

Statement of Lee R. Crockett

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Good morning Mr. Chairman and members of the Commission, my name is Lee Crockett and I am the Executive Director of the Marine Fish Conservation Network (Network). The Network is a broad-based coalition of 124 environmental organizations, commercial and recreational fishing associations, aquariums, and marine science groups dedicated to promoting the long-term sustainability of marine fish. Our member organizations represent approximately 5 million Americans.

The Network was formed in 1992 by five national environmental and conservation groups to work to change the focus of the Magnuson Fishery Conservation and Management Act (Magnuson Act) from one of promoting fishing to conserving fish. The reason these five groups came together was the well-documented collapse of the New England groundfish fishery and fish population declines in other parts of the country in the late 1980s and early 1990s.

The Network's founding members believed that the root cause of these problems was the Magnuson Act. Enacted in 1976 to address overfishing by foreign fishing fleets off of our coasts, it was originally intended to phase out foreign fishing and promote the U.S. fishing industry. It accomplished this through a series of loan guarantees, subsidies, and programs to promote underutilized fisheries. By the late 1980s foreign fishing in U.S. waters had virtually ended and the U.S. fishing fleets had expanded to such a degree that their capacity to catch fish far exceeded the reproductive capacity of many fish populations. In essence foreign overfishing had been replaced by domestic overfishing.

In response to these overfishing problems, the Network advocated a series of changes to the Magnuson Act designed to change the focus of U.S. fisheries management from one of promoting fishing to conserving fish. Following four years of hard work by the Network and many others, the Sustainable Fisheries Act (SFA) was signed into law on October 11, 1996. It charged the National Marine Fisheries Service (NMFS) and the eight regional fishery management councils with amending existing management plans to:

- Prevent overfishing and rebuild overfished stocks as quickly as possible taking no longer than 10 years when biologically possible.
- Report on and minimize the catching and killing of non-target ocean wildlife, known as bycatch.
- Designate essential fish habitat for all federally managed fish species and minimize adverse effects from fishing on those habitats.

Since enactment of the SFA in 1996, members of the Network have been actively involved in its implementation at the council level. We have participated in committee meetings and provided oral and written testimony. Our members have been working diligently over the past five years to ensure that the SFA was implemented, as we believe Congress intended. Based on that experience, the Network issued a report in January

1999, in partnership with the Ocean Conservancy, which evaluated council implementation of the SFA called *Missing the Boat*.

We found that some progress was made controlling overfishing and rebuilding overfished stocks, but more work was needed.

We found that many councils failed to minimize bycatch claiming that past actions were adequate or that they did not have adequate data upon which to take action. At the same time they failed to take action to gather bycatch data.

Finally, while the councils identified EFH in an appropriately precautionary manner, they had taken almost no new actions to protect that habitat from damaging fishing practices.

NMFS' response to this report was that it was too early to criticize implementation of the SFA and to assure the public that it would reject inadequate plan amendments.

In September 2000, we issued an evaluation of NMFS' implementation of the SFA entitled *Lost at Sea*. In that report, we found that, despite its earlier assurances, NMFS failed to reject the vast majority of the inadequate SFA implementation amendments

On October 11, 2001, the five-year anniversary of the enactment of the SFA, we issued *Caught in the Act*, which is our five-year review of implementation of the SFA by NMFS and the councils. I'll briefly review our findings based on the three general conservation requirements of the SFA.

Overfishing

Inadequate overfishing definitions are in place in many fisheries. In some instances, like the North Pacific, NMFS approved inadequate definitions. In other instances, e.g., in the South Atlantic and the Gulf, NMFS disapproved inadequate definitions, but the councils have failed to take action to correct these definitions. And finally, some councils, like New England, have not implemented their new definitions.

Rebuilding plans are often too long. In some instances, like the New England Council's monkfish rebuilding plan, overfishing is allowed to continue in the early years of the plan. In some plans, they could have been rebuilt in less than 10 years. In others, in particular the Pacific rockfish rebuilding plans, the plans drastically exceed the 10-year limit, e.g., bocaccio 38 years, canary rockfish 57 years, and cowcod 90 years.

Bycatch

Nearly all councils have failed to develop new legally required bycatch reporting systems. Many have relied on vessel trip reports, i.e., self-reporting by fishermen. These methods are known to drastically underreport bycatch. For example, more than 80% of the vessel trip reports in the New England cod fishery reported no bycatch, while the bycatch in this fishery made national headlines. Other councils relied on the Atlantic

Coast Cooperative Statistics Program. The problem with this is that the program is not completely operational because it has not been fully funded by Congress.

Not surprisingly since many councils did not improve bycatch reporting they also failed to take any new action to reduce bycatch. Most councils, New England, Mid-Atlantic, South Atlantic, Gulf, Pacific, and Western Pacific asserted that existing management measures minimize bycatch to the extent practicable. But little to no substantiation was provided for that claim.

Essential Fish Habitat

Most councils identified EFH in an appropriately precautionary manner. In an effort to enhance protection of ecologically important, rare, sensitive, or threatened EFH, several councils have designated Habitat Areas of Particular Concern. These areas will receive enhanced protection from damaging fishing and non-fishing activities.

NMFS' response to inadequate assessments of fishing on EFH was inconsistent. Some inadequate assessments were fully approved, e.g., in New England. Others were partially disapproved, e.g., in the Gulf. And others were fully disapproved, e.g., the Mid-Atlantic. A recent federal court decision found that all of the councils had failed to adequately evaluate the environmental impacts of fishing on EFH.

Only two councils took any new action to minimize the adverse impacts of fishing on EFH, i.e., the South Atlantic and the North Pacific. The remaining councils asserted that existing management measures minimized fishing impacts on EFH to the extent practicable. As with bycatch, the councils failed to substantiate these claims.

Conclusions

When the SFA was enacted in 1996, it was hailed as a landmark piece of conservation legislation that would significantly improve fisheries conservation. Yet more than five years after its passage, the bright promise of the SFA has not materialized. As our multiple reviews demonstrate, overfishing is allowed to continue. Rebuilding plans are too long and too risky. Bycatch is not being quantified or minimized. EFH has been identified, but too little is being done to protect it.

Some argue that our concerns could be addressed through better implementation of the Act. In theory this may be true, but under current practice it is not. Our reviews of SFA implementation clearly demonstrate two phenomena. First, once NMFS approves an inadequate management plan amendment, the councils are not likely to change it. Second, even when NMFS has disapproved inadequate amendments, and required revision as soon as possible, the councils are slow to correct deficiencies.

However, while part of the problem can be attributed to poor implementation, the Act's legal framework also allows this to happen.

- Flexibility in the law has allowed NMFS to develop regulations that allow for overfishing of weak stocks in mixed stock fisheries.
- Flexibility in the law allows NMFS and the councils to claim that there is too little data to take action to minimize bycatch, while at the same time failing to take meaningful steps to collect that data.
- Flexibility in the law has allowed managers to identify EFH, but take almost no action to protect it from damaging fishing practices.

Based on our findings, we are urging Congress to eliminate loopholes and strengthen the Magnuson-Stevens Act with science and conservation-based provisions in the next year that:

- Prohibit overfishing of all stocks, and include a margin of safety to compensate for scientific uncertainties.
- Make it a high priority to avoid bycatch and require managers to further reduce this practice annually.
- Keep bottom trawling, dredging, and other damaging fishing practices from destroying sensitive sea floor habitats.
- Require managers to stop managing ocean wildlife as a series of unconnected parts and consider the needs of ocean ecosystems when developing management measures.

These proposed legal changes are our recommendations for reforming the current fisheries management system. They are proposed to address what we believe are serious problems with implementation of the SFA. However, some, including many members of the Network, point to the fisheries management system itself as the problem. They say that this experiment in self-regulation has failed. They are calling for fundamental changes in the way we manage our ocean fish. Some would like to see the role of the councils changed. Their positions range from complete abolition of the council system to restricting their authority to only allowing the councils to make allocation decisions. Some would like to see NMFS assume a greater role in fisheries management. While NMFS has the authority to reject inadequate plans and amendments, and to write management plans itself, it rarely does so. Some of my members would like to see NMFS charged with developing management plans and amendments with advice from the councils. Finally, some of my members would like to see a whole new entity established and charged with managing our ocean resources. The bottom line is that there is great dissatisfaction in the conservation community with the way we manage our ocean's living resources and a strong desire for fundamental change.

The past 25 years of management under the Magnuson Act clearly demonstrate that managing our ocean resources only for extractive purposes has led to many of the problems we see today. Is that just an alarmist claim? I don't think so. We recently

analyzed data from NMFS and an American Fisheries Society study and found that 31 species of federally managed marine fish are threatened with extinction. As Dr. Jack Musick, the lead author of the AFS study, said: “Contrary to prevailing scientific opinion ten years ago, it now appears that fishing may well drive marine fish species to extinction.” It is not too late to change the way we manage our oceans, but we must do it now. We must put conservation first.

The Commission on Ocean Policy is perfectly situated to facilitate this change. We urge you to take a hard look at our current management system, both the councils and NMFS. Are they doing the job? As I’ve outlined above, we don’t think so. If not, what do they need to do a better job? Do they need a clearer legal mandate, one that puts conservation first? We think so. Should there be a new management structure, one that separates the user groups more from the management decisions? Many in the conservation community think so. These are all fundamental questions that you should ask. We think that when you do, you will see that there is much room for improvement. As you undertake this examination, the Marine Fish Conservation Network stands ready to help. Please feel free to call on us for assistance

Thank you and I would be happy to answer any questions.