

TESTIMONY OF VITO GIACALONE
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&
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BEFORE THE
SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST GUARD
OF THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE
REGARDING IMPLEMENTATION OF THE
MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT
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WASHINGTON, DC

Mr. Chairman, distinguished members of the Subcommittee, thank you for this opportunity to testify before your Subcommittee and contribute to your oversight of the implementation of the very important Magnuson-Stevens Reauthorization Act (MSRA).

As an active fisherman and the policy director for the Northeast Seafood Coalition, I have been deeply involved in the process to implement key provisions of the MSRA as they relate to the Northeast Multispecies fishery, better known as the New England groundfish fishery. Through Amendment 16 to the NE Multispecies Fishery Management Plan (FMP), this fishery has made a profound transition from an effort-based management system using Days at Sea (DAS) and vessel capacity as the allocation currency, to a catch-based output control system of voluntary fishery cooperatives called 'sectors' that now use the 'catch history' of a permit as the allocation currency.

The Northeast Seafood Coalition is the sponsor of 12 of the 17 sectors now operating under this Amendment including one serving as a private permit bank of which I serve as the Director. Over 300 active trawl, gillnet and hook gear vessels are members of the Northeast Seafood Coalition-sponsored sectors operating in ports from Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York.

While Northeast Seafood Coalition is now both deeply invested in and committed to making the existing sector system work, sector-based management was not the preferred choice of the Northeast Seafood Coalition, nor were a number of key aspects of the current sector system. Nevertheless, because it was clear the Council was firmly committed to adopting the sector approach notwithstanding our input to the contrary, we felt a strong obligation to our members to fully engage in the sector system in order to protect their best interests as best we could.

As I will explain, in a number of ways the Council's decisions to broadly expand the application of sector management fishery-wide, as well as the ensuing details of the sector system structure they developed, were both consequences of the key changes made to the Magnuson-Stevens Act (MSA) in the MSRA.

While most of my comments are critical, please understand that we fully recognize and greatly appreciate the efforts of this Committee and others in Congress to continually improve the MSA such as through the MSRA. It is natural for me to point out the problems and concerns with a hopeful eye towards another opportunity to make further improvements to this landmark statute.

Having said that, certainly not all the problems we see in groundfish management are due to the policies or legislative language in these statutes. On the contrary, it has been our observation that the Agency frequently makes excessively narrow or incorrect interpretations of your legislation, ignoring useful opportunities to apply flexibility where it exists throughout the MSA that might have avoided unnecessary problems. This can be very frustrating for all of us. We often wish the agency's attorneys would adopt a more common sense approach to interpreting Congressional intent. Perhaps that is a message this Committee can convey to the agency.

Arbitrary Implementation Deadlines

The MSRA set forth two key implementation deadlines that had important consequences for New England groundfish management; the requirement to end overfishing immediately, and the requirement for Annual Catch Limits (ACLs) and Accountability Measures (AMs) to be in place for fishing year 2010 for stocks subject to overfishing.

Of course, those deadlines are well behind us now, but I think it is important to use our experience as a case in point of how arbitrary statutory deadlines of any kind that lack sufficient flexibility and/or proper agency interpretation can generate unintended or at least unanticipated consequences that are rarely positive. My testimony may also help explain the reasons for the strong and loud voices you continue to hear from New England regarding the sector system.

Amendment 16 began as a confluence of statutory and Council objectives to achieve in a fair and equitable manner an historic transition from effort-based management to catch-based management while simultaneously ending overfishing immediately, establishing annual catch limits, and imposing strict accountability measures to achieve those limits—all while causing a minimum of disruption to the fishery and communities. Adding to that, our fishery is a complex group of disparate multispecies fisheries involving several gear-types and 19 stocks all under one FMP.

It is no surprise that such an overly ambitious agenda simply could not be achieved according to the statutory deadlines without making critical sacrifices to the quality of the outcome.

It is impossible to know what might have been the result under different, more favorable circumstances, but in my personal view, the New England Council's and the Agency's rush to achieve these overwhelmingly complex objectives according to the MSRA-mandated schedule had- or substantially contributed to- the following adverse consequences:

- 1) Very early on, the Council hastily abandoned any serious analysis or consideration of potentially more favorable alternatives (eg. the points system) to the sector system. Instead, the design and operation of two existing sectors originally adopted years prior as a very limited 'pilot program' for the small, directed cod fishery on Cape Cod became the sole focus. Essentially by default, a sector system quickly became the defacto Accountability Measure using the existing Cape Cod 'non-LAPP' sectors as the template.
- 2) There was insufficient time for the Council and the fishing community to adequately analyze, understand or consider the implications of the various allocation criteria alternatives. This resulted in the expedient adoption of the most simplistic alternative (catch history). Because the Days at Sea system produced a series of ever increasing cuts in Days at Sea allocations, traditionally single-permit fishermen were forced to purchase additional permits for a completely different purpose (increasing their DAS) than what was used to assign value to those permits under the Amendment 16 sectors allocation system. Consequently, as the currency on which all non-speculative investment in the fishery had been based (DAS/Capacity) was abandoned, substantial investments in the DAS currency were stranded. This created instant winners and losers

that, for most fishermen, was a matter of pure chance and/or a product of regional and inshore/offshore disparities in fishery regulations affecting catch history.

- 3) Under pressure to meet the statutory deadlines, and for expediency in dispensing with a protracted debate, the Council adopted disparate allocation baseline periods for different groups within the overall groundfish fishery. After completing a difficult process to resolve the baseline period for the core commercial fisheries, the recreational fishery was given a separate, more favorable baseline as were the two previously established Cape Cod sectors. These differences had very significant implications for the resulting allocations to the three groups. The vast majority of commercial permit holders in our fishery have raised very serious concerns that the Council's action to treat each of these three groups differently was not fair and equitable. This action has raised many ongoing concerns over its consistency with a number of MSA provisions including National Standard 4. These concerns are currently under review in federal court.
- 4) The Council's adoption of the final sector design and complex operational details took place well in advance of the 2009 GARM III stock assessment and subsequent ACL determinations—before the biological objectives of the sector system were known. Lacking information on the status of many key stocks, the Council knew it had no idea what the actual consequences of the sector system would be on the functionality of sectors and the sector trading system, but was forced to prematurely set an Accountability Measure in stone in order to meet the MSRA deadline.
- 5) Perhaps the most damaging result of attempting to meet the timelines set forth in the MSRA is the absence of legitimate Amendment 16 alternatives to an ITQ-type system such as the current Sector allocations scheme operating today. Creative alternatives could not be proposed or developed adequately absent updated biological objectives being made available in time for the proper process to unfold. (the extra year granted through interim rule was used exclusively for the purpose of ironing out the complexities of the sector policy and administration and to allow the industry and NOAA to prepare the infrastructures necessary to handle the new system. The extra time was not used to create sensible alternatives.
- 6) At least partly for the purposes of expediency, a deliberate decision was made by the Council to develop the sector allocation and management system outside of the MSRA rules governing Limited Access Privilege Programs (LAPPs) now set forth in section 303A of the Magnuson-Stevens Act after receiving an initial legal opinion from the Agency

confirming that the existing Cape Cod sectors were not LAPPs as defined under the MSRA. Thus, none of the rules and protections envisioned by Congress for LAPP programs apply to the Amendment 16 sectors.

Sectors

With that last point in mind, I want to be clear, however, that the Northeast Seafood Coalition has strongly concurred with the agency's final legal determination that the Sectors ultimately developed under Amendment 16 are not LAPPs. More importantly, the Northeast Seafood Coalition also strongly concurs with the Agency's published interpretation that sectors and vessels are NOT issued a permanent allocation.

This latter determination is absolutely crucial to the current and future investment environment with profound implications for the future structure of the fishery and communities. It also confirms very importantly that if and when the NE Council and/or agency take any future action to formally establish an IFQ or any other form of LAPP program for groundfish, such program and associated allocations must meet all section 303A and other applicable MSA requirements.

We are extremely concerned, however, that the agency's message is either not being heard, has not been made strong enough, or that the agency is wrongly backing off.

Consistent with the Agency's correct interpretation, it is not possible to simply morph the current Amendment 16 'non-LAPPs' and the associated non-permanent sector allocations into a section 303A-consistent LAPP allocation system through a Framework or other abbreviated process. A new, legitimate LAPP allocation system must be fully developed from the ground up with all elements on the table, including especially the allocation criteria and issues related to consolidation, through a deliberate, comprehensive Plan Amendment process to conform the new allocation system to Section 303A requirements.

Anything less than this would likely perpetuate both the inherent flaws we have experienced with the current system as well as the continued circumvention of what was, in our strong opinion, plain Congressional intent for allocation systems such as the Amendment 16 sectors to be designed according to the MSRA rules and protections for LAPPs including a referendum for an Individual Transferrable Quota (ITQ). This would be a very helpful message for Senators interested in improving current New England groundfish management to deliver to the Agency and Council.

With that in mind, let me further clarify that the current sector system is effectively an ITQ system wearing a 'non-LAPP sector' costume. Amendment 16 to the Northeast Multi-Species fishery management plan established an initial allocation for each and every limited access permit. Individually, each permit received a Potential Sector Contribution (PSC) which is represented by percent quota shares based upon historical performance for each stock allocated through the amendment. The PSC values are what each fisherman brings to the sector.

Naturally, once a fisherman receives that information from the agency, he/she fully expects to take out what they brought into a sector. The proof that this is the reality is that all 17 sectors have sector/member contracts and operations plans that incorporate a "what you brought in is what you can take out" redistribution method within the sector. Sector members are allowed to trade their individual allocations freely between members of their own sector. In addition, Amendment 16 provides for inter-sector trading; a system which has effectively operated as an ITQ given that members of different sectors regularly make private business agreements to trade fish and then instruct their respective Sector Managers to facilitate the transactions through the inter-sector trading mechanisms.

That said, I must point out that the sector scheme has built a form of protection to the smaller operators in the form of Right of First Refusal for permit sales and quota leasing. Each sector has a hired professional Sector Manager that assists the sector members in the burdensome reporting requirements as well as acting as a communication and trading facilitator. The low ACLs coupled with the straight catch history method of allocation produced a very narrow distribution of quota and without a referendum. I believe that the requirement that vessels be members of a sector, and the manner in which the industry formed the sectors, has created a layer of protection to fishing communities that many do not yet understand. But, the fact remains that the current Amendment 16 sector scheme is effectively operating as an ITQ system.

Finally, while I have attributed a lot of the problems we've experienced with the Amendment 16 sector development process to the statutory deadlines, I feel I owe you my honest assessment that many of these problems relate to the reality that Council members have the extraordinary power to create winners and losers in the initial allocation process of any catch share/ LAPP program. Notwithstanding statutory rules governing recusal and conflict of interest, I believe Council members presented with a choice of plausible allocation alternatives will naturally gravitate to what is best for their own business interests. On a personal level, I am infinitely grateful to those individuals who have invested countless days, months and even years of their lives serving in the all too often thankless roles as Council members. As an

organization, the NSC supports the Council process and strenuously endorses substantial industry representation on the council. The statements I am making here are not intended to discredit anyone or to insinuate that any improprieties or unethical behavior took place. I am merely offering my sincere and honest observation having lived this up-close and personally. Given similar circumstances, I believe there are few human beings that are capable of self-inflicting wounds when the alternative is to achieve instant wealth through a favorable initial allocation scheme. The stakes are simply too high which makes it almost unfair to Council members to have to make ultimate allocation decisions when the results are as financially profound as they can be in the initial allocation of a valuable resource like New England groundfish.

The perception in New England, shared by a great many, is that the allocation choices made by the New England Council were a product of an exclusive and very closely coordinated working relationship among Council members from the groundfish fishery, the recreational fishery, the pro-catch share environmental community, and perhaps the agency itself. This created a few big winners among those Council members and their sectors, and many, many losers of those fishermen not privileged to be inside that inner circle. This is, unequivocally, the perception.

Surely it must have been the fear and concern of precisely this type of result that caused members of the New England delegation to provide for a referendum requiring two thirds approval before an IFQ allocation scheme could be implemented. Similarly the MSRA LAPP provisions and associated requirements must be placed front and center if an action involves allocation to any group or persons that represents a quantifiable portion of any stock or stocks within a fishery. In New England, we effectively received an IFQ / ITQ-type allocation scheme and a LAPP-type management regime without either a referendum or full consideration as a LAPP under the MSRA.

Had NOAA determined Amendment 16 sector allocations to be an IFQ subject to a referendum the Council would have avoided the level of culpability now perceived to be attributable to them.

Having identified some of the pitfalls we experienced in trying to accomplish too much with groundfish management within the MSRA deadlines for ending overfishing and establishing ACLs and AMs, there are certainly a number of positive aspects of a properly designed and implemented sector management scheme that we can also learn from.

By definition, the input-control DAS management system deliberately imposed inefficiencies on the fisheries in order to control catch (fishing mortality). The transition to sectors relieved

fishermen of a number of those inefficiencies including seasonal/rolling closures and trip/possession limits and the associated regulatory discards (waste), among several others.

Certainly, the transition from input-control effort management to output-control sectors also made it possible to avoid the consequences of deep Days at Sea cuts that were inevitable absent a fully supported effort to radically modify the effort control system. Had we attempted to use the Days at Sea system that was in place as the tool to meet the new mandates of the MSRA, the results would have been catastrophic.

To that point of the absence of real efforts to improve the DAS system, over the years the Northeast Seafood Coalition proposed numerous modifications to the Days at Sea system that were intended to advance the tool to meet the anticipated MSRA requirements. Although some were ultimately implemented, like the “B-Days” concept, they were never adequately administered or utilized by the Council or the agency. Other useful modifications were rejected such as the “Cod Cap”, the “Yellowtail Trigger” and further development of the “B-regular day” concept.

It was apparent, however, that these provisions were not taken seriously because they ran counter to the ultimate desire of key Council leaders and perhaps the agency to execute an ITQ allocation of the resource. In my strong opinion, had there been an adequately advanced Days at Sea alternative that could meet MSRA mandates without collapsing the industry, it would have been impossible to have implemented the sector ‘catch share’ program we have now because the industry simply would not have allowed it. The combination of MSRA mandates, a lack of timely biological objectives in the stock assessment, and the resistance to advancing the Days at Sea tool left the industry with a “Hobson’s Choice” that led to sectors.

In any case, theoretically, if individual initial allocations are fair, equitable and sufficient, and if adequate quota is available to support a healthy, functioning sector trading system, a sector system can provide useful tools to improve the efficiency of fishing businesses and economic stability overall. As we all know, on paper, a sector ‘catch-share’ system enables fishermen to choose to fish at times and in places that can maximize catch-per-unit-effort, the market value of the catch, and even vessel safety. A functioning sector allocation trading system itself should provide for the greater utilization of the optimum yield of strong stocks consistent with national Standard 1. In theory, a sector ‘catch share’ system should provide important benefits.

When asked whether the sector system is *actually* working in practice, my response is simply--it truly depends on which fisherman you ask. As I indicated, the Council’s deliberate decision to

abandon the DAS-based currency on which all non-speculative investments in the fishery were previously based, it created instant winners and losers, mostly by pure chance.

If a fisherman happened to have purchased a permit because of its value in allocated DAS-- and that permit also just happened to have a lot of catch-history associated with it—then they became lucky winners. If a fisherman bought a permit for DAS purposes that just happened to have very little catch-history associated with it, then they became unlucky losers. A lot of permit holders in the fishery—it seems the majority—had substantial investment stranded in DAS currency and are now faced with a sector allocation and trading system that is not functioning in a way that enables them to recover. Consequently, many permit holders are locked into dire circumstances at no fault of their own. Naturally, that is why you have heard and will probably continue to hear a lot of outrage about sectors coming from the region.

Rebuilding timelines

The MSRA also revised the deadline for the Councils to prepare and implement measures to rebuild overfished stocks. This deadline was not in itself a problem, at least for New England groundfish management. What continues to present a problem is the 10-year or any arbitrary time frame for rebuilding resulting from MSA section 304(e)(4)(A)(ii).

While many people have expressed many different ideas about the need for “rebuilding flexibility”, as explained below, our consistent view has been the need to simply eliminate any arbitrary time requirement for rebuilding and replace it with a rebuilding strategy founded on natural population dynamics. We don’t need flexibility built into arbitrary rebuilding time-frames; we need to get rid of them!

The fundamental MSA objective to simultaneously achieve the biomass that produces the MSY for all stocks in a multispecies ecosystem and fishery is a very expensive one (not to mention biologically unachievable). The least-common-denominator management effect resulting from this objective ensures that in a multi-species fishery, very substantial amounts of the optimum yield of those stocks that happen to be at their high points will be wasted in order for the fishery to comply with the requirements to rebuild all stocks that happen to be at a low point. When I say wasted, I mean that substantial portions of the optimum yield will be left in the water uncaught and lost to natural mortality. This is the inherent conundrum presented by National Standard 1 for a multispecies fishery in a complex ecosystem.

What often greatly exacerbates this loss of sustainable yield are the arbitrary rebuilding timeframes generated from MSA section 304(e)(4)(A)(ii) which generally require shorter time frames and lower fishing mortality rates than the true population dynamics of a stock would

otherwise require. In other words, even more sustainable yield of the stronger stocks will be lost in the effort to rebuild more quickly. In our multispecies groundfish fishery, approximately 60 percent of the total optimum yield remains harvested each year.

To be successful, a rebuilding strategy based on an arbitrary timeframe either requires knowing the unknowable, or pure luck. The 'unknowables' are future recruitment, natural mortality and, consequently, what the correct rebuilding target should actually be 10 years or more into the future. These parameters of fish stock population dynamics are ultimately driven by the dynamics of the ecosystem and environment--things that are completely beyond our control. And, these ecosystem dynamics are even further complicated by the interrelationships between stocks in a multi-species ecosystem and fishery.

We may get very lucky and by accident choose the right numbers, but far more likely the population effects on a fish population caused by the relatively small portion of mortality we do have control over (fishing) will be far outweighed by the effects caused by those ecosystem and environmental parameters we have no control over and cannot predict.

Instead, as more than one distinguished NMFS Chief Scientist has testified, the arbitrary timeframes for rebuilding set forth in MSA section 304(e)(4)(A)(ii) should be replaced with a strategy linked directly to the true population dynamics of a stock. In other words, a strategy of setting a target fishing mortality rate at the level that will over time, on average rebuild the stock to the biomass that will produce maximum sustainable yield. This fishing mortality rate is known as F_{msy} , and managers may appropriately adjust the target with a buffer to reflect scientific uncertainty.

The time it will take to rebuild any stock fished at F_{msy} (or as adjusted) will be exactly that which reflects the actual future recruitment and natural mortality exhibited by the stock—parameters that will be dictated by the uncontrollable and unpredictable dynamics of the ecosystem. By definition, this strategy will prevent overfishing and achieve rebuilding which are the true and legitimate biological objectives of the MSA. The policy decision to rebuild more quickly than this strategy was purely a political one, and I should point out that even NOAA Administrator Lubchenco has suggested this question should be reviewed by the National Academy of Sciences (NAS), and that at some point she was in discussions with NAS for this purpose. We would encourage you to follow-up with Dr. Lubchenco on her plans.

Again, the current arbitrary rebuilding timeframes have compounded the difficulties in multispecies management, particularly with the 19 stocks subject to our groundfish plan. They

force ACLs to be extremely low for some stocks, choking the sector trading system needed to achieve the Amendment 16 objective of increasing the utilization of Optimum Yield.

ACLs

The MSRA requirement to set ACLs for all stocks was never a problem per se'. The need to set annual catch limits was fundamental to the decision to transition the New England groundfish fishery from effort-based to catch-based management anyway.

As explained above, the arbitrary deadline for ACL implementation was problematic for NE groundfish due to the complexity of the broad objectives of Amendment 16 and the lack of updated biological objectives from the new stock assessment before the sector system was set in stone and the implications understood.

As also explained above, those ACLs that were set at artificially low levels for stocks subject to the arbitrary 10-year rebuilding timeframe, exacerbated the least-common-denominator (choke stock) effect on the fishery resulting in even greater losses of Optimum Yield.

Further, what came to light for some of us only after the MSRA was enacted and more fully understood was the profound role the Scientific and Statistical Committees (SSCs) were afforded. While purely advisory pre-MSRA, the SSC's recommended catch levels now dictate the upper limit of the ACLs developed by the Councils according to MSA section 302(h)(6).

The SSC's responsibility to generate catch limits involves following the National Standard 1 guidelines, a process which can generate a range of results, some more conservative than others, but all consistent with the requirements of the Act. This is an extraordinary authority, responsibility and level of discretion for a group that includes non-federal scientists and, therefore, is something that should be accompanied by a process of checks and balances.

As we have seen with NE groundfish, there is indeed a great deal at stake in the ACL-setting process—including whether the sector allocation trading system can function. A functional sector allocation trading system is fundamental to the premise that sectors, as coops, can achieve a higher utilization of the Optimum Yield than under the previous system and, thereby, achieve greater economic benefits for sector members. This is among the most important purposes of the sector system. Unfortunately, the ACLs generated for the NE groundfish fishery were set so low for some stocks that when coupled with the narrow distribution of the initial allocation, a vast majority of the vessels that were relatively viable in 2009 suddenly found themselves too far below the break point to actively engage the new system.

NSC has repeatedly noted that MSA section 302(h)(6) does not apply to the Secretary and that this provides the Secretary with critical 'checks and balances' authority to intervene if the ACLs need to be adjusted in order to meet other equally important National Standards, objectives and mandates of the Act. With this authority, the Secretary can also serve as a 'peer review' of the SSCs application and interpretation of the National Standard 1 guidelines and of the scientific data itself. We feel this is a critical and potentially very useful Secretarial authority that Congress ought to encourage. It appears, however, that this is one of those areas of the statute where the agency's attorneys have adopted a very conservative, unhelpful interpretation.

Finally, I would note that NOAA recently announced the anticipated increases in ACLs for some groundfish stocks. To be clear, these increases were not a result of the Secretary responding to the multiple requests from members of the New England Congressional Delegation to use his authority to adjust the groundfish ACLs described above. Instead, these increases were a natural product of the Framework 44 ACL-setting process generated from Amendment 16. I should also point out that these ACL increases are not a testament to the success of sectors and 'catch-share' management as some might suggest. In fact, the data on which these ACL increases are based pre-date the implementation of our sectors.

Senator Brown's Bill

S. 238, the Fishery Impact Statement Honesty Act introduced by Senator Scott Brown and cosponsored by Senators Snowe and Collins brings focus to another very important issue that became apparent during the Amendment 16 development process.

Because a basic purpose of Amendment 16 was to make the enormous and complex transition from the DAS effort-based management system to the sector 'catch share' system, there was a great deal of uncertainty about what the social and economic impacts would be on individual fishermen, ports and communities throughout the region. In any case, everyone knew the impacts would be huge.

However, because so much of what was being developed in Amendment 16 was unprecedented, the required Fishery Impact Statements and associated socio-economic analyses were both difficult to produce and of limited utility or influence in the Amendment 16 decision-making process. In fact, in an effort to facilitate better industry-wide understanding of these impacts in the face of a limited Council economic analysis of the allocation options, the Northeast Seafood Coalition itself commissioned a professional analysis of these options. Unfortunately, none of these analyses had their intended impact and under current law, once the Amendment is implemented, such analyses basically sit on a shelf to gather dust. Further,

there is no formal process to go back and assess what the post-implementation impacts actually were—much less do anything about them.

Nevertheless, Congress made clear in both National Standard 8 and the required impact statements that understanding and minimizing the economic impacts of federal fishery regulations on fishermen and fishing communities must be among the very top priorities of the Councils and NMFS.

Notwithstanding this clear mandate, this has proved to be a weak link in the fishery management process. Although prepared by Council and agency staffs, fishery impact statements appear to have little if any operative effect in the actual fishery management process and have been reduced to a pro forma paperwork exercise.

When originally championed by Senator Olympia Snowe in the 1990's as part of the Sustainable Fisheries Act (SFA), National Standard 8 was intended to provide the crucial, missing balance to those elements of the SFA that were focused strictly on fish stock conservation. In practice, we saw little evidence that National Standard 8 mandate to minimize adverse economic impacts on fishing communities was reflected in the Amendment 16 process.

If enacted we think this legislation would have at least three very important positive impacts on future fishery management. First, it would improve the quality of Fishery Impact Statements given the authors are both independent and would know their work will be reviewed annually after implementation. Second, it would lead to the Council's taking National Standard 8 and these economic analyses far more seriously in their initial decision-making and implementation. And third, the mandate for the Secretary of Congress to actually mitigate unacceptable economic impacts identified in post-implementation reviews would be a giant leap forward in restoring more balance between conservation and economic impacts to the fishery management process. These would be very big improvements that should be given the Committee's full and serious attention.

US/Canada

As a final note, I want to express my very profound appreciation to Senators Snowe and Kerry and other members of the Committee and Congress, and especially the Committee staff, for getting the job done on clarifying how the MSA rebuilding provisions will apply to stocks covered by the US-Canada Transboundary Resources Sharing Understanding.

We worked with you on this issue for more than 5 years beginning, in fact, with the development of the MSRA. Thus, I must recognize your exceptional persistence which has

already paid off with a critical adjustment to the Georges Bank Yellowtail Flounder catch limits agreed-to by the US and Canada last month.

As is appropriate and intended by Congress for stocks managed by international agreement, the US catch limits for our US-Canada transboundary fisheries will now reflect the true status and population dynamics of the stocks rather than the fishing mortality rate needed to rebuild a stock according to an arbitrary time frame. The 'apples and oranges' approach to fishery management between the US and Canada threatened to collapse the critically needed joint cooperative management of these valuable transboundary stocks, and so I see a very bright future for continued cooperation.

I should also note that while the recent increases in Georges Bank yellowtail flounder catch limits enabled by this legislation are not yet large enough to support a directed fishery, they will make a very substantial difference in alleviating the 'choke stock' effect on fishing for other valuable groundfish stocks and on the valuable New England scallop fishery. As this stock continues to rebuild according to its natural population dynamics, we fully expect to see the return of the directed yellowtail fishery on Georges Banks. Thank you again for your hard work in making this happen.