

**TESTIMONY OF DAVID BENTON
EXECUTIVE DIRECTOR
MARINE CONSERVATION ALLIANCE
BEFORE
THE HOUSE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
REGARDING
HR 21
THE OCEANS CONSERVATION, EDUCATION AND NATIONAL STRATEGY
FOR THE 21ST CENTURY ACT
April 26, 2007**

Thank you Mr. Chairman. For the record, my name is David Benton, and I am the Executive Director of the Marine Conservation Alliance (MCA). MCA is based in Juneau Alaska, and represents harvesters, processors, coastal communities, Community Development Quota organizations, and support services businesses involved in the groundfish and shellfish fisheries of Alaska. MCA was formed to promote the sustainable use of North Pacific marine resources by present and future generations through the application of sound science, prudent management, and a transparent open public process. MCA supports research and public education regarding the fishery resources of the North Pacific, and seeks practical solutions to resource conservation issues to protect the marine environment and ensure sustainable fisheries. Our members collectively represent roughly 80% of the production of North Pacific fisheries.

I want to thank you and the committee for this opportunity to testify before you today regarding HR 21, the Oceans Conservation, Education, and National Strategy for the 21st Century Act.

Although the bill has much broader implications for oceans conservation and management, I want to speak to HR 21 mostly from a fisheries perspective. While MCA supports efforts to move towards an ecosystem based approach to fisheries management, we are concerned that several provisions in HR 21 will actually impede efforts to improve conservation of our nation's marine resources.

To put our concerns into perspective, let's first examine Alaska's record for fisheries management.

Alaska produces roughly half of the nation's commercial fisheries landings by volume. Fisheries account for about 35,000 jobs in Alaska, and are valued at over \$1.3 billion dollars in ex-vessel value. In 2005, the ex-vessel value of groundfish alone was \$740M with \$138.4M from the Gulf of Alaska and \$601.8M from the Bering Sea and Aleutian Islands. The gross value of the 2004 groundfish catch, after primary processing, was approximately \$2.0B (F.O.B. Alaska). In addition to groundfish, halibut and shellfish generated \$170.1M and \$159.2M ex-vessel values respectively.

Most importantly, the majority of Alaska's coastal communities are built around a fisheries based economy, and without a stable fishery resource base many of these

communities would not exist. It is because of this dependence upon the sea and its renewable resources that Alaskans work hard to ensure that conservation comes first, and that fishery resources are managed for their long term sustainability.

The record speaks for itself. There are no overfished stocks of groundfish in Alaska. Fisheries are managed under hard caps and close when harvest limits are reached. Federal observers, Coast Guard, NOAA Enforcement, and Vessel Monitoring Systems (VMS) monitor the fisheries to ensure compliance with closures. Over 380,000 square nautical miles are closed to bottom trawling to protect marine habitat. Ecosystem considerations are taken into account in fishery management plans. For example, fishing on forage fish species is prohibited, and measures are taken to protect endangered species, marine mammals, and seabirds. For depressed crab stocks, aggressive rebuilding plans have been in place for many years. Most scientists believe that these stocks are depressed because of oceanographic changes that happened in the late 1970's, and that these stocks will not rebound until oceanographic conditions become more favorable for these species.

We have also worked hard to address oceans conservation on the international level. Because of the combined efforts of the seafood industry, the States of Alaska and Washington, and the federal government, several new treaties were put in place that established one of the world's most effective multi-lateral surveillance and enforcement regimes, a comprehensive multi-national science program, and institutional arrangements that have the management tools to protect the region's marine resources from illegal and unregulated high seas fishing. As a result, high seas salmon interception has all but been eliminated, incidental mortalities of marine mammals and seabirds dramatically reduced, and vulnerable fish stocks in large areas of the North Pacific outside the U.S. Exclusive Economic Zone are no longer subject to unregulated fishing pressure.

Because of this record, Alaska has been cited by the U.S. Commission on Ocean Policy and other groups as a potential model for the rest of the nation. Recent articles in National Geographic identify Alaska as one of three areas in the world where management is being done right.

But, we also know that nothing is perfect, and in the ever changing world of oceans conservation and fisheries management you can not rest on your laurels. We are constantly working to improve our understanding of the marine environment, and the factors affecting it. For example, in Alaska the North Pacific Fishery Management Council (NPFMC) is developing a Fisheries Ecosystem Plan for the Aleutian Islands. This is the first such plan for Alaska waters. In addition, the North Pacific Research Board, in cooperation with the National Science Foundation is funding a multi-disciplinary multi-year ecosystem research program for the Bering Sea. A second, similar program is planned for the Gulf of Alaska. On a broader scale, the NPFMC spark plugged an effort to bring together all the relevant state and federal agencies to discuss and address activities such as shipping safety, marine pollution, offshore oil development, land use in the coastal zone, fisheries, and other factors that are or might have an effect on Alaska's marine environment.

In a similar vein, Alaska's seafood industry has instituted several major cooperative research programs to partner with federal, state, and university scientists in numerous scientific projects to reduce bycatch, improve fishery monitoring and accountability, and mitigate the effects of fishing on seafloor habitat. We are also operating one of the nation's largest marine debris clean-up programs in partnership with NOAA and local communities and citizens groups.

All of these efforts are improving our management and conservation of fisheries and related marine resources. Most importantly, while quite similar to some of the concepts in HR 21, these efforts are being carried out under existing authorities within the context of well understood legal mandates and public participation processes. The results are practical and timely measures to improve resource conservation.

This record also provides the context from which we look at the provisions of HR 21. And it is because of our practical experiences in the North Pacific that we believe that some of the major provisions of HR 21 will actually impede efforts to improve conservation of our coastal and oceans resources.

Our concerns center on three basic aspects of the bill:

- Establishing a broad national policy with poorly conceived national standards;
- Far reaching mandates for ecosystem based management with little or no recognition of the realities of the status of the science involved, the conflicts that will arise between the new policies and current and ongoing conservation and management programs, the impacts of the policies on existing ocean related uses, the increased potential for unnecessary litigation, and the gridlock that will ensue;
- The expense of the new bureaucracy called for by the bill, and the attendant weakening of ongoing conservation efforts due to scarcity of funding and personnel resources.

Title I of HR 21 purports to establish a national oceans policy. However, instead of enhancing the effectiveness and efficiency of our nation's oceans management regimes through a comprehensive approach to oceans policy, HR 21 further complicates an already daunting array of laws, regulations and policies that currently govern ocean uses. It does so by focusing on only one aspect of the nation's ocean interests, and by adding yet another layer of broad, far reaching, but poorly defined policies and standards. The bill establishes U.S. policy to "protect, maintain, and restore the health of marine ecosystems" and then a national standard that, "to the fullest extent possible, the policies, regulations, and Public Laws of the United States" shall be interpreted to meet this policy.

Actions covered by the bill are defined as "any activity affecting United States ocean or coastal waters or resources that are authorized (including a federal license or permit),

carried out, or funded by a federal agency”. The bill then mandates that such actions “may proceed only if the covered action is not likely to harm the health of any marine ecosystem and is not likely to impede the restoration of the health of any marine ecosystem”.

Taken together, this broad policy subverts all national interests in ocean affairs to one single policy, and circumscribes all other federal laws with a broad and poorly defined mandate. Any federal agency conducting any activity that might affect ocean or coastal waters is to judge any and all covered actions against this inflexible standard, a standard that is virtually impossible to verify, and certify compliance prior to allowing the action to proceed. If there ever was a formula for gridlock, this is it.

Title II of HR 21 is an organic act for NOAA. Section 204 requires NOAA to “take an ecosystem-based management approach” to all of the agency’s resource management obligations. While on the face of it, this sounds like a positive step in resource conservation; in reality it ignores some very fundamental and basic issues.

First and foremost is the question of whether or not the science is there to do the job right. The bill addresses this question by stating that lack of science requires managers to invoke the “precautionary principle” and take action. In other words, lack of information is no excuse, regardless of the consequences. The annals of resource management are replete with examples of well intentioned actions resulting in disastrous unintended consequences. Blind adherence, or in this case a legal requirement, to act on poor information is not, in our opinion, good resource management.

Instead, relying on the expertise of managers and their science advisors to take prudent steps seems more in order. But, by setting up rigid legal requirements, coupled with judicial review and litigation, this bill is heading in the other direction.

Secondly, the mandate for an ecosystem-based approach to management is exacerbating the problems managers already face. Namely, how to balance different resources and uses. For example, when endangered salmon come into conflict with protected marine mammals that feed on them, how do the managers meet the requirement for ecosystem based management? Or, when confronted with decimation of protected sea otter populations by protected Orcas, how do managers respond? Should they “take sides” in the ecosystem by reducing Orca mortality on sea otters? Should they engage in “control measures” to protect endangered salmon from predation? What if the only viable alternative is lethal control of the predator? Under the provisions of HR 21, would managers be vulnerable to litigation if they did not take such actions?

Admittedly these are extreme cases, yet each is actually playing out in the world today. They serve to underscore a more fundamental question. What do we mean by “ecologically sustainable”; and how do managers respond in a real world sense to a mandate for “maintaining biological diversity and ecosystem functioning and structure from one human generation to the next”. Given the statutory mandate of HR 21, does this mean that fishery managers base their management programs on the potential

consequences of coastal development that might happen sometime in the future? Does that mean that repairs to harbors or shoreline protections should be halted because it can not be shown that they are “not likely to significantly harm the health of any marine ecosystem”?

From the perspective of a region that is interested in making real, “on the water” progress in oceans governance and conservation, each of the definitions of “marine ecosystem health”, “healthy marine ecosystem”, “precautionary approach”, and most importantly the definition of “ecosystem-based management” all suffer from the same basic flaw. They sound good, and are full of ambiguities that will make the practical and real world work of managers virtually impossible.

These problems are even more daunting when considering the scope of the area and functions covered under the provisions of HR 21. The definitions of oceans waters include all federal waters, and the definition of coastal waters includes those waters covered by Sec. 304 of the Coastal Zone Management Act, which includes bays and estuaries. By extension, this may also include activities taking place anywhere in the coastal zone, which in many states reaches far inland. This means that road repairs, sewers, harbor improvements, shoreline restoration, fisheries both commercial and recreational, housing, shipping and transportation, and all the myriad of activities that take place on or near the ocean will fall under the new mandate, and managers will have to juggle all of these considerations when making decisions.

As a final point, in addition to the provisions of Title II that establish NOAA, Titles III and IV establish an elaborate, and potentially very expensive, oceans planning process. Some of these provisions mirror recommendations of the U.S. Commission on Oceans Policy, some of which have already been adopted by the President. Some of these new provisions simply create a new and somewhat redundant bureaucracy. This will be an expensive endeavor, with the potential for drawing funds away from ongoing conservation or science programs to fund the new bureaucracy.

To address this concern, HR 21 would establish the Oceans and Great Lakes Conservation Trust Fund. Aside from the sale of a “Healthy Oceans Stamp” and some interest gathered on the Fund over time, deposits to the fund will apparently come from the general Treasury. Current fiscal realities will dictate that these funds will be counted against other oceans programs. The result is classic, once again the ocean community will be faced with broad and contradictory policies, and new mandates, with insufficient funding.

So what is the way forward? How do we make progress in a practical and timely fashion?

We propose the following:

1. Implement the Magnuson Stevens Act (MSA). Reauthorization of the MSA has already done much of what is needed. Now Congress needs to fund the research and conservation programs it just passed. The revised MSA was a significant achievement

that included provisions to move the nation towards ecosystem based fisheries management, prevent overfishing, strengthen the role of science in fisheries management, and improve monitoring and enforcement. The renewed MSA passed with broad bipartisan support, and was hailed by conservationists, recreational and commercial fishermen, scientists, and fishery managers; all of whom praised the bill as a much welcomed improvement for conserving our nation's marine resources. With regard to ecosystem based management, the MSA takes a step wise approach by providing the tools to move in that direction, and by strengthening existing scientific programs to get the data to support such efforts. This is a formula for success.

2. Provide a source of stable and long term funding for oceans research and observation. The MSA began this process, and HR 21 may have some elements to add through the creation of the Oceans and Great Lakes Conservation Trust Fund. However, none of these efforts will succeed unless new sources of dedicated funds are identified that do not detract from funding for existing programs.

3. Be selective in setting new policies and cautions when establishing new mandates. Fix only what is broken. Strengthen federal/state partnerships and promote regionally based solutions. Several reports and studies emphasize building on existing programs in an evolutionary manner. Make it the first priority to provide the resource management agencies the personnel and basic funding they need to do their job, and do it well.