Testimony
Of
Ralph Brown

Before the
United States Commission
On
Ocean Policy

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Thank You, Mr. Chairman;

I am Ralph Brown of Brookings, Oregon.

I grew up in the fishing business, and spent much of my life on the ocean. I currently own two fishing trawlers that fish out of the Port of Brookings-Harbor on the Oregon Coast.

My background includes 20 years of living marine resource management. In 1988 through 1990, I was a member of The Oregon Governors Taskforce on Marine Resources, in 1992 through 1994, I was on the Oregon Ocean Policy Advisory Committee, and I have been a member of the Pacific Fishery Management Council since 1996.

I was been involved in the development and writing of *The Oregon Ocean Plan*, *The Oregon Territorial Sea Plan*, *The Oregon Rocky Shores Management Plan* and the Strategic Plan for Pacific Groundfish management. I wrote the draft legislation that became the Oregon Developmental Fishery Program, and the straw man proposal that eventually turned into the Groundfish Limited Entry Program for the Pacific Fishery Management Council.

These plans involve nearly all facets of marine life management including seabirds, marine mammals, tide pools and, of course, fisheries. These plans also involve non-living marine resources including oil and gas development and marine mineral extraction.

When Mr. Lockhart called to ask me to testify before this commission, I assumed that I would be speaking from this broader range of experience. He explained, however, that he wanted at least part of my testimony to be from the perspective of the Pacific Fishery Management Council. In order to comply with this request I am starting there. I intend that half of my testimony will be from the perspective of a manager in the context of the Magnuson Stevens Fishery Management and Conservation Act (MSFMCA). I will shift in the second part of my testimony and give a more personal perspective on management.

The part of my testimony labeled as being on behalf of the Pacific Fishery Management Council has been done with the cooperation of the Management Council Executive Director and the Council Staff.

Comments on behalf of the Pacific Fishery Management Council

The Pacific Fishery Management Council manages fisheries in the Exclusive Economic Zone off of the States of Washington, Oregon, and California. We have three fishery management plans (FMP) covering over 80 species of groundfish, five species of coastal pelagics, and all of the runs of salmon found on the West Coast, including those that are listed as threatened or endangered. We are nearly finished with a fourth FMP for highly migratory species. This will bring at least 13 additional species under Council management.

The Role and Authorities of Regional Fishery Management Councils

These comments pertain to recent efforts to change the role of regional councils. The comments detail why we strongly disagree with these efforts.

In establishing the regional council system, the Magnuson-Stevens Act set in place a unique process for local interests to have a voice in management of regional fisheries. Through the Pacific Council, diverse stakeholders from four western states (California, Oregon, Washington, and Idaho) craft fishery policies that best suit the local needs of the Pacific region. Developing reliable estimates of acceptable biological catch and optimum yield (or, available harvest) is a critical part of this process, and of great importance to the Pacific Council. For example, in our groundfish fishery, the Council uses a rigorous stock assessment review (STAR) process developed by our Scientific and Statistical Committee. Recent stock assessments are run through the STAR process to ensure data and models used produce the best available science, providing a sound basis for management decision making. Throughout this process, the National Marine Fisheries Service (NMFS) and state fishery management agencies are key participants, developing the science in partnership with the Pacific Council.

We have recently heard calls for a change to the roles set forth by the Magnuson-Stevens Act. The view has been expressed that regional councils be limited to allocating available harvest and the job of developing management science and conservation measures be given to NMFS. We strongly disagree with this notion.

- Preventing the involvement of regional councils in developing the science that girds our fishery management goes against the intent of Congress. Currently, objective science is produced through the Pacific Council process in a partnership that includes federal, tribal, and state scientists; academic scientists; private-sector scientists; and the interested public. Limiting development of this basic information to NMFS unnecessarily precludes the other parties.

- This view presumes fishery science produces definitive results and ignores the large amount of uncertainty that complicates fishery management. In contrast, the

process employed by the Pacific Council recognizes this uncertainty and strives to develop risk-neutral science recommendations. Once these bounds have been established, the Pacific Council considers the uncertainty involved and determines whether to make risk-prone, risk-neutral, or risk-averse policy decisions about how a fishery will be conducted.

- There are situations where conservation and allocation decisions cannot be easily dis-entwined. For example, marine protected areas (MPAs) are promoted as a tool for both protecting marine resources and improving sustainable fisheries. Many scientists agree that MPAs may protect marine resources. However, in terms of sustainable fisheries, there is a great deal of scientific debate about the merits of MPAs in comparison to other fishery management techniques (such as annual quotas). Regional councils provide a public forum where the merits of MPAs can be discussed by all interested parties.

Fishery management is a complicated process. Environmental variability, legal mandates, fish life histories, and social concerns all weigh heavily on the management of our living marine resources. A regional, public process was envisioned by Congress as the best way to provide for local needs in managing local fisheries. The role of the regional council, as set out by Congress, should not be changed.

Council Activities

Council activities during recent years can be categorized in three categories; Season Setting, adjustment to the Sustainable Fishery Act and Development of new Fishery Management Plans.

Season Setting

One of our major challenges is to develop fishery regulations which allow harvests of fish that we want caught while avoiding harvest of fish that we do not want caught. We have a number of species of salmon that are listed as either threatened or endangered, and species of groundfish that are listed as overfished. These populations must be rebuilt.

The season setting process starts with an abundance forecast. Previous catches, life history characteristics, trend indicators and other pieces of data are combined in a model that predicts total abundance. Life history parameters are employed to determine the level of fishing pressure that can be applied to the stock, and a quota is determined.

Fishing seasons are constructed such that areas and times open to fishing coincide with areas and times of minimal presence of the protected species. For mixed stock fisheries, the catch of the target species is adjusted downward until the catch of protected species is low. The catch of many healthy stocks is severely restricted to protect those of low abundance.

The need to balance catches of healthy and weakened stocks will be a permanent part of fishery management. The time frames that are required to rebuild some of the groundfish

stock are so long, in excess of 100 years, that for practical purposes they can be thought of as permanently depressed.

Data is the key to this process. The species that we manage have poorly understood life history characteristics. Ocean environmental regime changes have recently been discovered. While we believe that these environmental changes have profound influences on fish stocks, we do not know the extent yet. Better stock location information could allow us to fine tune fishing seasons and provide more fishing opportunity while at the same time afford better protections for the protected species. .

Fishery data is itself compromised because of changes in regulations or in some cases, fishery closures. Recreational catch data relies on Marine Recreational Fishery Survey data that was not intended for this purpose. Fishery independent indexes, such as surveys, are non-existent for parts of the coast and for parts of the range for each of the overfished species.

While National Marine Fishery Service is attempting to address this shortage of data, the length of time required to establish a time series is such that many years will pass before new information sources, once started, can be used. If we are to continue with this style of management, many new sources of data will need to be developed and adequate funding will need to be provided

The Council is helping with this data collection where possible. Limited salmon fisheries have been authorized in areas previously closed, so that we can collect marked fish and coded wire tag information. Observers are being carried on groundfish boats to determine the true species composition of the catch by time and area. Log books from trawlers have been collected for years and Council and National Marine Fishery personnel have analyzed the catch and area location. These sources of data are currently used in season setting and show promise to improve our ability to target catches to healthy stocks. Obviously the mapping of all of the species of fish along the coast is a major undertaking that cannot be accomplished quickly or cheaply. Understanding the physical and environmental processes that determine our spawning success can only be thought of as a long term project. Success of our management system is determined by the success in collecting and understanding fishery data.

Fishing gear research will be a vital component of future fishery management. More selective fishing gear that simply doesn't catch certain types of fish, would allow harvests of some fish that are not allowed now. The management council currently has supported several exempted fishing permits to allow exploration of different gear configurations in both the trawl fisheries and in the hook and line fisheries. Funding for these programs is limited and is likely to end soon. Additional funding will need to be identified for these and other similar programs to continue.

Matching fishing capacity to available resource is critical to success of fishery management, particularly in commercial fishing. The goal of commercial fishing is to

provide food for the public in a cost effective manner for the business. Clearly this is impossible when capacity is too high.

The tools that the council has to work with on capacity reduction are limited. The Council has recommended that the current prohibition on Individual Fishing Quotas (ITQ) be allowed to expire, and allow development of ITQ programs for fisheries on the West Coast.

Our groundfish industry has been identified has being grossly overcapitalized. The industry has stepped forward, with Council support, with a buy-back plan to address this overcapacity problem and has presented this to congress. A west coast buy-back bill has been entered by Senator Ron Wyden of Oregon. Whether this bill will be passed remains to be seen.

The current version of the bill requires a combination of government funding and of government loans to the industry. The loans would be paid back over time from proceeds from fishing. The bill has run into opposition and will probably be reconstructed to only consist of government loans. This will likely be the first industry funded capacity reduction program in the United States. Trawl buy-back has been identified as the top priority in our strategic plan for groundfish

We have a permit stacking program in place for our fixed gear sablefish fishery. Under this program, boats can acquire, and fish, more than one permit and fishery limit. Congress gave the fishery aspecial exemption from the ITQ prohibition in order to develop this program. The degree of capacity reduction that will be achieved remains to be seen as the program is relatively new but some reduction has already occurred. The early indications show that this program will be a benefit to the fixed gear fishery. We are working on a similar program for our trawl fishery but the program is still in the early stages of development. Further exemptions from the ITQ prohibition will be needed for this program to be successful.

Adjusting to the Sustainable Fishery Act

Responding and adjusting to the Sustainable fishery act has been a major and ongoing process. The act required several fishery management plan amendments. Some of these have been completed but some were denied by National Marine Fishery Service as being incomplete when submitted and have to be rewritten. This has been a major workload item for the staff.

Some members of the public feel that the council is not moving quickly enough to respond to the sustainable fishery act or to protect overfished stocks of fish, particularly groundfish. As a result the courts are becoming increasingly important in fishery management. . Nearly every management decision on the part of the Council brings with it a new lawsuit. We don't name the lawsuits anymore. We just number them. The standard lawsuit involves an issue of fishery management and a complaint on procedure involving the National Environmental Policy Act (NEPA). The Court has not been

friendly to National Marine Fishery Service and we have been instructed to do a number of things that will change fishery management in the future.

We have been using abbreviated rulemaking procedures in order to shorten the time between management decisions and management implementation. The Court has ruled that this is improper and therefore we are attempting to address full rulemaking in our groundfish procedures. We currently manage on an annual basis but this will no longer be possible. The time frames required for decision, publication, public comment and implementation simply do not allow annual management. In order to comply with the court ruling, we are transitioning to a bi-annual management cycle this year. In the future, quotas, trip limits and fishery regulations will be bi-annual regulations.

We can do this for groundfish because the fish live for many years and do not require annual assessments. If this requirement for rulemaking is broadened to apply to salmon, which do require annual stock forecasts, we will lose the ability to manage the salmon fishery.

We have been given instructions to improve our by-catch accounting. We currently have an observer program that focuses primarily on trawl boats with some observation of the fixed-gear sable fish fleet. The court has ruled that this is not extensive enough. We still do not have a final determination of the required actions to bring us into compliance with this decision. If, as seems to be likely, an expanded observer program is required, funds for the program will need to be found. These funds may need to come from a commercial fleet that is already strapped financially. There is currently no mechanism to get funds from, or charge fees for, recreational fishing. This may be needed in the future.

We are working on two environmental impact statements (EIS). One of these, dealing with the impact of fisheries and of management on the habitat is in response to the courts. The other is an update of the programmatic EIS.

We have other lawsuits in the queue for the courts. One of these challenges the length of time allowed for rebuilding over-fished species. If the plaintiffs are successful in this suit it could have the effect of closing most of the fisheries along the west coast.

In order to prevent new lawsuits, NMFS and the Council are attempting to complete Environmental Assessment Documents prior to decision time for council actions. It is hoped that by doing this a broader range of alternatives will be considered and analyzed, and the official record of the council discussion will be more complete. We do not yet know whether this will be successful in preventing new lawsuits.

The writing and analysis required to comply with NEPA and to defend against these lawsuits is hampering our ability to manage fisheries. Although we have had some increase in staffing, it is not enough to deal with the increased workload. Council members are having trouble finding time to read and absorb the volume of material. The necessity of having the documents completed prior to decision-making reduces the creative ability to deal with fishery problems.

At every council meeting we have a discussion of work load priorities. Invariably, the required items take up all of the work time available and no new items can be added. Often these new items are the very actions that will improve fishery management. The system has become so bogged down with required actions that it is unable to improve. We have hopes that by moving to a biannual management system we will be able to find time to develop innovative solutions to fishery problems and move out of the crises management that we are in now.

The problem of lawsuits will probably not go away soon. A review and clarification of environmental and fishery regulations could assist in guiding the council actions. Simplification of environmental regulations will help.

New Fishery Management Plans

Finally the third category of action is the development of new management regimes. We have recently adopted a management plan for the coastal pelagic species and are in development of a management plan for highly migratory species. These also were major workload items for the council family. We do not know yet what the ongoing workload requirements will be or how these plans will fit into our already burdened council structure. We do know that much of the biologic information required for management of the species is scanty or non-existent. Improved biological information will be needed to achieve better management.

Council Recommendations:

1. Retain the current regional council role in terms of science and management decision making.

2. Increase funding and staffing to collect, maintain, and analyze fishery-dependent and fishery-independent data.

3. Support the use of IFQs as a management tool available to the regional councils.

4. Review and clarify environmental and fishery laws and regulations..

At this time I am going to change hats and speak as an observer of many different management systems. I will talk about what I think is wrong with the present federal management system and finally defend the Pacific Council.

First off, no management system is perfect. If we expect perfection we will always be disappointed. We should instead plan for mistakes.

As I said in my introductory remarks, I have been involved in the establishment or implementation of several management systems. They have some things in common. In

every case we sat around bemoaning the lack of information and high degree of scientific uncertainty (In many cases we would comment that we don't know any thing about some of the species that we are trying to manage.). We would then develop a management system that required a huge amount of data and scientific information.

Since the systems demand large amounts of data in order to function and since we don't have the data, we make it up and pretend that it's real. We don't call it "made up data," of course. We call it "scientific assumptions" or one that I really like -- "filling in the missing data cells" and we don't say, "We don't know what the answer is." We say, "There is a high degree of uncertainty."

Why are we surprised when such a system fails?

We are experiencing such a system failure now in the groundfish fisheries. I gave a description of the season setting process above. We do all of the usual data heavy stuff. Stock assessment, quota setting, catch tracking, manipulations of seasons, trip limits using ratios of species in the catch from the past. We probably can't be called a success, however. We blame over capacity, or not enough data, or those damn fishermen, or those damn biologists. We certainly don't have enough time, money or people to implement the system completely. We haven't even applied the full system to all of the species that we supposedly manage.

Compare that to the Dungeness crab fishery. At the beginning of the fishing season, no one knows what the stock abundance is. They have overcapacity problems. They have serious competition for the resource. Catch accounting is done but it really doesn't matter to the management of the fishery. Regulations haven't changed in many years. There aren't really even very many people working in the management system. This system would never be designed today. You would think that this system should be a mess but every one including the environmentalist, agree that the Dungeness crab fishery is a sustainable fishery.

What's the difference? The difference is what I call the difference between passive management and active management. Crab managers have determined the parameters that protect the resource and then developed gear, season, size and sex regulations that implement the protections. Notice, no quotas. Notice, no pretending that we know what we don't. Instead there is recognition that we don't know much and have developed a system that works with what we know. The gear and seasons are designed such that we don't catch what shouldn't be caught. The management measures are put into place and then left to do their jobs.

A lot of time and money is spent trying to defend, change, improve and tweak active management systems. One suggestions is that quotas should have a "precautionary adjustment" to deal with uncertainty. Isn't this just another way of saying that we don't trust the stock assessment? Implied in this statement is also the assumption that failure is only defined as allowing over fishing. I submit that failure can also be defined as closing industries because of over regulation. Our current system fails on both counts. I

recognize that it is easy to say that passive measures should be developed for fisheries and much harder to achieve. The failures of the current system don't come easy either. The benefits of passive measure are great enough that more time should be spent on developing them.

The latest cry is that fishery management systems should be conservative in nature. I agree. I disagree on the methods suggested to achieve this conservation. As stated above, the norm is to suggest that downward adjustments of quotas will achieve conservative management. I submit that they will not.

In the early 1980's we believed that the canary rockfish stocks could withstand several thousand tons of harvest. If we had reduced this by half, we would have still been in excess of 1000 tons. We now believe that the MSY for that species is 750 tons. During the early 1990s based on the recommendation of the stock assessment, we set harvests of canary rockfish at 1000 tons. Even with the benefit of a stock assessment had we decreased quotas by 25%, we would have only been at our current assumption of MSY. We now believe that canary rockfish was already over fished by that time. In this case, even with precautionary adjustments relative to our understanding of the stock, the system would not have prevented over fishing.

Pacific whiting, on the other hand, has one of the largest biomasses in the eastern Pacific. Had we applied precautionary adjustments to the fishery in the 1960s we would have had little more than catch to go on. Adjustments downward from the catch would have prevented the development of the present fishery. In this case, over fishing would have been prevented, but only at the expense of no fishery. I do not believe that this can be called success. Also, it certainly doesn't require a stock assessment to protect stocks from "no fishing."

Pacific Whiting has been the top priority of NMFS for many years. There is no fishery on this coast that has had the degree of scrutiny or manpower in assessment that this one has had. The fishery was declared over fished this year. The Council's first groundfish management action was to place limits on Widow Rockfish. The fishery has been actively managed since 1982. Widow rockfish was declared over fished two years ago.

I submit that this type of active management is inherently unconservative because it relies too heavily on information, data, and scientific understanding that we do not have. The crab fishery, even though a simpler management system, is much more conservatively managed. The system works even when mistakes are made.

Throwing more money, time and manpower at the current system will not achieve the degree of conservation desired. The system is decades away from having the understanding that is required to make this system work.

I do need to be clear at this point. I realize that I am sounding rather schizophrenic at this point, given the recommendations of the earlier section. If we are going to keep the data intensive, active management system that we have now, I concur completely with the

recommendations as outlined in the section on the PFMC. I just think in most cases passive management measures will provide more protection at less cost. I personally recommend that more emphasis be given to passive management systems and techniques.

One last comment on the nature of our system. When ever a change in the fundamental design of management is suggested, such as I have done, the new system is compared to an idealized, perfect system. We need to be sure that we are comparing to the real system, as it actually exists. The current system fails badly if held to the same standards that new systems are held.

Given the above discussion of our management system, it is probably a surprise that I would defend the Pacific Fishery Management Council. Critics of the system often want to blame the council for the failings that are showing up now. The critics usually imply that the council ignored clear signs of over fishing in order to allow short-term benefits to accrue to the industry.

Nothing could be further from the truth. This Council has never shied away from decisions to protect the resources under their management. Critics have the luxury of talking with perfect hindsight. The Council did not have this luxury. Instead, decisions had to be made relative to the information that was presented at the time. The failures perceived with the system reflect differences in scientific understanding of the resource now compared with the past. The failures are a reflection of the problems inherent in this kind of active management system, not with the Council System. I wish that I could point at someone and say that they were the cause of our fishery problems. I can't. Everyone in the system has done what they were supposed to do and they have done their jobs well.

This Management Council has always been the most open process that I have ever dealt with. I have disagreed with decisions that they have made in the past but never the less the decision process was always open for all to see. There is no behind the door deal making, no hidden information. All meetings and information relative to the decisions made has been readily available.

Suggestions to change the Management Council System always imply that the fault with management is with the Council Structure. Several suggestions that I have heard to "fix" the council process will make management worse not better.

The first suggestion, separating stock assessment from allocation, has already been addressed in the section concerning the Pacific Management Council. Personally I will take the comments on this suggestion further than we could as an official comment from the Pacific Council.

One of the reasons given for separating the stock assessment process from allocation is the suggestion of political interference in the stock assessment process. I do not know what has happened in other regions but that has not happened here. As with all parts of the process in the Pacific region the stock assessment process is very open. If politics

were to enter into a decision, those politics would be quickly found out and exposed. There have been arguments about individual stock assessments but these arguments are confined to the adequacy of the data. Interestingly the stocks that are now considered over fished have not been the center of any of these arguments.

If the system is changed such that the stock assessment process is removed from public scrutiny then this check on politics is no longer present. The politics of NMFS and of the individual stock assessment authors will surely creep into the assessment process in this case. Separation of the stock assessment process away from the council will result in more politics in the assessment process, not less.

The second suggestion is that industry representatives dominate the Councils and that their vote is often swayed by conflict of interest. Six of the fourteen voting members of the management council are industry members, clearly not a majority. Of these, three are recreational representatives and three are from segments of the commercial industry. These groups are often enough in disagreement that they can hardly be thought of as a voting block.

The suggestion ignores several forms of conflict of interest. There is just as much conflict of interest in an environmentalist that needs a fund-raising issue as there is in commercial fishermen who needs a boat payment. There is conflict of interest present when an agency could use a crisis to support a budget increase. There is a conflict of interest when a state agency needs to sell recreational fishing licenses in order to fund its operations.

Selling fish is only one way to make money from fish. There are many millions of dollars spent annually on salmon management and research in the Pacific Northwest. This would not happen if salmon runs were thought to be in good condition. Managers far outnumber fishermen in the rosters of people making money from salmon. No one would suggest that all of these people are ignoring the needs of the fish in order to take care of they're finances. Fishermen are no different.

Again the best way to deal with the problem of conflict of interest is to recognize that it exists and make it public so that if decisions are made improperly they can be exposed for what they are.

It has been suggested that the selection process be changed so that nominations are made directly by the Department of Commerce and not involve the governors of the state. The suggestion is that somehow this will remove politics from the selection process and improve management. The nomination process is certainly political now. It would be political after this change was made, also. The politics would be different, certainly. The politics would be Washington D. C. politics instead of state politics, but that is certainly no less political.

Governors usually take advice from the fish and wildlife departments of the state. The individuals within these departments usually know the individuals recommended. The

nominated people are not necessarily known in Washington D. C. The likelihood that good non-political people would be nominated with the change in the system, goes down not up. The group that has the ability to send people and spend money in Washington D. C. will win and everyone else will lose under this proposal.

Finally I do have one suggestion that I think will improve the Council process. Those of us sitting on the council are not selected because we are wonderful fishery managers. We are there because we have been active with some fishery group and known to the managers. Some training in the elements of management would be helpful to us. NMFS does provide an orientation session when a new person is selected to serve on the Council. While many of the elements of the education process that I would suggest are presented at the orientation session the topics are too many and too cursory to qualify as educational. Sessions on the legal framework of management, some basic assessment theory, basics of economics, and in some cases, simple descriptions of the fisheries and of fishing gear would be helpful in allowing managers to make the most of the experience that they bring to the council process.

In summary, the council process in the Pacific region is a good open process. Managers have taken the charge of conservative management very seriously. The fishery failures that we are experiencing reflect a lack of understanding of the processes of the Pacific Ocean, not unwillingness on the part of fishery managers to react when actions are needed. Changing the Council process will not compensate for a lack of understanding of stock dynamics. Hiding the stock assessment process will not make the system more responsive and it certainly will not make the system more accountable.

In order to fix something we need to work on the real problem. In this case the problem is our lack of knowledge of the processes of the ocean that we are dealing with. We need to develop systems that work in spite of our imperfections.

In closing, I know that this testimony was lengthy. I apologize. I was asked to wear two hats while testifying and I have attempted to do that. I hope that this has not confused issues. The real interest that we all have, fishermen and the public, is to have our ocean resources well managed. I wish you success in you endeavors.

Thank You,

Ralph Brown