas reduce the available resources for those who have historically operated in the fisheries, and who must attempt to survive in an already heavily overcapitalized economic environment.

In short, there are limits to what the established fleets can sustain. New fees imposed on individual fishermen, and quotas established for local communities cannot be considered in isolation from one another, nor in isolation from other fees, taxes, and costs borne by our fishermen. In addition, it may well be that the elimination of excess capacity in the existing fleet will be indispensible to the further development of coastal community-based fisheries operations. Otherwise, neither the historical participants nor the new entrants can hope to benefit, and they will all be likely to suffer.

The ACC recognizes that it will not be an easy task for this Committee, the Congress, and the Administration to build upon the conservation-related provisions of the 1990 amendments and to bring the Act into conformity with the newly emerged concept of "responsible fishing" and new international standards of fisheries conservation and management. Nor will it be a simple matter to amend the Act to ensure that fisheries management measures contribute to safety and do not threaten it. Limited entry and community development issues will be very thorny. Nevertheless, the ACC believes that our government will rise to the challenge, as in 1990, and that our nation will be able to look forward to the sustainable--and safe--use of a national treasure, abundant fisheries resources.

Proposed Amendments to the Magnuson Fishery Conservation and Management Act

1. Amend the National Standards

1.1 Amend 16 USC sec. 1851 (a)(1) as follows:

"Conservation of fishery resources shall be the principal objective of fishery management plans and any regulation promulgated to implement any such plans. Conservation and management measures shall protect vulnerable spawning and nursery areas, prevent overfishing, and minimize waste, including bycatch mortality of non-target species and discard mortality of target species, while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry."

1.2 Amend 16 USC sec. 1851 (a)(5) as follows:

"Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources, including the avoidance or reduction of excessive fishing capacity and unnecessarily wasteful fishing gear and fishing practices; except that no such measure shall have economic allocation as its sole purpose."

1.4 Amend 16 USC sec. 1851 (a) as follows.

"(8) Conservation and management measures shall promote the safety of life at sea."

2. Amend Findings

Amend 16 USC sec. 1801 (a) as follows:

"(9) Agenda 21 of the United Nations Conference on Environment and Development provides conservation guidelines, principles, and commitments that should be respected in the management of the Nation's fishery resources. In particular, "sustainable use" should be regarded as the touchstone of the Nation's program of fishery conservation and management."

"(10) The elaboration by the Cancun Conference on Responsible Fishing of important guidelines, principles, and commitments reflected in Agenda 21 represents an important international achievement that should contribute to the Nation's program of fishery conservation and management.

Note: These proposed amendments were prepared by the Alaska Crab Coalition and endorsed by the Fishing Vessel Owners Association and Deep Sea Fishermen's Union.

February 28, 1995

Honorable Jim Saxton,
Chairman
The House Subcommittee on Fisheries,
Wildlife and Oceans
Washington, D.C. 20515

Dear Mr. Chairman:

It has come to our attention that, at the hearing before your subcommittee on February 23rd, Mr. Tom Casey presented a proposed amendment to the Magnuson Act concerning the appointments process for Council committees and advisory panels. We wish you to be aware of the fact we are the authors of that proposal and we did not authorize Mr. Casey to present it. We add that he did not present fully and fairly the rationale supporting the proposal.

It is all-too-obvious that Mr. Casey presented our proposal simply in an effort to advance his political agenda by associating himself with a well-considered position jointly developed by credible organizations in the fishing industry. We have informed Mr. Casey that we resent and protest his unseemly exploitation of our organizations. We have demanded that he desist from attempting to associate himself or his organization with our organizations and proposals.

Respectfully,

Robert M. Alverson, Manager
Fishing Vessel Owners Association

John M. Bruce, Executive Director
Deep Sea Fishermen's Union of the Pacific

Arni Thomson, Executive Director
Alaska Crab Coalition

cc: Members, Subcommittee on Fisheries, Wildlife and Oceans
Congressional Delegations of Alaska, Oregon and Washington

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Wednesday
February 22, 1995
Seattle Post-Intelligencer

It wasn't just the sea that killed them

Bruce Ramsey

The mayday call came on VHF, the radio of last resort. Perhaps a rogue wave broke out the wheelhouse windows. The crewman had no time to give his name or the name of his crab boat. Just the coordinates: a spot in the Bering Sea north of the Pribilof Islands.

On Jan. 15, the Northern Mariner rolled over. All six men aboard were killed.

It was a day for cautious souls to be in port. Winds gusted up to 60 knots. But 250 boats braved the storm because it was the first day of opilio crab season, which lasts only a month.

"Nobody's going to sit in the harbor when you only have a month," says Kris Fanning, president of the Alaska Crab Coalition and owner of the crab boats Caprice, Denali and Entrance Point. "In the first two weeks, three boats were lost. That's more than 1 percent of the fleet."

Fanning used to have another boat, the Nettie H. But on Sept. 13, 1993, the Nettie H sent out a mayday just outside False Pass in the Aleutians. Says the Coast Guard's summary report: "Vessel missing, presumed sunk without trace; five persons on board missing."

The list of Coast Guard reports is loaded with such phrases: "Victim died after 10 minutes in water . . . Entire crew missing; found slick and life raft . . . Fatal injury from head being crushed by trawl door . . . Killed in fire on board vessel . . . Leg tangled in anchor line, pulled overboard . . . Crushed between crab pot launcher and rail . . ."

FISHING IS A killing business. Eighteen crewmen died off Alaska in 1993, 13 in 1994 and seven so far this year. According to a study done by Richard Kennedy of the U.S. Public Health Service, the 1991-92 fatality rate in the Alaska fishing industry was 200 per 100,000 people, making it worse than logging (185). The highest fatality rates were in halibut (305 per 100,000) and crab (480). Crab fishing in Alaska, the report says, is "probably the riskiest industry in the country."

"Bruce was fully aware of the risk," says Christine Forde of her husband, lost on the Northern Mariner. "He thought about it constantly. When he left Dec. 30, he woke up both our daughters to hug them and say goodbye. He told me it was particularly hard to leave this time. Because of the way the risk was, and even the flying back and forth, (it) makes you think more about life and its importance, and what your values are."

Forde was 38. He had been fishing since he was 13. His father and grandfather were fishermen. And he took safety seriously. He could don a survival suit in less than a minute. He took courses in fire at sea. He was a trained medic.

BUT THE RISK remained. "One thing that's very attractive in fishing is the gambling aspect, the high adventure, high risk," Christine Forde says. "There was nothing my husband loved more than coming into town on a sunny day with a shiny boat and a tankful of fish."

Yet, she says, "He clenched his teeth a lot at night."

Some risk is unavoidable. But she, too, puts part of the blame on the system — the race for fish.

One way to reduce these risks is to guarantee each boat a certain quota of fish, whether they catch it today, tomorrow or next Tuesday.

Today's system is a fleet quota. Replacing it with with individual fishing quotas, or IFQs, would reduce the pressure. British Columbia went to an IFQ system in halibut several years ago, and fisheries officials list safety as the No. 1 benefit.

The United States is following suit in halibut and black cod. The 1994 halibut season, the last under a fleet quota, was two 24-hour periods. One of them was stormy, and five boats sank. One man died. Many were hurt, typically by putting a hook through a hand.

THIS YEAR, the halibut season opens March 15 and will stay open into November. Because quotas will be by the boat, fishermen will be able to sleep at night. They will be able to go into port during a storm. If a crewman leaves, the boat owner will have time to find somebody he knows rather than scoop the first one off the dock.

It will be the same old rules in the other fisheries. The king crab season was only 11 days last year, and is unlikely to be much longer this year.

"Right now, you go out," says Kevin Kaldestad, who owned the Northern Mariner. "You go with five or six guys until they get tired, they quit, they get sick, they get hurt."

With an IFQ system, he says, everyone will be able to slow down.

IFQs have broad support in the crab and groundfish fleet, but have been delayed because of rivalries over the initial deal-out of shares. Should longtime fishermen get more shares than newcomers? And should processors get a share, too?

But money isn't everything. Bruce Forde was not a boat owner, but he supported IFQs. So does his widow, Christine.

■ Bruce Ramsey is a P-I business reporter and columnist. His column appears Wednesday.

** TOTAL PAGE.006 **

STATEMENT OF TROUT UNLIMITED ON REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

Thank you for this opportunity to submit written testimony regarding reauthorization of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Trout Unlimited (TU) is the nation's leading salmon and trout conservation group, with over 75,000 conservation-minded anglers in our 450 chapters nationwide.

The fisheries regulated under the Magnuson Act are of great concern to our members. The magnificent anadromous fish of Alaska, New England and the Pacific Northwest -- Atlantic and Pacific salmon, steelhead, and sea-run trout -- provide recreation, but more than that, they are a resource into which TU members have invested countless hours of volunteer labor. Every year, TU's members in the salmon-producing states, backed by their fellow conservationists nationwide, contribute innumerable days of hands-on work restoring spawning streams, working side-by-side with landowners to protect fragile habitat, and educating future generations about the value of an irreplaceable resource.

A very special part of our national heritage is being lost as salmon stocks continue to decline. Last year, populations had declined so far that salmon fisheries had to be shut down entirely for much of the Pacific Northwest. Four Pacific salmon stocks are federally listed as endangered. Other runs of both Pacific and Atlantic salmon may soon be listed as well. That salmon stocks have collapsed on both the Atlantic and Pacific coasts is nothing short of a tragedy to the over 10 million Americans who fish for trout and salmon. Our fisheries management system has broken down, and Congress should take advantage of this opportunity to repair it.

H.R. 39 would make much-needed improvements in the Magnuson Act. However, there are several places where the bill should be strengthened to solidify the move towards sustainable fisheries. TU's greatest concerns for salmon fisheries lie in three major areas: preventing overfishing and rebuilding overfished stocks, conserving important fisheries habitats, and reducing bycatch.

Overfishing

No lasting solution to the crisis confronting Atlantic and Pacific salmon is possible without sensible harvest management. On both coasts,

there are many cooperative efforts underway to conserve those salmon stocks that remain relatively healthy and to recover those that have been damaged. These efforts will go for naught if there are not reasonable measures in place to ensure that harvest does not exceed sustainable levels.

H.R. 39 takes several important steps in addressing overfishing: adding a definition of overfishing and requiring specific definitions in all fishery management plans; requiring rebuilding programs for fisheries that are overfished; and requiring the Secretary of Commerce to take action if a Council fails to address overfishing within one year. These provisions would benefit from greater specificity in regard to time frames (1) for rebuilding programs, and (2) for Secretarial action when a Council fails to address overfishing.

H.R. 39 would also be improved by adding proactive measures designed to identify fisheries that are approaching an overfished condition, and requiring a Council (or the Secretary, if the Council fails to act) to develop plan amendments to prevent overfishing in those fisheries. TU believes it is far preferable -- and less painful for all involved -- to avoid overfishing in the first place than to rebuild a fishery after it has been overfished.

While H.R. 39 addresses several critical issues on overfishing, it fails to get at the central problem: the definition of optimum yield. So long as economic and social factors can be used to justify catch levels greater than maximum sustainable yield, Councils will face great pressure from anglers to set optimum yield at levels above what the fishery can sustain. The definition of optimum yield should be amended to place a cap at maximum sustainable yield.

Habitat conservation

Nothing is more critical to rebuilding salmon stocks on both coasts than conservation of fisheries habitat. Without action to address habitat concerns, all the fishery management efforts we can muster will be too little to recover Atlantic and Pacific salmon. The Magnuson Act offers an important opportunity to encourage habitat conservation before fisheries reach a crisis state. It would focus habitat efforts on maintaining healthy stocks, providing a proactive avenue for anglers to pursue habitat conservation -- before the Endangered Species Act takes over and compromise become more difficult and problems more intractable. If anglers are given a voice on habitat conservation under the Magnuson Act, we may be able to develop solutions and avoid conflicts like those that have developed on the Columbia River and other areas of the Northwest.

Habitat conservation is an issue that unites conservationists, recreational anglers, and fishing communities. Building on that common

ground, a collection of fisheries professionals, recreational anglers, commercial fishing representatives, and conservationists has worked to develop a legislative proposal that would improve fish habitat conservation. TU strongly supports this proposal, which would build on the habitat provisions of H.R. 39 by:

- Defining "essential fish habitat" in a manner similar to, but slightly narrower than, H.R. 39.

- Utilize the expertise and resources of the National Marine Fisheries Service to assist the Councils by providing recommendations for the identification and conservation of fish habitat in specific fishery management plans.

- Maintain a strong role for Councils by requiring in each fishery management plan the identification of: (1) essential fish habitat, and (2) appropriate actions to conserve that habitat. Those Councils with greater interest and resources invested in habitat could take a very active role, other Councils could rely on the NMFS recommendations.

- Create an effective process for interagency consultation on federal actions that effect designated fish habitat.

This proposal would provide anglers with a much-needed voice on habitat issues. Commercial and recreational anglers are the people who suffer when federal activities harm important fish habitats; TU believes it is only reasonable that they (through NMFS) should have a seat at the table when those activities are considered. A copy of the proposal has been included with this statement.

Bycatch reduction

TU is very concerned over the impacts of the incidental catch of salmon (and forage species for salmon) in other fisheries. We were encouraged by the strong provisions in H.R. 39 directed at bycatch concerns. Specifically, TU was pleased to see a definition included for bycatch (as well as for economic and regulatory discards), a national standard for bycatch minimization, and the requirement for bycatch minimization measures in fishery management plans. While we are generally pleased with the direction H.R. 39 sets with regard to bycatch reduction, TU believes some changes and clarifications would strengthen the bill. First, rather than calling for a reduction in mortality, H.R. 39 should focus on reducing the catch of economic and regulatory discards. Because mortality estimates are far from precise, including a mortality standard will serve as an open invitation for lawsuits. Secondly, the definitions of bycatch and regulatory discards should be clarified to exclude recreational catch and release fishing. Recreational

anglers who, as a matter of conscience, return their catch to the water should not be discouraged in their conservation efforts. Definitions should be crafted carefully to avoid any unintended effects on this widely-supported practice.

Any bycatch reduction efforts must be built on sound scientific information. Unfortunately, we know far too little about the amount and impacts of bycatch in many parts of the country, including salmon bycatch in the Pacific Northwest. Improving the information on which management efforts can be built will require better observer coverage, which in turn depends upon funding. TU believes councils should be authorized to collect reasonable fees from participants in a fishery to fund appropriate observer programs. Just as recreational anglers pay their way in recreational fishery management (through license fees and excise taxes under the Sport Fish Restoration Program), we believe it is reasonable that commercial anglers should contribute financially to the management of fishery resources. At a minimum, the authority to collect fees for an observer program should be extended to include the Pacific Council as well as the North Pacific Council. This would be a vital step in empowering the Councils to manage fisheries more effectively.

Trout Unlimited appreciates this opportunity to comment. We look forward to working with the members of this Subcommittee to develop a Magnuson Act reauthorization that will help secure a future for salmon fisheries on both coasts.

SEC. 102. FINDINGS, PURPOSE AND POLICY

Section 2 (16 U.S.C. 1801) is amended --

by adding at the end of subsection (a) the following:

(9) One of the greatest long-term threats to the conservation of commercial and recreational fisheries is the continuing loss of marine, estuarine and riverine habitats on a national level. Habitat conservation must receive increased attention in the management of fishery resources of the United States.

SEC. 103. DEFINITIONS

Section 3 (16 U.S.C. 1802) is amended --

by inserting after paragraph (5) the following:

(6) The term "essential fish habitat" means any waters necessary to fish for spawning, breeding or growth to maturity.

SEC. 111. FISHERY MANAGEMENT PLANS.

Section 303(a) (16 U.S.C. 1853 (a)) is amended --

by inserting in paragraph (2) after "location" the following:
"its essential fish habitat,"

by striking paragraph (7) and inserting the following:

(7) include a description of the significant threats to the conservation of the essential fish habitat of the fishery, and the actions which should be considered to encourage the conservation and enhancement of such habitat.

SEC. 304. ACTION BY THE SECRETARY.

Section 304 (16 U.S.C. 1854) is amended --

by adding at the end the following:

(h) Habitat Conservation.

(1) The Secretary shall, within one year of the date of enactment of this Act, establish guidelines to assist the Councils in the identification of essential fish habitats in fishery management plans (including the significant threats to such habitats, and the actions which should be

considered to ensure the conservation and enhancement of such habitats) and set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitats.

(2) The Secretary shall provide each council with recommendations and information regarding each fishery under its jurisdiction to assist it in the identification of essential fish habitat, the significant threats to such habitat, and the actions that should be considered to ensure the conservation and enhancement of such habitat.

(3) The Secretary shall review other programs administered by the Department, and shall utilize such programs in furtherance of the conservation and enhancement of essential fish habitat identified under this Act. The Secretary shall assist federal agencies in carrying out their duties under this subsection.

(4) Each federal agency shall first consult with the Secretary with respect to any prospective action authorized, funded or carried out by such agency that may adversely affect any essential fish habitat identified under this Act.

(5) If the Secretary finds that an action authorized, funded or carried out by a federal agency would adversely affect essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

(6) If, after consultation with the Secretary, an agency does not adopt a recommendation of the Secretary under paragraph (5), prior to undertaking the action it shall make a finding (together with a written statement of the basis for such finding) that adoption of such recommendation is inconsistent with other applicable law and that the action of the agency is consistent with the conservation of such habitat.

Unalaska Native Fisherman Association
P.O. Box 591, Unalaska, Alaska 99685 Phone: (907) 581-3474 (FISH) Fax: (907) 581-3644

February 23, 1995

U. S. House of Representatives
Committee on Resources

RE: Testimony on the Reauthorization of the Magnuson Fishery Conservation and Management Act

The Unalaska Native Fisherman Association is an organization of commercial fishermen, subsistence fishermen and sea mammal users living in Unalaska, in the Aleutian Islands. Approximately one half of our membership is Native American, predominantly Aleut.

Needless to say, we are very concerned about the future of the fisheries in our area. Our community, like others in the Aleutian Islands has a history of dependance on the sea that stretches back for over 7,000 years. Wasteful industrial fishing practices and a rush to claim ownership of the marine resources by large corporate interests threaten to bring this tradition to an end. That would be devastating to the communities and culture of our area., and we look to you folks to ensure that it doesn't happen.

To that end, we believe that wherever possible in H-39 language should be included dictating that economic concerns take a back seat to conservation. The best way this could be done is by re-defining optimum yield in the most conservative terms possible.

We also believe very strongly in the idea of providing incentives to fishermen who operate in a clean and selective manner. Mechanisms such as the Harvest Priority concept should be provided to work within gear types or - when necessary - allocation decisions should be made between gear types. Out here we've noticed a reluctance on the part of the National Marine Fisheries Service bureaucracy to deal with such concepts. This intransigence must be overcome with a clear message form Congress. We in the Aleutians aren't afraid to deal with the idea of allocation. If people can't clean up their act within gear types, then we should simply require the use of more selective practices.

In line with this, we are firmly opposed to the issuance of exclusive fishing rights (such as ITQ's) to folks who have built their track records on a decade of filthy fishing. It is infuriating to us that both our marine resources and the coastal communities that depend on them should suffer for mistakes made in board rooms thousands of miles away. It would be a travesty for our nation at this point to give away our common resource so that some corporate interests can bail themselves

out of their self-induced problems of over-capitalization. Like one fellow said "Nobody forced those hogs up to the trough."

We are somewhat reassured by provisions in the Senate Bill 39 establishing the parameters of any eventual limitation of access, with specific provisions for entry-level and small-boat fishermen. In most of the current access - limiting proposals, industry (with a big "I") has been allowed to select the slice of history that would determine eligibility for future participation in the fisheries. This slice was - of course - a time of ten-cent codfish and massive industrial trawling. 7,000 years of local participation would therefore be ignored in order to satisfy immediate corporate concerns. This is an affront to the residents of coastal Alaska. Many of the elders from our towns remember jigging cod from dories to deliver to one of the 17 local salteries in the Aleutians... All this was long before Taiyo Fisheries, Tyson Seafoods, or a trawl of any flavor had ever been seen on the Bering Sea.

To that end, we believe this bill should prohibit the imposition of any form of access limitation until--

> --The fisheries are cleaned up, thereby rewarding only the responsible stewards of the public resource.
>
> --Strictures are provided similar to those in Senate Bill 39 providing for entry level local fishermen - With a particular eye towards promoting cleaner gear types such as jigging or pot fishing.

The Unalaska Native Fisherman Association is heartened by the House Bill's recognition of the role that coastal communities should hold in the formulation of fisheries policy. We feel that the definition of a "fishery dependent community" in terms of social as well as economic needs precludes limiting application of the concept solely towards addressing CDQ or on-shore processor concerns. A fishery-dependent community is just that - a community.

With that in mind, we favor the addition to H-39 of a national standard similar to that proposed in SB-39 regarding fishery-dependent communities. We would also prefer to see very specific language guaranteeing a portion of the total allowable catch for such communities to be used for entry-level and small-boat fisheries employing clean gear types.

We of the Unalaska Native Fisherman Association appreciate this opportunity to bend your ears, and we ask you to remember that long after the corporate giants of whatever stripe have moved elsewhere, our folks will still be here living by the shore -- hopefully still feeding our families from the sea.

Sincerely,

R. Storrs

Bob Storrs
Vice-President

To: The Members of the Resources Committee
From: Capt. R. Barry Fisher, President, Yankee Fisheries
Gerald B. Leape, Legislative Director, Greenpeace
Cristina Mormorunni, Ocean Ecology Campaigner, Greenpeace
Re: Reauthorization of the MFCMA
Date: February 23, 1995

To follow is a position statement written jointly by Greenpeace and Capt. R. Barry Fisher, President of Yankee Fisheries. This document should serve to underscore areas of mutual concern with regard to the reauthorization of the Magnuson Fishery Conservation and Management Act. This statement by no means fully defines either party's position on fisheries reform. The objectives laid out below are simply illustrative of a common recognition of the problems plaguing existing systems of fisheries management and are indicative of shared commitment to work to resolve said problems. Both parties feel that these issues must be addressed if the goal of sustainable systems of fisheries management is to be realized.

COMMON OBJECTIVES FOR THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

BYCATCH

* Immediate efforts must be made to dramatically and steadily reduce bycatch levels in all marine fisheries.

* A multi-faceted strategy must be utilized in order to carry out necessary reductions in bycatch levels. Funds shall be specifically ear-marked within the NMFS budget to carry out these objectives. This strategy should one, call upon NMFS to build a framework for data collection and analysis -- a centralized data base which would identify fisheries with bycatch problems. This new information should be quickly assessed, analyzed, and used to improve not only the knowledge of fisheries but also increase awareness of which fisheries have contributed most significantly to the bycatch problem. Two, for fisheries where the bycatch rate is known, fishery management councils must set acceptable bycatch levels and an individual vessel accountability program established; vessels that exceed the established rate shall be penalized through fishing time restrictions. Three, a harvest preference strategy must be employed whereby cleaner fishermen are rewarded through preference in allocation decisions.

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* NMFS should continue to use observers to collect fisheries data rather than placing observers in enforcement roles. Furthermore, observer data should be utilized to determine whether or not a fishermen is fishing cleanly and warrants harvest preference in allocation decisions. Said determination should be based on strict criteria developed by regional fishery management Councils.

* Regional Councils shall specify allowable gears for each fishery under their jurisdiction and include testing mechanisms, based on strict ecologically sound criteria, for any new gears that want to enter into a fishery.

* New gears and methods that reduce bycatch and habitat degradation should be developed through an enhanced, better funded, federal research program done in complete cooperation, from the start, with fishermen in the fishery targeted. Rather than channeling these monies through the National Marine Fisheries Service Federal funds should be allocated to and directed through multiple agencies such as state Fish and Game Departments, Sea Grant, as well as regional agencies such as the Pacific States Marine Fisheries Commission.

USER FEES

* User fees under the Magnuson Act should be collected in an equitable fashion everyone paying their fair share. These funds should be earmarked specifically for carrying out the costs of fisheries management.

* User fees should not be administered by the Federal Government. They should be collected, if authorized, by the region and put back into the region in the form of paying the costs of: observers collecting data, the resources needed for analysis of these data, and fisheries research required in order to carry out the effective management of marine fisheries.

STOCK ASSESSMENTS

* Effectively managing fish populations whose status is not known is an impossibility. The need to rapidly assess these fisheries population levels is an urgent one. Congress must direct the NMFS to assess the status of fish populations, both commercial and noncommercial, and develop a strict timetable for doing so.
* Stock assessments must evaluate the status of fish populations

within the context of the broader ecological health of the marine ecosystem and its component parts. Knowledge of ecosystem functioning must drive the development of new fishery management systems.

* Greater use should be made of fishermen in fishing boats to collect data on status of stocks.

* Consider the idea of allowing fishermen who meet certain criteria, i.e. are to maintain low levels of bycatch, to participate in the collection of data, keep any fish or a percentage of the fish that they catch as a direct result of this effort, not counting it against their quota.

HABITAT PROTECTION

* Councils must declare what essential fish habitat is for fisheries under their jurisdiction and NMFS should be given Veto authority over federal projects that might impact essential fish habitat.

COUNCILS

* Council members should be subject to the same federal financial conflict of interest laws that apply to all other full or part time federal employees.

* The voice of non-industry, i.e knowledgeable consumers, academicians, Native Americans and conservationists, on regional fishery management Councils must be strengthened.

* Where not currently being done, fishery management councils should be required to direct the NMFS to define overfishing for fisheries under their jurisdiction and to develop plans to rebuild fish stocks if depleted.

FUNDING

* Presently, effective fisheries management is hindered by a general lack of funding. Increased monies must be allocated to the Councils and the NMFS in order to address the research, monitoring, management, and enforcement needs associated with sustainable fisheries management.

STATEMENT OF GREENPEACE

AT THE HEARING ON H.R. 39,

A BILL TO REAUTHORIZE

THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

BEFORE THE SUBCOMMITTEE ON FISHERIES AND OCEANS

OF THE RESOURCES COMMITTEE

OF THE U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1995

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On behalf of the 1.5 million supporters of Greenpeace in the United States, I want to thank you for the opportunity to submit our views on the reauthorization of the Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act). We are pleased to see that the Magnuson Act reauthorization is a top priority for this committee and urge you not only to continue on your expedited schedule but to make the necessary changes to ensure that further overfishing is prevented, overfished fish stocks are rebuilt, bycatch is reduced and privatization through individual transferable quotas (ITQs) is not authorized.

Greenpeace has worked with members of this subcommittee for many years in the battle to ban large-scale high seas driftnets that were being used by fishing fleets from Japan, Taiwan, South Korea, France and Italy. It was the continual passage of progressively restrictive legislation, by the former Merchant Marine and Fisheries Committee, that put the United States in a position of leadership in the fight to ban this indiscriminate gear. The commitment of this body toward ending the use of this devastating gear successfully culminated in the passage of the United Nations resolution calling for the current moratorium on their use on the high seas.

We are happy to report that two years after the moratorium was put in place, the North Pacific seems to be free of the large-scale driftnet fleet that once numbered more than 550 boats and used 20,000 kilometers of fishing net every day. The news from the Mediterranean is not quite as good.

The 600 boats using large scale high seas driftnets from Italy continued to fish in 1993-1994. Dismissing the law passed by this body, the Administration refused to certify Italy as a driftnetting country even though the government sanctioned this continued fishing. In the late fall, there was a glimmer of hope as the Italian government, responding to pressure from other European governments, began a program to buy back these driftnet boats. We are hopeful that this program can serve to rid the high seas of the last significant driftnet fleet.

GREENPEACE'S FISHERIES CAMPAIGN

By 1986, it became clear, that as an organization, Greenpeace needed to become involved in fisheries management on a broader scale. We recognized, at that time, the tremendous potential to work with sectors of the industry that shared our common goal of having fish around for future generations. We believed that continued overfishing (the catching of more fish than can naturally be replaced) and increasing bycatch levels (the catch of non target species) were two of the biggest obstacles to sustainable fisheries management. Therefore prevention of overfishing, the rebuilding of overfished fish stocks and the reduction of bycatch became our top priorities.

To achieve those goals, the organization began working to reform the New Zealand fisheries policy, the Common Fisheries Policy in the European Community and the Magnuson Act during its reauthorization of 1989-1990.

Additionally, we undertook work at the United Nations, ICCAT and the IATTC to address fisheries in international fora as well. Currently, we are working within the framework of the United Nations Conference on Highly Migratory Species and Straddling Stocks.

In 1992, after unsuccessfully attempting to amend the Magnuson Act in 1990, Greenpeace helped form the Marine Fish Conservation Network. This unprecedented network of 80 environmental and commercial, recreational and sport fishing groups united around a common agenda for changing U.S. fisheries management.

In 1994, the Network drafted a comprehensive package of amendments that were embodied in H.R. 4404 introduced by Congressman Wayne Gilchrest. This package, which included amendments on overfishing, bycatch, habitat protection, council reform, protection of large pelagics and enhancement of enforcement and monitoring, was cosponsored by 90 members of the House (45 Republicans and 45 Democrats). We encourage the committee to take a close look at these amendments, and urge you to incorporate these changes into the final committee bill.

For Greenpeace, our priorities remain preventing overfishing, rebuilding depleted fish populations and reducing bycatch. We also urge the committee to hold the line against authorizing ITQ schemes.

THE NEED FOR A CONSERVATION-ORIENTED ACT

Since the passage of the Magnuson Act in 1976, U.S. fisheries have experienced a major transformation. Nineteen years ago, the fisheries along U.S. shores were being exploited primarily by foreign fleets. Today, the "Americanization" of U.S. fisheries - a primary objective of the Magnuson Act - has been achieved.

However, the success of Americanization and the development of the U.S. commercial fleet has brought new challenges. Instead of competing with foreign fishing fleets plying off the coasts, U.S. fishermen are now competing with each other. The familiar cry of overfishing and concerns about excess capacity and destructive and wasteful fishing, are now being said by U.S. fishermen about U.S. fishermen.

As the Magnuson Act allowed for the rapid economic development of the U.S. fishing industry, conservation issues were put to the wayside. The result is clear. The problems facing our national marine fisheries are more severe today than during the tumultuous

years prior to the Magnuson Act, and the status of fisheries in this country has worsened. In 1972, it was determined that 39 stocks were over-utilized. Today, the National Marine Fisheries Service (NMFS) believes that 64 of 153, or roughly 43%, of the known managed fish stocks are over-utilized. An additional 25% of the known stocks are considered to be fully-utilized.

Now that most major fish stocks in the United States are either fully or over-exploited, policies that once promoted the growth of the U.S. fishing industry must be replaced by policies to contain the capacity of modern fishing technology and conserve fishery resources. Consideration must be given to the effects of fishery removals on the future viability of the fisheries and of the marine ecosystem as a whole.

As we have recently witnessed in New England, there are both strong economic as well as environmental arguments for taking this approach. If not apparent before, New England has demonstrated that the health and survival of the fishing industry and fishing communities depends on the long-term sustainability of fish stocks.

RESOLVING THE BYCATCH PROBLEM

Bycatch is the general term used to describe the catch of unwanted fish and other marine species taken during fishing operations. Typically bycatch is discarded overboard dead or dying. Due largely to unselective fishing practices, vast quantities of fish are caught and wasted each year. The reason fish are wasted is because they are the wrong sex, the wrong size, or the wrong species for the target fishery. The level of bycatch is different from fishery to fishery, from gear type to gear type and even from vessel to vessel. In most fisheries, bycatch is unwanted and discarded due to regulation or because of low economic value. It is important to understand, however, that one vessel's bycatch may be another vessel's target catch.

Many of our nation's fisheries are allowed to continue irrespective of the wasteful manner in which they are prosecuted.

For example, in 1993, in the groundfish fisheries of the North Pacific, over 740 million pounds of fish were discarded. Approximately 76% of this figure was contributed by the factory trawler sector alone. In our view, bycatch may be one of the single greatest threats to the long-term viability of our fish populations. Yet, the Magnuson Act is silent on bycatch.

Therefore, we urge Congress to amend the law not only to include a new national standard to reduce bycatch in all fisheries, but to tighten requirements under the fishery management plans to ensure that bycatch reduction programs are established, and the goal of reducing bycatch is achieved.

To this end, conservation and management measures in fishery management plans should focus on preventing bycatch. Furthermore, programs to address bycatch should work towards reducing all bycatch, not just the bycatch of regulated and commercially-valuable fish. Currently, in both bills before Congress in 1995, H.R. 39 and S. 39, only species which are managed under a fishery management plan would be fully addressed by measures to reduce bycatch. Under this scenario, numerous species which are caught as bycatch and are not subject to fishery management plans would not be afforded adequate conservation and management under the Act. There is little or no data presently of the impact that this type of bycatch would have on these stocks or the ecosystem of which they are a part.

In addition, Greenpeace does not believe that programs to utilize bycatch are solutions to the problem. Known collectively as full utilization, such programs will not reduce bycatch, but instead sidestep the issue, by promoting the creation of and markets for low-value products such as fish meal.

Greater consideration should be given to programs which seek to avoid the catch of unwanted fish in the first place. Efforts must be made in the area of gear selectivity in order to improve the types of fishing gear used as well as fishing methods. We support the development of a harvest priority system which would provide incentives to promote clean fishing. As an example, fishermen agree collectively on a bycatch rate. Those who fish cleanly would be rewarded with an extra fishing season, or perhaps an extra allotment of fish. Those fishermen who did not fish cleanly would be penalized by not receiving this additional opportunity to fish. The intended goal is to provide a system whereby fishermen design a better way to fish, improving the selectivity of gear to catch the target species and avoid the non-target species.

THE NEED TO PREVENT OVERFISHING

One of the primary goals of the Magnuson Act, as originally authorized, was to halt the overfishing of U.S. fish stocks. As noted above, the law, to date, has largely failed in this regard.

In fact, as written, the law does not prevent overfishing.

A critical problem affecting conservation of fish resources is that fish stocks are currently managed to provide 'optimum yield'. Optimum yield is defined with an emphasis on economic benefits to the nation which often results in catch levels being set higher than maximum sustainable yield (MSY). Due to the uncertainty of fisheries science, the level of overfishing for many fish stocks is also not known. Therefore, we believe that the definition of optimum yield should be changed to allow for a greater conservation buffer in the face of uncertainty.

Moreover, the concept of MSY assumes that each fish stock behaves independent of other fish stocks and other species in the marine ecosystem. Recently, scientists have begun to focus on the importance of better understanding marine ecosystem dynamics in order to more effectively conserve fish stocks. Toward this goal, Greenpeace believes that efforts should be made to move away from single-species fisheries management and instead focus on a more holistic ecosystem approach.

Finally, the yield of a fishery must be defined in terms of long-term sustainability. Since marine ecosystems are dynamic and fish populations are subject to natural fluctuations, in the face of scientific uncertainty, fisheries management must err on the side of conservation when determining levels of fishery removals.

Greenpeace supports language in the Magnuson Act which would define optimum yield as follows:

The term optimum, with respect to yield from a fishery, means the amount of fish--

A) which would provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

B) which is prescribed as such on the basis of the sustainable yield from such a fishery, as lowered by any relevant economic, social or ecological factor;

C) provides for rebuilding of depleted and overfished fishery resources to a level consistent with providing sustainable yield.

LIMITING ACCESS IN OUR NATIONAL FISHERIES

The majority of fisheries managed in federal waters are conducted under what is termed "open access" systems. Under open access, any vessel may participate in any fishery as long as the vessel has a valid fishing permit. In concept, open access was completely compatible with the desire to Americanize U.S. fisheries and develop a globally-competitive fishing fleet. However, as there is no limit to the number of participants in a fishery, open access has resulted in overcapitalized fisheries and competition between vessels, racing to catch as much fish as possible. This system has also exacerbated overfishing and increased bycatch and waste.

Presently, the debate on open versus limited access is focussed on a highly controversial management scheme known as individual transferable quotas (ITQS). Under an ITQ system, each vessel owner would be permanently granted a percentage share of the

fishery's overall annual quota. Quota shares would be based on the vessel's catch history for a given time period, and once allocated, could be bought, sold or otherwise traded. The only way for new participants to enter would be through the purchase or rental of existing quota shares.

In order to understand the current pressure that is being exerted to legislate ITQs during this current Magnuson Act reauthorization, it is important to understand the history that brought us to this point.

In the mid-1980s, a joint industry-government task force was convened to develop a plan for the future of groundfish in the North Pacific. Their report, issued in 1988, recommended among other things that entry in the fishery be limited. However, with numerous new vessels under construction, the North Pacific council was unwilling to recommend cut-off dates for entry, and no sector or individual was willing to limit its own participation.

As a result, between 1986-1992, the number of 200-400 foot factory trawlers increased from 12 to over 60. Many of these vessels came on-line after the report was issued. These boats were built on the basis of a ten month fishing season, but in 1995 will fish barely two months. This part of the fishing industry, the main proponents of ITQs, is failing financially. Therefore, having failed to convince the North Pacific council to bail them through an ITQ program for North Pacific groundfish, the factory trawlers have set their sights on Congress.

While Greenpeace recognizes that there may be a need to limit access in certain fisheries in order to improve conservation and management, it must be also be accompanied by a reduction in fishing effort. While ITQs may reduce overcapitalization, they do nothing to reduce fishing effort. Whether its the enforcement nightmare facing the North Pacific Halibut-Sablefish ITQ program or the depletion of the New Zealand Orange Roughy stock which has become depleted since the fishery went ITQ in 1983, it is clear that ITQ programs carry with them heavy ecological, social and economic costs. The problems existing in these ITQ programs prove that:

ITQs will not achieve conservation of fish stocks, or maintain the role of the small-scale fishermen and the coastal communities dependent on them.

ITQs will not address the environmental impacts of wasteful fishing practices, specifically the problems of bycatch and discards. To the contrary, ITQs will reward those who fished least conservatively with the largest quota share. The fact that ITQs will provide a greater incentive to discard fish which are not the right size, sex or quality desirable for maximum profitability, will further exacerbate this problem.

ITQs will concentrate fishery resources into the hands of large corporations which can afford to buy up quota shares. This process will force individual fishermen out of business, and threaten community-linked fishing operations.

ITQs will, in most cases, be granted only to vessel owners, not captains or crew members.

Estimated costs of monitoring and enforcing an ITQ program are two to three times greater than costs under present fishery management systems. With the longer fishing seasons, the opportunities for high grading and poaching will increase further exacerbating the problems of overfishing.

Finally, ITQs will fundamentally change the nature of fishery resources. ITQs will take what is presently a resource belonging to all U.S. citizens and transform it into private property that belongs to only a few select individuals or corporations. Once the Nation's fisheries are privatized, fishing will no longer be a privilege--the fish will become private property and fishing a property right.

In order to improve marine resource management in the United States, numerous changes must be made in the status quo. Economic efficiency can no longer be the impetus for improving the status of fisheries.

CONCLUSION

In 1975, when the U.S. fishing industry came to Congress asking for an end to overfishing by foreign industrial fishing fleets off the coasts of New England, Congress rose to the challenge with the passage of the Magnuson Fishery Conservation and Management Act of 1976 which did, among other things, end FOREIGN overfishing. In 1995, with the closure of Georges Bank in New England, the Red King Crab Fishery in Alaska and declining catches around our coasts, U.S. fisheries are once again in a state of crisis. If the U.S. fishing industry is to survive, Congress must enact the comprehensive reforms that will change the Magnuson Act from its current role of development of US fisheries to one of long-term sustainability.

AMERICAN FACTORY
TRAWLER ASSOCIATION

February 28, 1995

The Honorable Don Young
Chairman
House Committee on Resources
1324 Longworth House Office Building
Washington, DC 2051581

Dear Mr. Chairman:

The American Factory Trawler Association (AFTA) submits the following comments on H.R. 39, the Fishery Conservation and Management Amendments of 1995. We appreciate the Committee's consideration of our views, and we look forward to working with the Committee as it crafts a Magnuson Act reauthorization bill for consideration by the House.

Bycatch and Discards in U.S. Fisheries

H.R. 39 contains a number of important provisions relating to the reduction in waste in U.S. fisheries, with particular emphasis on the North Pacific fisheries. Perhaps the centerpiece of the bill's provisions is the definition of the term "bycatch." As defined, "bycatch" means fish that is discarded, either because regulations dictate that fishermen discard the catch or for economic reasons. AFTA strongly supports this approach. The "bycatch" definition recognizes that some fisheries, such as Alaska pollock, are single species fisheries; incidental harvest of non-target species is minimal. Other fisheries are mixed species fisheries. The definition of "bycatch" in H.R. 39 recognizes that there is nothing inherently wrong with harvesting several species as long as utilization of both target and non-target species occurs.

AFTA also supports requiring fishery management plans to include measures that provide for a full accounting of bycatch by all vessels as well as measures to minimize mortality of species discarded for regulatory or economic reasons.

However, AFTA has some concerns over provisions of the bill relating specifically to the North Pacific fisheries. Indeed, the North Pacific fisheries are generally healthy, populations of many groundfish species are at a historically high level. It is odd given the overall state of U.S. fisheries that Congress would choose to micro-manage the healthy fisheries, particularly since

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the North Pacific Council has been aggressively analyzing management measures designed to reduce waste.

For example, H.R. 39 directs the North Pacific Fishery Management Council to impose by July 1, 1996 specific management measures purported to reduce waste in the fisheries. The legislation emphasizes "harvest preference" as one such measure. The Council is already analyzing this management option. Many industry participants believe "harvest preference" is unworkable, and that the regulatory analysis will bear out that view (See attached letter dated June 3, 1994.). "Harvest preference" could adversely impact national benefits derived from U.S. fisheries. For example, favorable allocations would be granted to fishermen with low discard rates, but who freeze whole fish for processing abroad. U.S. fishing operations that add value (for example, producing fillets for national restaurant chains), but have higher discard rates, would be penalized under harvest preference. Many in Congress are criticizing federal agencies for promulgating rules that intrude unduly on the marketplace and that are impractical and burdensome. Advocating "harvest preference" regulations runs counter to Congress' prevailing view pertaining to federal rules.

Individual Transferable Quotas (ITQs)

H.R. 39 is silent on the issue of individual transferable quotas (ITQs). While an ITQ system may not be the appropriate management measure for every fishery, ITQs are a legitimate management tool, and Congress needs to address the issue. At a minimum, H.R. 39 should include certain national policy guidelines for councils and the National Marine Fisheries Service (NMFS) to use when developing or administering ITQ programs.

Specifically, Congress should clarify that a quota share issued to a person under an ITQ program is not a property right. Under an ITQ plan, an individual is provided the privilege of harvesting a percentage of the annual allowable catch. Also, the Magnuson Act should be amended to make clear that no "taking" claims arise under the Fifth Amendment in the event that the Secretary revokes for cause a person's quota share. Finally, the Magnuson Act should be amended to allow the Secretary to impose a user fee on quota share holders. Such user fees should be capped at a level necessary to fund the administrative, enforcement and data collection costs resulting from the imposition of an ITQ

management system. User fees should be expressed as a percentage of the exvessel (unprocessed) value of fish harvested pursuant to the ITQ program.

These national guidelines promote the public interest as regional councils continue to examine ITQ solutions for fishery management problems. With regard to the North Pacific, national guidelines should facilitate development of an ITQ program for groundfish. Fishing industry participants, academics and others agree that an ITQ system for North Pacific groundfish is the best management option for reducing bycatch and overcapitalization and addressing a dozen other identified problems in the fishery. Indeed, the North Pacific Council's own analysis supports that view. The most effective step that Congress can take to reduce waste in the fisheries and to return economic and social stability to the fishing industry is to encourage the Council to adopt an ITQ program within two years for North Pacific groundfish.

Fishery Dependent Community

H.R. 39 creates a new term, fishery dependent community, within the Act, and authorizes regional councils to provide preferential fishery allocations to any entity that qualifies under this provision. If the intent of this proposed change in the law is to authorize the existing Community Development Quota (CDQ) program, then that intent should be clearly and plainly stated.

The term "fishery dependent community" is too broad a term, creates ambiguity, and introduces a concept much different than the CDQ concept. H.R. 39 provides for favorable treatment for communities that can demonstrate fishery dependence to a regional council. This change in the law will encourage fishermen residing in fishery dependent communities to petition a council for preferential access to fishery resources at the expense of fishermen who reside in economically diverse areas. Nothing in the existing national standards of the Magnuson Act encourages government involvement in determining winners and losers in the marketplace. That approach should not be altered now.

Even if Congress determined that allocations to fishermen should be based upon the community in which they reside, H.R. 39 does not ensure that the "social engineering" in which councils will then engage will result in sound public policy. Northwest fishermen, who pioneered the Bering Sea groundfish fishery, may

reside in communities more dependent on the timber industry or aircraft manufacturing than on the fishing industry. It would be unfair to promote fishery allocation measures that deprive fishermen of their livelihood because they reside in economically diverse communities even though those communities may be economically distressed.

The concept of priority allocation among communities based on their dependency on fishery resources flies in the face of the Magnuson Act's dictate that the nations fishery resources should be managed for the benefit of the nation as a whole.

In sum, if Congress determines that there is a need to authorize and, perhaps, set parameters for the CDQ program, then the provision should be limited to that specific program. If the intent is to go beyond the CDQ program then AFTA strongly opposes this provision.

Regional Fishery Management Council System

Members of the fishing industry and the environmental community, academics and federal officials are taking a fresh look at the regional fishery management council system. This review is prompted by overfishing of many U.S. fish stocks and a proliferation of controversial allocation measures. To many, credibility problems affecting the regional councils stems from council members establishing harvest levels for fisheries in which they participate and prompting allocation measures from which they, their constituents, and other members of their sector benefit, at the expense of their competitors.

H.R. 39 is a step in the right direction to addressing the concerns outlined above. The bill specifies a process by which agenda items can be added for council consideration, it requires councils to keep detailed minutes of their meetings, and it provides an opportunity for council members to seek roll call votes on any matter before the council. AFTA supports these proposed measures, but these are modest measures that will do little to relieve anxiety among those seeking council reform.

The bill also considers the issue of conflicts of interest among fishery management council members. The councils remain unique entities--federal regulatory bodies comprised of private citizens, often with a financial interest in the fisheries that they manage, who are exempt from conflict of interest statutes that apply to virtually all other federal employees. H.R. 39 attempts to adjust the delicate balance of ensuring continued

involvement of resource users in the regulatory process and restoring credibility to the council process. Unfortunately, the conflict of interest provision advanced in H.R. 39 falls short of improving the Act's inadequate ethical standards. We recommend, as a solution to this very real problem, that Congress make the Councils subject to the same rules, regulations and guidelines that apply to other federal advisory bodies.

Emergency Rulemaking Authority

AFTA recognizes the importance of providing councils and the Secretary with the authority to impose emergency rules to protect fishery resources. Unfortunately, over time, economic and social justifications have been increasingly cited as the basis for taking "emergency" action. In other words, allocative objectives have become as common as conservation objectives in the promulgation of emergency rules.

Since emergency rules shortcircuit the administrative process by limiting the amount of analysis required and by shortening and sometimes even eliminating prior public comment, it is inappropriate to extend the life of such rules that are adopted purely for economic or other allocative reasons. Congress should therefore limit any extension of emergency rule duration to those rules which truly stem from a resource or other biological or ecological emergency.

AFTA's proposed change is consistent with ongoing Congressional efforts to provide for accountability in the federal rulemaking process.

Thank you, for considering AFTA's views. We look forward to working with you as the House Committee on Resources considers this important piece of legislation.

Sincerely,

Joseph R. Blum
Executive Director

June 3, 1994

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

RE: Harvest Priority Proposal

Dear Mr. Lauber:

As representatives of the preponderance of North Pacific groundfish and crab harvest, we wish to express our frustration with the Council's apparent willingness to include for analysis under Comprehensive Rationalization the Alaska Marine Conservation Council's "Harvest Priority" proposal. Harvest Priority is not a real solution to the bycatch and discard problem. The Harvest Priority proposal is a modified "penalty box" approach applied to fishery regulation. It is nothing more than a variation on the vessel incentive program (VIP) currently in place in the Bering Sea. The VIP has been in effect for three years and as yet has not resulted in a single penalty for PSC bycatch. The basic idea of Harvest Priority is to penalize the production of companies which fail to reach a bycatch reduction or utilization standard. This regulatory approach has been widely abandoned in environmental regulation because it creates weak incentives to modify behavior.

Harvest Priority is not a market-driven allocation system. There are no rights of exclusion or similar mechanism that allows fishing rights to flow to firms with the highest-valued use for them. The common property nature of fishing under Harvest Priority would continue to produce a race for fish. As long as fishermen have to compete to catch fish before the TAC is met, a whole range of potential fishing strategies and technical innovations to reduce bycatch and discard become infeasible because they catch and process fish too slowly.

The Harvest Priority proposal calls for members of the industry to come forward with proposals for standards of bycatch and discard reduction. As such, Harvest Priority will amount to little more than a veil behind which allocation games are played. Each proposal will have built-in assumptions about bycatch/discard in terms of gear used, processing mode, product form, definition of "bycatch", definition of a target fishery, and definition of "utilization". Unfortunately, the underlying goal of industry-derived proposals will be more to gain a competitive advantage than to make real inroads into bycatch and discard reduction. Even under the best of circumstances, the demands on

managers to possess technical information to act as judges of proposals would be unprecedented and unrealistic.

It is hard to see how Harvest Priority would operate with lower administrative and enforcement costs than ITQs. The necessity of at-sea verification of bycatch and discard rates on a trip by trip basis will result in the need for more observer hours than are presently required. If the stakes involved are as high as being excluded from 50 percent of the TAC, incentives to cheat will be enormous. Verification requirements will be daunting because the information collected will have to pass the test of scientific and legal challenges. Every company excluded from the "reward" season will have unprecedented incentives to litigate. In addition, the willingness of the fishing industry to pay for an additional observer assessment is questionable given that Harvest Priority is essentially a punitive system, as opposed to ITQs which would be more likely to bring economic stability to the fishing industry.

The root economic problem facing the fishing industry in the North Pacific is overcapitalization. The Harvest Priority plan is by no stretch of the imagination a viable solution to this economic problem. The authors of the Harvest Priority proposal have stated that the system will, in fact, reduce overcapitalization. This is supposed to result from eliminating industry participants that cannot meet the bycatch standards as higher and higher levels of reduction are set. Under Harvest Priority, however, there would still be the lack of defined harvest rights and even if half the fleet were eliminated by not meeting the Harvest Priority bycatch standard, companies still in the fishery would seek ways to compete more effectively for interim profits. This would undoubtedly mean adding additional harvest capacity to compete for the fish that would have been caught by firms that were forced from the fishery.

The bottom line with Harvest Priority is that overcapitalization would continue to plague the fishing industry. Reductions in bycatch and waste would be suboptimal because the race for fish would limit adoption of gears and practices that fish more cleanly and result in less discard. Thus, mediocre reductions in bycatch and discard will come at a great economic cost to the industry and the nation. Is anyone better off if we force some companies into bankruptcy while the remaining ones initiate another round of capitalization to garner interim profits created in the wake of business failures?

As representatives of a very large percentage of the entire North Pacific harvest sector, we strongly suggest that the Council, in the near term, focus its efforts on solutions that are practical and do not impose needless economic costs on a fishery that is attempting to remain competitive in the global seafood industry. In the longer run, the Council should concentrate on bycatch and utilization solutions

(such as IFQs or other measures) that solve the race for the fish problem and allow greater advances in bycatch and discard reduction to occur in a rational and economically efficient manner.

Sincerely,

Chris Blackburn
Alaska Groundfish Data Bank

Joe Sullivan
American Factory Trawler Assoc.

Beth Stewart
Aleutians East Borough

John Bruce
Deep Sea Fishermen's Union

Margaret Hall
IFFPC

Brent Payne/Steve Hughes
United Catcher Boats

Arni Thomson
Alaska Crab Coalition

ALASKA DRAGGERS ASSN

Eric Olsen
FVOA, President

cc: Pennoyer

Oceantrawl

Statement of Assen Nicolov
President & Chairman
Oceantrawl Inc.
Seattle, WA

Submitted to House of Representatives Committee on Resources
Subcommittee on Fisheries, Wildlife and Oceans

Regarding H.R. 39
Reauthorization of the Magnuson Fishery Conservation and Management Act

February 23, 1995

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Mr. Chairman:

My name is Assen Nicolov and I am President and Chairman of Oceantrawl Inc., one of the largest seafood harvesting, processing and marketing companies in the United States. I appreciate the opportunity to present the views of Oceantrawl on H.R. 39, a bill to amend the Magnuson Fishery Conservation and Management Act of 1995. Oceantrawl is committed to protecting and conserving the fishery resources on which we depend. Since we began operations in 1986, we have launched three state-of-the-art factory trawlers: the Northern Eagle, Northern Hawk, and Northern Jaeger. Our vessels operate primarily in the waters off Alaska, Washington, Oregon and California. We routinely call on the Port of Dutch Harbor and, as an Alaskan company, our vessels employ a significant number of Alaskan residents. We have offices in Seattle, Dillingham, Dutch Harbor and Russia. As a result of our substantial investment in these fisheries, H.R. 39 is extremely important to us, and we are pleased to be able to inform the Subcommittee of our views in order to make sure that you fully understand how changes in the law will affect us and our fishing operations.

At the outset, it should be noted that groundfish stocks in the North Pacific are healthy with harvest levels near all-time highs. Our resources have been conservatively managed with rigorously enforced quotas set on an annual basis for each species. Vessels fishing in the North Pacific Ocean carry the highest level of observer coverage of any fishery in the country, and we have the best data collection system in the world. In summary, the North Pacific Fisheries Management Council has done an excellent job managing the fish stocks under its jurisdiction. However, in the North Pacific, it is the fishing industry itself that is in danger of extinction. Fishing fleets are grossly over capitalized, and seasons that once lasted year-round are now measured in terms of months and weeks. The annual "race for fish" that we are forced to conduct in our pollock, flatfish and other fisheries are wasteful and inefficient, and many times puts the lives and safety of the men and women who conduct the fishery at risk.

In these very difficult financial times, Mr. Chairman, we ask only for stability and a reasonable expectation of certainty from the U.S. Government regarding its regulatory actions in conserving and managing these resources. Companies are going bankrupt at an unprecedented rate in the Pacific Northwest and Alaska. We believe that this is the legacy of the "open access" management system under which most of the North Pacific fisheries operate.

Our company has been in the forefront of efforts to promote an Individual Transferable Quota (ITQ) system for the groundfish fishery of the North Pacific. In our view, initial allocation of quotas under such a program should be based on current harvesting/processing levels (status quo). Our industry has suffered too many arbitrary changes reshuffling fishery quotas based on political rather than economical justifications. We need stability now more than ever. We need to preserve the status quo in allocations, while eliminating the "race for fish." Once again, we fully promote the ITQ system, but we have to make certain that this program is not used by certain groups to acquire additional fishery allocations based simply on their political

connections. Otherwise, we are better off without an ITQ program. The ITQ system we envision would have the following elements:

- Each vessel would receive an ITQ (stated in terms of a percentage of the annual quota for each target and by-catch species) based on its current harvesting/processing level, thus, preserving the status quo.

- All ITQ vessels would carry one or more observers to monitor catch.

- All catch of target and by-catch species would count against the vessel's ITQ.

- A vessel would have to terminate fishing or else buy or lease additional ITQ's once its initial allocation of any target or by-catch species is exhausted.

- All ITQ holders would pay an annual user fee that would cover the cost of administering and enforcing the program.

The above-described ITQ system would have the effect of reducing overcapitalization by allowing a consolidation of the fleet and providing industry stability by creating a healthy investment climate for the development of additional value-added processing capacity on-board our vessels and shoreside facilities in Alaska. In addition, the ITQ approach would help reduce waste and by-catch as each vessel individually becomes accountable for its own actions thereby rewarding the "clean" fisherman and penalizing the "dirty" fisherman. It would enable fishermen to schedule their individual fishing operations (i.e. predictability) so as to avoid hazardous weather conditions, optimize recovery rates and deliver their products at times and places when and where market opportunities are best.

I would suggest to the Subcommittee that these benefits are more than hypothetical. They have been demonstrated in other ITQ fisheries nationally and internationally. For example, we are already realizing some of these benefits through our active participation in a Community Development Quota (CDQ) program in the Bering Sea fishery. As a partner to the Bristol Bay Economic Development Corporation (BBEDC) for the past three years, we have been actively pursuing groundfish harvesting and processing opportunities off the coast of Alaska with our BBEDC partner. In our opinion, the CDQ program has been extremely successful, and we continue to be major proponents of the CDQ program's continuation and expansion to other species.

The current reauthorization process is an excellent opportunity for Congress to recognize that CDQ's and ITQ's can be useful management tools dealing with many of the problems currently facing the North Pacific fishery, in addition to reemphasizing the importance of the existing CDQ program. As the Subcommittee is aware, under the CDQ program, certain communities in Western Alaska are allocated a portion of the annual Bering Sea pollock quota. Each community, or group of communities, then contracts with a vessel operator to harvest the

89-569 96 – 11

community's quota. Allocation of quota is based on the performance of development plans submitted to the State of Alaska. As a CDQ participant, Oceantrawl is extremely pleased to report at this juncture that the CDQ groups have all implemented new objective measurements for measuring the total catch of fish. In addition, the groups have agreed to place two observers on their boats when harvesting CDQ quota, and in fact, lead the industry in reducing and controlling by-catch and waste. In summary, the CDQ program is assisting in building a private economy in a region that has historically suffered from one of the nation's highest levels of poverty and unemployment.

With regard to specific provisions of H.R. 39, Oceantrawl has the following comments:

1. By-catch and Waste. We agree that current levels of by-catch and waste in the fisheries are too high, and support the inclusion of a new National Standard that would direct the Councils to address those issues in their management plans. We propose the following language:

> Conservation and management measures shall promote fishing and processing practices that, to the extent practicable, avoid the harvest and reduce the mortality of fish that are not utilized by U.S. fishermen and, to the extent feasible, maximize the utilization of those fish harvested by U.S. fishermen, except that no such measure should have economic allocation as its primary purpose.

However, please be aware that we do not support the inclusion of any Congressionally mandated solutions. Each fishery is different, and the measures necessary to control by-catch and reduce waste in each fishery should be left to the individual Councils. As we mentioned previously, Oceantrawl favors an ITQ system as the management measure in reducing waste and by-catch.

As a final point to the issues of by-catch and waste reduction measures, these issues are endemic in all U.S. fisheries and the mandate to reduce by-catch and waste should apply on a national level, not just to the North Pacific fisheries. It is ironic that the North Pacific is singled out in H.R. 39. As the Subcommittee is aware, the North Pacific is the one area of the country where the Council is already working on a variety of measures to reduce by-catch and to minimize waste in fisheries under its jurisdiction. By-catch caps and vessel-incentive programs imposing substantial fines on vessels with unacceptably high levels of by-catch are already in place in the North Pacific.

2. Data Collection. We support the provisions of H.R. 39 that would result in the establishment of uniform or standardized procedures for the collection of data concerning by-catch. As indicated above, all of our vessels carry at least one, and sometimes two, federal fisheries observers during all fishing operations. Such observer coverage provides an excellent opportunity for the collection of accurate and reliable by-catch and target fishing data. We are concerned, however, that by-catch and/or other data from vessels with lower or non-existent levels of observer coverage will be used to compare performance (in terms of by-catch or other operational characteristics) between those vessels and ours. It is not only unfair, but misleading

to assume that data generated by vessels, sectors or gear types with varying levels of observer coverage or no coverage at all is comparable data -- especially when that data is used as a basis upon which to justify preferential allocations or harvest privileges between such vessels, sectors or gear types. In our view, a comprehensive observer program is the cornerstone of a reliable data collection system and all commercial fishing vessels should be required to carry observers.

3. Catch Measurement. Oceantrawl supports measures to improve total catch measurement but opposes any requirement that mandates vessels to only utilize onboard scales to weigh fish. Such a requirement may not only be impractical, but may be unnecessary as well -- especially in large-volume single species fisheries such as mid-water pollock where volumetric measurement may be just as accurate and dependable. If Congress should mandate scales, we ask only that this process be phased in on a gradual basis once the technology is completely available and allow for volumetric measurements as a back-up system, in case of scale breakdowns.

4. Fishing Dependent Communities. Oceantrawl is a fishing dependent company and our employees are fishing dependent men and women whose livelihoods are dependent on the fisheries of the North Pacific. We have invested more than $150 million in an effort to help Americanize the groundfisheries of the North Pacific and the Washington-Oregon-California fisheries. At the time our investments were made, the groundfish fisheries in the Bering Sea and Pacific Ocean were largely conducted by foreign fishing and processing vessels. There were at that time virtually no groundfish fishing dependent communities in the Bering Sea area. We are strongly opposed to any measure that would create a preference for any fishermen based on the region, state or community in which they reside. In our view, such a preference would constitute an unfair "taking" of the legitimate investment expectations that Oceantrawl had when, at the urging of U.S. Congress, the Department of Commerce, the National Marine Fisheries Service, the Pacific and North Pacific Fisheries Management Councils and the State of Alaska, we invested millions of dollars to assist in Americanizing the fisheries of the North Pacific and the Pacific Coast.

5. Conflict of Interest, Recusal Provision. We believe the recusal provisions of H.R. 39 fail to adequately address the conflict of interest problems that have created a crisis of confidence over the integrity of the Council process. As we understand the recusal mechanism, only those Council members who have a direct financial interest in the outcome will be prohibited from voting on a specific measure, and even then, only if their particular interest represents a minority of the interests that would benefit from the proposed measure. Accordingly, as drafted, H.R. 39 would allow representatives, lobbyists or employees of trade associations or fishing groups appointed to the Councils to continue to be eligible to vote on controversial allocation, management and conservation measures. In many instances, such individuals' actions are dictated by people who have direct financial interest in the outcome of certain measures. Therefore, we suggest that the recusal mechanism be expanded to include mandatory recusal of trade associations, gear groups and individual fishing/processing company representatives whose members (or clients) have a direct financial stake in the issue before the Council.

Finally, there has been considerable debate in the past over the disproportionate allocation of seats on the North Pacific Fishery Management Council. The primary issue in our view is the failure of the Secretary of Commerce to comply with the existing statute regarding Council appointments. Section 302 (b) (2) (B) of the Magnuson Act directs the Secretary (when making appointments to the Council) to "ensure a fair and balanced apportionment on a rotating or other basis of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." To date, industry appointments to the Pacific and North Pacific Fisheries Management Councils have not reflected a "fair and balanced apportionment" of the active participants in the fisheries being regulated. Consequently, most of the industry seats have been allocated to small boat fishermen who are only marginal participants in the groundfish fisheries being managed by the Councils. For example, longline representatives recently occupied more than half of the industry seats on the North Pacific Fisheries Management Council -- even though their sector of the industry accounts for less than 10% of the overall harvest in fisheries regulated by the Council. Trawlers, on the other hand, which account for more than 90% of the harvest in the North Pacific fisheries currently have only one representative on that Council. We do not believe this is a "fair and balanced" apportionment. It is an apportionment that has resulted in a skewed regulatory regime that distinctly favors one sector over the other. This perceived unfairness in the Pacific and North Pacific Fisheries Management Councils structure could be addressed, and possibly remedied, if the Secretary adhered to the appointment guidelines already specified in the Magnuson Act.

6. Over-fishing Provisions Oceantrawl supports the provisions of H.R. 39 relating to the regulation of overfishing, but notes that there is probably not one comprehensive definition of overfishing that can be applied to all fisheries. We would therefore suggest that the Standing Scientific Committee (SSC) for each of the respective Councils play a key role in defining the term as it applies to the fisheries within their Council's jurisdiction.

7. Total Allowable Level of Foreign Fishing (TALFF). Section 5b of H.R. 39 contains provisions which have the effect of legislating a zero TALFF for Atlantic herring and mackerel for the next four years. We believe that these provisions violate our Governing International Fishery Agreement (GIFA) with the Russian Federation and provisions of the Law of the Sea Treaty, and as a result will have a chilling affect on our fishery relationship with Russia and other countries which seek to explore business opportunities with the U.S. As you are aware, the Magnuson Act grants to the appropriate management Council the right to determine surpluses in our fishery resources. To the best of my knowledge, Congress has never before legislated this type of scientific determination. Since 1992, the Mid-Atlantic Council has established a zero TALFF for mackerel, even though we understand the stocks are quite healthy and American fishermen harvest less than one-tenth of the Allowable Biological Catch (ABC). In 1993, for example, U.S. fishermen caught less than 4,700 MT of the almost 100,000 MT of the ABC. In view of these actions taken by the Mid-Atlantic Council for the past three years, we question the wisdom of this provision. Many of us are aware of an interest in Europe to fish and purchase these stocks. European companies have established markets for these species and we believe they would be willing to invest in shoreside facilities in New England which might assist

displaced groundfish fishermen through investment and technology transfer. TALFF could be instrumental in providing much needed economic opportunities to New England and East Coast fishermen and processors. As the Subcommittee recalls, TALFF in the North Pacific and Pacific fisheries was instrumental in Americanizing our fisheries.

This concludes my testimony. I would like to thank you, Mr. Chairman, and the Subcommittee for this opportunity to testify.

ALASKA OCEAN SEAFOOD

LIMITED PARTNERSHIP

March 22, 1995

The Honorable Jim Saxton
Chairman, Subcommittee on Fisheries,
Wildlife and Oceans
United States House of Representatives
Committee on Resources
Washington D.C. 20515

Dear Congressman Saxton:

Thank you for your letter of March 16, 1995, requesting our response to additional questions on our testimony concerning H.R. 39. We welcome the opportunity to share our views on these issues and hope that our answers will be helpful to the Subcommittee Members as they continue their consideration of Magnuson Act Reauthorization.

1. How do you determine by-catch rates on your vessels? (By weight, volume or number of fish and by actual measurement or by estimation?)

The ALASKA OCEAN operates primarily in the Bering Sea and Aleutian Island pollock fishery and pacific whiting fishery off the coast of Washington, Oregon and California. Because pollock and pacific whiting are primarily pelagic (midwater) fisheries the bycatch rates average less than 4% of the targeted species.

In following H.R. 39, there are three forms of Bycatch; Regulatory Discards, Economic Discards and Retainable Bycatch:

Regulatory Discards: Non-target species that are required by regulation to be discarded. Regulatory discards include the following prohibitive species:

Salmon: All salmon are retained until counted individually and examined for species, sex, length and weight.

Crab: Crab are counted individually from sampling and the total number per tow is extended from the sample.

Halibut: Same format as crab.

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Herring: Herring is recorded by weight from sampling.

Economic Discards: Target species that are not retained because they are undesirable size, sex or quality, or for other economic reasons. Except for rare or unusual circumstances the ALASKA OCEAN has negligible discards on targeted species.

Retainable Bycatch: Non-target species which could be retained legally but are not for economic or other reasons. (Not mentioned in H.R. 39).

All of the vessel's bycatch is determined by tow by the NMFS Observer's sample weight and is extrapolated to total weight based on the total catch. The Third Officer visually checks each tow in the fish bins and on the processing line for estimate verification and records the Observer calculations in the vessel fishing logs and NMFS reports.

The ALASKA OCEAN accurately weighs all targeted species prior to processing. A Marel inline scale is located on the conveyor belt between the fish bins and the processing line. This scale is calibrated daily during the season and the Observer has complete access to it and the vessel's fishing and processing records at all times. The NMFS Observer samples between 60 and 80% of all tows. For tows not sampled, the Observer and Third Officer extend and apply an average bycatch from previous and/or succeeding tows.

2. What type of observer coverage do your vessels carry and is this because of the requirements passed by the Councils or because you feel it is necessary for reporting requirements?

Each of our three vessels - the ALASKA OCEAN, the AURIGA, and the AURORA - has 100% observer coverage, meaning that there is an observer aboard each vessel whenever the vessel is operating. This coverage is mandated by the North Pacific Fishery Management Council.

Separate and apart from that mandate, however, we believe that the NPFMC observer program has played a crucial role in insuring that the stocks of North Pacific groundfish have remained healthy, and we view the program as critical to the success of any ITQ program that the Council might implement. We also support a concept that is advocated by the CDQ communities and others: that vessels should carry two observers at all times so that 24-hour-a-day coverage is available.

We do want to mention one aspect of the observer program that we find unacceptable, i.e., its cost. Until recently, we were responsible for paying the observers on our vessels directly; in the case of the ALASKA OCEAN, for example, the cost averaged about $235 per day. Under regulations recently implemented by the NPFMC, we will now pay the observers through an assessment based on our catch; in the case of the ALASKA OCEAN, this assessment

will be approximately $1,600 per day. Needless to say, we are more than a little puzzled by an exponential increase in cost for exactly the same observer coverage as we had before, and can attribute it only to the bureaucratic expenses built into an assessment system that do not exist in a direct payment system.

3. Do you feel there are other methods of dealing with over-capitalization of the fisheries without enacting ITQ programs?

In a word, no. The other methods that have been suggested - moratoriums, license limitation programs, buy-back programs, etc. - do not address the root cause of over-capitalization, which is the open access system. So long as a fishery is open to all comers and so long as any participant is allowed to harvest as much of the resource as he possibly can, participants will have a continuing incentive to retain - and increase - existing capitalization levels. This will come in the form of direct capital such as addition of new vessels, and in the form of "capital-stuffing" such as improved technology, increased horsepower, added gear, etc.

In our view, over-capitalization can be dealt with only by addressing its cause - by eliminating open access and replacing it with a system under which each individual participant is limited to a set percentage of the available resource. Under such a system, additions of capital simply become irrelevant because the harvest cannot exceed the percentage established by the quota.

4. Would you still support limited access systems if the quota shares were not transferrable, but reverted to NMFS for redistribution if they were not being fished?

We believe that it is possible to devise an acceptable system that would invoke non-transferrable quotas. The acceptability of such a system to us would depend in large part on what happens to shares that are not being fished. For example, depending on specifics, we might be able to support a system in which unused quotas are cancelled. On the other hand, we could not support a system in which unused shares are distributed to new entrants; such a system would do nothing toward reducing capitalization.

5. Why do you feel that ITQ plans are essential for maintaining healthy stock levels? Don't the Councils set Total Allowable Catch (TAC) levels whether there is limited access or not?

We do not believe that ITQ's are essential, at least in the near term, for maintaining the health of the Alaska pollock stock. As mentioned in my prepared testimony, we feel that the combined efforts of NMFS, the scientific community, and the NPFMC have ensured that that resource has remained healthy. (We of course cannot address the practices of other Councils nor the health of the stocks they manage.)

What we do believe is that expeditious adoption of an ITQ program for the Alaska groundfish fishery is essential to the continued health of the industry and to the many businesses and communities that depend on that industry. We also believe that an ITQ system is the best way to address the very real and very serious problems that result from open access - problems relating to safety, discards, bycatch, insufficient resource utilization, and economic instability.

6. You talk about reducing over-capitalization through ITQ plans but then you advocate a requirement that would not allow the Councils to reduce any vessel's existing catch by more than 5 percent. How does this reduce over-capitalization?

At the outset, let me clarify that the initial allocation parameters we are proposing are intended to apply only to the NPFMC and only with respect to the groundfish fishery in the Bering Sea/Aleutian Islands. We believe that those parameters are fair and workable in the context of that fishery. We are not suggesting their use for other fisheries or other Councils.

With respect to your specific question, we do not look upon reduction of capitalization as the primary purpose of our initial allocation parameters. We believe, as explained above, that ITQ's in and of themselves will have that result. Rather, we view the suggested parameters as a fair way of implementing an ITQ system. The parameters are fair because they prevent the distribution of large windfalls to some industry participants at the expense of other industry participants.

A secondary result of this fairness however, will be the prevention of additional capitalization in the industry. If all present participants have access to the same or slightly lesser amount of catch as they are now harvesting or processing, there will be no point in capital-stuffing. On the other hand, if some participants receive windfalls of quota that exceed the catch upon which they presently rely, capital-stuffing will inevitably occur as those participants seek to gain the benefit of their windfalls.

7. There have been several ballot initiatives to ban the use of nets in commercial fisheries. This could be considered a direct attack on factory trawlers and your way of life. How do you defend your fishing techniques to a public that believes you discard more fish than are caught in other U.S. fisheries?

We heartily agree that such proposals are a direct attack on factory trawlers; moreover, such attacks are totally unwarranted. While we cannot speak to the practices of all fishermen who use nets, we can speak to our particular industry and our factory trawler.

The ALASKA OCEAN participates in the pelagic (mid-water) fisheries for pollock and pacific whiting. Because these species typically are found concentrated with few other kinds

of fish, and because they tend to swim in large schools, we are able to avoid much of the bycatch problem experienced in some other fisheries. Indeed, a recent United Nations study declared the North Pacific pelagic fishery to be the cleanest fishery in the world in terms of discard rates. ("A Global Assessment of Fisheries Bycatch and Discards," United Nations Food & Agriculture Organization, FAO Fisheries Technical Paper #339 (1994).)

In addition to our ability to fish clean because of our target species, we have a strong commitment to sound bycatch management and full utilization of the fish we catch. As detailed in my prepared testimony, the ALASKA OCEAN does not only produce its high value product of surimi; the vessel also uses that portion of the catch not suitable for surimi to produce fish meal and oil. In addition, the ALASKA OCEAN is equipped with state-of-the-art scales, permitting us to weigh accurately the fish we catch.

As a result, the ALASKA OCEAN has less than 4% economic discards and its regulatory discard rates average less than .05% - discards which, by the way, are not done by our choice but by regulatory mandate.

* * *

We hope that these responses are helpful to you and the Members of the Subcommittee. Again, thank you for the opportunity to share our views.

Sincerely,

Jeff Hendricks
General Manager

CLF Conservation Law Foundation

March 23, 1995

Honorable Jim Saxton, Chairman
Subcommittee on Fisheries, Wildlife and Oceans
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Saxton:

I am happy to provide answers to the following additional questions from Congressman Peter Torkildsen regarding the reauthorization of the Magnuson Fishery Conservation and Management Act, for the record of the Fisheries, Wildlife and Oceans Subcommittee hearing on H.R. 39 on February 23, 1995. The additional questions are referenced on page 158, lines 3614-3616, of the transcript for the hearing.

Q1) What is CLF's long term plan for Georges Bank? Included in your response should be a proposal that addresses the social and economic ramifications of total closure of Georges Bank to the fishing communities which depend on the fishing industry for their livelihood.

CLF response: CLF's goal for Georges Bank is to restore its potential production of groundfish by allowing the severely depleted stocks of cod, haddock and yellowtail flounder to rebuild to levels that can produce much higher yields than we are currently obtaining. While the authority for developing a specific fishery management plan that can achieve this goal rests with the National Marine Fisheries Service and the New England Fishery Management Council, CLF is working with the managers and the fishing communities to develop management measures that will achieve this goal while minimizing short term impacts on fishing communities.

Our principal objective is to obtain this stock rebuilding as soon as possible, because a swift recovery will maximize fish production and minimize social and economic costs over the long term. Part of the challenge is to better coordinate with Canada so that groundfish management is consistent on both sides of the Hague Line. Another part of the challenge is to understand to what extent fishing gear is having long term negative effects on groundfish reproduction and recruitment by the habitat damage that it causes.

As for the short term social and economic disruption caused by the groundfish crisis, only the federal and state governments

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can provide assistance to help fishermen either survive the period of low catches until fish stocks have rebuilt or make the transition out of fishing and into another livelihood.

CLf does not envision a permanent closure of all of Georges Bank, although it may be wise to keeps parts of it closed as a fishery reserve to assure future harvests. What is needed now is the marine equivalent of a fallow period for agriculture: we need to give the ocean a rest so that it can produce more in the future. The NMFS bottom trawl surveys will inform us of how well and how fast the recovery is progressing, but the hard fact is that, even with no fishing, recovery will take a long time.

Q2) What proposals, if any, has CLF made concerning bluefin tuna?

CLF Response: CLF has not made any proposals concerning bluefin tuna.

Q3) What scientific information did CLF use to estimate the return of critical biomass of haddock would take approximately 12 years?

CLF response: The figure of 13 years for haddock to rebuild to a critical biomass of 80,000 metric tons (mt) is a recent estimate made by the Groundfish Plan Development Team of the New England Fishery Management Council. That figure was included in a memorandum to the Council's Groundfish Oversight Committee dated January 30, 1995. It is the estimate for rebuilding time if fishing pressure is reduced to a fishing mortality rate known as F 0.1, the Council's stated objective for Georges Bank groundfish in amendment 7 to the groundfish plan, which is currently being developed. A footnote to that figure indicates that it is derived from a 1986 scientific paper and should be considered preliminary. An updated assessment of the Georges Bank haddock stock, planned for later this spring, should give a more reliable estimate of the expected rebuilding time.

Please note that this amount of rebuilding would not be a full recovery. Full recovery would be to a higher biomass level capable of producing the maximum sustainable yield, rather than producing just the average recruitment, as is expected for a biomass of 80,000 mt. There are no estimates for how long full recovery would take, but full recovery could be reached with somewhat more fishing allowed than the F 0.1 level planned for amendment 7.

Put more simply, the best available scientific information indicates that more than a decade will be needed to restore Georges Bank haddock to a level that can produce average recruitment. The upcoming re-assessment of the stock may reveal

a slightly different estimate, but I would be surprised if it is radically different, because haddock has been reduced to such a low level. Of course, it is possible that haddock will recover more quickly than the scientific estimate if we are lucky enough to see better than average year classes produced and if we succeed in protecting those year classes from too much fishing pressure. Some American and Canadian fishermen have been seeing more haddock in their nets recently, and Canadian scientists report recent improved recruitment, so we can hope that the recovery is beginning, but there is still a very long way to go before we can hope to catch anything like the amount of haddock that Georges Bank is capable of producing.

I hope that the above responses are useful, and I extend to you and the other Subcommittee Members my best wishes for the difficult job of reauthorizing the Magnuson Act.

Sincerely,

Eleanor M. Dorsey

Eleanor M. Dorsey
Staff scientist

cc: Peter G. Torkildsen

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March 24, 1995

Congressman Jim Saxton, Chairman
U.S. House of Representatives
Committee on Resources
Subcommittee on Fisheries, Wildlife and Oceans
Washington, D.C. 20515

Dear Mr. Chairman:

I will answer all of the questions to the best of my ability by posing your question and giving my answers.

1. Can you elaborate on some of the community development programs that the CDQ groups have funded?

All of the CDQ groups have established training and internship programs with their factory trawl partners. In addition, Each of the CDQ groups have established vocational and technical training programs, job training, and aggressive employment programs. Over 1600 jobs have been created as a result and we are expecting many of our interns and graduates of our vocational and technical training to be involved in the off-shore and on-shore fishery from the manufacturing lines all the way up to captains of factory trawl vessels.

One group, the Aleutian Pribilof Island Community Development Association, has infrastructure development as one of their projects to provide commercial service centers for the Bering Sea fishing industry. Docks and gear storage facilities are being studied for support of the fishing industry as well.

The Bristol Bay Economic Development Corporation is involved in a comprehensive regional fisheries planning effort to add value to salmon and herring so that full-time, year-round jobs can be created. An academic Scholarship Program has been established which will be in place in perpetuity for juniors, seniors and graduate students to get their undergraduate and graduate degrees so that

they can compete for jobs at all levels in the fishing industry, other industrial sectors of Alaska, the U.S. and globally.

An observer training program is being developed so that more Alaskans will be able to compete for factory trawl observer jobs once mandatory 100% observer coverage of all vessels operating in the Gulf of Alaska and Bering Sea is in place. A Bristol Bay Regional Internship program is in place that encourages all businesses in Bristol Bay to implement an internship program so that more local people will be qualified to eventually take over all of the management functions required to keep Bristol Bay operating its schools, municipal governments, hospital, businesses and non-profit organizations.

A Salmon Limited Entry Permit Brokerage has been established to allow Bristol Bay region residents to purchase permits that have been migrating out of the region. A Bristol Bay Revolving Loan Fund will be established by mid or late 1996 that will allow residents of Bristol Bay to acquire the capital needed to purchase permits before they are sold to people outside of the Bristol Bay region.

A seafood investment fund (ASIF) that would allow Bristol Bay to invest in fishery related joint ventures in Alaska and the Northwest Coast of the U.S. is in place. Plans are to look at crab, longlining for cod, tendering and partnerships in a factory trawler.

Coastal Villages Fishing Cooperative owns 50 % equity in a 197 ft. factory trawler, Brown's Point, with the long-term goal of owning, managing and operating a fleet of at-sea processing and harvesting vessels. They along with other CDQ groups are engaged in training, internships and scholarship programs.

Central Bering Sea Fishermen's Association has a boat loan program for the purchase and construction of vessels 32 to 125 ft. in length that are capable of participating in the multi-species fisheries of the Bering Sea. They also have set aside funds to develop infrastructure to support the fishing industry and have job training, internships and scholarship programs as well.

Norton Sound has a strong training and education scholarship program for their people. They have also started a winter, fresh crab operation, pioneered new markets for salmon and herring, provide low-interest loans for salmon and herring permits, to purchase

fishing gear, and funds to upgrade fishing vessels. They have set aside funds to revitalize shore side fish processing in several of their villages and are exploring building processing plants in other communities in their region.

Yukon Delta Fisheries Development Association has set up a fund for purchasing salmon limited entry permits and are exploring halibut and cod fisheries in the upper Bering Sea. They have a strong scholarship, training and internship programs that are training their people in management, finance and human resources.
They have developed a fleet of small catcher vessels designed to operate in local longline and/or the crab pot fishery. They have a training program with the goal of 258 trained residents by the end of 1995.

These are a few examples of what the CDQ groups are accomplishing with the CDQ program. This program is showing measurable results because the area that the Western Alaska CDQ program impacts has been the most neglected part of the United States in terms of economic development assistance. The CDQ program is allowing Western Alaska to acquire capital to allow them to train people, provide jobs, get people off welfare and made investments in fishery related industries that will create a vibrant economy.

2. Are there restrictions on what the profits from the CDQ allocation can be used for?

The understanding that we have is that the proceeds from CDQ funds are to create jobs, provide training and get as many people as possible involved in the fishing industry from manufacturing to outright ownership of on-shore and off-shore fishing processors. Some of the funds are used for basic vocational and technical training so that the people can move into more advanced programs or get into the academic area.

3. What are the State of Alaska's certification criteria for CDQ groups?

The State of Alaska took into consideration the following factors when they reviewed the certification of the CDQ groups.

1. The number of eligible communities participating in the CDQ program;

2. the size of the allocation of the fishery resource requested by the qualified applicant and the number of years the qualified applicant requires the allocation to achieve the milestones, goals and objectives of the CDP as stated in the complete CDP application;
3. The degree to which the project(s) is expected, if any, to develop a self-sustaining local fisheries economy and the proposed schedule for transition from reliance on a CDQ allocation to economic self-sufficiency;
4. The degree to which the project(s) is expected, if any, to generate capital or equity in the local fisheries economy or infrastructure, or investment in commercial fishing or fish processing operations;
5. The contractual relationship between the qualified applicant and joint venture partners, if any, and the managing organization.

4. How do the corporations fish their CDQ allocations? Are the allocations leased to other vessels or do the corporations have their own vessels?

The CDQ groups, or corporations, have established partnerships with factory trawlers and receive a royalty for harvesting their pollock quota allocations. The agreements include the necessity of the factory trawler partner to train residents of the respective CDQ groups to become knowledgeable in the off-shore Bering Sea fishery.

Most CDQ groups did not have the funds necessary to purchase factory trawl vessels when the CDQ program began and there was an over capitalized fleet of factory trawlers chasing too few fish. No new factory trawl vessels were built to add to the problem and the CDQ groups used the existing fleet to accomplish their goals. Several of the CDQ groups are studying the purchase or equity position in factory trawlers at this time since capital has been accumulated to allow such a venture.

One group, Coastal Villages Fishing Cooperative, used their CDQ pollock allocation proceeds to purchase a 50% interest in a factory trawler.

5. Do any of the CDQ groups plan to use the corporation profits to purchase vessels or are all of the plans for on-shore development?

As stated earlier, capital has been accumulated so that the purchase of equity positions, joint ventures and outright purchase of existing fishing vessels is a strong possibility. The current economic

situation in the factory trawl business is that there are too many vessels fishing for a finite number of fish and very strict fishing guidelines have to be structured to protect the long term survival of the fish resources. It would not be prudent for purchases to be considered at this time.

6. You mention that the fishing vessels which lease the CDQ allocations are held to strict by-catch measures. Can you tell us a little more about this and how you enforce them?

Our enforcement mechanism is a part of our royalty agreement where we state that heavy bycatch must be avoided. Our partners will move from a bycatch area and fish where bycatch rates are low. We have daily report requirements so that the National Marine Fishery Service knows exactly what the CDQ factory vessels are doing on a daily basis.
We mandate and pay for 100% observer coverage on our factory trawlers. No other groups have this requirement and this should be the norm for all fisheries controlled by the United States.
We have volumetric bin measurements certified by NFMS which gives us a more accurate measurement of what we are catching.
We are encouraging that scales be installed on all fishing vessels so that the measurements will be more exact.
We are constantly and consistently advocating for very low bycatch rules and regulations, low discards and full utilization of all species caught if fish cannot be returned to the sea in a condition to survive.

7. In your testimony you talk about CDQs being a "laboratory for conservation". Could you explain in more detail what other measures you have taken in managing the resource and how others in the fishery could follow your example?

The reference to the CDQ groups as a laboratory is that we have special rules and regulations that have proven that fishing in the Bering Sea can be cleaned up and that a profit can still be made.
We have proven that you can have 100% observer coverage of your fishing activities and not go broke.
We have proven that a group of people with little of no experience in the off-shore fishery can succeed in establishing successful business relationships that are economically beneficial to Alaska, Washington State and others who benefit from the Bering Sea fishery.

We have proven that the CDQ fishery is a cleaner fishery in terms of bycatch, recovery rates, and quality than the open Olympic fishery. We have proven that our fish product quality during the CDQ fishery is superior and that our recovery rate is higher than that of the open season. This means that fewer fish are needed to meet market demands and that the health of the resource can be protected and still contribute to the overall fishery economy of the United States and state of Alaska and the state of Washington.

We have proven that the United States of America can entrust the targeted use of a national resource and achieve economic, social and national benefits unknown to this time.

We believe that the CDQ groups are a model of how the nation, states and local people can work together to fight unemployment, cut welfare, educate and train people, provide hope and establish a vibrant economy where none existed on the mainland of Western Alaska before. We believe that this program provides only good results for the United States and we are proud to be a part of it.

I hope that these comments are satisfactory and that you receive them in a timely manner. I cannot recommend that the Alaska model will work in other coastal areas of the U.S. but elements of it may be useful to you and your colleagues.

We are hoping that language can be found to make sure that the CDQ program can become a part of the Magnuson reauthorization legislation. We are hopeful that your committee efforts will be successful and that the Magnuson Act is concluded in Congress this year.

If there is anything else that I can do to help, please call or write and I will do all that I can to be of assistance.

Mr. Chairman, please accept my thanks for the courtesy of allowing me to finish my testimony during the Magnuson hearing.

Sincerely yours,

Nels A. Anderson, Jr.

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Chairman
Joseph M. Brancaleone

Executive Director
Douglas G. Marshall

March 28, 1995

The Honorable Jim Saxton, Chairman
Subcommittee on Fisheries, Wildlife and Oceans
U.S. House of Representatives
805 O'Neill House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter of March 16, I submit the attached responses to the questions from Representative Torkildsen and other subcommittee members. The questions are numbered and repeated with my response following each one.

Sincerely,

Joseph M. Brancaleone
Chairman

Attachment

JMB/pwc

Joseph M. Brancaleone responses to additional questions from the Hon. Peter Torkildsen to both Rollie Schmitten and Mr. Brancaleone. (Feb. 23, 1995)

Q. 1. Is it your view that Georges Bank will remain closed after Amendment #7 regulations are passed? If so, for what period of time? Please provide me with a detailed outline of the proposed long-term plan for Georges Bank.

A. Mr. Brancaleone: Yes it will. We can't say yet for how long but Amendment #7 will contain a timetable or a mechanism for reopening the bank at an appropriate time. There is not a detailed long-term plan for Georges Bank. Amendment #7 will be that. We haven't yet decided all details of the amendment.

Q. 2. Is the Council considering support for aquaculture as a viable component to any long term plan?

A. Mr. Brancaleone: Not actively but the possibility is not precluded.

Q. 3. When will NMFS and NOAA brief the EPA and the Army Corps of Engineers of their commitment to aquaculture in an effort to expedite the application process?

A. Mr. Brancaleone: The Council cannot speak for NOAA or NMFS. That is Mr. Schmitten's prerogative.

Other Questions to Mr. Brancaleone

Q. 1. You feel that there is only a perceived conflict on the Councils. How do you think this "perceived conflict" should be addressed?

A. The Council is sending a letter to the Subcommittee with numerous comments on proposed changes to the Act. We will address that question in our letter.

Q. 2. Do you feel that Council members should ever refrain from voting on an issue that might affect their personal finances?

A. Yes. It has been a continuing practice for most, if not all, of the Council's existence for members not to vote on issues that directly affect them financially beyond the degree to which all participants in a fishery are affected. Members have generally erred on the side of caution where there has been any gray areas of doubt.

Q. 3. Why are you opposed to the NOAA General Counsel making a determination on conflict?

A. It seems to me personally that it is better for the Council itself to decide such matters.

Q. 4. Do you feel that Councils should develop guidelines on recusal?
A. I believe that is an entirely desirable and practical course of action.

Q. 5. What type of fees would you like the Councils to be able to establish? What would these fees pay for?
A. Basically Councils' fishery management plans should be able to require fees to fund data collection or administration of limited entry programs that allocate quotas, resource shares or units of effort that may be expended in a fishery. Such fees should be expended in the area of the Council that manages the fishery where they are collected. Such fees should not be an offset to regular budget appropriations for NMFS.

Q. 6. You state that you think the 602 guidelines are adequate to control overfishing. How do you explain the overfished groundfish fishery in New England? How do you explain that NMFS currently estimates that up to 1/3 of all commercially harvested species are overfished?
A. The language proposed for defining overfishing in the Act is essentially identical to the language in the current 602 guidelines. National Standard 1 already requires preventing overfishing while achieving optimum yield. Section 303(a)(1)(A) requires management plans to contain measures necessary to prevent overfishing, etc. Redundant language in the Act will not be a quick solution to overfishing.

Overfishing in New England has resulted from several causes including (as major ones) too lax controls on fishing in the past and government encouraged overcapitalization of the fleet.

The reason NMFS estimates that up to one-third of all commercially harvested species are overfished is because it is very likely true. I think that estimate covers all U.S. fisheries -- it may even cover all fisheries worldwide -- so it is a problem not peculiar to New England alone.

Q. 7. Why do you feel that a description of essential habitat for each fishery is too burdensome on the Councils? Don't the Councils currently look at habitat concerns? Isn't this something the Advisory Panels and the Scientific and Statistical Committees can develop for Council approval?
A. Describing habitat is a very technical exercise best done by oceanographers and other marine scientists working collaboratively. The Councils do not have enough staff nor staff with the requisite skills to do such descriptions beyond the simplest, commonplace level.

FMPs do generally make reference to habitat or environment on the basis of information readily at hand. Council staff does not research habitat. Our advisory panels are composed of industry members who generally have only minimal scientific knowledge or skills. Our scientific and statistical committee (SSC) reviews and comments on scientific analyses performed by staff or plan development teams. The SSC does not do staff work for the Council.

Q. 8. In Lee Anderson's paper from the last Congress, there is a request that the Magnuson Act be amended to allow an emergency action to be voted on without the Regional Director voting. In your opinion, does the Secretarial review of an emergency action unnecessarily delay the implementation of the action? Can you give any examples?

A. Secretarial review of a Council request for emergency action may result in emergency action not being taken at all. It is discretionary for the Secretary if the Council vote is less than unanimous. See section 305(c)(2)(B). Regional Directors have standing orders from NMFS headquarters to always vote against requests by Councils for emergency action. This leaves the decision of whether or not to implement emergency rules to the Secretary. That makes section 305(c)(2)(A) essentially meaningless.

Q. 9. Do you know of any instance where a Regional Director has voted with the rest of the Council for a unanimous vote on an emergency action?

A. Virtually never. There may have been one case where NMFS instructed the Regional Director to ask the Council to request an emergency action and where the R.D. then voted yes on the request by the Council.

JMB/pwc
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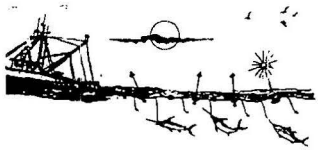

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4/4/95

Honorable Jim Saxton, Chairman
House Committee on Resources
Subcommittee on Fisheries, Wildlife and Oceans
House Annex 1
Washington, DC 20515

Dear Jim,

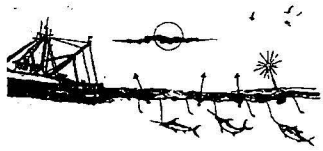
In response to the additional questions presented to me in your letter of March 16, 1995, I offer the following document. Please include it into the public record, along with my testimony.

I have also included an addendum that details some of my experiences on how the current approach to bycatch and waste issues has affected the U.S. Atlantic pelagic longline fishery for swordfish and tunas. I have included this for your information and to illustrate my point that it is impossible for Congress to address the complexities of each fishery within the Magnusor. Act.

Do not hesitate to call on me if additional questions should arise. I look forward to working closely with you throughout the task of reauthorizing these important fisheries Acts.

Sincerely,

Nelson R. Beideman
Exec. Dir. BWFA



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April 4, 1995

Honorable Jim Saxton, Chairman
Subcommittee on Fisheries, Wildlife and Oceans
House Committee on Resources
805 House Annex 1
Washington, DC 20515

Dear Jim,

Reducing waste in all U.S. fisheries is a formidable task that will take a long time to achieve. We simply do not have the technology or the research resources that are required. Fishermen as well as the public aspire to the common sense "Waste not - Want not" goal and continuously adjust their fishing gear to maximize their targeted catch. Hook fishermen are especially aware of incidental catch because every hook taken by an unmarketable species is unavailable to catch a targeted species. Managers must apply this approach to fisheries management. The species-specific regulatory approach favored by NMFS and state managers, often results in increased regulatory waste while they are attempting to address allocation conflicts between users. Congress must begin turning the management of our fisheries toward a more effective multi-species and ecosystem-based approach. Initiating a holistic management system will require considerable resources; however, postponing this effort will gain nothing.

It is impossible and ineffective for Congress to micro-manage all aspects of U.S. fisheries. Our fisheries are simply too complex and the users too diverse to cover all circumstances under specific definitions in the Magnuson Act. To do so will almost certainly undermine the flexibility that managers will require to work with user groups in a public process to develop practical measures relevant to each fishery. The regional councils and in the case of Atlantic highly migratory species, the Secretary's task is to interact with the different fisheries stakeholders and address the biological and the socio/economic issues in an open public forum. The result should be effective, practical and enforceable. What may be effective for the Northwest fisheries probably does not fit the issues of the Southeast or New England. Congress must find a way to set firm mandates to eliminate waste as an overall national fisheries management policy and cut the funding and programs that stray from this mandate. All levels of fisheries management must be accountable for their actions.

The suggested **"bycatch" management amendment** (attached) addresses what a building coalition of fisheries groups , including BWFA, consider to be a viable solution that will allow Congress to mandate a fair and practical national policy on this issue. We feel this National Standard should replace the detailed bycatch regulatory language in HR 39 including the present standard, the various bycatch definitions, the section 303 provisions and the region-specific provisions.

To respond to the questions presented to me in your letter of March 16,1995:

How to address regulatory waste, bycatch and utilization.

1). Congress should firmly mandate a national policy to deal with utilizing, to the extent practicable, dead fish captured in all U.S. fisheries while reducing avoidable bycatch and decreasing bycatch mortalities. This national policy must provide a firm directive to alter NMFS's reliance on regulations that result in waste. It must also allow the managers the flexibility to work with users to develop effective programs and phase in changes in regulations that will minimize, to the extent practicable, waste in specific fisheries. Because we are food producers and also business people, we need to address these issues from an economic as well as biological perspective.

The emphasis must remain on eliminating waste. Ideally, every fish that is either dead or mortally injured should be retained and used for something, rather than be discarded overboard. If it is edible, it should be used for food ~ either sold or donated to the hungry. If it is not fit for human consumption, it should be made into pet food or other commercial products (oils, fertilizers, meal, etc.) to the extent economically and physically possible. If possible, it is better used than wasted; however, we clearly recognize that little if anything is ever actually wasted in the sea since virtually all dead discards are ultimately consumed by various marine life and thus re-enter the food chain.

Full utilization is not practical in many fisheries. That doesn't mean that we shouldn't begin heading in that direction where it is feasible and when it makes good sense. Perhaps during a transition, some fisheries could be required to land a portion of their bycatch to be analyzed for species by count, size, sex and then properly utilized in some way either for commerce, donation, animal feed or fertilizer. It has been my experience with the pelagic longline fishery that the majority of what is discarded could be used to supply needed protein to hungry people. It is not unusual to see fish in Europe's markets that are similar in species and size to what U.S. fishermen are required to discard.

In the present bill the definition of bycatch together with the new National Standard #8, exempts a large source of fish mortalities out of the bycatch issue ~ the recreational sector. Recreational fishermen are also involved and have discards caused by regulation on size and bag limits and catch unusable species. Presently, HR 39 does not directly address the overall issue of reducing regulatory waste in fisheries management to the extent practicable.

Documenting all fish mortalities.

2). If we are to continue a scientific based approach, we must look at what is important to the scientific models. From a layman's point of view, the data must reflect how many fish mortalities occur by age class and sex if possible. If this basic information is not reasonably accurate, our current reliance on analysis of catch by age to set allowable harvests is undermined and may render our approach to fisheries management ineffective. Yet NMFS continuously fails to address the reliability of our basic catch information as they promulgate regulations that are directed at user groups instead of across the entire fishery involved. This is especially true for highly migratory species fisheries.

Congress should require catch and effort documentation for all users of marine resources. It should be a responsibility of all who want the "right" to fish - commercial and recreational alike. We must require all who catch marine species to report their catch because there is no other way to keep track of exactly what is being caught.

All fishermen and/or processors should submit timely reports either daily, weekly, or monthly to the National Marine Fisheries Service. Scientists can then accurately track quotas and assess the status of the stocks. Logbooks are already in place for most commercial fisheries, yet they are absent from for-hire and recreational fleets that contribute substantially to fish mortalities.

The use of observers should be as broad as the budgets will allow and used as a cross-check to verify self-reporting. All vessels: charter, party, commercial, and recreational in all fisheries should be covered by observer programs, or appropriate levels of dockside intercept surveys.

The need to have observers to ensure that commercial fishermen do everything they can to release unmarketable fish alive is not an efficient use of limited funding. In my mind, observer coverage is necessary only to provide a cross-check to already fairly accurate daily logbooks in many fisheries. An ongoing national observer program may provide managers with invaluable data on trends in U.S. fisheries. The Atlantic pelagic longline fishery has obtained extremely valuable information from approximately 5% coverage.

Currently, the pelagic longline fishery has mandatory daily logbooks, mandatory tally sheets within 5 days of offloading, mandatory observer coverage if selected, and mandatory bi-weekly dealer reports. We are also exploring dealer reporting within 24 hours and daily vessel catch reports via continuous satellite position monitoring. Unfortunately, despite the wealth of information available from the longline fishery, the scientific data for many of the species we harvest is little more than guesswork because NMFS can only estimate what the recreational sector is catching, discarding dead, and the mortalities of hooked fish when they escape or are released. The recreational sector has recently raised this issue because the U.S. has reported only about 400 MT of yellowfin tuna to ICCAT in the past few years. Since ICCAT has recommended capping effort, recreational users may face unnecessary restrictions if their catch is actually several thousand metric tons, as they maintain.

Congress should ensure that data gathering, monitoring, and observer coverage are comparable for all users contributing to mortality in a fishery, without exception. We suggest that all businesses including headboats, charterboats, taxidermists, and tournaments be required to have trip reporting, logbooks, and appropriate observer coverage to validate this reporting. We think that outside contractors could supply recreational boaters with mail-in optical scan postcards through the state and federal agencies that require vessel registration. NMFS could obtain weekly reports that would provide much better information than presently exists.

How to determine bycatch ratios.

3). The answer to this question will vary from fishery to fishery. The issues should be discussed between the fishery managers and the fishery participants. It is difficult to set a number or percentage of allowable incidental harvest but it can be workable and practical if it is reviewed and revised to reflect the current situation on the ocean. It should be based on an average

interaction rate by month, area, and/or method of harvest. If the percentages are based on old data, they may result in waste. For example, the incidental longline quota for Atlantic bluefin tuna above 34°N was set in the early 1980's at 2% of the trip catch in weight. Depending on how much you caught, this could be 3 or 4 fish. Due to reduced catches, as swordfish stocks have declined, the 2% criteria now amounts to a fraction of a fish. The criteria has not been revised to reflect the current situation in the fishery and is causing unnecessary waste.

Any proposed system should include an incentive to reduce the catch of unwanted species and encourage fishermen to improve the mortality ratios, not punish them for trying new ideas. It should offer some incentive to vessels that catch fewer of the regulated species with perhaps an emphasis on tag and release programs.

All concerned parties must recognize that as some stocks of fish (such as bluefin tuna) and protected turtles and mammals improve, interactions will increase. Logic dictates that this will happen and fisheries managers should not be alarmed to see more interactions if the management programs in place work in rebuilding the interacting stock.

Bycatch data and monitoring.

4). In terms of actually measuring bycatch, I can only comment on the pelagic longline fishery, where fish are individually handled. In trawl fisheries, there will be a much greater problem, as accurate measurements may in fact contribute to higher mortalities. In the longline fishery, the existing observer coverage allows NMFS to estimate not only any dead discards but also live releases. It is important to recognize that in terms of stock assessments, we can use reasonable statistical estimates of dead discards in the model as long as they are based on a good sample size and the discards are a relatively small portion of the total number caught. The U.S. is the only nation that has formally submitted estimates of our dead discards to ICCAT.

I hope these explanations help clarify the difficulties involved with the "bycatch" issue and illustrates the complexities that must be discussed. If you have any further questions, please contact me and I will help in anyway that I can. Thank you for your interest in finding solutions to these difficult problems.

Sincerely,

Nelson R. Beideman

Nelson R. Beideman
Exec. Dir. BWFA

Addendum:

Some of the effects that the current lack of a firm fisheries mandate to deal with bycatch and regulatory waste has on the Atlantic highly migratory species pelagic longline fishery.

Over the life of Blue Water Fishermen's Association, we have been most successful on our scientific and research programs with fishermen who understand the basic principles and potential benefits of fisheries management and conservation. Understanding the theory behind maximum sustainable yield enhances our already present "conservation ethic" and at the same time tweaks "our selfish desire" to have greater security, in terms of healthier stocks, for our future to support our families and crew. Mistrust tends to fade with education as we recognize that sensible and effective management sustains the stocks and our incomes. It may be that the most constructive thing the Congress could do for the MFCMA is to instruct NMFS to make basic literature more accessible and to begin the arduous task of educating all fishermen on the basics of responsible fishing practices.

I'd like to briefly explain some of these issues; however, quantitative studies of all users are necessary to set bycatch priorities in a fishery. The Atlantic pelagic longline fishery is being proactive by attempting to study and address bycatch priorities for this fishery. BWFA and National Fisheries Institute (NFI) have initiated steps, through a Saltonstall-Kennedy Grant, that we feel are necessary to prepare for a comprehensive management plan for the pelagic longline fishery. There are three phases to the overall study of this fishery.

S-K Grant Objective: This project will provide baseline information to members of the industry to encourage practical suggestions relating to operational changes which could minimize bycatch.

1). Prepare quantitative information covering observed bycatch in the pelagic longline fishery. This includes placing into a usable format observer information on dead/live ratios for all species captured and retained, released or discarded.

2). Industry Bycatch Workshops to promote two way information on avoidance and mitigation techniques and to develop the industry's ideas for setting species priorities and necessary research. This will include a questionnaire being developed by BWFA/NFI/NMFS to receive information on the fishermen's attitudes and their concerns and priorities on these issues.

3). If funding is available, a panel of pelagic fishery experts including the different interest groups and international ICCAT participants could comprehensively address these multi-species fisheries and bycatch priority issues; by:

* First, laying out the status of involved species and catch.
* Accurately describe sources of mortality including landings and discards from various user groups.
* Reviewing known industry techniques for bycatch avoidance, decreased mortality and utilization of dead catch.
* Set research priorities for potential avoidance and mitigation techniques.
* Determine practical measures to implement the best available techniques to reduce bycatch of priority species.

Despite the best efforts of fishermen and managers to develop methods to reduce bycatch, a certain amount (depending on area and season) of unmarketable resources may still be wasted unless and until we implement programs to recover that waste and find uses for it. Unfortunately, poverty is increasing in America and the World. If allowed, U.S. fishermen could alleviate some of the hunger in America, while adding to the scientific data necessary to provide better management for U.S. fisheries.

These issues and their difficulties cannot be discussed without mentioning the role that user group conflicts plays in complicating and slowing the process. Often, politics and hidden agendas derail practical and scientifically sound ideas. For example:

As you may know (letter attached), there have been additional complications in NMFS implementation of the final rule for the Second Harvest Undersized Swordfish Donation Program. Despite nearly three years of intensive work to develop a strictly controlled program that was still practical for voluntary participation, delays continue. An impossible demand from several groups, including sportfishing interests and one "conservation" group, has created these delays. In an attempt to make this program so impractical and prohibitively expensive that industry would abandon it, they demanded 100% observer coverage to ensure that a vessel releases all live undersized swordfish. Observer coverage is not necessary for fishermen to release live fish that cannot be marketed. Further, one hundred percent observer coverage for this program is not the best use of limited NMFS resources. However, industry has worked to meet this new requirement in order to prevent further delays. This sport/environmental group is opposed to the program, because it may bring U.S. commercial fishermen good public relations for assisting needy individuals. The politics inside NMFS may squash this experiment, even though public comment throughout the open process was overwhelmingly in support.

This is only one example of good faith ideas from fishermen being stymied by a small minority of politically-powerful individuals because the proposal did not suit their agenda. There are many among them that really do not want to see the "bycatch" issue addressed in an effective, realistic way but would rather use the issue of "bycatch" to promote their true agenda to close commercial fisheries altogether. Nothing short of that will satisfy their cause.

There are other areas of fisheries management where waste is built into the regulations:

The pelagic longline fishery targeting Swordfish and Tunas has documented a small bycatch of Large Coastal Sharks through voluntary reporting and by scientists on commercial and research vessels since the early 1960's. NMFS encouraged a directed shark fishery to develop in the late 1970's and early 1980's. The recently implemented Shark Fishery Management Plan established a total allowable catch with closures once the semi-annual quota is reached. When the shark closure occurs, the traditional bycatch on longline vessels must be discarded. There must be a mandate in the legislation to prevent conservation efforts from imposing more unnecessary waste. BWFA repeatedly suggested that the traditional incidental shark fisheries be given sufficient year-round allocation before setting a directed quota. This did not happen and the unnecessary waste of the resource continues.

Another Example: Year after year, the pelagic longline fishery for swordfish and tunas has done its best to avoid unnecessary hook-ups of bluefin tuna. U.S. longline fishermen have been forced by law to discard these valuable edible fish since 1982, regardless of where they are fishing.

We submitted proposals to NMFS and the ICCAT Advisory Committee to alleviate this problem since the data shows that bluefin tuna stocks are stabilized. This proposal sets up a U.S. longline index of abundance for bluefin tuna, that takes advantage of the far ranging areas, temperatures, and times of the year in which this fishery may interact with bluefin tuna. The ICCAT Advisory Committee is supportive; however, NMFS has ignored our ideas because they are entrenched in their wasteful regulatory approach, and do not want to deal with protests from other users, even though these fish have been documented and reported to ICCAT.

We are the only country that records discards. Without changing the amount of quota to the U.S. (as recorded in the actual assessment) or taking quota from other user categories, the incidental longline category could land the average amount estimated as dead discards. This would also provide additional monitoring data including critical Catch Per Unit Effort data from the more widely distributed pelagic longline fishery. The only problem is this would require allowing multiple landings (2-3 per trip) during the times of the year that bluefin migrate through the offshore waters where pelagic longlining is prosecuted. Again, there is no firm mandate for managers to develop constructive programs to help eliminate waste when feasible. Each year as the stock rebuilds, an ever greater number of bluefins will sink dead to the bottom, without the age/size data that help to track stock condition and size. Instead these fish could provide a substantial benefit to our economy and also have a positive effect on our trade deficit with Japan. Without a firm mandate, the politics within NMFS will continue to require this waste.

Another example: The Billfish Fishery Management Plan takes a political, rather than scientific, approach. It provides exclusive access to an international foodfish for the U.S. recreational sector, while totally preventing other owners of this public resource, including seafood consumers, from sharing in any benefit from the resource. Commercial fishermen largely ignored the development of this plan in 1988, in the hope that upon receiving this "sacred cow", the recreational sector would moderate their threat of eliminating U.S. commercial longlining. This did not happen. The Billfish Foundation recently submitted a proposal to NMFS that, if implemented, will close the majority of the U.S. EEZ to commercial longlining during the most productive months. They have taken the position of portraying longline as destructive gear, despite the similarities in method of harvest and species catch composition between longline and offshore sportfishing. Cash tournaments that can pay more than $240,000.00 for a single 67 pound white marlin, raise funds for this lobbying effort.

This approach is seriously flawed, ineffective, and undermines constructive attempts to gather the international cooperation that is necessary to rebuild declining billfish stocks. The combined U.S. recreational and commercial share of billfish catches in the Atlantic, including longline discards reported to ICCAT, for 1993 are as follows:

8.1% Blue Marlin 3.2% White Marlin 1.3% Sailfish

Currently, sportfishing interests fail to acknowledge that the combined efforts of hundreds of recreational tournaments, charter vessels, and private sportfishing boats, is clearly a significant source of billfish mortalities. In fact the number of billfish they kill may be comparable to or even exceed U.S. longline billfish mortalities. Although many sportfishermen have placed a concerted effort to promote "release" tournaments; many "kill" tournaments continue to expand. U.S. sportfishermen and resort developers have extensively promoted tournaments throughout the Caribbean. Promotion of further effort on these stocks is not a responsible direction for any industry to take.

A few sportfishermen are dedicated to making billfish a "gamefish" world-wide and eliminating all commercial longline fisheries in the process. They have resorted to campaigns targeting consumers, restaurants, and retail outlets to eliminate even legally harvested marlin. Fleets from other nations, as well as our own fishermen, must see incentives and rewards for their conservation efforts. If effective steps are to be taken to rebuild depressed billfish stocks to healthier levels, the value of this commercial harvest for food consumption must be recognized. All Atlantic harvesters will not cooperate without a fair and equitable approach.

It has never been a problem for U.S. longline fishermen to release billfish that come to the boat alive. BWFA has worked to spread the common sense practice of tag and release for all live billfish to the other ICCAT countries. Thirteen of our BWFA Captains are in the top 20 taggers for the Southeast Cooperative Tagging Program and the Billfish Foundation, itself, recognized BWFA's efforts in a special recognition award in 1994. This approach internationally would potentially reduce billfish mortalities by 30 - 40%. U.S. commercial fishermen understand the relevant value sportfishing for these species has compared to the low market value of billfish for consumption. However, discarding dead billfish is yet another regulatory loss of valuable protein. Not only is the American public denied market access by this wasteful regulation but also the loss of valuable scientific data and monitoring information that is inherent to this one-sided approach.

Ask these same questions of fishermen in different fisheries and you will probably receive descriptions of many similar examples of waste and possible solutions. Without a strong mandate from Congress, it will continue. Last year, the Second Harvest, national foodbank network, based in Chicago, put forth a Magnuson Act amendment (attached) that you supported. Our industry coalition amendment also addresses the same concerns within the broader context of the "bycatch" issue, in a more flexible manner. BWFA, NFI and many other groups attempted to address the waste issue in the definition and alterations to the new National Standard #8 in H.R. 39. The environmental community successfully opposed these constructive suggestions that were offered by many different fisheries. Their contention that bycatch can be reduced to zero is wrong. Bycatch will never be reduced to zero and Congress must address the waste issue. We must all try to ensure that unwanted bycatch mortalities are minimized. We must also pursue fuller utilization of all dead fish in the most beneficial way ~ whether it be for commerce, donation, animal feed, or fertilizer.

As fishermen realize that we need accurate data for the security of our futures, many of our current problems caused by insufficient data will be solved. That message, once successfully ingrained in all fishermen, will minimize the need for extensive observer coverage. Why not emphasize educating fishermen? A more constructive positive attitude about working with fishermen, rather than the negative, mistrustful attitude which characterizes the NMFS command and control approach, might change the policies that have cost this nation and our resources a great deal because of unnecessary waste. There must be an incentive to work toward a national goal that all fishermen can support. It cannot all be continual sacrifice with no end or reward in sight.

With education, fishermen may see the reward of a more secure future. As market incentives develop, our ecosystem should be more broadly used and the stresses of overly selective removals lessened. It will take many forces at once - legislative, marketing and education among them to achieve the goal of a healthy ecosystem providing food for the public and a livelihood as well as recreation for fishermen and their families.

Attachment A: 1 page

"Bycatch" Management:

Both the fish harvesting and fish processing industries, together with Congress, must establish as a national priority improvement in the conservation and utilization of fish and the reduction of discarded catch that can not be utilized. Even though this issue is of national concern, the particulars of "bycatch" reduction and increased utilization are complex issues that differ widely from region to region and are just as dynamic and diverse as the fisheries themselves. Consequently, "bycatch" management solutions will be equally diverse and Congress simply can not be expected to contemplate every unique detail of each U.S. fishery.

Accordingly, like all national fishery policies, a national "bycatch policy" should provide a maximum degree of flexibility and discretion to the Regional Councils and the Secretary to resolve fishery-related solutions to "bycatch" management. The Councils, and in the case of Atlantic highly migratory species, the ICCAT Advisory Committee, are in the best position to resolve these complex issues. In fact, efforts by Congress to micro-manage these matters through very detailed amendments to the Section 303 Fishery Management Plan requirements or through region-specific language are likely to complicate the ability of management authorities to develop truly practical and workable solutions.

Instead, by incorporating specific national objectives to minimize bycatch and waste and to encourage fuller utilization in the National Standards, Congress can make it clear that reducing waste is a national priority. Congress can also clearly establish that the reponsibility to implement this policy is the job of the proper management authority and they must implement these policies according to the characteristics of each fishery. Such a clear statement avoids the need to develop interpretive definitions of new "bycatch" terms. The following bycatch and utilization policy objectives are fundamental and straightforward:

1. In the first place, minimize the catch of fish that cannot be utilized.
2. Minimize the mortality of those fish that are caught but cannot be utilized.
3. Maximize the utilization of those fish that are captured dead.

Finally, a practical policy dictates that Congress require that the harvesting and processing industries achieve these objectives to the extent practicable, and to ensure that these objectives are not used solely for the purpose of economic allocations.

Proposed Amendments to H.R. 39 - Bycatch:

* On page 4, strike lines 13 through 25, and renumber the succeeding paragraphs accordingly.

* On page 11, strike lines 6 and 7 and insert the following in lieu thereof:

"(8) Conservation and management shall promote practices by United States fishermen and fish processors in a fishery that, to the extent practicable, (A) minimize the harvest, and reduce the mortality of fish that are not utilized by U.S. fishermen or processors in that fishery, and (B) maximize the utilization of those fish that are captured dead; except that no such measure shall have economic allocation as its sole purpose."

* On page 18, strike lines 14 through 22 and insert the following in lieu thereof:

"(A) in paragraph (5) by inserting "according to a standardized reporting methodology" immediately after "thereof."

* On page 19:

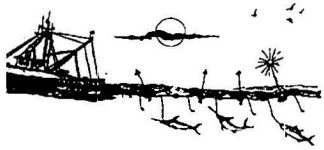
(1) on line 14, insert "and" at the end of thereof;

(2) strike lines 15 through 22; and

(3) on line 23, strike "(13)" and insert "(11)" in lieu thereof.

* Strike page 30, line 10 through page 32, line 5, and re-number the succeeding sections accordingly. (i.e. Strike section 14 of the bill and re-number succeeding sections of bill.)

Attachment B: 2 pages



BLUE WATER FISHERMEN'S ASSOCIATION

2/12/95

Richard Stone
Chief, Highly Migratory Species Division
National Marine Fisheries Service
1335 East - West Highway
Silver Springs, MD 20910

Dear Dick,

I am writing in an attempt to jump start the Second Harvest Undersized Swordfish Donation Program. As you may know, there have been complications at the Agency level with getting this constructive experiment underway. Following nearly three years of intensive work to put forth a very tightly controlled program that was still practical for voluntary participation, the impractical criteria set by the Center for Marine Conservation has created these further delays.

Unfortunately, CMC did not see fit to participate in the Second Harvest Task Force. If they had, they would know Observer Coverage is not necessary for fishermen to release live fish that cannot be marketed. One hundred percent Observer Coverage for this program is not the best use of NMFS resources; however, industry has worked to meet this new criteria to prevent further delays.

We may need to alter implementation procedures South of Cape Hatteras where smaller vessels are unable to accommodate another man on board without sailing operationally undermanned and must bear insurance costs directly to the vessel. I recommend that we continue to seek volunteers who agree with the current program criteria while we discuss viable alternatives. Meanwhile, the following volunteers North of Cape Hatteras are prepared to take the next step necessary to implement the program. Each vessel meets the criteria of having participated in previous conservation programs and have no negligent fisheries violations that would make their participation questionable.

F/V Sea Lion VIII, Owner/Operator Larry Thompson, currently based out of Portland, ME.

F/V Eagle Eye II, Owner/Operator John Caldwell, currently based out of Fairhaven, MA.

F/V Hungry Dog, Owner/Operator Tom Davis, currently based out of Montauk, NY.

F/V Lori L., Owner John Larson, Capt. Mike Johnson, currently based out of Barnegat Light, NJ.

It will be necessary to obtain logistical information from each vessel; such as a list of ports, docks and fish dealers typically encountered during a full year. Throughout the Second Harvest Task Force discussions, it was recognized that any dock or dealer willing to participate must be allowed to volunteer their services for this pilot as not to have our Government mandate who a vessel can or cannot do business with. In these cases all primary docks and dealers have already applied to the program. Ancillary logistical set-ups will be the primary focus, as each vessel uses different ports during their year-round operation. Once this information is obtained, information on the program should be sent to each dock, dealer, and Local Foodbank in a vessel's logistical chain to have them sign-up.

Following this transfer of information, I suggest each logistical chain be brought together by Conference Call to ensure each operation is familiar with their perspective responsibilities in the program. Once this is accomplished, necessary equipment and letters of permission in plastic covers should be sent to each participant in a vessels chain of logistics and the program be placed on line one at a time by vessel. If we start with the Lori L., I will be able to help monitor any initial problems that may arise.

I'm sure we will be working closely to implement this program. Typically fishermen work long hard hours, even when ashore. I am available to contact these fishermen after hours or on the radio if necessary. I look forward to initiating this program that moves fishery management in a better direction than the current mandate of regulatory discarding and the resulting waste of science and protein.

Thank you for your consideration of my views on implementation of this constructive experiment.

Sincerely,

Nelson R. Beideman
Exec. Director BWFA

Attachment C: 3 pages

SECOND HARVEST
NATIONAL FOOD BANK NETWORK

August 2, 1994

Congressman Jim Saxton
Merchant Marine and Fisheries Committee
United States House of Representatives
1334 Longworth Office Building
Washington, D.C. 20515

Dear Congressman Saxton:

The purpose of this letter is to ask your support for a proposed amendment to the Magnuson Act which provides fish to food banks. As you know, Congress is scheduled to reauthorize the Magnuson Act, the law that regulates fishing in U.S. waters. From my perspective as the president of an organization committed to the alleviation of hunger in America, I think that this provision has the potential of making more protein-rich fish available for hungry Americans. This distribution is possible through the existing network of 185 food banks serving over 48,000 charitable agencies including soup kitchens and emergency food pantries.

Federal fisheries regulations presently require the discard of millions of pounds of fish even though the fish are not alive and are therefore of no sustaining value to the commercial fisheries. There is no existing requirement that less wasteful alternatives be explored. The reauthorization of the Magnuson Fisheries Conservation and Management Act provides a great opportunity to address what is, from our point of view, an unnecessary barrier to available protein for hungry Americans.

Second Harvest requests your strong support for this amendment for these reasons:

- It requires fisheries to seek alternatives to the mandatory discard of unlive fish.
- It allows the option of donating fish to food banks as an alternate plan to dispose of unlive prohibited species bycatch and other mandated discards.
- The costs of processing and delivery are shared by both the private industry and the nonprofit sector.

- Reduction of National Marine Fisheries Service's administrative and logistical support expenses from direct donation of forfeited fish to domestic hunger relief organizations would be a cost-effective benefit to the nation.
- Since millions of tax dollars are spent for hunger relief each year, it seems unreasonable to discard, by law, millions of pounds of usable protein rich food.
- The proposed amendment is moderate, supportable, and potentially effective as a mechanism to provide hunger relief and to reduce inefficiencies and waste.
- It would have no negative impact on federal fisheries management.

Your support for this amendment and the issues it addresses in the Magnuson Act reauthorization process could help us feed millions of hungry Americans.

Sincerely yours,

Christine Vladimiroff, O.S.B., Ph.D.
President and Chief Executive Officer

Enclosure: Proposed Magnuson Act Amendment

MAGNUSON ACT
AMENDMENT PROPOSAL

Add a new paragraph at the end of subsection 1851 (a)

SEC. 301 16 USC 1851
NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

(a) IN GENERAL. -- Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

"Regulatory discard of dead fish or fish parts will not be used as a management measure in any fishery unless alternatives are assessed, and it can be shown that no effective alternative can be implemented."

Add a new paragraph at the end of subsection 1853 (a)

SEC. 303 16 USC 1853
CONTENTS OF FISHERY MANAGEMENT PLANS

(a) REQUIRED PROVISIONS. -- Any fishery management plan which is prepared by any Council, or by the Secretary, with reepect to any fishery, shall --

"contain a description of measures taken to assess and implement, wherever possible, alternatives to regulatory (mandatory) discard as a strategy for managing prohibited catch.

(A) Alternative disposition of prohibited catch can include the option to allow or require processing for, and contribution to, a National Marine Fisheries Service approved, non-profit, distributor for the benefit of a national food bank network serving the economically disadvantaged."

NATIONAL RESEARCH COUNCIL
COMMISSION ON GEOSCIENCES, ENVIRONMENT, AND RESOURCES
2101 Constitution Avenue Washington, D.C. 20418

OCEAN STUDIES BOARD

OFFICE LOCATION:
Milton Harris Building
2001 Wisconsin Avenue, N.W.
Washington, D.C. 20007
(202) 334-2714

April 14, 1995

The Honorable Jim Saxton
Chairman
Subcommittee on Fisheries,
Wildlife and Oceans
O'Neill House Office Building
House Annex 1, Room 805
House Committee on Resources
Washington, DC 20515

Dear Congressman Saxton:

Thank you for the opportunity to testify before your subcommittee on February 23, 1995 regarding H.R. 39 and the reauthorization of the Magnuson Fishery Conservation and Management Act. I am pleased to respond to your follow-up questions of March 21. My answers are given below.

1. You apparently feel that there is significant overcapitalization of the U.S. fishing fleet. What do you propose to reduce this fishing effort? Do you advocate a vessel buy-out program and if so, considering tight budget constraints at both the State and Federal levels, how do you propose funding such a program?

In the NRC report, the committee recommended that fishery management should control entry into and wasteful deployment of capital, labor, and equipment in marine fisheries. Furthermore, we recommended the fishery management councils should decide the form of controlled entry and that it must be responsible and equitable, and have adequate phase-in periods. We also noted that limited entry alone cannot prevent overcapitalization; some form of control of fishing effort and/or total catch is also needed. (p.33)

We did not consider vessel buy-out programs in our study.

2. You seem to advocate limited access programs and ITQs in particular. How do you deal with the social and economic dislocations that occur with ITQ programs (both for individuals and communities)?

(See also response to question 1 above.) In the NRC report, we describe and discuss briefly five possible mechanisms for limiting entry, including ITQs (p.20). However, we did not advocate any mechanism in particular. Regarding individual quotas, we specified concerns which we felt (either some or all of which) needed to be addressed

in order to realize higher benefits to conservation and society: namely, "preventing overconcentration of the quotas; effectively discouraging the practices of bycatch discard and highgrading (keeping only the larger, more valuable fish); providing opportunities for future entrants to a sustainably managed fishery through future quota reserves or other means; ensuring certainty of tenure in order to reduce risk created by ambiguities in the legal fabric; preserving and promoting the economy and way of life of coastal fishing villages; addressing distributional or equity issues that arise with the disposition of access rights to a public resource in a manner that bestows potentially large windfall profits on the initial private recipients of the newly created marketable privileges; and ensuring that, at least initially, any increases in administration and enforcement costs necessary for a successful transition to, and implementation of, large-scale individual quota systems is adequately funded by the owners of quotas and/or increased budget allocation for the agency." (p.21)

3. Whether a limited access system is in place or not, why is the Council setting an acceptable total allowable catch not adequate to protect fishery resources?

> One of our major conclusions was that open access to fisheries and the resulting overcapitalization were major problems inadequately addressed in most contemporary fisheries management. We recommended that in order to prevent overfishing, managers should control entry and control effort and/or total catch. (p.33)

4. In your report you advocate an independent entity to review management and conservation measures. Isn't this just adding an additional level of bureaucracy to the system?

> In our study, we concluded that the present level of oversight of fisheries management by Congress is not sufficient. We determined that some form of independent mechanism is needed to address the issues of adequate oversight of management and implementation of the MFCMA, resolution of conflict involving objection to specific management measures and/or actions, and development of long-term strategic planning for securing the future viability of U.S. fish stocks and the U.S. fishing industry. (pp.39-40)

Thus, the role of the independent entity is not redundant because, as proposed, it would execute functions that are lacking in the existing management process.

Specifically, we recommended that the new body be responsible for:

"(A) Reviewing and commenting on
(1) Scientific and technical issues underlying the council's and Secretary's fishery-management decisions.
(2) Philosophical aspects of emerging management strategies.
(3) National management goals.
(4) Overlapping provisions and jurisdiction among the MFCMA, the Marine Mammal Protection Act, and the Endangered Species Act.
(5) Environment and habitat-protection issues.
(6) Performance of the councils and the Secretary.

(B) Mediating or rendering non-binding conclusions on
(1) Challenges to councils by the public on issues related to conflict of interest and improper statistical decisions.
(2) Conflicts between the councils and the Secretary.

(C) Reporting annually to Congress on the implementation of the MFCMA and to the President on the effectiveness of the implementation agencies: NOAA/NMFS (data collection and analysis), the Coast Guard (enforcement), and the Department of State (international)." (p.40)

5. You mention a need to determine and protect those areas that "are critical in fish reproduction and growth." Do you feel the provisions in H.R. 39 are adequate to make that determination?

As mentioned in my written statement submitted for the record, H.R. 39 contains several noteworthy provisions aimed at reducing bycatch problems and protecting fish habitats, including a requirement for the Secretary of Commerce to identify the essential fishery habitat for each fishery and for the council to include a description of the essential habitat in management plans along with conservation and management measures necessary to minimize adverse impacts on that habitat caused by fishing.

The NRC report describes many human activities, in addition to fishing, that have altered habitats important for sustaining fishery resources. For example, in many areas habitats are severely affected by pollution, including nutrient loading from point and non-point source discharge,

agricultural runoff, and aquaculture; dumped foreign substances such as toxic material, dredge spoils, or oil spills; thermal discharges; and excessive light and noise. The introduction of exotic species, or of man-made structures such as artificial reefs that modify beach sand budgets, also alter habitats. Fishing activities can alter nutrient levels and bottom sediments resulting from bottom trawling, dredging, and processing operations. (pp.29-30)

The committee recommended development of a major national program to determine what habitats are critical for fish reproduction and growth and how they can be protected. Furthermore, the committee suggested that two early tasks would be to define the environmental components essential for fish reproduction, survival, and production at the level needed for maintenance of fisheries resources, and to identify and understand current causes of habitat degradation. (p.44)

Thus, H.R. 39 takes a first step toward identifying critical habitats and minimizing adverse affects by fishing activities, but there are other human activities that adversely affect fish habitats. We recommended that steps need to be taken to protect critical habitats and more information is needed about the current causes of habitat degradation (in addition to adverse effects from fishing activities).

6. After listening to the first panel's testimony, there seems to be quite a difference in opinion on how much the Magnuson Fisheries Conservation and Management Act needs to be amended. Do you believe the Magnuson Act has the ability to work as it is written or are major revisions needed?

The objective of the NRC report *Improving the Management of U.S. Marine Fisheries*, was to present recommendations while Congress considered changes in the MFCMA. We acknowledged that the report is not an in-depth evaluation or assessment of all of the issues relevant to the MFCMA. Rather it reflects the collective, deliberated views and recommendations of experts, who are well familiar with all aspects of the MFCMA, on how the act might be improved in the reauthorization process. The committee's recommendations were designed to enhance the most effective aspects of the present MFCMA and to introduce critically needed clarifications and structural improvements. (p.11) Thus, we believed that management, currently under the MFCMA, could be improved; some of our recommendations require a change in the MFCMA and others do not necessarily require a change in the MFCMA, but Congress could ensure

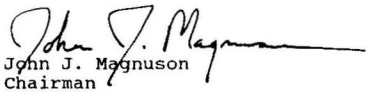
their implementation by incorporating them in the reauthorization legislation.

In particular, we recommended that "Congress should clarify the authority and responsibility of the Secretary of Commerce and of regional fishery management councils with respect to allocation and capitalization controls, implementation and enforcement of fisheries management plans, strategic planning, review of management decisions and actions, and conflict resolution (p.34)." In addition, we identified inadequate provisions in the MFCMA, and suggested improvements that would be most appropriate for Congress to address in reauthorization, namely, redefine optimum yield in terms that prevent overfishing (p.32), specify recreational fisheries in the first national standard, specify optimum yield from each stock (rather than from each fishery) in the first national standard (p.33), and in general, require that all the national standards include conservation and management measures that prevent overfishing and promote rebuilding of stocks reduced to low levels (p.32).

Although most of the recommendations were directed to specific actions by fishery managers and NOAA/NMFS, Congress may choose to ensure that the NRC recommendations are implemented by inclusion in the reauthorization legislation.

Please do not hesitate to contact me if you have any additional questions.

Sincerely,



John J. Magnuson
Chairman
NRC Committee on Fisheries

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ISBN 0-16-052241-2