Testimony of Mr. Chris Oliver, Executive Director

North Pacific Fishery Management Council

Before the Committee on Natural Resources

United States House of Representatives

December 1, 2011 in Washington, D.C.

Good morning Chairman Hastings and members of the Committee, and thank you once again for the opportunity to testify regarding potential amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). I offer a perspective from the North Pacific region, as a representative of the North Pacific Fishery Management Council. Neither the Council nor those with a stake in the North Pacific fisheries have reviewed these comments; therefore, they represent my best attempt to speak for those interests, based on my previous testimony before this Committee and on my 22 years of experience with the Council process in Alaska.

The 2006 amendments to the MSA comprised a very ambitious, comprehensive, and powerful set of new requirements for fisheries management, primarily aimed at rebuilding and conserving fisheries through the mandate of Annual Catch Limits (ACLs) and the reliance on best scientific information in that pursuit. The 2006 amendments were not without pain and costs to the fishing industry, as is evidenced by the introduction of various Bills aimed at modifying some of those provisions. The 2006 amendments to the MSA also put in place numerous requirements for the development of Limited Access Privilege Programs (LAPPs), requirements which also apply to many of the 'catch share' programs being considered, or being developed, by Regional Fishery Management Councils around the U.S. Catch share type programs, including sector allocations, license limitation programs, and individual transferrable quotas (ITQs), while not appropriate for all fisheries, do represent a critically important tool for fisheries management, and have been used extensively in North Pacific fisheries. Catch shares in the North Pacific have been developed through an extensive, and inclusive, public process. We do not want to lose catch shares as a management option in our tool box.

As a general comment, I believe that whatever Bills do pass, they need to be as specific in their direction and intent as possible. An example of general provisions resulting in substantial revisions to North Pacific fishery management (and nationwide), is in fact the implementation of ACLs required under the 2006 MSA reauthorization. Recall that the 2006 additions to the MSA which implemented the ACL requirements were but a few sentences of statutory text (largely patterned after long-standing North Pacific practices), but that the implementation of the ACL requirements resulted in 98 pages of 'guidelines', or regulatory text, from the National Marine Fisheries Service. We are still in the process of addressing the provisions of the 2006 MSA reauthorization. In the case of the North Pacific, we had to undergo significant amendments to our Fishery Management Plans (FMPs) to comply with the letter of the ACL regulations, even though we have been successfully managing fisheries with strict annual catch limits for 30 years. The guidelines as written also require us to develop additional amendments to our FMPs to more explicitly address uncertainty in stock status, even though we have robust stock assessments for most species, and uncertainty levels are incorporated in our stock assessments and setting of ACLs. Finally, despite the lengthy and detailed guidelines which were developed, there is still debate

over how to account for fish taken in research, stock assessment, and cooperative research under exempted fishing permits (EFPs).

There are certainly instances where the implementation of the ACL amendments has complicated, or even negatively impacted, some fisheries in the North Pacific. We have relatively poor information on overall Pacific octopus biomass, due to the difficulty in assessing this species, but we have enough information to establish a 'stock assessment' and are compelled to establish an ACL. This ACL is based largely on historical, incidental harvest information, life history characteristics, and stomach content analysis of Pacific cod, rather than a robust stock assessment, and has recently resulted in closures of fisheries which take octopus incidentally. This example underscores the need for robust stock surveys and assessments, which we recognize as a major component of several of the Bills under consideration. Another example worth citing, relative to rebuilding requirements, is that of Pribilof Island Blue King Crab. While we have no overfished groundfish stocks in the North Pacific, this crab stock is considered overfished and in need of a rebuilding plan, even though no directed fisheries have occurred for nearly two decades, and the species is only occasionally taken as bycatch in other fisheries. We are facing the prospect of curtailing certain groundfish fisheries, because this is the only source of mortality we can affect, even though our analyses and models indicate that the expected bycatch savings will not positively effect, or affect, rebuilding success.

I cite these examples as recognition that the ACL and rebuilding requirements are not perfect and some adjustments to these requirements may well be in order. Overall however, because we have long been operating under this general paradigm in the North Pacific, and because we have the benefit of robust stock surveys and stock assessments for most species, we have not experienced the types of negative impacts that other regions appear to be having in complying with ACLs. In that vein, while we understand the need for some flexibility in the application of ACLs and rebuilding requirements, we believe it will be imperative to consider such changes cautiously, to not dilute the basic intent and benefit of ACLs, and to not lose ground in our success at rebuilding overfished stocks where rebuilding is feasible. To that point, any reauthorization of the MSA should include a primary focus on developing adequate stock assessments for all of our fisheries, and maintaining robust stock assessments where they already exist, so that ACLs are set at the appropriate level in the first place.

H.R. 594 Coastal Jobs Creation Act of 2011

Generally, this Bill represents a potentially positive approach to cooperative research opportunities. While the laudable goal appears to be job creation in the shorter term, it also provides funding and processes which could ensure fisheries jobs in the longer term, notably by providing opportunities to enhance stock assessment information across all of our fisheries. I believe that the focus of many of the Bills under consideration at this hearing is to alleviate job losses experienced in many of our fisheries – the key question is how to create or maintain jobs by building and sustaining our fisheries, rather than creating or saving short-term jobs by dismantling otherwise successful management programs. Another aspect of this Bill that we in the North Pacific note with interest is the ability to use provisions of this Bill to fund observer deployment. The North Pacific Groundfish Observer Program is a fundamental underpinning of our management program, and is primarily funded by the fishing industry at a cost of over $15 million per year.

There are a couple notes of caution I would like to raise in the context of this Bill. First, it will be expensive, at the proposed $80 million per year, and we caution against this funding coming at the expense to existing, on-going, mission critical activities such as NOAA's existing stock assessment activities, in the North Pacific or in other regions. Secondly, the Bill calls for the Secretary (NMFS presumably in this case) to develop guidelines (regulations presumably) within 30 days to implement this program. In my experience with development of guidelines and/or regulations, 30 days represents an

impossible timeline to develop the kind of guidelines which would be required for this program. Finally, because the devil is indeed in the details, the provisions of this Bill should be made as specific as possible in order to facilitate development of the guidelines, and to minimize the potential for the guidelines to be more complex than necessary.

H.R. 1013 Strengthen Fisheries Management in New England Act of 2011

I have no comment on this Bill specifically, as it pertains explicitly to the New England region. However, if provisions of this Bill were extended beyond the New England region we would have serious concerns, due to the potentially negative impacts on NOAA's enforcement mission. Please refer to my comments on H.R. 2610 in this regard.

H.R. 1646 American Angler Preservation Act

A number of significant concerns are raised by this Bill, and I will address them section by section.

Section 2 - Improving Scientific Review:

This section proposes the introduction of the term "risk neutral" with regard to scientific advice. Risk and uncertainty are implicit in any stock assessment and attendant ACL determination, and the insertion of this term could lead to further confusion, or subjectivity, in attempting to define this term.

This section constrains a Scientific and Statistical Committee (SSC) from making an ACL recommendation which is 20% smaller or larger than the previous ACL, unless that recommendation has been approved in a peer-review process conducted exclusively be non-governmental entities. This is problematic from a number of angles. First and foremost, the 2006 MSA reauthorization went to great lengths to recognize the SSC as the appropriate forum for establishing annual acceptable biological catch (ABC, or effectively, ACLs for purposes of this discussion), in fact going even further to explicitly recognize an SSC as the appropriate body for satisfying the peer review requirements of the Data Quality Act. During the 2006 reauthorization we argued vigorously against additional peer review requirements because of the scientific credibility of our Plan Team and SSC review processes in the establishment of ACLs. This provision would seem to discount the role of our SSCs, as was imbued upon them in the 2006 reauthorization.

To preclude an ACL from deviating by more than 20% is an arbitrary constraint which has the potential to either (1) result in excessive harvest rates if the science indicates that a reduction of 20% or more is warranted, or (2) result in great financial loss to fishermen and communities, and be contrary to National Standard 1 (using the best scientific information available and attaining optimum yield from the fishery), if conditions warrant an increase of greater than 20%. Some fisheries in the North Pacific are among the most well understood, best assessed stocks anywhere in the world (Pollock for example) and it is not uncommon to have changes in stock biomass and attendant ACLs which approach, or even exceed, 20%. We believe that our SSC is the appropriate 'gatekeeper' for ABC determinations and do not believe that an additional peer review process is warranted or advisable.

Further, it is not clear how the members of such a peer review would be chosen, whereas the Council process provides an effective means to vet scientific experts and ensure adequate representation of scientific perspectives on our SSCs. This proposed Bill does not define the specific qualifications for 'non-governmental entities', who would select the reviewers, and when such selection process would occur (relative to the timing of setting ACLs each year). Practically, there are a limited number of

available experts who are not already engaged in the Council process, either as SSC members, industry, or environmental representatives.

Section 3 Extension of the time period for rebuilding certain overfished fisheries

I earlier cited the example of Pribilof Island Blue King Crab, a fishery which has not been subject to any fishing for nearly two decades, and for which restrictions of any fishing activities (even closing fisheries which might take this species as bycatch) are not predicted to effect, or affect rebuilding. Certain provisions of this section would provide relief for these situations, and by the example listed above, we recognize the need and desire for some flexibility in the current rebuilding strictures. However, the various provisions regarding alternative time frames to rebuild collectively generate some concern, in that they appear to relax many of the existing constraints on both the minimum and maximum time frames for rebuilding overfished stocks, which may jeopardize the ability to successfully rebuild some stocks. Relaxing the constraint on the minimum time frame to rebuild could add confusion to the calculation of the relative available range of rebuilding times, as currently the calculation of the minimum time frame to rebuild (Tmin) is based on an assumption of no fishing (i.e., the substitution of the term 'practicable' for the term 'possible'). On the other hand, relaxing some of the constraints on the maximum time frame to rebuild seems reasonable for some fishery situations. We only note that it may be difficult (and somewhat subjective in some cases) for the Secretary to make the determinations listed in the proposed Bill, and that such provisions be considered cautiously.

Section 5 – Approval of Limited Access Privilege Programs

This section appears to be targeted to specific regions, which do not include the North Pacific, and we support the clarity that these provisions would not apply to the North Pacific. It is unclear whether certain 'catch share' programs, such as sector allocations, would fall under the provisions of this section, but in any case we would strongly oppose any such provisions for fisheries in the North Pacific. The 2006 amendments to the MSA provided numerous constraints on the development of LAPPs, and compelled the Councils to vigorously analyze and consider the impacts of any LAPP program before adoption. Maximum flexibility for program design, tailored to the specific aspects of each fishery, is key to successful development of LAPP or other catch share programs. Termination of LAPP programs after some arbitrary time period, particularly where transferability is allowed, will likely result in significant disruption to the fishery, its fishermen, and related communities.

Section 6 - Certification Required for Fishery Closure

The overall purpose of this section is challenging to ascertain, but there are several aspects of this section that are problematic and cause great concern: 1) the definition, or lack of definition, of the term 'closure'; 2) the required determination of direct and indirect impacts on entities; 3) the aspects that would need to be certified by the Secretary to enact a fishery closure; and, 4) Secretarial review of existing closures.

1) **Definition of closure**. Closures may be defined in many ways, and in the North Pacific, there are literally hundreds of closures that NMFS effects in-season, on an annual basis. Examples include closure of a fishery due to reaching its catch limit in-season; closure of a fishery for catch of any species which has exceeded its OFL; area closures for conservation reasons; closure for reaching a catch limit of a prohibited species. Another interpretation of the term 'closure' in this section may mean not allowing a fishery to open at all in the beginning of the year, presumably due to ACL and/or rebuilding requirements. If this certification requirement is intended to pertain to anything other than the latter (not opening an annual fishery), there are significant concerns with the ability of NMFS to manage multiple fisheries, gear types, seasons, and areas simultaneously, on a timely basis, so as to avoid exceeding the allowable catch limits. Currently in the North

Pacific, NMFS annually manages 'closures' for a variety of reasons including species-specific catch limits, prohibited species bycatch catch limits on target fisheries, area-closures to protect habitat, bycatch and target stocks, and in-season actions when the OFL of a single target species is reached thus requiring any fishery which catches that as bycatch to be closed. Requiring this type of certification for each of these closures would make sustainable management of the fisheries in the North Pacific entirely impossible. Regardless of the intended breadth of the term 'closure', we have significant concerns with the practical ability to determine direct and indirect affects as called for in the proposed Bill.

2) **Determination of indirect or direct effects of at least $50k on more than 25 small businesses**. The wording of this section appears to require an extremely impractical, if not impossible, mission. First it would require someone, somehow to identify each and every small business in the U.S., or region of the U.S., that might be related to a particular fishery, a monumental task in itself. Secondly, someone would next have to conduct a full financial audit of each and every one of those businesses in order to determine whether a $50,000 affect would occur to at least 25 of them (setting aside for the moment the subjective determination and quantification of 'indirect' impacts). Such a determination by nature would be speculative (projecting whether a closure would directly or indirectly affect more than 25 businesses), would likely not provide valuable information as to the impact of the proposed closure, and could not likely be done in any timeframe that would be relevant to any proposed closure. The monetary costs of even attempting to conduct such a determination can only be speculated, but would likely be extreme.

3) **The three certification requirements for a closure**. While there is clear merit to the intent of certifying the three aspects included here, there is an inherent complication in requiring both B and C (i.e., both an updated peer review within the preceding three years AND was developed with at least models subjected to outside peer review). In the North Pacific, we have annually peer-reviewed stock assessments for all stocks; however, not every assessment has gone through an external peer-review process, nor do all stock assessments employ age-structured models (e.g., for some assessments, based on the information available, catch limits are based on estimates of mortality multiplied by survey biomass, or catch limits are recommended based upon average catch levels over a specified time frame). Only age-structured assessment models are typically the focus for external peer review due to the more complicated nature of these assessments, in contrast to more simplistic assessments (based upon either survey biomass only or average catch calculations). Changing the wording of B and C to indicate an 'or' in lieu of an 'and' would allow for the intent of the certification without unnecessary disruption for assessments that are annually peer reviewed within our current process but are not priorities for external peer review. An example of an assessment that would meet B but not C in the North Pacific is that for the Gulf of Alaska Atka Mackerel - that assessment is annually peer reviewed but, due to a lack of a reliable biomass estimates for the stock, specifications are established based upon average catch and not any form of age-structured model. Under regulations to protect the endangered Steller Sea Lion population, this directed fishery is annually closed. Because no external review (of alternative models) has been conducted on this assessment (per requirement 'C') this assessment would not qualify for the Secretarial certification, which would in turn result in the fishery being opened to directed fishing, in violation of the Endangered Species Act. Further, and to reiterate earlier comments, we do not support requirements for outside peer review in any case given the robust nature of our current scientific review process (i.e., our SSC, with optional outside peer review in specific cases, at the discretion of the Council or the Secretary).

4) **Secretarial review of existing closures**. Again recognizing the extreme hardships implied by many fishery closures, and the merit in carefully examining such closures, it is difficult to ascertain the practical effect of this section, as a retrospective exercise. Once again the definition

of the term 'closure' is critical, and the intent of this section needs to be clarified. Does this mean any closure at all, or any closure for which a fishery has not subsequently been re-opened? As described in comments above, the ability to definitively measure every direct and indirect impact on small businesses and communities overall, and identify specific and potential job losses, is extremely limited and subjective. Estimations may be possible, but the specific provisions (and criteria) in this section would not appear to allow for subjective, non-definitive estimation. Crafting regulations to implement these provisions would likely be an extremely daunting task.

H.R. 2304 Fisheries Science Improvement Act of 2011

This proposed Bill appears to promote the development of better stock assessment information, and allow certain flexibility in rebuilding for stocks that are overfished. As it is written, it would not appear to affect stocks in the North Pacific; however, it may be important to clearly differentiate and define the terms 'stock survey' and 'stock assessment'. In the North Pacific, there are several species, including octopus, sharks, and squid, for which there is no specific stock survey (nor any specific, reliable survey instrument), but there is a stock assessment performed annually, based on historical catch numbers, life history parameters, stomach content analysis of predator species, and limited biomass information. Based on this stock assessment, octopus for example has a relatively low ACL and has recently constrained fisheries which take octopus incidentally. Depending on how these terms are defined it may be possible that provisions of this proposed Bill would affect management of these species, and perhaps a few others in the North Pacific. The definition of 'ecosystem stock' is more narrow than that contained in the ACL guidelines, and it is unclear what the intent and affect of this definition would be. Finally, the provision requiring the Secretary to conduct a stock assessment for an overfished fishery appears well intended; i.e., we need better stock assessments to determine appropriate ACL levels and rebuilding schedules.

H.R. 2610 Asset Forfeiture Fund Reform and Distribution Act of 2011

As written, it appears that this Bill would change the distribution of funds collected from fines, penalties and forfeitures for violations of the MSA and any other marine resource law from Federal and State agencies to States only. Specifically, the amendment would remove the asset forfeiture fund as a source of revenue from the NOAA Office of Law Enforcement (OLE) and instead would distribute these funds solely to States for such activities as fishery research, stock assessments, data collection, at-sea and shoreside monitoring of fishing, and compensation for the costs of analyzing the economic impacts of fishery management decisions to name just a few.

Based on my understanding of how NOAA OLE functions in the North Pacific, the impacts of this proposed Bill are potentially significant. The amendment could severely hamper the investigation process of federal fishery violations and ultimately reduce the effectiveness of enforcement of MSA regulations in the North Pacific. Currently, OLE in the North Pacific region relies significantly on the asset forfeiture fund to pay for travel associated with investigating fishery violations. Unfortunately, these travel costs contribute a significant portion of the costs associated with fishery violation investigations because of the remoteness of the North Pacific communities and ports. Absent the asset forfeiture fund, travel associated with investigating fishery violations will be reduced significantly or in some cases eliminated altogether. Current procedures would be to send an OLE officer to the community or port to investigate the fishery violations. This would allow OLE officers assigned enforcement duties to focus on enforcement only. Instead, already stretched OLE officers normally assigned enforcement duties will now be tasked with conducting investigations in addition to their enforcement duties, thereby reducing the effectiveness of fishery enforcement in the North Pacific.

Case in point, the investigative actions by NOAA OLE against the 140' fishing vessel Bangun Perkasa, recently seized by the U.S. Coast Guard for use of high seas drift nets, were funded entirely from the asset

forfeiture fund, so without this source of the revenue OLE could not afford to investigate these violations which could jeopardize enforcement of illegal high seas fishing in the North Pacific region.

Using some portion of the funds for stock assessment augmentation is a positive aspect of this Bill. Perhaps sponsors of this Bill would consider some portion of the Asset Forfeiture Fund being retained for use by NOAA OLE for investigative activities.

H.R. 2753 Fishery Management Transparency and Accountability Act

This Bill would require live video and audio broadcast of Council, SSC, and CCC meetings on each Council's website, and written transcripts posted within 30 days of the meeting. We endorse the point of this legislation, and making the Council process more accessible, and in fact already do most of what is being proposed (live broadcast of Council meetings, complete audio files, posting for public access). However, we oppose the specific provisions for the following reasons:

In the North Pacific, we currently live stream audio of Council meetings when possible. In more remote locations of Alaska, internet access may not be available, or broadband too limited for live broadcast based on our experience (including our most recent meeting experience!).

Thirty days may be too short of a time to get written transcripts prepared, and transcribing is a very expensive and time consuming task. The North Pacific Council and its SSC meets 5 times per year. Council meetings last for 7 days, and SSC meetings for 3 days. Full audio files of Council meetings are available to the public, in an easily searchable time/date stamped format. Transcripts would be redundant and unnecessarily expensive.

The SSC provides scientific advice, not policy advice, and written transcripts would tend to suppress the full expression of scientific opinions. As noted at the first national SSC workshop, "*Most SSCs provide scientific advice based on a summary of their deliberation. The general consensus was against the practice of using verbatim transcripts. SSC deliberations are a dynamic process and statements made by SSC members could be quoted out of context under the transcript format. The transcript approach is likely to discourage open discussion especially in the current litigation environment.*"

Council Coordination Committee (CCC) meetings are already being broadcast, and in most cases a full audio and written transcript is developed.

H.R. 2772 Saving Fishing Jobs Act of 2011

While this Bill appears to be directed at regions other than the North Pacific, I can assert that we would adamantly oppose these kind of provisions being applied to the North Pacific region. Consistent with previous testimony before this Committee, and consistent with my earlier comments, we believe that the LAPP provisions of the 2006 MSA reauthorization provide the necessary flexibility for Councils to initiate LAPP programs, as well as the necessary constraints on that development. We do not believe the Councils' discretion in this regard should be constrained by additional petition requirements. Further, requirements to terminate such a program, particularly where transferability is allowed, will likely be very disruptive. A reduction in eligible vessels and/or fishermen is inherent in most LAPP programs, and setting an arbitrary termination criteria (for example 15% decrease in eligible fishermen) may negate the otherwise positive benefits of the program for which it was originally established. One example of the tradeoffs inherent in any LAPP program is the exchange of numerous, part-time jobs for fewer, full-time, higher paying jobs.

H.R. 3061 Flexibility and Access in Rebuilding American Fisheries Act of 2011

Section 2 – Extension of Time Period for Rebuilding

This section contains provisions very similar to H.R. 1646, therefore please refer to my specific comments on that proposed Bill, with regard to rebuilding flexibility.

Section 3 – Committee reports

This section would require SSCs to submit a comprehensive annual report to the Council regarding the quality of the science, aspects of uncertainty, and how the SSC used the science in its determinations. These requirements (with one notable exception) are inherent in our current SSC process and are largely already contained in the detailed minutes of our SSC meetings. The notable exception, and the one provision which should not be part of the SSCs consideration in setting ACLs is section (a)(VI), which would require the SSC to provide "a description of the social and economic impacts of the committee's recommended management measures and whether such measures are consistent with the national standards set forth in section 301(a)(8)". The 2006 MSA reauthorization explicitly empowered the SSCs with recommending acceptable biological catch levels, and left to the Council the myriad policy decisions of balancing other factors to recommend appropriate management measures. These factors are included in the biological, economic, and social impact analyses prepared for every Council recommendation, and which are required by the MSA and various other statutes. The SSC does not, and should not, make policy recommendations beyond the setting of ABC, which should be done independent of other considerations, based on the best scientific information on a particular fish stock.

Section 4 – Annual catch limits

The provisions to allow Secretarial suspension of ACLs may provide beneficial flexibility in some instances, though it will likely be very difficult (and potentially subjective) to determine "a level of uncertainty that is insufficient to ensure that the FMP is inconsistent with 301(a)(8)". The ability of this section to achieve its intended results will likely be very dependent upon the specific guidelines, or regulations, to implement these provisions.

Section 6 – Fishery/Annual Impact Statements

This section appears to comprise a well-intended attempt to assess, in a programmatic fashion, the overall impact of an FMP on fishermen and communities. However, most FMPs (certainly those in the North Pacific) are a culmination of numerous plan and regulatory amendments, developed cumulatively over the 35 year history of the Councils. Fishery impact statements, inclusive of economic and social impacts are developed for each of these incremental management actions, some with estimated dollar impacts and some more qualitatively, but each also attempting to estimate cumulative impacts. Making a programmatic assessment will be more challenging than simply summing the results of these various plan and regulatory amendment analyses. Periodically we compile a programmatic Supplemental Environmental Impact Statement (an SEIS, under NEPA requirements) which assesses the cumulative impact of our groundfish FMPs, but this would be a daunting, resource-intensive undertaking on an annual basis, and does not necessarily generate a full understanding of every adverse impact of every aspect of an FMP, nor a specific dollar amount of that impact. Substantial fiscal and human resources, above and beyond those currently available to the Councils, would be required to address these provisions of H.R. 3061. Our most recent SEIS was 7,000 pages long and took over two years to compile (please see additional comments below regarding streamlining of statutes).

Subsection (k) of this section mandates the Secretary to "take such actions as may be necessary to mitigate any adverse impacts identified in the annual impact statement…". This appears to be a very open-ended mandate and would appear to grant the Secretary vast authorities which may be in conflict with other Council authorities under the MSA. This open-ended authority should be clarified in some manner to avoid confusion or conflict at some point in the future, and not be left to the total discretion of the Secretary through 'guidelines' or regulations.

Other Issues

As Congress considers these and other potential amendments to the MSA, we would like to reserve the ability to offer additional comments and input to that process. There are two issues I would like to highlight at this time

Reconciling MSA and NEPA

The 2006 reauthorization contained a provision intended to streamline the NEPA process as it pertains to fishery management actions promulgated under the MSA. This Congressional mandate has yet to be achieved, and any new reauthorization should attempt, once again, to reconcile the redundancy between these two Acts, and minimize the procedural inefficiencies which currently encumber the process. As I have stated in previous testimony to this Committee, we are not interested in 'exempting' the Council process from the environmental protection and conservation intent of the National Environmental Policy Act (NEPA), but believe that the process can be much better served by incorporating key provisions of NEPA within the MSA, and making the MSA the guiding Act for fisheries management in the U.S. If Congress wishes to pursue this issue further in any reauthorization process, I will of course stand ready to offer additional, detailed suggestions on this issue.

Date change to allow for State management

In the absence of an FMP, the State of Alaska's inability to act against unregistered vessels in EEZ waters could be addressed by a change to the MSA. MSA § 306(a)(3)(C) allows the State to regulate a fishing vessel that is not registered with the State and that is operating in a fishery in the EEZ off Alaska, if no FMP was in place on August 1, 1996, for the fishery in which the vessel is operating. In addition, the Secretary and the Council must find that Alaska has a legitimate interest in the conservation and management of the fishery. Modification to §306(a)(3)(C) by removing the phrase "on August 1, 1996" could provide the State with the authority to regulate non-State registered vessels commercially fishing for salmon, or any other specified species, in the EEZ. While it is clear that the intent of Congress is to provide Alaska with the authority to regulate non-State registered vessels in the absence of an FMP and that the Secretary and Council recognize the State's legitimate interest in the fishery, the relevance of the August 1, 1996, date to this authority is not clear. We are in the process of amending our Salmon FMP in the North Pacific, which largely defers management to the State of Alaska, and this date change would allow the State of Alaska to fully regulate these fisheries, within the 3-mile line and in the EEZ, while retaining appropriate levels of Secretarial oversight.

In closing, I appreciate once again the opportunity to provide my perspectives on these important fishery management issues, look forward to answering any questions you may have, and look forward to working with you to develop amendments which appropriately address the issues before us.