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Testimony to:
House Committee on Natural Resources
Sub-Committee on Oversight and Investigations

Topic: Examining Barriers to Access in Federal Waters
“A closer look at the Marine Sanctuary and Monument System”

Intro: I am a Fishing Industry Consultant based in Point Judith RI. Prior to that I spent over 50 years in both recreational and primarily the commercial fishing industry. Currently, I am also a third term member and Chair of the New England Fisheries Management Council (NEFMC) (see bio attached). Although my testimony today may include information in publicly available documents produced by NEFMC and others, my comments and opinions are my own.

My experience on the topic at hand is with the implementation of both the Antiquities Act of 1906 (AA) and the Magnuson-Stevens Fishery and Conservation Management Act (MSA) in Federal Waters particularly in Southern New England and the Mid Atlantic.

Starting with the older of the two, the AA is a one page document that does provide in Section 2 “That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United states to be national monuments, and may reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with proper care and management of the objects to be protected.”

The Act does not require the President to produce an evidentiary record nor follow specific procedures and analysis such as the Administrative Procedures Act (APA), National Environmental Policy Act (NEPA) and others including the MSA.

On September 16, 2016, the President used this Act to designate the Northeast Canyons and Seamounts National Monument (Monument) located in the Atlantic Ocean southeast of New England. The process that was used to develop the Monument began on September 15, 2015 in Providence, RI at a “town hall” meeting. This was the only public meeting on the issue. At that time the Monument was only an idea and lacked any clear shape, form or detail making any specific or informative comments difficult at best. The meeting was attended by a wide variety of interested parties who were allowed 2 minutes to provide oral comments during the two hours dedicated to the meeting.

After that event, only a few small meetings were held by the Council on Environmental Quality (CEQ) but still without any geographic, spatial, or temporal data and detail.

On August 8, 2016 a proposal was presented to the public that only included a picture of the area under consideration and location information. Again, public input was hampered given the lack of details and the evidentiary record and analysis is unknown.

Thirty-nine days later the Monument was proclaimed. The process was one year and one day long start to finish. The Monument has two separate areas that total 4,914 square miles and includes several prohibitions on extractive activities such as mining, oil/gas operations, etc.

Also, commercial fishing of any kind, with a temporary exemption for lobster/crab pot fishing which has now expired, is prohibited in the Monument. However, Recreational fishing is allowed. This includes, particularly in the Highly Migratory Species fisheries such as tuna, the ability for recreational fishermen to use fishing gear identical to commercial gear.

Aside from the prohibitions listed in the declaration, a management plan for the Monument was required to be developed jointly between the Departments of Interior and Commerce within three years of the proclamation. Seven years later, draft management guidance is just now emerging.

By comparison we have the 169-page long MSA which is the primary law governing marine fisheries management in U.S. federal waters and is considered by many to be the “gold standard” for worldwide fisheries management guidance. The requirements of the MSA and the 10 National Standards contained in the Act mandate that the Council(s) prevent overfishing, rebuild overfished stocks, maintain sustainable fisheries and the communities that depend on them, promote safety at sea and also ensure the long-term socio-economic benefits to commercial and recreational fisheries and the Nation as a whole. The MSA further mandates that management be an open, transparent, and robust process that is reliant on science and collaboration with fisheries and other stakeholders and allowing for extensive public input. Lastly, while not exactly nimble, the MSA does provide for regulatory flexibility in the face of change, including climate change.

Under the authority of MSA in late 2015 the NEFMC began, in earnest, the development of a discretionary not mandatory action to protect vulnerable deep sea ecosystems including corals and their habitat. Over the course of almost 4 years including dozens of public Council, committee, advisory panel and plan development team meetings plus extensive scientific and socio-economic analysis include NEPA and, of course the MSA and the 10 National Standards the Omnibus Deep Sea Coral Amendment was approved for submittal to NOAA for final vetting and approval. (Attachment 3) The document itself is 566 pages plus 8 appendices long detailing the rationale behind designating an area of 25,153 square miles, five times larger than the Monument, for protection of vulnerable deep sea ecosystems including corals. More importantly, the Amendment also considered both the intended and unintended consequences to stakeholders as well. A “freeze the footprint” approach allowed historical fishing grounds to remain accessible to fishermen which, in turn, maintained the socioeconomic benefits to the Nation as a whole.

On July 26, 2021, the Omnibus Deep Sea Coral went into effect. (Attachment 4)

In summary, in the two cases above it should be obvious that the Antiquities Act and the Magnuson-Stevens Fishery Conservation and Management Act have very different requirements. The AA allows an individual, the President, to declare a National Monument. This can be done with little or no public involvement other than the proclamation itself. The only requirement of the AA limits the size of a Monument to “in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected”. Given that the AA has been used to proclaim four National Monuments in the Western Pacific Ocean that cover 1,182,717 square miles, even the phrase “smallest compatible” is left to individual interpretation.

Conversely, the MSA is without question a more deliberate process with multiple steps at many levels. As shown in the Omnibus Deep Sea Coral Amendment, the process is very thorough and can be quite lengthy in order to meet all the requirements of MSA and the National Standards. However, in contrast to the AA, Magnuson mandates that an open, transparent, and robust public process must be used even in the smallest action.

Thank you,

Eric E. Reid