Statement of Rod Moore
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On *The Potential Implications of Pending Marine National Monument Designations*
House Subcommittee on Water, Power, and Oceans
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Mr. Chairman, Ranking Member, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the potential implications of pending marine national monument designations and the role of the National Marine Sanctuary system. For the record, my name is Rod Moore and I serve as Executive Director of the West Coast Seafood Processors Association (WCSPA). Our Association represents commercial fishermen and shore-based, American-owned seafood processors and associated seafood businesses in Washington, Oregon, and California. Our members also have operations located in Alaska, Arizona, Georgia, Hawaii, Nevada, Texas, and Utah. Our main objective is to assure the regular supply of sustainable seafood so that we can provide healthy products to the consumer.

Let me make one thing clear from the beginning: a well-designed marine sanctuary is not a bad thing. Just like on land, there are special places in the ocean with historic, cultural, or natural values that should be protected. Nobody wants to see trawlers operating on the site of the wreck of the *U.S.S. MONITOR*; nobody wants to see deep sea sport fishermen hauling up chunks of coral in the Flower Garden Banks. However, there is a big difference between a National Marine Sanctuary and a Marine National Monument.

The National Marine Sanctuary system was established in 1972 and presently encompasses 12 properly created marine sanctuaries and 2 marine monuments, one of which is identified and managed as a Sanctuary. Reading through the history of the Sanctuary system (http://sanctuaries.noaa.gov/about/history/welcome.html) one can see that the initial Sanctuaries were chosen to celebrate and protect key historic and environmental values. As time went on, other agendas came into play. For example, let's look at the 4 Sanctuaries – Cordell Bank, Greater Farallones, Monterey Bay, and Channel Islands – established off the coast of California. Visiting the web sites for each of them, you discover that all four speak grandly – and vaguely – about protecting biological diversity, the importance of upwelling to biological productivity, and ecosystem values. In fact, they were originally designated as a way to prevent offshore oil and gas exploration. To quote a local fisherman on the history of the designation of the Monterey Bay NMS: "*The main public interest in creating a sanctuary was to add another layer of regulation to keep oil development out of the region*."[1]

But still, there is a process and there are criteria for establishing a Sanctuary. To begin with, the process is locally driven ("every nomination starts at the community level"[2]). While NOAA's concept of a "community" may not be the same as ours, at least there has to be a local nexus. NOAA then reviews the nomination against several criteria – including existing management and regulations - and against community support / opposition. Only if the proposed area passes muster – or at least the red face test – will it be placed on NOAA's list of nominated areas for consideration to be designated as a National Marine Sanctuary, which is an entirely separate process. As of the beginning of September, 5 formal nominations have been submitted; 3 have been denied; 1 has been re-submitted; and 2 have been accepted. That is a reasonable track record.

[1] Tom Roff in http://alliancefisheries.org/uploads/BaitandSwitch0215.pdf
[2] http://www.nominate.noaa.gov/

Unfortunately, that isn't good enough for some people. Recently, we have seen public calls for the President to use his powers under the Antiquities Act to establish Marine Monuments off New England and Alaska. In the latter case, a nomination for a Sanctuary was denied by NOAA, citing 3 of the nominating criteria that it didn't meet[3]. Undaunted, the Public Employees for Environmental Responsibility set up an on-line petition for which – as of last week – they had nearly 114,000 supporters. Of course, that included signatories from 28 foreign countries; in fact there were more foreign signatories than there were from the state of Alaska (including a lone signature from the Lao Democratic People's Republic). In the former case, proponents didn't even bother with a sanctuary nomination; they went directly to the Monument petition route. They did this in spite of the fact that the New England Fishery Management Council was working on a fisheries habitat plan that would protect some of the same places that are covered in the petition.

So why this rush to action when a perfectly good, workable and (mostly) science-based Sanctuary nomination process is readily available? The obvious answer to our industry is that the proponents wish to shut down most commercial fishing and control whatever commercial and sport fishing will be left.

And this gets to the heart of the matter. Under the Antiquities Act, the President can withdraw whatever federal lands he wants and have that withdrawal managed using any criteria he chooses. Don't like trawling? Poof, it's gone. The Antiquities Act provides no basis for learned discourse, no scientific, economic, or social analysis; it is whatever the President says it is. The use of the Antiquities Act to create Marine National Monuments is a true top-down, dictatorial approach which is frequently championed by big-bucks environmental groups and in which the public – including the fishing community that is directly affected – has no voice.

As to the value of the fisheries, it's difficult to say. Not having seen the direct proposals, nor being familiar with the particular fisheries in either case, I would hesitate to put a value on the loss to the nation's – and the region's – economy if either of these areas was established by Presidential fiat. But once again, that gets to my point: there is no analysis done, no deliberations, no meaningful public comments – the President simply signs his name to a piece of paper and 554,000 square nautical miles encompassing the Aleutian Islands, a large chunk of the Bering Sea, and Southwest Alaska as far north as the Kuskokwim delta is off limits to whatever the President or his staff decides.

So what are the alternatives if we want to protect habitat in a studied, sensible way? The first obviously is by submitting a nomination through the National Marine Sanctuary process. The National Marine Sanctuaries Act provides a number of checks and balances to give the common man a fighting chance to shape the extent of Sanctuary protection. I would submit it doesn't always work; for example, the Greater Farallones and Cordell Bank Sanctuaries off the coast of California were recently expanded by 2.5 times each through a simple regulatory process. However, to be fair the Sanctuaries listened to the comments of the regulated communities – sport and commercial fishermen, ports, aircraft owners, etc. – in crafting with their final regulations.

The second alternative and the one I prefer is to establish sensitive areas through the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA) process. The MSFCMA provides for the identification of essential fish habitat (EFH) and the creation of habitat areas of particular concern (HAPC). More importantly, the MSFCMA provides for a *public* process to evaluate and decide on what areas are going to be protected.

[3] http://www.nominate.noaa.gov/nominations/aleutian_letter_012315.pdf

How well does this work? Using the west coast as an example I think you will find that it works extremely well. In 2005, the Pacific Fishery Management Council (PFMC) completed work on its initial round of EFH and HAPC areas. These areas ranged from spots where there was no fishing allowed to spots where only non-bottom tending gear was allowed. These EFH / HAPC areas were in addition to the 5 national marine sanctuaries located off the west coast, the Rockfish Conservation Area (RCA) which stretches from Mexico to Canada and is designed to allow depth-based protection for certain overfished species, and restrictions on the use of gear (e.g., no large footrope trawl gear shallower than the RCA). Combine these restrictions with the plethora of state-regulated non-fishing areas and you will find that the area left to fish in is quite limited.

In 2014, the Council began its formal review of EFH pursuant to section 303(b)(2)(C) of the MSFCMA. During this process, leaders from the fishing industry and the environmental community decided they had more to gain by working together than fighting with each other so they established the Collaborative EFH Working Group. The Collaborative is working on a comprehensive plan of habitat protection and access to fisheries which if adopted will increase the permanent closed areas significantly while recognizing that there are areas which are now closed but could be opened. Although one environmental group has bowed out of the process and some fishermen are reluctant to trust those that remain, the majority of us have hope for the future.

Finally, a word about legislation pending before this Committee. The Committee – and the House – have already passed HR 1335 which among other things makes clear that the MSFCMA is the controlling statute in fisheries management. This will resolve such strangled legal interpretations like the one provided to the PFMC by NOAA's legal counsel: that the Council has jurisdiction over fishing and the ocean bottom but doesn't have jurisdiction over the water column. By using the MSFCMA process to develop regulations instead of the NMSA and the Antiquities Act, we will ensure that at least when it comes to fishing there will be thoughtful and thorough analysis and the opportunity for public comment.

The Committee also has pending before it HR 330 and HR 332, both introduced by Mr. Young of Alaska. HR 330 is more general in that it prohibits the establishment of a Marine National Monument anywhere in the exclusive economic zone before certain steps are taken, including getting approval from the governors of affected states. HR 332 is more specific in prohibiting the establishment of a Marine National Monument in the EEZ off Alaska. Both are good bills but we would prefer the passage of HR 330 because of its more general applicability.

Mr. Chairman, there is no doubt in my mind that there are certain key areas in the ocean that need protection. The question is how best to do it. I think you would find that most rational people agree that protecting an area should be conducted only after scientific analysis and a true public process. The use of the Antiquities Act should not be allowed. I will be happy to answer any questions. Thank you.