

**TESTIMONY OF
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Before the

**U.S. SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION
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REAUTHORIZATION OF THE MAGNUSON-STEVENSON FISHERY
CONSERVATION AND MANAGEMENT ACT**

Senator Stevens, Senator Inouye, and members of the Committee on Commerce, Science, and Transportation, my name is George Lapointe, and I am Commissioner of Marine Resources for the State of Maine. The Department is established under Maine law for the purpose of conserving and developing marine resources, as well as promoting and developing Maine's coastal fishing industries. Thank you for the opportunity to provide a State perspective on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). I would like to say on behalf of Governor Baldacci that Maine appreciates the focus that this Committee is bringing to the sustainable management of our Nation's living marine resources. In Maine, marine resources are central to the culture, economy, and character of our state. Their sustainable management is of the utmost concern to us, and we view this pending reauthorization as an opportunity to ensure healthy fishery resources and healthy fishing communities for generations to come.

The draft bill (dated November 7th, 2005) extensively amends the Magnuson-Stevens Act. I have tried to focus my testimony on what Maine considers to be some of the most critical provisions, and conclude with some thoughts on the importance of promoting effective State-Federal partnerships in achieving sustainable fisheries. Topics are addressed in the order in which they appear in the draft bill.

Cumulative Impacts – The proposed language amends National Standard 8 to require the inclusion of economic and social data and assessment methods in evaluating impacts

on fishing communities. It also requires that fisheries management plans analyze the likely effects, including the **cumulative** economic and social impacts, of the conservation and management measures. Maine has long advocated for cumulative impacts to be taken into account. The cumulative impacts on our fleet and shoreside infrastructure have been particularly severe. Over the past decade, Maine has lost more than half of the groundfish vessels previously homeported in the State. Taking a longer-term view of the impacts on coastal communities would reveal to managers if a particular geographic region, sector, gear type, etc. has been repeatedly disadvantaged by successive plans, and will plainly show the impacts of management on our Nation's fishing communities.

Further, the proposed language would also require that the Fisheries Management Plans provide possible mitigation measures to address any such impacts on the regulated communities. The language on impact mitigation provides an important next step in fisheries management, lessening the concern that we manage with little regard to the real consequences of management actions on participants in the fisheries.

Annual Catch Limits – The proposed language would require that Councils adopt annual catch limits for each of their managed fisheries, based on the recommendations of the Science and Statistical Committees. If the annual catch limit is exceeded, the excess must be deducted from the following year's annual catch limit. Management measures must be established such that catch would be at or below optimum yield, unless fully justified by the Council.

The problems that we've had with the fisheries in New England in exceeding the target total allowable catch (TAC) must be acknowledged, and I fully appreciate the need to achieve greater accountability in the future. However, what is essentially a version of a hard TAC is not necessarily the answer for all fisheries. Hard TACs are but one of a range of possible fishery management tools, and their use is more suited to some types of fisheries than others. In a multi-species fishery like New England's, hard TACs result in managing to the weakest stock. Once that TAC is reached, the entire fishery must be shut

down. As a result, the biological goal may be achieved, but at significant social and economic cost.

New England has sought to avoid TACs ever since they were tried unsuccessfully in the late 1970's and early 1980's. Our experience has been that they failed to prevent overfishing, disrupted the market, and resulted in high-grading. It took several years to move away from this failed experiment into the Days-at-Sea (DAS) program. While DAS has certainly also had its problems, target TACs and DAS have stabilized the cod stocks in New England, while hard TAC/ITQ programs have failed to prevent a decline in cod fisheries in other parts of the North Atlantic.

The negative market impacts of hard TACs are well documented. They often create "derby"-style fisheries, wherein, in an effort by each individual fisherman to obtain a portion of the TAC, the entire TAC is caught in a highly compressed time frame. Last summer's yellowtail flounder fishery is an example of this, where the TAC was caught quickly, and a low price was paid for the overabundance of fish in the market place. Because of their tendency to cause disruptions in the marketplace, hard TACs also tend to eliminate all but the largest (import capable) processors.

Hard TACs can endanger fishermen. Again, in an effort to secure a portion of the TAC, fishermen are much more likely fish under dangerous weather conditions, work continuously for long periods without rest, and possibly overload their vessels, greatly increasing the probability of loss of life or serious injury. In addition, hard TACs tend to lead to fishing strategies that favor big, mobile boats that can move between areas, which smaller boats are unable to do, and may result in discards and high-grading.

The problems created by hard TACs in other fisheries have often forced a shift to rights based management systems, such as Individual Transferable Quotas (ITQs). Historically, New England in general and Maine in particular, has expressed long standing concerns about the impacts of ITQ management on the traditional nature of our fleet and coastal economies. Some New England fisheries have been pursued for nearly 400 years; they

are the lifeblood of our coastal communities. Other input controls on fishing effort can be just as effective as an output control like a TAC in rebuilding a stock, if they are properly designed. We would suggest alternate language to what is present in the bill such as “establish TACs or target TACs *with adequate measures as approved by the SSC in the council of jurisdiction*”.

It is my understanding that some fishermen from New England recently visited Congressional offices to further discuss the balance between management accountability and the flexibility to address circumstances that arise in particular fisheries, and that these discussions are beginning to yield results vis a vis this balance. I’ve not yet examined the proposed legislative language that came out of these discussions, but am committed to working with you, interested industry members, and conservation interests in coming up with the right language to improve fisheries management results while providing some flexibility in how to achieve these results.

Limited Access Privileges

One of the most important reasons to move forward with the reauthorization of the Magnuson-Stevens Act is the current absence of any guidance in law for the creation of Limited Access Privileges in those regions where there is interest in this type of management system. As reauthorization has been discussed over the past few years, Maine has been in the somewhat difficult position of providing input on standards for a system that the majority of people in the state hope will never be used to manage our fisheries. There is a fundamental belief that the implementation of Limited Access Privileges, or ITQs as they were previously known, would mean the end of the traditional character of the New England fleet. Under the traditional ITQ structure, corporate consolidation of the fisheries seemed an inevitable result.

For these reasons, Maine has long argued for strong “safe-guard” provisions that would ensure that Limited Access Privilege systems are only implemented in those regions in which they are appropriate and desired. The proposed language covers what we consider the most critical of these provisions, including the development of policies to foster the

sustained participation of small, owner-operated vessels, preventing privilege holders from acquiring an excessive share, providing for new entry, setting specific standards for the program, and including a formal, detailed review after 5 years, and every 5 years thereafter. We support the concept that the specifics of each of these decisions are best made at the level of the Regional Fisheries Management Councils, so that they can be appropriately tailored to the specific fishery.

We also support the provision to require that at least 50% of the permit holders in a fishery petition the Regional Fisheries Management Council to develop a plan, before the Council could proceed with this option. In particular, we are glad to see that all permit holders, not just those deemed “active” will have a voice in whether or not a plan is developed. In addition, we appreciate the provision that is specific to New England and the Gulf of Mexico which requires the approval of two-thirds of the eligible permit holders in order to implement a limited access privilege plan. This concept of a “double-referendum” wherein permit holders have a say both before a plan is developed and before it is implemented, has been one way that Maine has advocated to ensure that any ITQ program is entered into very deliberately, with strong support from the individuals most impacted.

Because the implementation of Amendment 13 has continued to be so difficult for many of Maine’s fishermen, there has been some very early discussion of identifying more palatable options than the traditional “Days at Sea” approach. While this conversation is only in the most preliminary stages, I am glad to see that the proposed language contemplates a variety of arrangements for the entities that may participate in a Limited Access Privilege program, including for example, fishing communities or regional fishery associations.

The language in the draft bill contains language that requires all fish harvested under a Limited Access Privilege system be processed in U.S. waters or on U.S. soil. I am concerned about the precedent contained in this language. Maine ships much fish to Canada for processing. If applied broadly to Maine fisheries, it would seriously disrupt

the marketing and distribution systems for a number of our fisheries, most notably lobster.

Environmental Review Process

The proposed changes would add to the Discretionary Provisions of Fishery Management Plans the option to establish a process for complying with the National Environmental Policy Act (NEPA), and require the Secretary to revise and update agency procedures to achieve compliance with NEPA. Our assumption is that the underlying goal is to avoid duplication of effort and improve efficiency, while still considering the effects of the proposed actions on the marine environment, the cumulative effects of the proposed action, and reasonable alternatives. Provided that all of the NEPA requirements are met, we would support this change. This action is consistent with providing a balance between the NEPA procedural requirements, and the need to be able make timely and responsive changes to fisheries management measures.

What most people involved in fisheries management are seeking is an environmental review process that doesn't result in redundant bureaucratic processes - which is what we seem to have now. The language contained in the draft bill addresses this issue.

Secretarial Action on State Groundfish Fishing

Maine is well aware of the specific issue that led to this language being included in the draft bill. We appreciate the attempt to address this matter, in which a significant percentage of the total Gulf of Maine cod catch is being taken in Massachusetts state waters by individuals not holding federal permits, but state licenses only. As this percentage of the catch has increased in recent years, concerns have been raised that this catch erodes the effectiveness of the Multispecies Management Plan. However, it seems that this problem should be addressed through state action on the part of Massachusetts working with the New England Fishery Management Council, and I hope that this provision won't be needed in the future.

Joint Enforcement Agreement

Maine has been a successful partner in Joint Enforcement Agreements (JEA) for the past several years. Access to this program made it possible to obtain larger vessels that are capable of patrolling offshore in a way that we would otherwise be unable to do. For example, Maine has been able to patrol the EEZ for compliance with whale safe gear requirements in the lobster fishery. Prior to the JEA, we did not have the capacity to conduct such patrols safely. Similarly, we have also used JEA funding for effective enforcement of the “Gray Zone”, the disputed area between the U.S. and Canada. This program provides an important opportunity for state enforcement agencies to assist their federal partners in addressing enforcement priorities and maintaining an on the water presence. It would be very beneficial for all the coastal states to have the Cooperative Enforcement Agreement program formally authorized, and appropriation levels set.

Access to Certain Information

Much like the Joint Enforcement Agreement language, this proposed language points to the logical partnership between State and Federal agencies in sharing information and resources to achieve effective fisheries management. The intent of this section is to allow state enforcement employees access to data, such as VMS reports, to aid in the enforcement of fisheries regulations. The State of Maine strongly supports this change.

Bycatch reduction engineering program

Maine agrees that the problem of bycatch must be addressed in a practical, effective way. We support a regionally based, conservation engineering approach to this issue, as proposed by the bill.

Recreational Fisheries Information

Complete and accurate information on recreational fishing activity is currently missing from state and federal fisheries management. However, we all know that recreational fishing can have significant impacts on fish stocks, and better information is needed to improve stock assessments and fine-tune management measures. One need look no further than the current situation with summer flounder and scup in the mid-Atlantic

states to illustrate the need for better recreational data. The creation of an angler database for each of the eight fisheries management regions would improve data collection. It seems to be the intent of the proposed legislation to exempt those states with programs in place that meet the requirements of this section. We would like to ensure that this is a clear indication of the primacy of the state programs, and that a federal program will only be established in the absence of a state program. In addition, we would hope that this would not be construed to limit a state's right to develop a licensing or registration program in the future.

Cooperative Research and Management Program

Maine strongly supports adding a new section to the MSFCMA to formalize ongoing cooperative research and management, and to provide for the authorization of continued funding. Maine has a long history of working with its fishing industry on gear research to reduce bycatch in the northern shrimp and whiting fisheries. Most recently, Maine scientists and fishermen have been active participants in cooperative research through the NMFS Cooperative Research Partners Initiative and the Northeast Consortium. The Maine-New Hampshire Inshore Trawl Survey is an excellent example of scientists and fishermen working together to collect data to improve the management of our coastal fisheries. We strongly believe in the value that such activity adds to the management process for all parties involved.

The role specified for the Councils in identifying research priorities is important in that it will ensure that the research that is conducted has a direct link to management needs, and will inform the development of future management measures.

In the past, a serious disincentive to participating in collaborative research was the potential that it might negatively impact the participant by lowering their catch history, or their expended days-at-sea, which may in turn limit their future participation in the fishery. This bill would require the Secretary to establish guidelines to prevent this from happening. Finally, we support the direction provided to promulgate regulations to create an expedited process for issuing experimental fisheries permits.

Herring Study

This bill singles out Atlantic herring as the focus of a cooperative research program in the Northwest Atlantic, authorizing \$2 million/year for 3 years. This species certainly warrants a concerted research effort, as it is one of the most biologically and economically important fish species in the western Atlantic. Herring are oceanic plankton-feeding fish that occur in large schools, inhabiting coastal and continental shelf waters from Labrador to Cape Hatteras. With an estimated complex-wide biomass of 1.8 million metric tons, herring provide a significant forage base for other fish species, marine mammals, and birds, as well as supporting the second largest commercial fishery on the east coast. In addition to the direct economic contribution of herring landings, this fishery supports a domestic value added industry (canned sardines and frozen whole fish) worth approximately \$50 million, and the North Atlantic lobster fishery estimated at \$260 million. Studying the impacts of fishery practices on this keystone species will also assist in the move toward more ecosystem-based management of fisheries, something in which we all have an interest.

In closing, I would just like to say again that I appreciate the Committee's decision to include a representative of a state-level fisheries agency on the panel today. It illustrates your recognition that the states have a critical role to play as the primary managers of the inshore fisheries and as full partners in the federal fisheries arena. I believe that our Nation's fisheries will be improved by strengthening this role, in a way that builds on, and doesn't diminish, the work of the Regional Fishery Management Councils. I hope that my comments have been useful to you in moving forward the Magnuson-Stevens Act Reauthorization.