



Written Testimony by Sam Cotten

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for the U.S. Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

hearing on Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight of Fisheries Management Successes and Challenges

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Good afternoon Senator Sullivan and thank you for the opportunity to provide comments on the Magnuson Stevens Fishery Conservation and Management Act (MSA). I am Sam Cotten and am the Commissioner of the Alaska Department of Fish and Game, and am a member of the North Pacific Fishery Management Council. I'd first like to thank you for holding a hearing here in Alaska. While the MSA is the signature piece of legislation governing federal fisheries throughout the Nation, I'd like to start my comments today by focusing on its connection to the Alaskans who participate in these fisheries here in our local communities. While the Council and the MSA are focused on federal fisheries, which are managed by National Marine Fisheries Service (NMFS), many of the actions taken by the Council and the provisions within the MSA have a significant impact on Alaskans throughout the State. Here in Alaska it is well known that the commercial fishing industry is the largest private employer in the state. Nearly every coastal community in Alaska, and many inland communities, have some level of participation in federal fisheries. In addition to the actual boots on deck, there are thousands more Alaskans working in processing plants, gear and net shops, welding shops, and many others businesses that support these fisheries. These same permit holders, crew, and support facilities help Alaska have the Nation's top three ports by volume, and three of the Nation's top five ports by value. These statistics are in large part due to the success of the MSA, the Regional Council process, and underscore the importance of maintaining the core structure of the Act.

However, as we dig into the statistics it becomes apparent that while many Alaskans participate in and enjoy economic benefits from the seafood industry, the vast majority of the groundfish catch volume (83%) was made by vessels with primary owners that were not Alaska residents, (economic SAFE report 2016)¹. Alaska waters, state and federal, are open to all US fishermen, as it should be. One of our goals here in Alaska is to enhance opportunity for our resident fishermen and improve the economies of our fishing communities. We would ask that any changes to MSA are given consideration as to the impacts on our fishing families and communities.

Federal v. State Management of Fisheries in the EEZ

Several species of fish and tanner crab are harvested in the Exclusive Economic Zone (EEZ) while being managed by the State of Alaska. These fisheries have been effectively managed by the State of Alaska; this practice should continue. A recent decision by the 9th Circuit Court of

Appeals (now under appeal to the US Supreme Court) would require a Fishery Management Plan (FMP) for salmon management and could have implications for other species as well. The state agreed with the NMFS that an FMP is not needed either legally or for proper management of salmon. The result would be a lengthy, difficult, and we feel unnecessary burden for the North Pacific Council. We have concern that the precedent for requiring a FMP may have implications for Tanner crab, ling cod, and some rockfish species.

There is also some concern about unintended consequences such as closures that would not have otherwise occurred. We would ask that the MSA reauthorization provide the North Pacific Council the discretion to develop an FMP for fisheries in the EEZ that are currently managed by the State of Alaska.

Council Recusal Process

Finally, the State of Alaska encourages this committee to examine the recusal process for Council members. Currently, MSA generically outlines when and why a Council member should not vote²; however, there is not accompanying guidance as to how National Oceanic and Atmospheric Administration (NOAA) should determine that a Council member should be recused. Due to this lack of specific direction, NOAA has implemented policy guidance that not only the State of Alaska questions, but that the North Pacific Council recently requested NOAA review³. The policy relies on an attribution method that attributes all fishing activities of a company, or partially owned companies, to a Council member when considering whether recusal thresholds have been exceeded. The problem with this approach is that it results in recusals that have no logical connection to the directives in MSA. For example, recently a North Pacific Council member was recused from voting on an action to re-designate essential fish (EFH) habitat in the Bering Sea/Aleutian Islands. Re-designating EFH does not change the total amount, timing, or location of harvest, or the distribution of harvest among participants. Given that, it is inconceivable how this action would have a significant and predictable effect on the financial interest of the Council member, as MSA states as a cause for recusal. This current NOAA policy guidance is particularly troubling, not only due to the apparent lack of linkage to MSA, but also because it weakens the Council process by unnecessarily recusing Council members from voting. Given these issues, the State of Alaska encourages this Committee to work with NOAA to ensure that a thorough review of the conflict of interest regulations, and any subsequent policy interpretations of those regulations, takes place prior to MSA reauthorization.

In conclusion, the State of Alaska supports Congressional reauthorization efforts, and encourages this committee to maintain the core structure of the MSA, while ensuring modifications don't harm or unnecessarily burden existing programs in Alaska.

¹<https://www.afsc.noaa.gov/REFM/Docs/2016/economic.pdf>

²MSA Section 302(j)(7)

³https://www.npfmc.org/wp-content/PDFdocuments/CM/2017/071017/0620_Recusalletter.pdf