WRITTEN SUBMISSION OF RUSSELL SHERMAN COMMERCIAL FISHERMAN AND TREASURER OF THE GULF OF MAINE FISHERMEN'S ALLIANCE ON THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

BEFORE THE SUBCOMMITTEE ON OCEANS AND FISHERIES OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION THE HONORABLE OLYMPIA J. SNOWE, CHAIR

APRIL 10, 2000

Russell Sherman
95 Concord Street
Gloucester, MA 01930
(978) 281-4651

Counsel: Stephen M. Ouellette, Esq.
Cianciulli & Ouellette
163 Cabot Street
Beverly, MA 01915
(978) 922-9933

I. INTRODUCTION

Madame Chair and members of the Committee, I would like to thank you for the opportunity to address you regarding the re-authorization of the Magnuson Stevens Fishery Conservation and Management Act. I have been a commercial fisherman for 29 years, fishing primarily out of the port of Gloucester, Massachusetts, and also from Alaska, Maine and Virginia. As a commercial fisherman and vessel owner, I have a vested interest in the future of a viable commercial fishery and understand and respect the need for effective conservation and management. I am the Treasurer and a Director of the Gulf of Maine Fishermen's Alliance. This group of fishermen, representing vessel owners and crew who fish in the Gulf of Maine and surrounding waters seeks to ensure that regulations are effective and sensible and treat fishermen fairly and equally. The Gulf of Maine Fishermen's Alliance and I have been involved for a number of years in the effort to implement management measures that attain conservation objectives, without unreasonably burdening those who access the resource. As the owner of an inshore vessel currently unable to fish due to extensive and lengthy inshore closures, I believe I have also experienced and suffered through one of the most dismal failures of the management process. With increasingly stringent rebuilding measures mandated by the Sustainable Fisheries Act, and reduced involvement of fishermen, the management process has turned into an allocation fight, with the winners being special interest groups, represented by well funded lobbyists able to garner support on, or who are actually members of, the New England Fishery Management Council. As a result, small owner operated vessels, from small fishery dependent coastal communities are forced out of the industry.

Effective conservation measures must be sensible and practical and derive their authority from the consent of those governed and affected. Rules must be fair and equitable, and take into account variations between fisheries. While the Magnuson Act appears to provide many of the safeguards for small businesses, particularly in National Standards four, six and eight, we believe that the National Marine Fisheries Service has been ineffective in ensuring that those standards are properly applied. In many instances, I believe that the shortcomings of the present act result not from problems in the act itself, but from improper interpretation or ineffective implementation of existing provisions. While all fishermen understand that the long-term goal of the Act is to sustain a viable fishery, we do not believe that Congress' intent is to sacrifice fishermen's lives or livelihoods merely to hasten a recovery. Nor do we think congress' intent is to eliminate small businesses like mine.

In making my comments therefor, while addressing the need for revisions to the Act as presently drafted, I will also address the problems we presently see in the Act's interpretation, which might in some respects be corrected, through clarification of congressional intent. The views expressed herein reflect my opinions, and are the represent the consensus of the Gulf Of Maine Fishermen’s Alliance

II. CONGRESS MUST GIVE MORE GUIDANCE IN PRIORITIZING THE NATIONAL STANDARDS AND REQUIRE THAT A BALANCE IS

STRUCK BETWEEN THEM

Congress should provide some guidance to the Administration as to the priority to be given each National Standard. As fishermen, we are often confronted with the statement that conservation goals set forth in National Standard One override all others. As a result, I believe managers are too quick to reject industry alternatives that might come close to conservation goals, but which would significantly reduce the burden on fishermen and harm to their communities. We do not believe that this was congress' intent. Managers must balance competing issues such as health of stocks with the health of fishery dependent communities, fairness and equity and safety at sea. If a slight delay in rebuilding will permit a community to survive or promote equity or safety, then every attempt should be made to delay rebuilding as long as this does not affect the long term viability of a stock. Plans should be flexible to permit some re-direction, or to avoid cumulative effects of competing plans from suddenly increasing the burden on fishermen who engage in a number of fisheries.

The present National Standards require consideration of the effect of fishermen based on each individual plan or action. As a multispecies fisherman, I am subjected to a number of management plans, each with its own set of rules and limitations. Although considered a groundfisherman, I am also severely impacted by the Lobster Plan, the Monkfish Plan and the Dogfish Plan. For example, at the same time inshore multispecies vessels are suffering from draconian restrictions in the cod fishery, which deprive many of us access to other species such as flounder and pollock, we are now required to discard many of the lobster we previously landed; many others are required to discard monkfish; and the dogfish fishery appears to be at an end for all practical purposes. Nowhere has the cumulative effect of these plans been evaluated. I can tell you that the value of any fish that the regulations require me to discard represents a pure loss of profit-without any conservation benefit. The cumulative effect of all plans, including their regulatory burden, must be determined.

III. MANAGERS SHOULD HAVE THE FLEXIBILITY TO COORDINATE MANAGEMENT OF INTERRELATED STOCKS OR MANAGE THEM AS ONE

At present, stocks are managed on a species by species basis, with stock biomass targets set forth for each species based on their historical levels. We, as fishermen, know that the peak levels of fish never occur at the same time. Scientists tell us that the biomass of the ocean actually remains fairly constant, with the balance between species changing. Thus, not every species can be rebuilt to its maximum potential at the same time, as presently required under the Magnuson Act. Scientists have told us that the present management structure is doomed to failure because the ocean can never hold all of the species at the biomass level necessary for them to provide the maximum sustainable yield (BMSY). We are doomed to a perpetual rebuilding phase. The Act must be amended to permit managers to look at interrelated species to determine what the overall stock size should be, and the appropriate mix, and not base management decisions on inflexible and unattainable goals. Management on a

"fishery by fishery" and not a "species by species" basis will allow combined trip limits and reduce discards, thereby maximizing return from the fishery. Congress should also permit managers the flexibility to rebuild predators and prey at reasonable levels that make biological sense rather than to adhere to arbitrary rebuilding targets which accelerate the rebuilding of both predators and prey simultaneously.

IV. NMFS MUST BE COMPELLED TO ENFORCE ALL OF THE NATIONAL STANDARDS AND CORRECT COUNCIL ABUSES

As a small businessman, I expect NMFS to ensure that National Standards, in particular those governing fairness and equity and community issues, will be enforced. In the past, our former regional Director, Dr. Rosenberg was not afraid to tell the Council their proposed action were unfair to one or more sectors, or to reverse unfair Council actions. NMFS must actively ensure that the little guy does not become the victim of larger special interests as they try to avoid their burden of conservation and gain further advantage. Congress should ensure that those who bear the burden of conservation are still around to benefit from the result.

V. THE BAN ON ITQs SHOULD BE CONTINUED, AND ANY "QUOTAS" DISTRIBUTED EQUALLY AMONG FISHERMEN

I am generally opposed to any management scheme that privatizes and allows a few individuals to accumulate exclusive rights to the resource. I support a continued ban on the development of Individual Transferable Quotas (ITQs).

I think that individual fishing quotas ("IFQs"), which are non-transferable, might be considered a useful management tool, as long as they are fairly and equitably distributed. Quotas should not be carried from year to year, but available for use only in the year allocated. Recent proposals for quota allocation raise serious questions as to fairness. I do not believe that any individual quota should be directly correlated to an individual's past fishing history. This merely rewards those who have had the greatest impact on the resource, at the expense of those who have either voluntarily reduced their effort, or been forced to do so by the unevenly distributed burden of conservation. If any individual quotas are to be implemented, everyone should be given an equal share.

VI. ANY LATENT EFFORT BUY BACK SHOULD BE ENTIRELY VOLUNTARY

Although most fishermen understand the problem with so-called latent effort, at the same time we realize that it is unfair to deny access to the resource to those who have voluntarily reduced effort in some or all fisheries. Any restriction on latent effort should be carefully reviewed and any buyback should be voluntary.

VII. CONGRESS SHOULD ENCOURAGE COMMUNITY AND AREA BASED

MANAGEMENT

I strongly favor the development of regional fishery plans with local management. Under Magnuson as presently drafted, stocks must be managed as a unit throughout their range. This leads to situations where some fishermen are free to overfish in area after area. Managers should have the option of dividing areas into regional management blocks, with **separate sub-TACs**. Fishermen signing into these areas would then be limited to a region for a fishing year. I believe this would be more equitable and encourage more responsible fishing. It would force fishermen to work more cooperatively with each other and with managers to achieve a common goal.

VIII. REAL TIME DATA IS BADLY NEEDED

A continual problem is that of obtaining timely data. Scientific sampling and analysis is months or years behind. Management decisions are routinely adjusted or altered with less than a year's data. Nowhere has this been more dramatic than in the cod fishery, where large movements of codfish have resulted in accelerated catch rates. With a restrictive trip limit, the result is frequent discard. Scientists must be able to correlate fishermen and observers' data on a real time basis to ensure that decisions are made not on the "best available data" but rather on meaningful data. Stock assessments should be performed more regularly, and daily catches and catch rates should be analyzed to detect trends between full assessments. This could be accomplished through use of industry trawl data, possibly collected through electronic logbooks.

IX. COOPERATIVE RESEARCH AND MANAGEMENT ARE VITAL TO SUCCESS OF MANAGEMENT PLANS, AND THE FEDERAL GOVERNMENT IS NOT DOING ENOUGH TO PROMOTE THESE EFFORTS

As fishermen, we possess special knowledge regarding the fish; their habits and the health of stocks, which I often think scientists lack. Fishermen are by their very nature assessors of the stocks, and followers of migratory patterns. Too often scientists contest fishermen's claims about quantities of fish being seen or caught, fish migration, spawning habits, etc. We frequently invite the scientists and managers to come aboard our vessels to experience what we see, but are turned down. As a result, there has been an almost complete loss of trust between fishermen and managers. I believe fishermen need a closer working relationship with both scientists and managers, so they can understand what occurs on the ocean, both in terms of stocks and how we conduct our fisheries. We can tell scientists more than their computer models can about the subtle changes in the environment that can be discovered by daily observation. I have tried to become involved in the stock assessment process, but find I am often frustrated by the failure of managers to take seriously my involvement. For example, a council staffer invited me to participate in a stock assessment workshop, but only notified me of the time and place less than a day before the meeting, which was in a location far from my home. I encourage Congress to mandate the administration to involve fishermen in the entire scientific process.

Despite many attempts to develop innovative conservation methods through gear modification, etc., managers routinely reject fishermen's experience as "anecdotal" information, not worthy of consideration in management decisions. As fishermen we have spent years learning how gear works, and what it can and can't do. We need to develop new methods of protecting juvenile fish and non-target species. This can best be done with the fishermen's knowledge of gear. There has been a strong push by state officials, such as the Massachusetts Fishery Recovery Commission initiative to involve fishermen in the gathering of data and development of new gear, etc. The federal government has been slow to follow the lead, despite calls for industry involvement at all other levels. Even the recent peer review of the Northeast Multispecies Stock assessment process performed by the National Academy of Sciences called for increased industry involvement. Unless and until fishermen are involved in the process, trust will never be re-established between fishermen and regulators.

X. PRESENT PLANS ENCOURAGE WASTEFUL DISCARDS OF BYCATCH—ALL FISH WHICH CAN NOT BE RELEASED ALIVE SHOULD BE LANDED, EVEN IF IT IS GIVEN TO CHARITY

Present plans do little to discourage or prevent bycatch despite the existing National Standards. Nowhere is this more evident than in the Gulf of Maine cod fishery, where managers have closed coastal fishing areas to protect cod, including areas where fishermen have traditionally caught other species such as pollock and flounder. Vessels are bunched so closely together to make a day's pay that they can not maneuver or relocate to avoid massive influxes of codfish. All plans should provide for sufficient opportunity for vessels to avoid aggregations of critical species, while permitting maximum flexibility for fishermen to earn a living. All plans should also provide a mechanism to permit vessels to land all that they catch with combined trip limits, and any excess over trip limits should be donated to charity. No fish should go to waste merely because regulators find it more convenient to mandate discard.

XI. COUNCIL PROCEDURES BENEFIT SPECIAL INTERESTS AND ARE UNDERMINING FISHERMEN'S CONFIDENCE IN MANAGEMENT AND THE DEMOCRATIC PROCESS

The Council process must be reviewed to ensure that affected fishermen can be involved in making the decisions that affect their lives. In the Northeast region, we have a multitude of interrelated fisheries, prosecuted by fishermen from different port, using different gears and methods of fishing. The result is that given the small number of Council seats, many fishermen are under-represented, or not represented at all. Council members are often paid lobbyists, not individuals merely economically dependent on fisheries for their livelihood. As such, they are paid based on how they vote. This results in less than objective consideration of a "competitor's" position, and in cabals among Council members to promote the interests of their collective clients. Paid lobbyists, whether they represent fishing interests or other groups should have no place on the Council.

The problem with special interests on the Council is made worse by the Administration's failure to ensure that management measures are fair and equitable or to otherwise apply the existing National Standards to prevent abuse of the Council process. In many instances Council action is not merely a conservation tool. The first rule in fishery management has always been "shut down everyone but me" and Council action, unchecked by the administration, becomes nothing more than an allocation battle, where a few special interests hold all of the cards.

Recent developments on the New England Fishery Management Council raise even more serious questions as to the continued involvement of fishermen in the management process. While the Magnuson Act mandates public hearings, recent changes in New England Fishery Management Council policies prohibit many from speaking at the Council hearings, relegating public comment to sub-committees. While this may streamline the Council process, it does so at the cost of democracy. These new policies makes it virtually impossible for fishermen to promote plans or ideas, as they must now go though a completely separate culling process, before they can even approach the Council. Congress should make clear that the Council must abide by all public notice and public comment provisions of the act.

XII. LIMITATIONS MUST BE PLACED ON THE SCOPE OF COUNCIL ACTION, PARTICULARLY IN ABBREVIATED RULEMAKING KNOWN AS THE FRAMEWORK PROCESS

As a small businessman it is very difficult to continually attend meetings to determine what action may affect me. When Amendments Five and Seven to the Northeast Multispecies Fishery Management Plan were formulated, it was believed these would control our fishery for years. These measures relied on an even distribution of the burden of conservation. Recent frameworks have dramatically and disproportionately affected our inshore fishery, far beyond that which we could have anticipated under the FMP or the subsequent amendments. Councils should not be permitted to allocate through frameworks, or to make drastic adjustments to rebuilding goals without a full amendment process. Congress should place limits on the extent to which abbreviated rulemaking can affect catches particularly where they result in significant allocation. Perhaps a maximum change of 10%, in an allocation or in landings in any one fishery, would be an appropriate limit on the scope of a framework.

XIII. THE CONSTANT CHANGES IN OVERFISHING DEFINITIONS, STOCK REBUILDING DEFINITIONS AND MANAGEMENT OBJECTIVES MUST STOP

As fishermen, changing "overfishing" definitions continually confound us. Stocks become "overfished" not due to a decline in fish nor an increases in fishing effort, but merely because a definition is changed. As fishermen it is difficult for us to understand how, when measures meet or approach their objectives and we see more fish, NMFS is always calling for additional restrictions. Each time we believe that we are closing in on a management objective,

we are informed that congress has changed the goal, “raised the bar,” so to speak, and that therefore we must again suffer. In the face of increasing conservation targets, industry plans always comes up short. Public perception of fishermen and the government is also negatively affected by this apparent failure to meet objectives. We need to set goals and meet them, or at least follow one course of action long enough to see if anything we are doing is having any positive effect.

XIV. WHILE ENFORCEMENT IS CRUCIAL, FISHERMEN REMAIN CITIZENS, HARVESTING FOOD FOR AMERICA, AND THE GOVERNMENT MUST STOP TREATING US LIKE CRIMINALS AND RESPECT OUR RIGHTS

While most fishermen recognize and respect that the rules must be obeyed and violators punished the present manner and level of enforcement has turned the fishing dock into a virtual police state. We all suffer when fishermen violate the regulations, but the present atmosphere of daily boardings and daily dockside interrogations is too much. The ability to seize and hold a catch without a hearing gives the government too much power. In recent months a number of vessels have had catches seized and the proceeds of sale held for months without any action by the government. In one recent case, the Coast Guard escorted a boat from George's Banks to Gloucester, where the catch was seized and sold. Months later, the Coast Guard admitted that they had made a mistake and returned the monies without further compensation to captain or crew. Because of the civil nature of the seizures, the lawyers have a new joke- "What's the difference between an American fisherman and a foreign drug runner? - The drug runner has constitutional rights.”

Having been rescued by a Coast Guard vessel after 14 hours in the water, during which time 2 other men died, I will always respect the men who put their lives on the line for us. It is unfortunate that present regulations make us adversaries, and I believe that the Coast Guard's role in fisheries enforcement needs to be re-examined.

Fishermen are engaged in the most dangerous, and probably the oldest profession in America. We risk our lives every day to put food on the tables of our fellow citizens, yet even

---

In a recent case, managers added a new twist, applying goals not part of the rulemaking process. In the recent groundfish annual adjustment, the New England Fishery Management Council staff indicated a Gulf of Maine Fishermen's Alliance groundfish proposal did not meet marine mammal objectives, but came close to meeting biological objectives, and would have had the most positive effect on communitiites of any alternative. Marine mammal issues had never been discussed at the Council level or made a goal in the framework process. Sadly, the staffers failed to realize that due to present closures, fixed gear, the largest alleged threat to large marine mammals, has increased in areas closed to groundfishing. The Alliance's proposed reopening of those areas would have reduced the potential for interaction. Had the matter been discussed openly, the obvious error would have been realized. However, Council staff has never been receptive to industry proposals, and at times it almost seems as if they conceal from us the true goal until it is too late for us to adjust our plans.

At that time under the command of Paul Howard, current Executive Director of the New England Fishery Management Council.

when in full compliance with the law; we are treated with less respect by law enforcement agencies than common criminals. The situation is unfair and demeaning. As American citizens, we believe we deserve better treatment.

XV. JUDICIAL REVIEW OF MANAGEMENT MEASURES SHOULD BE MADE EASIER, OR ALL PLANS, AMENDMENTS AND FRAMEWORKS, SHOULD AUTOMATICALLY BE SENT FOR REVIEW TO OTHER AGENCIES, SUCH AS THE SBA

Under present law, management measures promulgated under the Magnuson Act are subject to only limited judicial review. Challenges to management measures must be brought within thirty days of promulgation, and preliminary relief is unavailable. Regulatory change is frequent and often dramatic, and regulations often run their course in a short period. Fishermen, irreparably harmed by improper action are thus deprived of any remedy at law. Congress should provide for an even more expeditious hearing process than presently exists, or alternatively, remove the anti-injunction provisions contained in Magnuson.

Another solution could be to submit all FMPs, Amendments and Frameworks to another agency, such as the SBA, for review of compliance with the National Standards. This reviewing agency could screen regulations and comments, and reduce or prevent disputes resulting in litigation.

XVI. CONSIDERATION SHOULD BE GIVEN TO REMOVING MANAGEMENT OVERSIGHT FROM NOAA

Congress should consider whether NOAA and NMFS are actually the appropriate entities to manage the fisheries. We are concerned that too often policy decisions may infect the science. We believe that Congress should investigate placing control over management of fishermen and stocks under another agency, such as Interior or Agriculture, with NOAA and NMFS continuing with the scientific analysis only.

XVII. CONCLUSION

I believe that the Magnuson Act has great potential for maintaining a healthy and sustainable fishery. Congress must, however, ensure that the National Standards are enforced, and establish priorities so that managers achieve a balance between the biological objectives and the needs of those dependent on the resource. More importantly, Congress must reverse the trend seen on the New England Fishery Management Council that allows special interests to allocate to themselves, or their constituents, disproportionate access to the resource, at the expenses of others. The Act as written appears to provide many of these protections, if only the National Marine Fisheries Service would enforce them by refusing to implement Council recommendations which do not comply with the law. Unless and until all fishermen are treated fairly and equally, the industry will remain in turmoil and management objectives will fall short of

their goals.

American fishermen have a long and proud heritage, bringing food to American shores for over 375 years. While the desire of government to change the way we fish, by requiring MSY in every in every species is admirable it may be impossible. We need to ensure goals are realistic and management plans workable. As fishermen we know more about how fisheries function and how to manage fishermen. While I may not agree with all that the government is trying to do, I can accept the cutbacks, tie up periods, closed areas, inconvenience and personal loss resulting from management measures, but only if I am treated fairly, equally and with the respect American fishermen deserve. I ask you then, to restore to the Magnuson Act the most basic principals of fairness, equity and equality, not just in words, but in the actions of the government and to restrain the abuses of the Council process which threaten to undermine these democratic principals.

Russell Sherman