

**REAUTHORIZATION OF THE  
MAGNUSON-STEVENS FISHERY  
CONSERVATION AND  
MANAGEMENT ACT**

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**OVERSIGHT HEARING**

BEFORE THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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Wednesday, March 13, 2013

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**OVERSIGHT HEARING ON THE “REAUTHORIZATION OF THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT.”**

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**Wednesday, March 13, 2013  
U.S. House of Representatives  
Committee on Natural Resources  
Washington, D.C.**

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The Committee met, pursuant to notice, at 10:06 a.m., in Room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Young, Wittman, Fleming, Labrador, Southerland, Runyan, Mullin, LaMalfa; Markey, DeFazio, Pallone, Holt, Bordallo, Sablan, Hanabusa, Horsford, Shea-Porter, Lowenthal, and Garcia.

Also Present: Representative Keating.

The CHAIRMAN. The Committee will come to order. And the Committee on Natural Resources today is meeting to hear testimony on an oversight hearing on the reauthorization of the Magnuson-Stevens Fishery and Conservation Act. And I note that we do have a quorum.

Under Rule 4(f), opening statements are limited to the Chairman and the Ranking Member of the Committee. However, I ask unanimous consent to include any Members’ opening statements in the hearing record if it is submitted to the Clerk by the end of business today.

[No response.]

The CHAIRMAN. And without objection, so ordered. I also ask unanimous consent that the gentleman from Massachusetts, Mr. Keating, be allowed to join us on the dais and participate in the hearing if he chooses to.

[No response.]

The CHAIRMAN. And, without objection, so ordered. And I will introduce Mr. Keating when we introduce the first panel.

I now recognize myself for 5 minutes for my opening statement.

**STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON**

The CHAIRMAN. I would like to welcome all of the Members and today’s witness for the first hearing this Congress on the reauthorization of the Nation’s premiere fisheries law, the Magnuson-Ste-

vens Fishery Conservation and Management Act, more popularly known as the Magnuson-Stevens Act.

As many of you know, both the full Committee and the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs held several hearings in the 112th Congress on topics related to this Act. However, because the Act expires at the end of Fiscal Year 2013, the real work on this reauthorization will take place in this Congress.

Managing fish and fishermen is a challenge. It requires a balancing act between a sustainable harvest level and the maximum economic value for the fisheries, between recreational and commercial users of the same resource, between different gear types in the same fisheries, and between different States. As we begin the reauthorization process, we will review the successes of the Act and determine what provisions Congress should examine to make the Act work better.

This hearing is intended to highlight issues that could provide the basis for further hearings. I want to emphasize that. This hearing is intended to highlight issues that will provide basis for further hearings. We will examine how the Act could or should be modified to provide better management of the Nation's fishery resources, as well as provide better economic certainty for recreational fishermen, commercial fishermen, and those communities dependent on fisheries.

In 2006, Congress passed the last reauthorization of this Act. The goals of that reauthorization were to base management decisions on science and require accountability. While both are good goals, they have been difficult to achieve. As we found out during hearings last Congress, many of the current challenges may not be due to the Act itself, but rather with its implementation. We also heard loud and clear that there is a lack of accurate, timely data for making sound management decisions.

Judging by the number of bills to amend the Magnuson-Stevens Act introduced in the last Congress, there is certainly an interest among Members and their constituents in modifying the Act. Legislation introduced in the last Congress, including proposals to modify a number of provisions in the Act include: modification of the annual catch limit requirement; additional flexibility in rebuilding time frames; additional transparency for councils and councils' science and statistical committees; new uses of funds collected from fisheries, fines, and penalties; modification of the disaster assistance provision; and a definition and restrictions on catch-share management programs. All of these issues were part of bills introduced in the last Congress.

Fishermen in coastal communities that depend on healthy fisheries are certainly facing challenges. The Secretary of Commerce declared seven fishery disasters in 2012 and several more have been requested. New England is facing severe cuts in the quotas for important fisheries. The Gulf of Mexico is facing severe restrictive fishing seasons for recreational fishermen. The Pacific Northwest is seeing management and data collection costs growing, with an ever-increasing burden falling on fishermen. All of these fisheries and all of these regions need economic stability.

During this reauthorization process I also hope to examine the need for better data collection. There has got to be a better way to get up-to-date accurate data on fishery resources and on the harvest levels. Congress attempted to start this process in 2006 by requiring an overhaul of the recreational data process. Unfortunately, that work is still underway.

But this is not just an issue for recreational fisheries. Increasing burdens are being placed on commercial fishermen in the Pacific and in the North Pacific. And, at the same time, new uses of technology are not keeping pace with innovation.

The Committee will examine all of these issues. And I am sure more will arise, as the process continues. Luckily, congressional hearings will not be the only source of information for this Committee. The eight Regional Fishery Management Councils are hosting a Managing Our Nation's Fisheries III conference in May that will certainly add information for us to consider.

In addition, the General Accounting Office, the Department of Commerce Inspector General, and the Ocean Studies Board of the National Academy of Sciences have, or will be, releasing reports that will aid us in this effort.

So, I look forward to hearing from the testimony of the Committee, or of the witnesses today.

[The prepared statement of Mr. Hastings follows:]

**Statement of The Honorable Doc Hastings, Chairman,  
Committee on Natural Resources**

I would like to welcome Members and today's witnesses to the first hearing this Congress on the reauthorization of the Nation's premiere fisheries law—the Magnuson-Stevens Fishery Conservation and Management Act—more popularly known as the Magnuson-Stevens Act.

As many of you know, both the Full Committee and the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs held several hearings in the 112th Congress on topics related to the Magnuson-Stevens Act. However, because the Act expires at the end of Fiscal Year 2013, the real work for the reauthorization will take place this Congress.

Managing fish—and fishermen—is a challenge. It requires a lot of balancing acts: between a sustainable harvest level and the maximum economic value for the fisheries; between recreational and commercial users of the same resource; between different gear types in the same fisheries; and between different states.

As we begin the reauthorization process, we will review the successes of the Act and determine what provisions Congress should examine to make the Act work better.

This hearing is intended to highlight issues that could provide the basis for further hearings. We will examine how the Act could or should be modified to provide better management of the Nation's fishery resources as well as provide better economic certainty for recreational fishermen, commercial fishermen, and fishery dependent communities.

In 2006, Congress passed the last reauthorization of the Act. The goals of that reauthorization were to base management decisions on science and to require accountability. While both are good goals, they've been difficult to achieve.

As we found out during hearings last Congress—many of the current challenges may not be due to the Act itself, but rather with its implementation. We also heard loud and clear that there is a lack of accurate, timely data for making sound management decisions.

Judging by the number of bills to amend the Magnuson-Stevens Act introduced last Congress, there is certainly an interest among Members—and their constituents—in modifying the Act.

Legislation introduced in the 112th Congress included proposals to modify a number of provisions in the Act including: modification of the Annual Catch Limit requirement . . . additional flexibility in rebuilding timeframes . . . additional transparency for councils and councils' scientific and statistical committees . . . new uses

of funds collected from fisheries fines and penalties . . . modification to the disaster assistance provision . . . and a definition and restrictions on catch share management programs.

Fishermen and coastal communities that depend on healthy fisheries are certainly facing challenges. The Secretary of Commerce declared seven fisheries disasters in 2012 and several more have been requested. New England is facing severe cuts in the quotas for important fisheries. The Gulf of Mexico is facing severely restrictive fishing seasons for recreational fishermen. The Pacific Northwest is seeing management and data collection costs growing with an ever increasing burden falling on fishermen. All of these fisheries and all of these regions need economic stability.

During this reauthorization process I also hope to examine the need for better data collection. There has got to be a better way to get up-to-date, accurate data on the fishery resources and on the harvest levels. Congress attempted to start this process in 2006 by requiring an overhaul of the recreation data collection process. Unfortunately, that work is still underway. But this is not just an issue for the recreational fisheries. Increasing burdens are being placed on commercial fishermen in the Pacific and the North Pacific and, at the same time, new uses of technology are not keeping pace with innovation.

The Committee will examine all of these issues and I am sure more will arise as the process continues. Luckily, Congressional hearings will not be the only source of information for this Committee. The eight regional fishery management councils are hosting the "Managing Our Nation's Fisheries 3" conference in May that will certainly add information for us to consider. In addition, the General Accounting Office, the Department of Commerce's Inspector General, and the Ocean Studies Board of the National Academy of Sciences have or will be releasing reports that will aid us in this effort.

I look forward to hearing the testimony from today's witnesses.

The CHAIRMAN. And I will note that the Ranking Member is not here. I will allow him to make his statement when he comes. But let me introduce the panel, the first panel that we have seated, and I will yield to Mr. Keating to introduce his constituent here.

First, we have Mr. Bob Jones, Executive Director of the Southeastern Fisheries Association. We have Dr. Robert Shipp—do you go by Bob, too? OK, good, two Bobs. Chair and Professor of the Department of Marine Sciences, University of South Alabama. We have Mr. Robert Dooley—is that another Bob? President of United Catcher Boats. We have Captain Keith Logan, Charterboat Captain, Myrtle Beach, South Carolina. Mr. Bob Gill, are you Robert? Bob is fine? OK. Co-owner of Shrimp Landing, in Florida. And Mr. Joe Plesha, Chief Legal Officer of Trident Seafoods.

And I will recognize now Mr. Keating to introduce his constituent.

Mr. KEATING. Mr. Chairman, thank you very much. And I noted your opening statement, where you covered so much ground, and it is so important in all those things. As a matter of fact, I want to thank you for last session, having myself and then-Member Mr. Frank testifying on issues.

And I want to take the opportunity to introduce a constituent of mine who is here, as well. He is the CEO of the Cape Cod Hook Fishermen's Association, and a former Chair of the New England Fisheries Management Council, John Pappalardo. In our area, he has a long-standing interest, represents over 100 commercial fishermen.

But as you know, there are so many areas of interest in this. I just want to commit with written testimony today to the Committee, and my commitment going forward, as I go back to—I am supposed to testify in another Committee right now—but to work with you in any way. We represent a diverse area, and the largest



fishing port in the United States, in Bedford, as well. And we will work hard.

I honestly think this Committee represents the best opportunity for significant change in Magnuson-Stevens. We will be able to go forward and look at socio-economic as well as environmental issues in a very even-handed manner.

So, with that, Mr. Chairman, thank you, and I look forward to coming back and listening. Thank you.

The CHAIRMAN. Was that the proper introduction of your constituent, there?

Mr. KEATING. He has more, unless you want it to be more lengthy, Mr. Chair—

The CHAIRMAN. No, that is fine.

Mr. KEATING [continuing]. I could give you more of his background.

The CHAIRMAN. No, that is fine.

Mr. KEATING. I think he could—

The CHAIRMAN. We don't want to know all the bad details, we just want to know—

Mr. KEATING. Thank you, Mr. Chairman.

The CHAIRMAN. At this time I will recognize the Ranking Member of the Committee for his opening statement.

**STATEMENT OF THE HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS**

Mr. MARKEY. Thank you, Mr. Chairman. And let me thank you, Mr. Chairman, first, for allowing my good friend, Bill Keating, to introduce his constituent, Mr. Pappalardo, this morning. He is a very distinguished part of the fishing community of Massachusetts, and it means the world to us that you would allow Congressman Keating to make that introduction. We thank you so much.

From Cape Cod to Cape Ann, New Bedford to Newburyport, Massachusetts has long been home to some of the best fishermen and most productive fisheries in the world. Our proud fishing tradition and vibrant coastal communities are a critical part of the cultural heritage and economy of my State.

In 1976, Don Young and Gerry Studds moved the original Fishery Conservation and Management Act through the House. Subsequent amendments of the law have sought to ensure healthy fish populations and the jobs, the income, and the prosperity for fishing communities that come with them. Along the way, the bill also picked up the name of its Senate sponsors, Warren Magnuson of Washington and Ted Stevens of Alaska, shortchanging the contributions of both the House and the Atlantic Ocean, because the bill originated here, with Gary Studds and with Don Young. So all four of them should have their names on the bill.

That is a shame, because in the waters off of Massachusetts, we have one of the best examples of how rebuilding stocks and using science-based management can create a conservation and economic success story. The Atlantic sea scallop fishery landed only 2 million pounds in 1995. But cooperation among scientists, managers, and the industry increased landings to 125 million pounds in 2011. This created thousands of new jobs, generated billions of dollars for the

Massachusetts economy, and helped make New Bedford the highest-valued fishing port in the United States.

Not all Massachusetts fisheries are doing as well. Last fall, the Secretary of Commerce took the unprecedented step of declaring an economic disaster for the New England groundfish fishery before the 2013 season even started. Anticipating reductions in the catch limits for the iconic cod and other key fish based on the latest stock assessment prompted Commerce to action. Fishermen that depend on this fishery now face an uncertain future, and their fears and frustrations are justified.

I am frustrated that the Majority here in the House has ignored the needs of the fishermen. House leadership refused to even allow a vote on an amendment I proposed to restore \$150 million in fisheries disaster aid passed by the Senate. This hurt fishing families not only in Massachusetts and New England, but in Alaska, Mississippi, and Texas, as well.

House Republican leaders have also rejected calls for increased funding to improve the scientific understanding of our fisheries and oceans. Rather than helping to find real solutions to deal with climate change, many have denied its existence. Instead, they have backed budgets that undercut science and offered alternatives to the sequester that would have cut science even more to spare the Pentagon's bloated budget.

While fishermen in Massachusetts and across the country deserve this Committee's oversight of what is and isn't working for managing our Nation's fisheries, they deserve improved and more frequent stock assessments to reduce uncertainty and increased harvest quotas. They deserve Federal assistance to help them weather the storm of declared economic disasters. And they deserve a better understanding of how global warming and changes in ocean chemistry are affecting the fish and the sea they depend on for their livelihoods.

Changing the Magnuson-Stevens Act cannot create more fish. Changing it cannot create additional science to inform fisheries management and build healthy stocks. Inadequate funding for science makes poor management and failing fisheries a self-fulfilling prophecy. Not funding disaster relief makes certain that fishing families will suffer.

As we begin to consider reauthorization of the Magnuson-Stevens Act today, I hope we can focus on the fact that fisheries are made up of fish and fishermen, and that healthy fisheries have both. I look forward to hearing about innovative solutions from our witnesses, especially John Pappalardo, Executive Director of the Cape Cod Commercial Hook Fishermen's Association, that will improve the health of our Nation's fish stocks and the economies of the coastal communities that depend upon them. Thank you, Mr. Chairman.

[The prepared statement of Mr. Markey follows:]

**Statement of The Honorable Edward J. Markey, Ranking Member,  
Committee on Natural Resources**

Thank you Mr. Chairman for allowing my good friend Bill Keating to introduce his constituent John Pappalardo, a very distinguished constituent.

From Cape Cod to Cape Ann, New Bedford to Newburyport, Massachusetts has long been home to some of the best fishermen and most productive fisheries in the

world. Our proud fishing tradition and vibrant coastal communities are a critical part of the cultural heritage and economy of my state.

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Thank you Mr. Chairman.

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The CHAIRMAN. I thank the Ranking Member for his statement. And for those of you on the panel that have not testified here before, I just want to give you the ground rules.

First of all, you all were asked to submit a statement. Your statement, in total, will be made part of the record. But you have 5 minutes for your oral remarks. And the lights there, you have the green, yellow, and red. Total of 5 minutes. When the green is on you are in the 4-minute window. When the yellow goes on, it means that you have 1 minute remaining, and I would ask you to try to wrap up your remarks. And when the red goes on, it means, unfortunately, you are out of time.

So, if you could, be cognizant of that. Obviously, with the number of witnesses and, obviously, the interest of Members that want to pursue different parts here, I would ask you to keep your remarks to 5 minutes.

So, with that, we will start, Mr. Jones, with you, from the Southeastern Fisheries Association. You are recognized for 5 minutes.

**STATEMENT OF BOB JONES, EXECUTIVE DIRECTOR,  
SOUTHEASTERN FISHERIES ASSOCIATION, INC.**

Mr. JONES. Thank you, Mr. Chairman, and thank you for the honor to be here this morning.

Under the modification of annual catch limits, when the Magnuson Act was amended in 2006, giving the Scientific and Statistical Committee total control over the amount of fish that can be harvested, we expressed concern then, and we still express concern. We prefer that the Regional Fishery Management Council set the annual harvest, based upon the recommendations from the SSC, and that any significant deviation from their recommendation must be enumerated and approved by the council during a public forum.

Uncertainty of data. NOAA's mandate that councils allow for uncertainty must be buffered by social and economic factors. Without additional empirical data available for stock assessments, we will always have significant uncertainty, resulting in precautionary science and lower quotas. The Science Center should provide all stock assessment modeling and fish sampling protocols to stakeholders upon request.

Flexibility. We request flexibility for the council to set total allowable catch, nor should we build fisheries without banning all fisheries, such as the South Atlantic Red Snapper, which was based on incomplete and imprecise stock assessments. The motion to ban red snapper fishing in the South Atlantic passed on a very contentious seven to six vote within the council.

Need for stock assessments. Appendix one of my written testimony is a copy of the letter from eight U.S. Senators to the Comptroller General dated February the 28th. They are concerned that NOAA does not place a high-enough priority on conducting robust, peer-reviewed stock assessments in the Southeast, and we totally agree with that letter.

Additional transparency. MSA says—and I quote—“Conservation and management measures shall be based upon the best scientific information available.” Unfortunately, the councils in the Southeast are forced to use imprecise information as the best information available. We know that a transparent stock assessment process would create better options for management.

NOAA law enforcement. We believe transferring NOAA's law enforcement division to another agency separating fisheries management from fisheries law enforcement would reduce discord. We believe that many regulations are approved by the councils to make law enforcement easier, at the expense sometimes of fishermen who can't fish in the areas where the fish are. It is easier to draw a straight line.

But if the present law enforcement system continues, we believe that the MSA fines should be used for cooperative fisheries dependent and fisheries independent research, and we think they ought

to establish a mandatory training school for anyone that violates the provisions of MSA.

Catch-shares. We believe the catch-shares program should be in the council's toolbox, but only used if there is a current peer-reviewed stock assessment for the fishery under consideration, and if the entire fishing community is involved in the process and if the catch-shares remain with the commercial fishing sector. We do not think they should be traded on the open market. We think that they are there to help sustainable harvest of fish for the market. That is where they ought to be.

State noncompliance in the Gulf of Mexico. Texas and perhaps Louisiana are noncompliant with the Gulf Council's red snapper management regulations. Florida seems poised to go that same direction at their next council meeting. And if they do, that will leave Alabama and Mississippi alone not in compliance, and they will probably be forced to become noncompliant, just to stay with the rest of their sister States.

Right now the Gulf is looking for 27-day fishing season for recreational fishermen in the Gulf of Mexico. That is not very many days. NOAA's analysis of the 2013 red snapper season length shows that the days could be increased, or shows how it could be increased, by reallocating the consumer's share of the red snapper quota to the sport fishermen. Even if NOAA reallocated the entire 4.3 million pounds of consumers current quota, there might be a 54-day recreational fishing season, but there would be zero red snapper on the market. Such action would take Gulf Red Snapper from the fully accountable sector and gift them to an unaccountable sector. Honest, transparent, peer-reviewed stock assessments would remove most of the scientific controversy in the Southeast, and significantly diminish the fishing industry's distrust of NOAA.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Jones follows:]

**Statement of Bob Jones, Executive Director,  
Southeastern Fisheries Association, Inc., Tallahassee, Florida**

Mr. Chairman, members of the Committee, Good Morning

My name is Bob Jones. I am the executive director of Southeastern Fisheries Association (SFA), serving in that capacity since June 1964. SFA was formed in 1952 and currently represents over 350 seafood companies employing over 5,000 men and women engaged in every type of seafood harvesting and processing of seafood from Texas through North Carolina with worldwide distribution of our products. We have member companies in Cape May, New Jersey (Lund's Fisheries) and New Bedford, Massachusetts (Packaging Products Corporation). We promote sustainability. We are leaders in fighting seafood fraud, and promoting safe, traceable, seafood.

From a historical perspective, I served on the U.S. State Department Ocean Affairs Advisory Committee in the late 1960s under Ambassador Don McKernan. Two of the main issues we debated during that time were the Law of the Sea Treaty and the creation of an Exclusive Fishing Zone from U.S. shoreline out to 200 miles. We are still debating the Law of the Sea Treaty, but Congress did create the Fishery Conservation and Management Act (FCMA). I was appointed by Elliot Richardson, U.S. Secretary of Commerce, to the original Gulf of Mexico Fishery Management Council in 1976. I served as Vice Chairman from 1976 to 1979 and as Chairman in 1980.

Chairman Hastings listed major fishery management issues in his invitation. I submit the following:

**Modification of the Annual Catch Limit (ACL) requirement**

The Magnuson-Stevens Act (MSA) should be amended, mandating that each Regional Fishery Management Council set an Allowable Biological Catch (ABC) based

upon guidance from its Scientific & Statistical Committee (SSC) instead of having the Scientific and Statistical Committee (SSC) independently setting an ABC. If this amendment is adopted, and some Council prefers their SSC to continue to set the ABC, those Councils could opt out of the amendment. Also, we do not believe appropriate ACL's can be determined without quantifiable stock assessments. We believe it is inappropriate to require ACL's to be established for stocks that have not had a comprehensive stock assessment in the past five years.

This amendment to MSA would force a SSC to reach a consensus when presenting its ABC recommendations to their Council. Any significant deviation from the SSC recommendation for ABC would be discussed and debated by the council at a public meeting and made part of the administrative record.

When the MSA was amended in 2006, giving the SSCs total control over all allowable harvest, great concern about the survival of the fishing industry in our region was expressed. Our concerns in 2006 are still valid in 2013.

I was told many years ago by a red snapper expert, a fish stock assessment can be accomplished by using only two fish. At the time I scoffed at this. Then I learned the hard way that he was correct. He didn't qualify how good the stock assessment would be or that it could be much more robust using up-to-date empirical data. Instead, he used what NOAA decided was the "best available data" and thus the original red snapper stock assessment estimate for the Gulf of Mexico became doctrine.

SSCs recommendations often focus exclusively on the estimated status of fish stocks while excluding adequate concern about corresponding social and economic factors. An MSA amendment should require more consideration of these two key factors.

NOAA's National Standard 1 (NS1) guidelines mandate a calculation and allowance for "uncertainty." The "uncertainty factor" should be buffered by social and economic factors. We are not aware of any explicit mechanisms NOAA has for incorporating social and economic factors into their calculations of what "uncertainty" is.

"Uncertainty" is hard to define and should be removed from the process unless it is properly quantified in a guideline; and comprehensive stock assessments must actually be performed. SSC committee members can discuss methods to try this or try that, but unless the basic stock assessment data is real, and contemporaneous, SSC conclusions concerning uncertainty are meaningless. For example, it was recently determined that the estimated historical recreational catch of red snapper in the South Atlantic region was five times too high because of a computer error. We think that error had a lot to do with red snapper fishing being banned from Virginia to Key West for the last two years.

From an ethical perspective, participants of each SSC should declare their affiliations with any Non-Government Organization (NGO)—past and present—and should sign a declaration if that NGO has received grants from NOAA. If SSC members are employed by NOAA in any fashion we believe they should not be a voting member of the SSC.

To NOAA's credit there has been improvement in the SSC and SEDAR process of the Gulf of Mexico and South Atlantic Fishery Management Councils in the last few years, but there is still a strong need for more transparency and open dialogue with the fishing industry.

A major reason for modifying the Annual Catch Limit (ACL) requirement is the fact that the science center in the southeast does not allow stakeholders or the council, to review their sampling protocols which determine what science makes the list of "best available data". The doctrine of "best available data" is not workable as currently used. The Fishery Management Councils and their respective SSC must develop standards for what constitutes "best available data."

Unless a Council reviews the annual data collection methods and results of such methods, there will be less confidence in the science. From our perspective, it takes an act of Congress (and that might not even be strong enough) to review the scientific protocols used to control fishing in federal waters. The Science Centers should provide every aspect of computer modeling used to control our nation's fisheries. The Councils should review the NOAA sampling protocols on an annual basis and share same with our fishing communities. I paraphrase a quote by Sir Winston Churchill made in 1939 in which he said, "I cannot forecast to you the action of Russia. It is a riddle wrapped in a mystery inside an enigma." We believe the NOAA Science Center in the southeast is an "enigma, within an impenetrable conclave shrouded by a stone mountain."

#### **Port samplers**

More port sampling, more tagging of red snapper using commercial and recreational fishermen, would give credence to the science being used by the southeast science center. The lack of an adequate number of Port Samplers is a major problem

for the southeast. We believe the number of samplers today is the same or less than NOAA authorized nearly three decades ago. We understand NOAA funds state agencies, through the Atlantic States Marine Fisheries Commission who hire state personnel to supplement the sampling done by the contracted NOAA port samplers. Funding state personnel for port sampling rather than using them for more robust biological sampling (age/growth empirical data), results in less than adequate stock assessment science. We need more port samplers and we need the kind of biological data that can best be obtained by state biologists working on or near the water.

Contemporaneous port sampling data is critical to prevent NOAA's premature closure of fisheries. Many times the amount of fish authorized by a quota for commercial fishing are "left on the table" and lost to the consumers. If the science centers in the southeast would open their doors and let stakeholders see what they do, and how they do it, much of the angst and mistrust of government would disappear. We don't believe the MSA prevents transparency within NOAA.

One of our speakers noted at a meeting in Miami, "Without valid measurements of the fish stock, harvesting cannot be made proportional to abundance. Without valid measurements, model predictions cannot be tested for accuracy. Without accurate predictions, you cannot in good faith, use the models in management. Wherever a quota is based upon mixed stocks, it over exploits the small stocks and under exploits the large stocks. Given sufficient time under this type of fishing regime, the assumption of one fish stock in large ocean areas should come true (at the expense of genetic diversity)."

To the fishing industry his statement means, "If you cannot measure it, you cannot manage it."

#### **Additional flexibility in rebuilding timeframes**

We urgently need to employ flexibility to reach optimal judgments to rebuild fisheries in these austere economic times. Flexibility would significantly reduce suffering in our fishing communities because of fishing regulations based on incomplete or absent scientific information. A further reduction in fishing effort for red snapper in the South Atlantic instead of the total fishing ban enacted on a 7 to 6 vote would not have harmed the red snapper rebuilding process, and would have kept fishermen working and protected our seafood industry infrastructure.

NOAA needs a process for creative management adjustments providing assistance to the beleaguered recreational and commercial communities experiencing one of the greatest economic downturns in our history. This harsh economy was not perceived in 2006 when MSA was reauthorized. The social and economic realities of today must be weighed more seriously by NOAA and the councils.

Fishing "communities" must be fully defined and receive more consideration by the councils. The traditional, independent seafood markets that depend on a consistent and varied supply of domestic seafood must be considered from an economic and social viewpoint. Just as the sustainability of fish stocks is a critical aspect of current fishery management policy, there should be careful and deliberate consideration of the socioeconomic sustainability for the human community supported by those same fish stocks.

These thousands of small businesses require local seafood for customers from the entire economic spectrum. Not everyone can afford jumbo shrimp or lump crabmeat, but they can afford whiting, flounder, bee liners, mahi, yellowtail snapper, black sea bass and a favorite Key West delicacy—grunts and grits.

The MSA should allow a management regime and harvest system for as many different species of fish, even in small amounts, available for as much of the year as possible. Flexibility would benefit the consumers by having a variety of highly nutritious and healthy local seafood items on the market all year long.

Not every group supports more flexibility and use court decisions to support their position that there is too much flexibility already. Following are the comments filed by the World Wildlife Foundation concerning National Standard 2 (NS2) in which they write: "Although some procedural constraints apply to NOAA Fisheries when determining the best science, the existing procedure allows far too much flexibility (emphasis added) to make the "best scientific information available" standard effective. There are several baseline rules established by the courts that NOAA must follow:

- In developing its administrative record, NOAA Fisheries may rely on research science, commercial data, regulatory science, and agency research.
- NOAA Fisheries has no obligation to seek out information not available in the general scientific literature.
- NOAA Fisheries may choose to ignore relevant scientific studies only if it states a basis for doing so.

- NOAA Fisheries must extrapolate from limited data, even in light of potential increased error, when the necessary means to produce more reliable information is infeasible.
- NOAA Fisheries must also consider any significant information of which it is made aware of by interested persons.
- If NOAA Fisheries fails to recognize relevant research or establish its reasons for doing so, it risks having its decision overturned by the court.
- In the event the court determines that NOAA's decision is arbitrary and capricious, the court must "remand to NOAA Fisheries for additional investigation or explanation."

We suggest the Committee examine these court based requirements. If MSA needs to be amended to address any of them to improve fisheries management, it should be done.

MSA should mandate that there be a certain allocation of scientific data collection for each fishery which is closed to harvest in the EEZ. When no fishing is allowed, scientists miss the age/growth data that could be collected every day. Nobody has any facts on the relative abundance of a stock of fish if there is no harvest. NOAA could hire commercial and recreational fishermen to work on cooperative research for fish harvested in their region. This committee might consider directing revenue generated by licensing and permitting into a special fund and mandate NOAA work with the states for implementation of fisheries management projects that generate up-to-date empirical data for stock assessments.

Appendix 1 of my testimony is a copy of the letter to the Comptroller General dated February 28, 2013, from a bi-partisan group of eight U.S. Senators concerned that "NOAA may not place a high-enough priority on conducting robust, peer-reviewed stock assessments on fisheries in the Gulf of Mexico and South Atlantic."

The fishing industry supports this request for a GAO study knowing that if the basic stock assessment numbers used to manage a fishery are not correct, every regulation based on those numbers is suspect. We request the House Natural Resources Committee endorse the letter to the Comptroller General supporting the request for better stock assessments.

#### **Additional transparency for councils and councils SSCs**

MSA was created to promote the domestic fishing industry's optimal harvest of coastal fisheries for food and for recreational opportunities. Without total transparency of the management system, there is a possibility of creating under-utilized fisheries resources due to regulations based on imprecise and poor stock assessment data. Transparency begins before any data is entered into the computer for modeling.

Transparency would better indicate true status of fish stocks after the hypothesis is stated, research is conducted and replicated then the conclusions are reached based on the results of the research. This is our understanding of the scientific method. We do not believe the conclusion should ever precede the hypothesis and only transparency will answer our doubts.

All stakeholders should be able to review every aspect of the NOAA modeling process including assumptions, scientific theories and formulas that produce stock assessments the SSCs use to determine the ABC. We think much of the angst would be improved if NOAA's legal division published the revised MSA National Standard 2 (NS2) guidelines that have been held up for years.

Section 301(a)(2) MSA says, "Conservation and management measures shall be based upon the best scientific information available." Unfortunately in our region NOAA and the councils are often forced to use poor and imprecise information as the "best scientific information available." And to our dismay, NOAA alone decides what the "best scientific information available" is. We believe what ends up as "best scientific information available" should be examined by a peer-review entity that includes scientists outside the control of NOAA. Without honest peer-review NOAA's decisions are often seen as political science.

Since 2008 the fishing industry and the general public have been asked to comment on portions of the NS2 after the Reauthorization of MSA in 2006. In 2010 the proposed rule for NS2 allowed further comment to be submitted. The final rule was expected to be published in the Federal Register by early 2012, but that deadline has come and gone. The latest information is the Office of General Counsel may finish their review by April 2013 and allow publication in the Federal Register sometime in the future.

When the NS2 guidelines are finally adopted will we be able to examine them and suggest ways for more transparency at all stages of fishery management?



### **New use of funds collected from fisheries fines and penalties**

We will not revisit the drama and trauma associated with the ill-conceived NOAA law enforcement's collection and expenditures of commercial fishing industry fines in the past. We complained about the way it operated because it was like a speed trap. In order to finance the law enforcement they had to make an ever increasing number of arrests and fine fishermen in huge amounts to perpetuate their operation. No law enforcement program should be funded based on how much money it can take from the user group they are regulating. We strongly believe all law enforcement should be funded from general revenue.

I did not know the previous head of NOAA law enforcement, but I know the current one from working with him for several decades in Florida. He is an honest lawman who will drink coffee with you in the morning and arrest you the same afternoon if you break the law. He understands the responsibilities of a sworn officer and knows to never use the power of the badge and gun for a personal policy preference or vendetta. He is the kind of officer that protects us under the rule of law.

There are many of us who would like the NOAA law enforcement division transferred to another agency in order to separate fish management from fish law enforcement. We believe regulations are written on many occasions to make law enforcement easier at the expense of fishermen being able to work where the fish are located. We realize a straight line is easier to patrol than a curved line, but with modern GPS equipment, vessels can easily stay outside of any type of line configuration. We believe there will be many more areas with buffer upon buffer built into the demarcation lines, establishing no fishing areas. This will become more serious as the push for large marine protected areas makes its way through the council process.

If the current law enforcement system continues as it is, we believe fines from MSA fishing violations should be used to fund cooperative fisheries dependent and fisheries independent research projects and to establish a mandatory training program for MSA violators. The cooperative research projects would be managed by the states under a NOAA protocol. The mandatory training of those who violate fishing regulations in the EEZ would be conducted by the state agencies in conjunction with NOAA fishery managers. The fines would not go to the NOAA law enforcement division, but to specific data gathering programs and a strong education program to reduce fishing violations.

### **Definition and restrictions on catch share management programs**

The Southeastern Fisheries Association believes catch-share initiatives should be a tool in NOAA's toolbox, but only used if there is a current, complete stock assessment for the fishery under consideration and only if the entire fishing community is involved in the process. As I stated before, stock assessments must be developed in a totally transparent manner, because everything that follows, including the stringent regulations, depend on the stock assessment documents.

We are not suggesting specific changes in the current Gulf of Mexico red snapper catch-share program. However, we believe when red snapper quotas are increased, fishermen in areas where red snapper have become abundant, should be allowed to enter the red snapper fishery. We believe catch-shares allocated to the consumers (through the commercial catch-share holders) should never be sold or traded to any individual or entity to remove them from commercial harvest and therefore the marketplace. Catch shares must stay in the commercial fishing sector for consumers.

The fish that live in our defined areas of the ocean belong to all the citizens and are managed under the provisions of the MSA. Most non-boaters have the opportunity to enjoy a predetermined share of fish through sustainable harvests by federally licensed commercial fishermen. The amount of fish awarded under a catch-share regime must continue as a commercial fishing harvest in order to preserve non-boaters access to fresh, local seafood.

### **Non-compliance with federal fishery management plans in the Gulf of Mexico**

Southeastern Fisheries Association believes NOAA red snapper stock assessment does not reflect the actual status in the Gulf of Mexico. The small number of days NOAA allows for recreational red snapper fishing is causing great angst and alarm all along the Gulf. The true recreational harvest is suspect. NOAA's regulations count estimated number of pounds of red snapper instead of an accurate determination on the number of fish caught. This issue needs to be addressed and every aspect of the modeling used for determining the abundance of red snapper in the Gulf of Mexico should be open for review by any interested stakeholder.

Because of such short red snapper recreational fishing seasons Texas and Louisiana will now be non-compliant with the federal fishery management plan. Florida

seems poised to go noncompliant as well and that decision might force Alabama and Mississippi to join with their sister states. While going non-compliant allows states to manage the red snapper in their state waters, NOAA will determine what the states catch and will use that amount in calculating when the federal quota is reached. NOAA, more than likely, will further reduce the number of days for red snapper fishing in the Gulf of Mexico. There might be less than 20 days red snapper recreational fishing in 2013 and the days will get less, as long as there is non-compliance or until more empirical data can be included in an updated stock assessment.

The projected ABC for GOM red snapper in 2013 is 8.462 million pounds. The consumer's share (51%) is 4.310 million pounds, (harvested by commercial fishermen) and the recreational fishing share (49%) is 4.146 million pounds. These allocation percentages reflect historical catches determined by easily accountable landing records for the commercial sector and random based surveys for the recreational sector which Congress mandated to be improved.

NOAA presented a Power Point (*Analysis of the 2013 Red Snapper Season Length-Southeast Regional Office-Jan. 7-8, 2013*) that showed the following scenarios. Taking 0.5 million pounds from consumer's quota would allow a 31 day red snapper season. Taking 1.0 million pounds from consumer's quota would allow a 34 day red snapper season. Taking 1.5 million pounds from consumer's quota would allow a 37 day red snapper season. Taking 2.0 million pounds from consumer's quota would allow a 41 day red snapper season.

It has been determined that if NOAA took all 4.3 million pounds of the consumer's quota, they might allow a 54 day red snapper recreational fishing season at the expense of zero domestic red snapper on the market. Such a decision would not pass the fair and equitable requirement.

Southeastern Fisheries Association supports direct measurement of the abundance and distribution of fish stocks be gathered by repeated, independent, standardized surveys. Having scientists on the water through cooperative research projects with fishermen is one of the best ways to gather true ecological data. We believe traditional catch per unit of effort protocols using professional fishing gear and human visual estimates of fish numbers is necessary for collecting empirical data. It seems empirical data gathering has been deemphasized in favor of the less expensive development of theoretical models to estimate fish stock abundance.

Thank you Mr. Chairman.

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[The letter submitted for the record by Mr. Jones follows:]

United States Senate

WASHINGTON, DC 20510

February 28, 2013

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Dodaro:

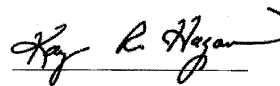
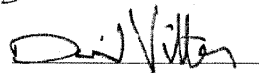
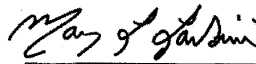
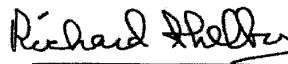
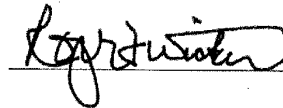

We are writing to request a study on issues related to fishery stock assessments conducted by the National Marine Fisheries Service (NMFS) within the Department of Commerce. As you know, stock assessments are the biological evaluation of the status of fish stocks. These assessments provide official estimates in key areas, such as the size of the stock's population, the size of the spawning population, and fish mortality. Importantly, stock assessments form the scientific basis used by regional fishery management councils and are a vital first step towards proper fishery management. For example, regional councils use stock assessments and other indicators of biological productivity to recommend to NMFS a maximum, or total allowable catch, in a particular fishery—typically for a year.

It has come to our attention that NOAA may not be placing a high enough priority on conducting robust, peer-reviewed stock assessments on fisheries in the Gulf of Mexico and in the South Atlantic. This lack of empirical data forces fishery council managers and their Scientific and Statistical Committees, who establish total allowable catch, to rely on what the councils have referred to in Congressional testimony as "flawed" and incomplete science.

Because of the importance of ensuring accurate stock assessments for the health of our nation's ecosystems as well as the vitality of our fishing communities, we would like for your office to examine: (1) the frequency with which NMFS conducts stock assessments; (2) the amount of federal resources spent annually on such assessments; (3) how NMFS determines which assessments to undertake and the frequency for doing so, including the relative costs and benefits considered when committing resources to improving stock assessments and prioritizing them; (4) the extent of discrepancies, if any, in the number and frequency of stock assessments conducted across regions of the country; (5) what resources are necessary to adequately sustain regular collection of information for fishery stock assessments; and (6) the various options for involving stakeholders in gathering valid fishery data directly supportive of regional council fisheries management decision-making and what gaps, if any, could be filled by guided stakeholder input.

As your work proceeds, please keep our staff advised of your progress. If you have any questions regarding this request please contact Sara Decker at (202) 224-3041. Thank you for your prompt attention to this request.

Respectfully,



The CHAIRMAN. Thank you very much, Mr. Jones.

Next we will go to Mr. Bob Shipp, who is Chair and Professor of the Department of Marine Sciences at the University of South Alabama, you are recognized for 5 minutes.

**STATEMENT OF DR. ROBERT L. SHIPP, CHAIR AND PROFESSOR, DEPARTMENT OF MARINE SCIENCES, UNIVERSITY OF SOUTH ALABAMA**

Dr. SHIPP. Thank you, Mr. Chairman. My name is Bob Shipp, and I am the Professor of Marine Sciences at the University of South Alabama. In addition, I have served 17 years on the Gulf of Mexico Fishery Management Council, three times elected Chair of the Council, and presently serve as Chair of the Council's Reef Fish Committee.

The current management of reef species for the recreational sector in the Gulf of Mexico is failing. I am suggesting a shift in management authority, as described below. I am in support of increasing fishery management authority to the Gulf States by extending the States' authority to manage reef species of finfish out to 20 fathoms. I will address three fundamental reasons why this would be beneficial.

First, most reef species, and especially red snapper, inhabit the Gulf waters to depths of 100 fathoms. So, by extending State authority to 20 fathoms in no way threatens optimum management of reef species. In fact, the Gulf States have excellent histories of successful fishery management. And it is in their best economic interests to optimally manage these species. Beyond 20 fathoms, the fishery management councils and National Marine Fishery Service would continue their authority.

Second, I refer to language in National Standard 1 of the Magnuson Act: "Prevent overfishing and achieve optimal yield." Recently we have been primarily concerned with "prevent overfishing" verbiage, often times ignoring achieving optimal yield. By allowing individual States to manage reef fish stocks to 20 fathoms would markedly improve the likelihood of achieving optimal yield.

As an example, in Florida spotted sea trout, speckled trout, has a bag limit of four. In Louisiana, it is 25. This is because the habitat for spotted sea trout in Louisiana can support a stock with a larger yield. A similar situation exists for red snapper. Off the Alabama coast some 17,000 artificial reefs have been constructed. Each holds a tremendous number of red snapper, which could easily support a fishery with a far higher yield, an optimal yield, than the current 28-day season with a 2-fish bag limit.

Third is a matter of logic. I was trained by the Jesuits, and one of the first required courses was logic. With red snapper populations, we have a conundrum of logic. Red snapper stocks are considered overfished. Projections of red snapper maximum sustainable yield made during the past 20 years have varied between 15 and 30 million pounds annually for the Gulf of Mexico. But we have never harvested more than 10 million pounds, and often much less than that.

So, if a stock can yield 15 or more million pounds annually, but has never yielded anywhere near that number, how can it be overfished? There is an answer to this riddle. The habitat for red snap-

per has increased dramatically. Before World War II there was little or no red snapper harvest from the Northwestern Gulf, despite numerous attempts to locate productive fishery areas there.

But from the mid-forties on, the harvest in the Western Gulf has increased dramatically. The reason? About 4,000 petroleum platforms and thousands of artificial reefs. Currently, more than 60 percent of snapper harvest comes from these areas with artificial habitat. In total, the harvest potential of red snapper in the Gulf has increased. State management would insure every effort to maintain these habitats in near-shore waters.

And related, the current practice of removing these platforms with explosives kills thousands of pounds of reef species. A recent video obtained by the NBC affiliate in Mobile revealed the mortality of about 10,000 pounds of red snapper at the surface. Divers tell me that probably four to five times that much is hidden beneath. Far better would be to dismantle these structures, lay them on their sides on the bottom, as is done in the "rigs to reef" program off Louisiana.

So, we have the most valuable finfish in the Gulf of Mexico not being harvested at optimal yield, and with its habitat under duress. Reauthorization of Magnuson-Stevens, as described above, would rectify this dilemma. Thank you, Mr. Chairman.

[The prepared statement of Mr. Shipp follows:]

**Statement of Dr. Robert L. Shipp, Professor of Marine Sciences, University of South Alabama, and Chair, Gulf of Mexico Fishery Management Council**

My name is Bob Shipp, and I am a professor of Marine Sciences at the University of South Alabama. In addition I have served 17 years on the Gulf of Mexico Fishery Management Council, three times elected chair of the Council, and presently serve as chair of the Council's reef Fish Committee.

The current management of reef species in the Gulf of Mexico is failing. I am suggesting a shift in the management authority as described below.

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First, most reef species, and especially red snapper, inhabit the Gulf waters to depths of 100 fathoms. So by extending state authority to 20 fathoms in no way threatens optimal management of reef species. In fact, the Gulf states have excellent histories of successful fishery management, and it is in their best economic interests to optimally manage these species. Beyond 20 fathoms, the Fishery Management Councils and National Marine Fisheries Service would continue their authority.

Second, I refer to the language of National Standard 1 of the Magnuson Act: "prevent overfishing and achieve optimal yield." Recently we have been primarily concerned with the "prevent overfishing" verbiage, often times ignoring "achieving optimal yield." By allowing individual states to manage reef fish stocks to 20 fathoms would markedly improve the likelihood of achieving optimal yield. As an example, in Florida spotted sea trout (=speckled trout) bag limit is 4. In Louisiana it is 25. This is because the habitat for spotted sea trout in Louisiana can support a stock with the larger yield. A similar situation exists for red snapper. Off the Alabama coast, some 17,000 artificial reefs have been constructed. Each holds a tremendous number of red snapper, which could easily support a fishery with a far higher yield, an optimal yield, than the current 28 day season with a 2 fish bag limit.

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dle. The habitat for red snapper has been increased dramatically. Before World War II, there was little or no red snapper harvest from the northwestern Gulf, despite numerous attempts to locate fishery productive areas there. But from the mid-forties on, the harvest in the western Gulf has increased dramatically. The reason? About 4,000 petroleum platforms, and thousands of artificial reefs. Currently more than sixty percent of snapper harvest comes from these areas with artificial habitat. In total the harvest potential of red snapper in the Gulf has increased.

And related, the current practice of removing these platforms with explosives kills thousands of pounds of reef species. A recent video obtained by the NBC affiliate in Mobile, revealed a mortality of about 10,000 pounds of red snapper at the surface. Divers tell me that probably 4 to 5 times that much is hidden beneath. Far better would be to dismantle these structures, lay them on their sides on the bottom, as is done in the "rigs to reefs" program off Louisiana.

So we have the most valuable finfish fishery in the Gulf of Mexico not being harvested at optimal yield and with its habitat under duress. Reauthorization of Magnuson as described above would rectify this dilemma.

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The CHAIRMAN. Thank you very much, Mr. Shipp.

And next we will go to Mr. Bob Dooley, who is the President of the United Catcher Boats. Recognized for 5 minutes, Mr. Dooley.

**STATEMENT OF ROBERT E. DOOLEY, PRESIDENT,  
UNITED CATCHER BOATS**

Mr. DOOLEY. Thank you. Chairman Hastings, Ranking Member Markey, members of the Committee, thank you for the opportunity to testify before you today. My name is Bob Dooley. I am the President of United Catcher Boats, a trade association of 70 commercial fishing vessels that participate in the Alaskan pollock, crab, cod, and West Coast groundfish fisheries. My brother, John, and I are co-owners of a commercial fishing business that operates three vessels from Alaska to the central coast of California. I have been a commercial fisherman for over 40 years.

I would like to begin my testimony by stating that, overall, the MSA is an excellent law. But there are areas that need improvement or outright change. To that end, my testimony will focus on National Standard 1 guidelines, catch-shares, and industry agency collaboration.

Underlying all my comments is a desire for a standard of reasonableness. Many of our concerns do not stem from the legislative language itself, but rather, from its interpretation and application. However, if the Agency and the councils cannot apply a standard of reasonableness, then Congress needs to amend the MSA to clarify the intent behind its various provisions.

National Standard 1 states that conservation and management measures shall prevent overfishing, while achieving, on a continuing basis, the optimum yield from each fishery. UCB strongly supports this national standard. We must prevent overfishing, but we must also achieve optimum yield from each fishery.

It is important to remember that the fundamental objectives of fisheries conservation and management is production of food and economic value on a long-term, sustainable basis. This is the reason that NOAA fisheries, the Regional Fishery Management Councils, and the MSA itself exist. If not, we should simply replace all of this with one line of Federal law: No fishing allowed. Such a law would certainly prevent overfishing. Needless to say, it would not produce optimum yield.

Fish don't have calendars. Yet harvest targets are applied as if there are annual limits, when they should be applied as long-term averages. Maximum sustainable yield and optimum yield must be understood as dynamic in nature, subject to fluctuation, and objectives to be achieved on an average over the years. With reasonableness and flexibility, optimum yield itself becomes a powerful conservation mandate. Overfishing cannot provide OY. Optimum yield is essentially a call for long-term sustainability.

UCB firmly believes that catch-shares should be a tool available to the Regional Fishery Management Councils. Our members participate in several successful catch-share programs, and are familiar with their many conservation and economic benefits. Measures such as fisherman-based risk pools, cooperative associations, and quota transferability are important components of a well-designed catch-share program.

For example, West Coast groundfish went from a \$38 million fishery before catch-shares to a \$54 million fishery with dramatically reduced bycatch and discards under catch-shares. An example would be the whiting fleet, where the bycatch of canary rockfish was reduced by 79 percent, and for Pacific Ocean Perch the reduction was 96 percent.

We strongly feel that catch-shares should be developed by the participants in the fishery at the regional level. MSA provides sufficient guidance to the councils on development and implementation of catch-share programs. Additional requirements are not needed at this time.

UCB supports science-based fisheries management. We recognize that better data results in more robust fisheries. UCB has been on the forefront of cooperative management with fisheries managers. Examples of our efforts include the development of a salmon excluder for the mid-water pollock trawl fleet, funding and employment of trawl catcher vessels to assist in stock assessment surveys, and the collaboration of fishery data for Federal and State research projects.

We believe such cooperative work should be incentivized and encouraged. When managed under a catch-share program, UCB believes the cost of such activities should be included as a credit when calculating cost recovery fees.

In conclusion, UCB believes the MSA is a strong and largely well-crafted piece of legislation with a proud history of 40 years of fisheries governance. With changes to the law to address the issues outlined in this testimony, we believe it will ensure robust and sustainable U.S. fisheries, fisheries that will help feed our Nation and promote economic stability for decades to come. Thank you.

[The prepared statement of Mr. Dooley follows:]

**Statement of Robert E. Dooley, President, United Catcher Boats**

Chairman Hastings, Ranking Member Markey, and Members of the Committee; thank you for the opportunity to testify before you today regarding the Magnuson-Stevens Fishery Conservation and Management Act. My name is Bob Dooley. I am the President of United Catcher Boats and co-owner of a commercial fishing operation with my brother John.

John and I have lived in Half Moon Bay, CA our entire lives and have been commercial fishermen for over 40 years. Our families have been active in commercial fishing and it's supporting businesses on the West Coast for over 70 years. Over the course of our careers we have owned and operated several vessels. To this day we

operate 2 vessels in the Bering Sea Pollock, Cod and West Coast Pacific Whiting fisheries and one in the state-managed Dungeness Crab fishery.

United Catcher Boats (UCB) is a trade association of 70 commercial fishing vessels that participate in the Alaskan Pollock, Alaskan crab, and West Coast groundfish fisheries. Our vessels are called catcher boats because that is all we do—we catch fish and deliver our catch “in the round” to processing facilities. We do not process the fish, even minimally. UCB is deeply committed to science-based management of fishery resources.

I would like to begin my testimony by stating that overall, the Magnuson-Stevens Fishery Conservation & Management Act (MSA) is an excellent law. Under it, the North Pacific Fishery Management Council has been able to manage robust, valuable, and healthy fish stocks. However, it is the nature of congressional testimony that it focus not on those aspects of the law that work well but on those that need improvement or outright change. To that end, my testimony will focus on the following issues:

- National Standard #1 Guidelines
- Catch Shares
- Accountability Measures
- State-Federal Fishery Management Plan Coordination & Consistency
- Bycatch
- Cooperative Management.

Overarching all of the following comments is a desire for a “Standard of Reasonableness” for implementation of the requirements of the MSA. Many of our concerns do not stem from the legislative language itself but from NOAA Fisheries and the Councils interpretation and application thereof. However, if the agency and the Councils cannot apply a “Standard of Reasonableness” then Congress needs to amend the MSA to clarify the intent behind its various provisions.

#### **National Standard #1 Guidelines**

National Standard #1 states that Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. UCB strongly supports this national standard. We must prevent overfishing. We also must achieve optimum yield from each fishery.

It is important to remember that the fundamental objective of fisheries conservation and management is the production of food and economic value on a long-term sustainable basis. This is the reason that NOAA Fisheries, the Regional Fishery Management Councils, and the MSA itself exist. If not, we can simply replace all of it with one line of federal law prohibiting commercial fishing. Such a law would certainly prevent overfishing. Needless to say, it would not produce optimum yield.

National Standard #1 (NS1) is well written. Achieving optimum yield is an equal objective to the prevention of overfishing. Unfortunately, the Guidelines for implementation of NS1 issued by NOAA Fisheries do not allow this balanced approach. Under the Guidelines, overfishing is certainly prevented but optimum yield is essentially impossible to achieve. The emphasis on ending and preventing overfishing over the past decade has essentially resulted in “underfishing” in several fisheries. This is not consistent with NS1.

Fisheries are now subject to a literal array of harvest targets. There is an Overfishing Limit (OFL), Allowable Biological Catch (ABC), Maximum Sustainable Yield (MSY), Optimum Yield (OY), Total Allowable Catch (TAC), an Annual Catch Limit (ACL), and a Maximum Fishing Mortality Threshold (MFMT). This array is not only confusing; it is often contradictory, and needlessly inefficient.

The fisheries management process needs to recognize that Maximum Sustainable Yield (MSY) and Optimum Yield (OY) are long-term averages, not yearly mandates. The MSA needs to be amended to make this principal explicit.

Fish don’t have calendars. Yet all of these harvest targets are applied as if they are annual limits when in reality several are better defined as and should be applied as long-term averages. We are not suggesting that a fishery be allowed to exceed the OFL year after year and never address the issue. Rather, we are suggesting that the targets of Maximum Sustained Yield (MSY) and Optimum Yield (OY) be understood as dynamic in nature, subject to fluctuation, and objectives to be achieved on average over the years.

#### **Rollovers, or overages and underages of catch targets can be and should be allowed to carry over from year to year so long as the prevention of overfishing and the long-term achievement of OY occur.**

In addition, the rigidity of ACLs is undermining improvements in fisheries science and fishing practices. In the North Pacific, the OFL for pollock is 2.550 mil-



lion metric tons and the ACL is 1.247 million mt. Yet when the industry applies for an Experimental Fishing Permit (EFP) to test salmon and halibut excluders, NOAA Fisheries has recently determined that it cannot allow the EFP-caught fish to exceed the ACL. Harvesting fish under this permit is research and catch volumes associated with that research would not pose a risk of overfishing occurring. Furthermore, the stock assessment author counts the research removals as mortality so it is accounted for in the stock assessment. For years this practice was widely regarded as acceptable and sustainable, but recently the agency has taken a hard line approach and interpreted these ACLs as hard caps even when catch is nowhere near the overfishing level. The unfortunate and ironic result has been an unnecessary reduction in research to spur fishery innovations that would improve and advance sustainable fishing practices.

We all recognize that there is uncertainty in fisheries science. Fishermen know about uncertainty all too well. We recognize that the weaker the science is to base fisheries management on, the more conservative such management needs to be. What is needed is a reasonable application of this precautionary approach.

Under the NS1 Guidelines, the only way to address scientific uncertainty is to further reduce the allowable harvest below levels that would generate optimum yield. This virtually guarantees that the Magnuson-Stevens Act goal of "attaining optimum yield" will not be met. Such an outcome is not necessary because there are several other management options available to address uncertainty.

For example, when closed areas are established for habitat protection, for bycatch reduction, or any similar goal they can, in certain circumstances, have the added effect of protecting a sub-population of a fish stock within that area. This helps ensure that the long-term goal of attaining optimum yield is achieved, and by definition is a hedge against uncertainty. However, when these types of protections are put in place no credit is given to their role in addressing uncertainty. The agency insists that catch reductions are the only viable tool for addressing uncertainty.

Identical to the need for reasonableness and flexibility in the application of NS1 harvest caps is the need for such when establishing rebuilding targets and timelines for overfished stocks. There is nothing scientific about the arbitrary ten-year rebuilding period required by the MSA.

Let me be clear. Overfished stocks need to be rebuilt. Even if NS1 did not call for the prevention of overfishing, the achievement of OY itself requires overfished stocks to be rebuilt so that food production and economic benefits can be realized. There is no magic timeline, however. Instead of an arbitrary fixed rebuilding period of ten years, rebuilding timelines should be allowed to be established by the Regional Fishery Management Council consistent with the biology of the fish stock, the needs of fishing communities, and the NS1 requirements to prevent overfishing and achieve optimum yield on a continuing basis.

A reasonable application of NS1 to rebuilding would not allow overfished stocks to remain so indefinitely. A perpetually overfished stock that is not rebuilding is fundamentally inconsistent with the NS1 standard of achieving OY.

With reasonableness and flexibility, Optimum Yield itself becomes a powerful conservation mandate. Overfished stocks cannot provide OY. Ongoing overfishing undermines achieving OY on a continuous basis. Understood as the long-term production of optimum levels of food production and economic benefits from a fishery, optimum yield is essentially a call for sustainability.

### **Catch Shares**

UCB firmly believes that catch shares should be available to the regional fishery management councils as one among many conservation and management tools. UCB members are very familiar with the benefits of catch share programs, participating in American Fisheries Act Pollock cooperative and the Alaskan crab IFQ program, both of which were approved by Congress, as well as the west coast groundfish catch share program. Our catch share programs have provided incredible conservation and economic benefits. For example, west coast groundfish went from a \$38 million fishery before catch shares to a \$54 million fishery with dramatically reduced bycatch and discards under catch shares. In the whiting fleet, for example, bycatch of canary rockfish was reduced by 79 percent, and for Pacific Ocean perch, the reduction was 96 percent.

As I stated in my April 2010 testimony before the Subcommittee on Insular Affairs, Oceans and Wildlife of this Committee, catch shares should be initiated and driven by the participants in the fishery. The west coast groundfish catch share program was developed from the ground up with full participation of all stakeholders in the fishery from Southern California to Northern Washington. It was not an example of NOAA Headquarters in Washington, DC trying to impose catch shares on the fishery. The PFM Council established a special stakeholders committee that included

a very broad membership including fishermen, processors, NGOs and community representatives. Out of this open process came a preferred option for an IFQ-based system for the shoreside fisheries and a Co-opbased system for the offshore Whiting fisheries.

The MSA provides sufficient guidance to the Councils on the development and implementation of catch share programs. Additional requirements are not needed at this time. Within the existing framework, the Councils have the ability to develop catch share programs on fishery-by-fishery basis so they address the particular objectives and needs of the fishery. Important to note is under current MSA law, the Councils may chose not to develop catch share programs. In particular, UCB does not support proposals to include sunset provisions or similar catch share terminations in the MSA. Such time restrictions undermine the very utility of catch share programs by removing the certainty that catch shares provide fishermen. This certainty empowers fishermen to make better operational decisions resulting in improved conservation and economic outcomes. Long-term investment stability directly leads to improved safety-at-sea conditions for vessels.

Multi-species catch share programs like the west coast trawl IQ program require proper measures to insure that hoarding of small allocations of constraining species do not thwart the intentions of the program. Measures such as fishermen-based risk pools, cooperative associations, and an emphasis on allowing fishermen to transfer quota during the season are important components to a well-designed catch share program.

#### **Accountability**

UCB members have long participated in federal fishery observer programs. We recognize the value and utility of such programs. Observers collect valuable fisheries data and help ensure compliance with conservation and management measures. **Accountability assures sustainability but needs affordability.** Observers in combination with ongoing technology advances such as electronic-monitoring systems (EM) are important components of good fisheries management but they need to be cost-effective. In the North Pacific, the industry bears the full cost of observers and always has. In West Coast groundfish we soon will. Other regions should do the same.

Since we pay for the cost of observer programs, we are extremely sensitive to the costs associated with them. Such industry expenditures should be included in the cost recovery calculations for catch share programs.

In most fisheries, 100% Human observer coverage is not necessary to ensure good data collection or compliance with regulations. A statistical subsample of fishing activity would suffice. Greater than 100% coverage is simply superfluous. For example, in the west coast groundfish trawl fishery, observers are placed on mothership catcher vessels even though fish never touch the deck of the vessel. These fishing vessels mid-water trawl for whiting, pull up the net but leave the codend in the water from where it is directly transferred to the mothership, where there is an observer onboard. There is literally nothing for the observers on these vessels to observe.

We need to transition away from physically present observers to potentially more cost effective electronic monitoring systems. Electronic Monitoring might not be potentially more cost effective because some NOAA Fisheries personnel want to design and implement EM systems that collect all conceivable forms of data. They are designing Cadillacs when all we need are reliable Chevys. Such elaborate EM systems will reduce if not eliminate the potential cost savings. Electronic monitoring systems should be designed and implemented in response to a specific problem statement that clearly identifies the data needed to ensure accountability. For example, in a full retention fishery an EM system that can identify the species of fish being discarded is superfluous since any discard is a violation of the fishery management plan. A high-tech camera is not needed to discern if a discard event has occurred.

Finally, commercial fishermen are not the only fishery participants that need to be held accountable. In many fisheries, charter and recreational fishing activities and harvest have a dramatic impact on fish stocks. These catches and their compliance with conservation and management measures need to be held much more accountable than is current practice. Tools such as VMS, AIS, check-in/check-out requirements, logbook accounting and perhaps observer coverage should be considered.

#### **State-Federal FMP Coordination & Consistency**

As you know, the MSA governs fisheries outside of state waters and inside the U.S. Exclusive Economic Zone (EEZ). Of course, fish do not recognize these boundaries. Many fish stocks managed under the MSA are also managed by various

States within their waters. In some cases, the State management plans can be contradictory or even undermine the conservation and management objectives of the federal FMP. Uncontrolled fishing effort within state waters can lead to the overcapitalization of a federally rationalized fishery. Effective coordination between state and federal fishery managers is required. For example, the Bering Sea crab fisheries are jointly managed under a 'framework' arrangement between the State of Alaska and the federal government. This agreement clearly details the jurisdiction, authority and responsibility of each government and the result is a successful management program that governs stock assessment, effort control, harvest record keeping and also a newly established catch share program for the crab industry.

UCB believes State fishery management plans for stocks of fish predominantly managed by the federal regional fishery management councils should be subject to review and approval by the Secretary of Commerce for compatibility with the federal FMP. States should be required to meet or exceed the conservation and management standards of the federal FMP. States that have no fisheries management for a federally managed stock should be required to develop one or have the federal FMP reach into state waters.

UCB also believes that when a designated fish stock is fully utilized by a developed fishery and the federal management of such fishery is well defined, the states should not be allowed to establish a new fishery that utilizes the same fish stock. This leads to 'leakage' in management and can result in overfishing of the fish stock or overcapitalization of the fishing fleet. One stock of concern we have in Alaska is Pacific Cod.

#### **Bycatch**

National Standard #9 requires bycatch and the mortality thereof to be minimized to the extent practicable. In many cases this is more of an allocation issue than a conservation issue.

Nonetheless, UCB supports the principal of minimizing bycatch. Again, however, a standard of reasonableness needs to be applied. In the North Pacific, many bycatch limits are set as hard numerical caps that have no relationship to natural variability of the fish stock. When stocks are low, the numerical cap may provide very little benefit. When stocks are high, the cap may be overly constraining and if exceeded may have little or no impact on stock. UCB supports proper bycatch management programs in order to insure the conservation of all fish stocks. However, these measures need to be reasonable and also allow input into the design and management by fishermen.

#### **Cooperative Management**

As previously mentioned, UCB believes strongly in science-based fisheries management. We recognize that the better the data the more robust the fisheries management. There are many instances where industry supports the collection of fisheries data: industry-funded observers, industry-funded surveys, Experimental Fishing Permits, and industry-charter work for fisheries scientists. We believe such cooperative work should be incentivized and encouraged. The costs of such activities should be included as a credit when calculating cost recovery for catch share programs. Retention of catch and the calculation of such outside of ACLs should also be allowed. UCB has been on the forefront of cooperative management with the federal fishery managers. Examples of our efforts include the development of a salmon excluder for the mid-water pollock trawl fleet, funding and deploying trawl catcher vessels to assist in stock assessment survey work, and the collaboration of fishery data for federal and state research scientists. This is one area of focus that needs further development and can lead to cost savings for the federal government.

#### **Conclusion**

UCB believes the MSA is a strong and largely well-crafted and implemented piece of legislation with a proud history of 40 years of fishery governance. With changes to the law to address the issues outlined in this testimony, we believe it will ensure robust and sustainable U.S. fisheries that help feed the nation and promote economic stability for decades to come. As the Congress once again proceeds with its work to reauthorize the MSA, we look forward to the opportunity to provide meaningful ideas and suggestions for you to consider. Stakeholder participation is one of the founding principles of the original Magnuson Act and has proven to be useful over the past 4 decades of fishery management.

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The CHAIRMAN. Thank you very much, Mr. Dooley.

Next I will recognize Mr. John Pappalardo, Chief Executive Officer of the Cape Code Commercial Hook Fishermen's Association.

Mr. Pappalardo, you are recognized for 5 minutes.

**STATEMENT OF JOHN PAPPALARDO, CHIEF EXECUTIVE OFFICER, CAPE COD COMMERCIAL HOOK FISHERMEN'S ASSOCIATION**

Mr. PAPPALARDO. Thank you, Chairman Hastings, Ranking Member Markey, members of the Committee. Thank you for the opportunity today. My name is John Pappalardo, and I am CEO of the Cape Code Commercial Hook Fishermen's Association, an organization started over 20 years ago by local small-boat independent fishermen. Our members catch around 12 million pounds of seafood, annually, worth \$17 million. Between 2002 and 2011, I also served on the New England Fishery Management Council, with the last 5 years as its Chairman.

While many look to New England and see the failure of our codfish fishery, I think it is important to remember to look at our successes, as well. I think about scallops, monkfish, and dogfish when I think about our successes. It is important to note that these successes were accomplished through the Magnuson-Stevens Act that we have today.

We think the law is working, but we think it needs improvement in implementation. We must move forward to rebuild and maintain our fish stocks by providing managers and the fishing industry with data and resources necessary to run our fisheries with annual catch limits. I have ideas on how to do that, and I would be happy to answer questions afterwards about that.

While the law set a tall order with annual catch limits, we think it is the right one. We think it can work. And we think it is the only way forward. We must make a commitment to providing our communities with innovative ways to create a fishing future, and make existing programs currently available to other industries in the United States also available to the fishing industry.

We need to start managing our marine ecosystem as the dynamic and interwoven environment that it is. While annual catch limits are the cornerstone of Magnuson-Stevens, they also demand annual stock assessments. And annual stock assessments are resource and data-hungry—we think the industry needs to be engaged and involved in creating those annual stock assessments. We currently don't have annual stock assessments to set annual catch limits. We think that is a problem.

Real-time data and accountability are also important, if we are going to manage our fisheries sustainably. Comprehensive observer coverage and information about the fish brought on board are a necessity for managers. But, unfortunately, our fishing industry can't afford to pay for these observers at this time. But we need that information if we are going to take delivery on the promise of Magnuson-Stevens.

So, we think better, faster, and cheaper information is something that managers need, and we think the current system isn't delivering that, at least in New England. So we believe we should start to look for public and private partnerships to fill the gaps that currently exist.

Our communities in New England need support. The challenges we are facing are very real. It isn't enough to be a good hunter of fish. Fishermen today need to be sophisticated businessmen to navigate all the regulations and requirements. My organization started a community permit bank in 2005 to provide diversity of access to fishing opportunities for fishermen on Cape Cod. We keep seafood landed in our communities, and we provide good, stable, crew jobs and opportunities for fishermen to access resources that they otherwise wouldn't have access to.

I work with fishermen every day. They spend their lives on the water. Not a week goes by without one of these guys coming into my office and telling me how important it is to manage the ocean, while considering how all species interact. From herring to cod and from skate to seal. They talk about how the increased abundance of one stock can directly impact another, and about how important the improved protection of critical habitat is for some of our most depleted and important resources, such as codfish.

While they never use the words "ecosystem-based management," that is what they are talking about. That is the approach that their lifetime of experience on the water tells them is essential. And I think it is time we moved in that direction when we manage our fisheries.

In conclusion, we must move forward to rebuild our fish stocks and keep them there. We need to expand accountability, improve our annual stock assessments, and come up with innovative and cost-effective programs for gathering real-time information. We must make a commitment to providing our communities with the tools to invest in the future of their fishing economies. And we need to manage the entire ecosystem.

Thank you. I would be happy to answer any questions.

[The prepared statement of Mr. Pappalardo follows:]

**Statement of John Pappalardo, Chief Executive Officer,  
Cape Cod Commercial Hook Fishermen's Association**

Chairman Hastings, Ranking Member Markey and Members of the Committee, my name is John Pappalardo. I am the CEO of the Cape Cod Commercial Hook Fishermen's Association (CCHFA), an organization started over 20 years ago by independent small-boat fishermen on Cape Cod. We work with over 100 commercial fishing businesses catching 12 million pounds of seafood worth \$17 million each year, including cod and haddock, lobster, conch, scallops, monkfish, dogfish, skates, sea clams, striped bass and bluefin tuna. These businesses support hundreds of fishing families and form the backbone of our area's coastal economy. Between 2002 and 2011, I served on the New England Fishery Management Council, including five years as Chairman.

The 2006 reauthorization of the Magnuson-Stevens Act was a wise step forward in fortifying our nation's fisheries laws by mandating better understanding of our marine resources, rebuilding depleted fish stocks, and holding fishermen accountable for their catch.

I support that law because I see evidence of rebuilding fish populations and restoring profitable small fishing businesses. I see noteworthy success stories on Cape Cod and around the nation. While many look to New England and see the failures of the codfish industry, I choose to look to successes such as the scallop, dogfish and monkfish fisheries.

We can improve Magnuson-Stevens. In my comments, I will make a series of recommendations on how we can further improve implementation of the law to help ensure continued growth for small fishing businesses in my community and around the nation.

### **An End to Overfishing**

The cornerstone of our management under Magnuson is the commitment to setting annual catch limits; this truly is the only way forward. However, annual catch limits demand annual stock assessments. We cannot end overfishing without better, more reliable, real-time information and timely stock assessments.

The value of industry-supported annual assessments is obvious when comparing the responses of New England's scallop and groundfish fisheries to significant reductions in available harvest this year.

The Atlantic sea scallop fishery, with annual assessments based on three independent surveys including two that are industry-based, faced their 30% quota reduction by acknowledging their confidence and support in the science. While painful, industry accepted quota cuts as necessary for the continued sustainability of their fishery.

The groundfish fishery consists of 17 different stocks with quotas generally set every three years based almost entirely on a single government trawl-survey with no industry participation and little industry confidence. Many of these assessments show persistent and troubling signs of inaccurate catch information among other problems. The groundfish fishery largely responded to the announcement of significant reductions in a number of key stocks by following a time-honored regional tradition of questioning the science and challenging the cuts.

It's important to remember that all wild populations will experience occasional downturns, even when well managed. However, without timely and accurate information and industry buy-in to the process, our Science Centers spend more time and money defending their assessments than improving them. This has to change if we are going to create an environment for small fishing businesses to thrive.

But annual assessments alone will not give us the tools we need to take the next step. We also need to improve the quality and timeliness of the data, particularly the catch information that feeds into our stock assessments. Unless we have better catch information, our fishing businesses will continue to be hamstrung by unpredictable, fluctuating quotas that are often misaligned with the reality of the resource in the water.

Therefore, we must rethink how we collect fisheries dependent catch information. We need to do it better, faster and cheaper and that means changing how we approach the problem and how we utilize the private sector to solve it.

Almost a decade ago, Cape Cod fishermen volunteered to pilot electronic monitoring systems to provide a safer, more efficient and cost-effective alternative to human observers. Yet, despite all the time and resources we put into proving the viability of cameras in New England fisheries, we do not appear any closer to implementation. Meanwhile fishermen from almost every region are facing the reality of having to pay an ever-rising portion of the monitoring cost.

Our small businesses cannot afford not to have comprehensive coverage and real-time accountability, but they also cannot afford to pay for a bloated and costly observer program to deliver catch information. We need to move forward with innovative solutions that rely on the efficiencies and strengths of the private sector to solve these problems. This is why last year our organization supported former Congressman Barney Frank's bill, H.R. 4208, which proposed reforming the S-K grant program. S-K funds can and should be used to provide much needed resources to the regions for these kinds of important improvements in monitoring and stock assessments.

### **Building Stronger Businesses and Fishing Communities**

We must do even more to protect and strengthen our fishing communities under a system of annual catch limits and accountability. I was on the front lines in New England when we tried to rebuild fish stocks without annual accountability. That effort thoroughly failed to protect fish stocks or to serve the small fishing businesses built on them. Watering down the conservation mandates of this law will not help a single small business grow for the future.

If we want to have strong businesses in a fishery managed by annual limits then I'm convinced, that we will need to utilize catch shares. It's the only way forward that I can see to stabilize our fisheries, build profitable small fishing businesses and harvest all of the quota recommended by our scientists. Now, I have also realized that catch shares, while an important part of better management, can have unintended consequences on our fishing communities, causing consolidation and community dislocation. These are challenges that we must prepare to address in all of our nation's fisheries.

So the question is, "How do we make this transition while building stronger ports, stronger businesses?"

We need to build resilience through securing diverse fisheries access at the business and port level. For centuries small boat fishermen in New England weathered downturns in a given fishery by maintaining access to other harvesting opportunities. When groundfish were less abundant, many fishermen would re-rig to target scallops or lobster; this allowed small fishing businesses to adapt, adjust and grow. However, too often allocation decisions and rising costs of fishing permits/quota are forcing our small boat fishermen to specialize in order to remain in a fishery.

We need to counter this trend and support the continued diversity of access that's essential for strong businesses and ports. To do this, we need innovative financing programs to support initiatives like community permit banks and fisheries trusts which allow communities to buy permits, maintain permanent fisheries access, and provide affordable opportunities for local fishermen.

My organization saw the need to build this type of program over five years ago as we saw the threat of permits being sold out of our communities and our fisheries diminished. Through the Cape Cod Fisheries Trust, we've helped dozens of local scallop, groundfish and sea clam fishermen gain access to additional fishing opportunities, ensured that seafood was landed in our local ports and that those fishing businesses provided stable, good-paying crew jobs for Cape Codders.

Through this program we've also provided business training and development, re-invested in fishermen-driven research, and have worked to identify, support and encourage the next generation of captains in our industry. It is not enough to simply be a good hunter of fish. Today's commercial fisheries demand that captains also be sophisticated businessmen. We must invest now in developing the next generation, ready to succeed in this new industry.

This community-based model can work in ports throughout the country, but it must be supported. We must invest in these economic engines through cross-agency collaborations and microfinancing programs.

#### **Market Support and Seafood Fraud**

Our fisheries need more than robust fish stocks and fisheries access to succeed; they need stable markets and transparent distribution pathways to ensure a fair price. Recent media investigations have confirmed what those of us connected to wild harvest fisheries have long known, rampant seafood mislabeling is undermining our small fishing businesses as well as the health and safety of American consumers who are too often unknowingly dining on foreign substitutes after ordering a domestic seafood entrée.

We must begin to stamp out seafood fraud and bring more transparency to the supply chain by passing Congressman Markey's Seafood Fraud legislation.

But we must also take steps to develop and strengthen domestic markets for underutilized stocks, like dogfish and skates which are abundant but are currently exported as high-volume/low-value products to European markets. While we rebuild other stocks, our small businesses must be able to adapt to harvest these stocks profitably and sustainably.

As a country, we have invested and worked to stabilize markets for our nation's agricultural products; and we must take a similar approach with our domestic fisheries. Our robust fish stocks represent a critical source of affordable and sustainable protein that we should be using to feed our soldiers, schoolkids and those relying on federal food programs. This is the ultimate win-win and we must pursue this kind of solution.

#### **Ecosystem-based Fisheries Management**

The final topic I would like to discuss is what people refer to as Ecosystem-based Management. I work with fishermen who have spent their lives on the water. Not a week goes by without one of these fishermen telling me how important it is to manage the ocean while considering how the species interact, how the increased abundance of one stock can directly impact another, how important the improved protection of critical habitat is to some of our most depleted and important stocks, like codfish. They never use the words, Ecosystem-based Management, but that's what they're talking about, that's the approach that their lifetime of experience on the water tells them is essential.

They recognize that we will never be able to rebuild New England's flagship cod populations without a robust forage base of herring and mackerel for those fish to feed on. We need to be more conservative with the commercial harvest of these forage stocks, since the consequences of even small declines in these populations ripple across our ecosystems and fisheries.

Not long ago, seeing a grey seal was a rare occurrence. Now, we motor past miles of breeding grey seals on the beach on our way out to the fishing grounds and routinely pull up seal-eaten cod and haddock on our hooks and in our nets. We recog-

nize the need to have healthy marine mammal populations but we cannot pretend to manage an ocean ecosystem while refusing to manage top-order predators like seals.

This isn't an easy conversation, but we need to have it if we're going to strengthen our small fishing businesses and better manage our oceans.

**Conclusion**

We can and must do more to build strong, resilient, and profitable fisheries and fishing ports. To do it, we have to resist the temptation to go back to our old ways of mortgaging the future of our fisheries by allowing short-term overharvesting. That's liquidating our fisheries, not investing in them.

Instead, we must move forward to rebuild our fish stocks, through expanded accountability, improved annual stock assessments, innovative and cost-effective programs for gathering real-time catch information. We must make a commitment to providing our communities with the tools to invest in the future of their fishing economies and managing the entire ecosystem.

There are certainly challenges ahead, but I remain confident that we can build stronger fisheries and profitable small fishing businesses.

Thank you, I'd be happy to answer any questions you have.

The CHAIRMAN. Thank you very much, Mr. Pappalardo. Next I will recognize Captain Keith Logan, Charterboat Captain out of Myrtle Beach, South Carolina.

Captain Logan, you are recognized for 5 minutes.

**STATEMENT OF KEITH LOGAN, CHARTERBOAT CAPTAIN,  
MYRTLE BEACH, SOUTH CAROLINA**

Mr. LOGAN. Mr. Chairman and members of the Committee, my name is Captain Keith Logan from Myrtle Beach, South Carolina. I have over 35 years of fishing experience in the South Atlantic as a charterboat captain, as a commercial fisherman. I appreciate the opportunity to testify before you today in the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act of 2006.

I am seeking your immediate help in reauthorization of the Magnuson-Stevens Act of 2006 to add flexibility, access, and a sound science approach to sustainability.

Give a man a fish, he will eat for a day. Teach him how to fish and the government will say he is overfishing, shut him down. This is what the 2006 reauthorization of the MSA is doing to us, the fishermen, here in the United States. The annual catch limits, accountability measures that the environmental groups helped put into the MSA on the eleventh hour of 2006 are causing an irreparable economical damaging impact to our coastal communities.

The 2006 reauthorization of the Magnuson-Stevens Act is clearly evidence of the hijacking of our fisheries management by the environmental groups. Enclosed is a screen shot from EDF's website, where it shows where they were boasting about their oceans team being instrumental in crafting and passing the changes to the Magnuson-Stevens Act. Once this was made public, and pointed out the possible undue influence by EDF, they wiped their site clean of the verbiage. I have a screen shot included in your package of it.

The effects of the annual catch limits and the accountability measures in the MSA placed on the fishermen in the South Atlantic by NOAA, National Marine Fisheries, and the South Atlantic Fisheries Management Council are having detrimental irreparable economical consequences on the fishermen of the Grand Strand, Horry County, South Carolina and the whole South Atlantic. This



does not only affect the fishermen of South Carolina, it is having an economic impact on the gas stations, marinas, tackle stores, golf courses, restaurants, grocery stores, motels, hotels, resorts, and rental properties. Because recreational fishermen, charter/head boat captains, and commercial fishermen are not fishing because of the MSA. Industries that provide a service were no longer doing business with those guys, because we can't afford to. We are not fishing.

All this being done is with bad data collected through the Marine Recreational Fishing Statistics Survey, called MRFSS. NCR Chairman, Dr. Patrick Sullivan, referred to MRFSS data as "fatally flawed."

The Magnuson-Stevens Act must be changed to add flexibility and access for the fishermen. We need legislation to provide flexibility and rebuilding of our fisheries. If certain conditions are met using a sound science approach for fishery management instead of the current very low standards, and best available science. Additionally, it must address annual catch limits and accountability measures and the rigidity of the SSC.

The goal should be to keep fresh fish on American tables and caught by American fishermen using common sense management and accurate science and data. As I have stated, the Magnuson-Stevens Act has been manipulated to further interest special interest groups at the sacrifice of the local economy and fishermen.

I am seeking your immediate help in the reauthorization of the Magnuson-Stevens Act of 2006 to add flexibility, access, and sustainability in order to stop the attack on our fishing industry. We, the recreational fishermen, charter/head boat captains, and commercial fishermen are the endangered species, we are. We are being put out of work every day.

Mr. Chairman, thanks again for hearing me and letting me finish my say. For us, we are going out of business because of a broken law, bad science. Please don't wait for a full reauthorization to get us back in business and on track. We need help right now, today. Thank you. Captain Keith Logan.

[The prepared statement of Mr. Logan follows:]

**Statement of Captain Keith Logan, Charter Boat Captain,  
Myrtle Beach, South Carolina**

Thank you for allowing me to speak. I am Captain Keith Logan, a charter boat captain from Myrtle Beach, South Carolina.

Give a man a fish he will eat for a day, teach him how to fish and the government will say he's overfishing and shut him down! This is what the 2006 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act is doing to the fishermen. The Annual Catch Limits and Accountability Measures the environmental groups had put into the MSA, at the 11th hour in 2006, are causing irreparable economic damage to our coastal communities. The 2006 Reauthorization of Magnuson is clearly evidence of the hijacking of our fisheries management by environmental groups. Enclosed is a screen shot from an EDF website where it shows where they were boasting about their "Oceans Team being instrumental in CRAFTING and PASSING the changes to the Magnuson . . ." Once this website was made public and pointed out that this was possibly undue influence, they (the EDF) wiped their site clean of such verbiage.

I am seeking your immediate help in the Reauthorization of the Magnuson-Stevens Act of 2006 to add **Flexibility, Access**, and a **Sound Science Approach to Sustainability**.

The effect of the Annual Catch Limits (ACLs) and the Accountability Measures (AMs) in the MSA placed on the fishermen of the South Atlantic by NOAA, NMFS,

and the SAFMC, are having detrimental and irreparable economic consequences on the Fisherman of the Grand Strand, Horry County, South Carolina and the whole South Atlantic. This does not only affect the fishermen of South Carolina, it is having an economic impact on the gas stations, marinas, tackle stores, golf courses, restaurants, grocery stores, motels, hotels, resorts, and rental properties. Because recreational fishermen, charter/head boat captains, and commercial fishermen are not fishing because of the MSA, they are not buying supplies and services that other industries provide, nor do they have the money in order to live. The tourists are not coming to the area to play golf and go fishing, because they cannot keep fish to eat.

The closure of Black Sea Bass has resulted in the complete shutdown of the Charter/Head Boat fleet for five (5) months out of the year. The loss of employment for those people of the fleet has been catastrophic. This is totally unacceptable. We want to work, but the Federal Government is putting us out of work! According to the North Myrtle Beach and Myrtle Beach Chamber of Commerce, the number one request from tourist vacationing in the Grand Strand is for Charter/Head Boat fishing information. Given this fact, the economic loss has included tourism dollars, tax revenues, and additional people to the ranks of the unemployed in South Carolina.

The effect on my charter business has been very hard over the last four years. On October 17, 2012, the Black Sea Bass closed due to meeting the ACL. For the remainder of 2011, 2012 I lost twenty-one (21) charters in October, twenty-four (24) charters in November, and eighteen (18) charters in December. This resulted in a loss of \$56,700.00, in gross revenues and 63 charters. As the Black Sea Bass season remained closed until June 1, 2012, my business continued to suffer catastrophic losses. I lost sixteen (16) charters in January, seven (7) charters in February, fifteen (15) charters in March, nineteen (19) charters in April, and seventeen (17) charters in May. This resulted in a loss of \$66,600.00, gross revenue and a total of seventy-four (74) charters. For the eight (8) months I was prohibited from catching and retaining Black Sea Bass, I lost \$123,300.00, in gross revenues. While I was unable to work, I was not buying fuel, bait, or tackle.

To date, for 2013, I have lost twenty-nine (29) charters and gross revenues of \$26,100.00. Additionally, I have not purchased fuel, bait, or tackle. Based on the above numbers, I am projecting a total loss of gross revenue of \$150,000.00, during this year's closures from October 2012, through June 1, 2013. This does not include the loss to the local economy six tourists would provide during their stay while fishing. My customers traditionally travel to the Grand Strand, play golf, and do a half day fishing charter. This may not sound like a lot of money, but it is to me. As I have stated, this economic impact does not include the fact I did not buy fuel, bait, ice, tackle, or spend any money on eating. Also, this figure doesn't include monies lost to gas stations, golf courses, restaurants, grocery stores, motels, hotels, resorts, and rental properties because my clients did not come to the Grand Strand area to go fishing.

How am I going to pay my mortgage, boat payment, truck payment, phone, electric, grocery, insurance, and boat slip if the keeps on going on? I don't know. Remember, this number is only for me; it does not include the other 152 charter/head boat captains of the Grand Strand and 512 charter/Headboats in South Carolina. If only half of 512 charter/head boat captains are in the same boat that I'm in, then it's a minimum of \$38,400,000.00 dollars lost to South Carolina's economy. Now add all the charter/head boat captains in southeastern United States, and all the customers no longer traveling to the coastal areas to participate in fishing, and commercial fishermen blocked from plying their trade; the economic impact is hundreds of millions of dollars! Now, consider the money the recreational fishermen would spend. This monetary loss will affect marinas, fuel dealers, marine supply stores, boat service centers, and tackle stores. Add another hundred million plus dollars of economic loss.

What needs to be done? The Magnuson-Stevens Act needs to be reworked to add flexibility, access, a sound science approach to sustainability; not be designed as it is now, resulting in overly aggressive closures of perfectly healthy fisheries without good data to back it up.

The Annual Catch Limits (ACLs) and Accountability Measures (AMs) are being based and established with old data and "Best Available Science", per NOAA and NMFS. This has to stop! NOAA must start utilizing data obtained through a "Sound Science Approach". This must include a study of biology, social and economic impact analyses, habitat evaluations, and ecosystem management issues. Fisheries must be open year round in order to avoid severe economic impacts.

The Magnuson-Stevens Act must be changed to add Flexibility, Access and Sustainability.

We need legislation to provide for flexibility in rebuilding fisheries if certain conditions are met and using a “Sound Science Approach” for fisheries management instead of the current very low standard of “best available science.” Additionally, it must address ACL’s (“Annual Catch Limits”); AM’s (“Accountability Measures”); and the rigidity in the SSC (“Scientific and Statistical Committee”). The goal should be to keep fresh fish on American tables and caught by American fisherman using common sense management based on accurate scientific data. The recreational marine fishery is worth over \$1.5 billion a year in South Carolina, and commercial marine fishing and local seafood is also highly important to our state’s growing tourism industry and the rest of our economy.

Flexibility in rebuilding fisheries that are experiencing legal “overfishing” must be added as follows. Amend Section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854(e)(4))

(1) in paragraph (4)(A)—

(A) in clause (i) by striking ‘possible’ and inserting ‘practicable’; and

(B) by amending clause (ii) to read as follows:

‘(ii) not exceed 10 years, except in cases where—

‘(I) the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

‘(II) the Secretary determines that such 10-year period should be extended because the cause of the fishery decline is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;

‘(III) the Secretary determines that such 10-year period should be extended to provide for the sustained participation of fishing communities or to minimize the economic impacts on such communities, provided that there is evidence that the stock of fish is on a positive rebuilding trend;

‘(IV) the Secretary determines that such 10-year period should be extended for one or more stocks of fish of a multi-species fishery, provided that there is evidence that those stocks are on a positive rebuilding trend;

‘(V) the Secretary determines that such 10-year period should be extended because of a substantial change to the biomass rebuilding target for the stock of fish concerned after the rebuilding plan has taken effect; or

‘(VI) the Secretary determines that such 10-year period should be extended because the biomass rebuilding target exceeds the highest abundance of the stock of fish in the 25-year period preceding and there is evidence that the stock is on a positive rebuilding trend;’ or

(2) in paragraph (7), in the matter preceding subparagraph (A), by inserting after the first sentence the following: ‘In evaluating progress to end overfishing and to rebuild overfished stocks of fish, the Secretary shall review factors, other than commercial fishing and recreational fishing, that may contribute to a stock of fish’s overfished status, such as commercial, residential, and industrial development of, or agricultural activity in, coastal areas and their impact on the marine environment, predator/prey relationships of target and related species, and other environmental and ecological changes to the marine conditions;’ and

(3) by adding at the end the following:

‘(8) If the Secretary determines that extended rebuilding time is warranted under sub clause (III), (IV), (V), or (VI) of paragraph (4)(A)(ii), the maximum time allowed for rebuilding the stock of fish concerned may not exceed the sum of the following time periods:

‘(A) The initial 10-year rebuilding period.

‘(B) The expected time to rebuild the stock absent any fishing mortality and under prevailing environmental conditions.

‘(C) The mean generation time of the stock.

‘(9) In this subsection the term ‘on a positive rebuilding trend’ means that the biomass of the stock of fish has shown a substantial increase in abundance since the implementation of the rebuilding plan.’

### **Sound Science Approach.**

1. The “Precautionary Approach”, also known as the “Precautionary Principle”, needs to be eliminated from Magnuson-Stevens and a “Sound Science Approach” needs to be inserted!

The “Precautionary Approach” was incorporated into the Magnuson-Stevens Act as “Risk Adverse Management”, where no empirical scientific evidence of any problem is necessary to precipitate action.

Presently, action can be initiated based on a hypothesis developed through subjective opinion and not based on objective scientific data.

2. The term, “Best Available Science”, should be removed from the Magnuson-Stevens Act and replaced with “Sound Scientific Process or Science” in order to improve crucial decision making!

**Negative Results:**

“Best Available Science” has been defined and applied to any resource, or environmental issues, to facilitate fully informed decisions; however, for this to occur, it is essential scientists, policymakers, and the public be aware of the prejudices affecting the development and limitations of science and its implementation. When actions by federal agencies are challenged in federal court, the courts always defer to the agency’s decision on “best available science.” The agency gets a free pass to use worst case scenario models despite evidence showing these models are not consistent with reality and in fact impossible biologically.

**Positive Results:**

The results of a “Sound Scientific Process” need not be infallible to be the best available. Scientific information and the conclusions it supports will always be subject to multiple interpretations; but, greater transparency in the process will go far in addressing skepticism and averting controversy. High-quality science adheres to a well-established scientific process. The soundness of any science is enhanced if the associated values, assumptions, and uncertainties are clearly explained.

3. The MRFSS “Marine Recreational Fishing Statistical Survey” Data is “very poor” according to NMFS. This is the data used to set the ACL and AM that are in the Magnuson that are closing our fisheries down.

In the January/February 2011 Big Game Fishing Journal, an article written by Jim Hutchinson, Jr., covered in great depth the MRFSS program and the legal requirements, as mandated by the Congress, the NMFS has failed to implement since 2009.

Quoting information from this article, “Marine Recreational Fishing Statistical Survey (MRFSS), National Academy of Sciences and their National Research Council (NRC) completed a study in 2006 and concluded both telephone survey and the onsite access components of the current monitoring systems have serious flaws in design or implementation.” NCR chairman, Dr. Patrick Sullivan referred to (MRFSS) data collection as “fatally flawed”. MRFSS was supposed to be replaced by Marine Recreational Information Program (MRIP). By law, MRIP was supposed to be implemented no later than January 2009. Magnuson contains a very clear set of guidelines for NMFS to address the data deficiencies. Federal law also clearly required that MRFSS be replaced by MRIP as of 2009. NMFS has failed to uphold their requirements under law, as the current Administration is fast-tracking catch share programs and fisheries closures to address other requirements related to Magnuson which hurt our industry. And again, the MRFSS has been allowed to dictate management decisions since Magnuson-Stevens gives it legal protection from challenge—NMFS deems it “best available science”!

4. A scientific approach based on accurate data collection with a 10% rate of error must be implemented. The MRFSS data currently used is flawed 21% to 33%. A test with 67% of the answers correct in any college is a failing grade.

**Scientific and Statistical Committee.**

1. Studies must be conducted addressing the biological, social, economic, and environmental impacts.

2. Members of the committee must be composed of leading scientists in biology, economics, statistics, and social science, without any ties to extremist, special interest environmental groups. Additionally, members must include Commercial and Recreational fisherman and Charter/Head boat captains who most closely understand these resources from their frequent and lifelong activities within the fisheries.

3. The Committee must meet at least four (4) times a year to address a broad range of topics, including stock assessments, management action evaluations, social and economic impact analyses, habitat evaluations, and ecosystem management issues. SSC members must also play a key role in developing stock assessments for Council managed resources through participation in SEDAR, the Southeast Data, Assessment, and Review program.

**ACL “Annual Catch Limits”.**

1. ACL’s must be set utilizing data obtained through a Sound Science Approach. They must include a study of biology, social and economic impact analyses, habitat evaluations, and ecosystem management issues. Fisheries must be open year round in order to avoid severe economic impacts.

2. Recreational ACL’s must be set to allow an average fishing year remain open year round.

3. If reductions in the bag limits are needed to keep a fishery open year round, it needs to be addressed prior to the ACL being set. A method needs to be developed in order to reduce bag limits when 50% of the ACL meet and, again, at 75% of the ACL.

**AM “Accountability Measure”.**

1. AM’s shall not include Catch Shares. Catch Shares are not provided within the Magnuson-Stevens Act.

2. If reductions in the bag limits are needed to keep a fishery open year round, it needs to be addressed prior to the ACL being set. A method needs to be developed in order to reduce bag limits when 50% of the ACL meet and, again, at 75% of the ACL.

3. AM’s must be set with a Sound Science Approach. They must include a study of biology, social and economic impact analyses, habitat evaluations, and ecosystem management issues. Fisheries must be open year round in order to avoid severe economic impacts.

4. AM’s make business planning and budgeting impossible. We are notified of what appears to be a perfectly healthy fishery being closed down, and we have no due process or no input on the matter. NMFS simply makes the decision to enact an AM in the middle of our fishing season, and there is nothing we can do about it.

**Implementation of ACLs and AMs**

1) When Congress mandated hard time limits to end overfishing, they assumed that NOAA Fisheries would have already complied with the mandate that they improve the data collection system FIRST, thus having the necessary information required to make informed decisions regarding setting viable ACLs and AMs. Unfortunately, NOAA Fisheries has opted to defy Congressional “Will” by refusing to improve the data collection system by the January 1, 2009, deadline and instead spend hundreds of millions of taxpayer dollars promoting the implementation of Catch Shares without having the necessary, required data to do so. THIS IS, IN MY EYES, AN OPEN ACT OF CONTEMPT OF CONGRESS AND THOSE RESPONSIBLE NEED TO BE HELD ACCOUNTABLE.

2) Additionally, while testifying at a Senate Commerce Committee subcommittee hearing a few years ago, Jane Lubchenco, in answer to a question from Rep. Barney Frank, conceded there was no scientific basis for the 10 years given to rebuild overfished stocks, but demurred when then asked if she would support legislation to write flexibility into Magnuson. Clearly, science has taken a back seat to ideology with this administration—THAT NEEDS TO BE CORRECTED NOW. Open, transparent science process needs to be at the forefront of this management regimen, and providing flexibility in the overfishing deadlines is paramount in importance, here, now.

3) It may be more cost effective and create a non-biased, scientific based fisheries management plan by defunding NMFS immediately and move our fisheries management to the state level, only in the Gulf and the Atlantic. NMFS themselves proved the point that it needs to be regulated state by state with their recent emergency rule implemented at the most recent Gulf Council meeting as well as the recent total closures in the Atlantic. The states can perform their own stock assessments, as well as implement their own ACLs and AMs to ensure that overfishing does not occur. In addition, the states should also be able to determine the allocation between recreational and commercial fishing in their own region. The states can be overseen by the Gulf States Marine Fisheries Commission as well as the Atlantic States Marine Fisheries Commission and the South Atlantic Fisheries Management Council.

Catch Shares are not about conservation. They are about MONEY and CONTROL. No one person, or entity, owns the fish in the oceans.

A. A “Catch Share” is an exclusive right, and guarantee, granting whoever owns the catch share, the right to harvest a certain percentage of the total allowable catch of a particular species of marine life.

B. Catch Shares will put the small, one boat fishermen out of work. It will allow the large corporations owning the fish houses and multiple boat operators to continue fishing while the rest of us are sitting at the dock starving. If the smaller fishermen wish to continue plying their trade, they will have to “lease” a portion of the larger operators share. Catch Shares accomplish nothing except to allow an elite few to profit off the backs of many, by providing the elite the “right to own” a natural resource provided for all by God.

C. Catch Shares are NOT GOOD for recreational fishing, commercial fishing, or charter fishing. They will substantially increase the costs of fishing, to the point many will not be able to fish anymore. This natural resource belongs to all peo-

ple, not just a few of the most wealthy. In the end, these "Individual Fishing Quotas" (IFQ's) catch share programs, are going to be detrimental to fishermen, ecosystems and consumers.

D. Catch Shares, or Individual Fishing Quotas, provide a method for a select few to own, control, and prevent the average person from utilizing a natural resource owned by no one. So what does this mean for you and me? We will have a world of tighter regulations, shorter fishing seasons, higher seafood prices, and fewer boats on the water. What does this mean for our economy? **The loss of billions of dollars and jobs!**

#### **Implementation of Commercial Catch Shares**

1) If the quota is to be allocated to fishermen, they should lease this quota directly from the government—the very idea of being able to trade, sell, or lease their privileges to each other, simply evolves into nothing more than a revenue stream for individuals/corporations to profit from our Public Trust Resource without even having to go fishing.

2) The way the system is set up now, the nation receives no benefit whatsoever from giving these individuals/corporations the right to profit from our Public Trust Resource—there are no lease fees required to be paid to the nation as are required in other industries such as oil, grazing, or timber. Not a good deal for our nation or our fisheries.

3) To add insult to injury, not only does the nation not benefit from the harvest of our Public Trust Resource, but is in fact saddled with subsidizing the program to the tune of millions of dollars per year due to the 3% cap placed on the Cost Recovery Fee (CRF). If the fishermen actually fishing the quota were to lease that quota directly from the government, that would be the most equitable and fair way to allocate the quota, and no need for the CRF.

4) The current drive to expand the implementation of Catch Shares into recreational fisheries needs to be prohibited in the new reauthorization of Magnuson. This includes Fish Tags, Days At Sea, or Inter-Sector Trading.

E. The definitions of ending Overfishing must be addressed.

#### **Closing**

As I have stated, The Magnuson-Stevens act has been manipulated to further the interests of special interests groups at the sacrifice of local economies and dedicated, hard-working men and women. I am seeking your immediate help in the Reauthorization of the Magnuson-Stevens Act of 2006 to add **Flexibility, Access, and a Sound Science Approach to Sustainability**, in order to stop this attack on the fishing industry. We, the recreational fishermen, charter/head boat captains and commercial fishermen are the Endangered Species

Help save the Fishermen and our Heritages here in South Carolina  
Thank you for allowing me to speak.

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The CHAIRMAN. Thank you very much, Captain Logan.

Next I will recognize Mr. Bob Gill, who is the Co-owner of Shrimp Landing, Florida. Mr. Gill, you are recognized.

#### **STATEMENT OF ROBERT P. GILL, CO-OWNER, SHRIMP LANDING, FLORIDA**

Mr. GILL. Thank you, Chairman Hastings, Ranking Member Markey, members of the Committee. Thank you for the opportunity to appear before you today. I offer these comments on behalf of myself based on years of involvement in fisheries issues in the Gulf of Mexico at both the State and Federal levels. Since 1986 I have owned and operated a fish house in Crystal River, Florida, and I have dealt with fresh Gulf seafood from both inshore and offshore fishermen. I was privileged to be appointed to the Gulf of Mexico Fishery Management Council in 2006, and served for 6 years, the last year serving as Chairman of that body. It is with that background that I speak today.

The changes made to the MSA in 2006 have had a profound effect on fisheries, councils, and stakeholders. The Act is fundamentally sound, but some aspects of implementation need continued

work. What is needed is a focus on the tools to make the MSA more effective. Today I will focus on what I consider three top priorities: improving the science and data, addressing the ACL and AMs, and improving stakeholder credibility.

The requirement for Federally managed fish stocks of AMs and ACLs has increased the need for scientifically sound, accurate, and timely data, so that fisheries managers can properly manage to those limits. However, the current state of our scientific knowledge is neither sufficiently advanced nor adequately funded to achieve the desired results. Rather than roll back or discard fishery management tools that work, we must ensure fishery managers have the necessary information to better manage the fish stocks in their purview. To do so, we need a significantly increased investment in science. The MSA cannot address this need, but Congress can.

Full stock assessments are not realistic for many fish stocks in U.S. waters. To achieve the goals of the MSA, we must develop less-costly ways to address data-poor stocks. One of the downstream results of the lack of data and science is larger uncertainty in stock status. Larger uncertainty translates directly to larger buffers to compensate, at least in part, for the increased probability that overfishing might occur. The net result is fewer fish available for all fishermen. Weakening the MSA will not improve the reality of this result. Improved data and more frequent stock assessments will. This means money.

I recognize the current climate is not favorable for additional funding, but I also realize that progress will be painfully slow to non-existent without it. Previous legislation has proposed a scaling back of the ACL/AM requirement that would effectively undo the very tool that has had a positive, if painful, result on our fisheries. The culprit here is not the ACL/AM ceilings required, but the mechanism by which to set them. The science and data need to be fixed, not the law.

We still need to strike a better balance between the biological needs and the social needs. Again, investing in improvements to science can help. Making appropriate changes to the MSA can also continue the improvement of the fish stocks, while mitigating the pain inflicted on the stakeholders. One change in MSA that ought to be considered that would ease the burden on communities and fishermen is to look at the science-based timelines required for rebuilding stocks deemed overfished, especially when overfishing is not the primary cause. The National Academy of Science is currently looking at the science behind rebuilding times, and their report could offer additional guidance.

From the vantage point of my experience, I have serious concerns about the viability of the current fishery management process. These concerns emanate from an increasing disenchantment of many stakeholders with credibility in the system. In the Gulf, States are increasingly looking for ways to maximize fishing for their constituents without much regard for offshore fishermen and other States.

For example, Texas and Louisiana have both chosen to go inconsistent with Federal red snapper regulations, and Florida is likely to follow suit. Our goal should be to work together to maximize

fishing opportunities for as many people as possible within the bounds of a prudent scientific basis.

In conclusion, the reauthorization of the MSA in 2006 contributed significantly to commendable progress in reducing overfishing and rebuilding our Nations' fisheries. The work to achieve sustainable fisheries in this country is not finished, but wholesale changes to MSA are not needed. I believe that modest improvements can and should be made to MSA to help fulfill its mandate while allowing the Nation's citizens to enjoy access to healthy fisheries. The 2006 reauthorization has moved us in the direction of striking this balance. Now we must improve on these advancements, rather than abandon ship.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Gill follows:]

**Statement of Robert P. Gill, Co-Owner, Shrimp Landing, Florida**

**I. Introduction**

Chairman Hastings, Ranking Member Markey, members of the Committee, thank you for this opportunity to appear before you with regards to possible changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as amended in 2006. I offer these comments on behalf of myself based on my years of involvement in fishery issues in the Gulf of Mexico at both the state and Federal levels. In 1986, I purchased a fish house in Crystal River, Florida, and have dealt since then with fresh Gulf seafood from both inshore and offshore fishermen. I soon recognized the need to better understand the changing regulatory environments and participated with increasing frequency in those processes as a private citizen. This resulted in the privilege of my appointment to the Gulf of Mexico Fishery Management Council in 2006 and served for 6 years, the final year as Chairman of that body. It is with that background that I speak today.

**II. The 2006 Reauthorization**

The 2006 reauthorization of the MSA required Fishery Management Councils (Councils) to implement science based annual catch limits (ACL) and accountability measures (AM) for most fish stocks in a fishery management plan. While this was a new requirement, implementation of science based ACLs and AMs had proven to be successful in ending overfishing and rebuilding fish stocks in multiple regions in the U.S. The changes required by the 2006 reauthorization strengthened the fishery management process. While all is not perfect, establishing the concept of hard ceilings through science based catch limits to ensure that the discipline required to end overfishing is maintained has had a positive effect on many of our fisheries. However, at the same time, we must recognize the burden these restrictions have placed on stakeholders.

The MSA now has our nation on track to ensure that overfishing is indeed ended and overfished species are rebuilt, benefitting our oceans and those dependent upon them. A record number of stocks were declared rebuilt in 2011, and all federal fisheries had catch limits in place in time for the 2012 fishing season. As prescribed by the 2006 reauthorization, the National Marine Fisheries Service (NMFS) now has ACLs and AMs in place for all 537 federally managed fish stocks and complexes.<sup>1</sup> Further, all 36 stocks experiencing overfishing are being actively managed under ACLs or equivalent measures to end overfishing, and all but eight of the stocks determined to be of an "overfished" status are under rebuilding plans.<sup>2</sup> These recovering fisheries establish a biological baseline from which we can measure any future changes. The requirements added to the MSA in 2006 reaffirm our realization that nature is amazingly resilient as long as we give her a reasonable opportunity to respond and recover from adverse impacts.

Legislation has been proposed that would roll back key conservation provisions of the Act; provisions that have worked. I do not share that view. The basic concept as detailed in MSA 2006 is correct, but modest changes can be made to improve an imperfect system. My comments are provided with this in mind and will hopefully provide a reasonable basis for those improvements.

<sup>1</sup> NOAA, NMFS, Status of the Stocks: Report on the Status of U.S. Fisheries for 2011, at 1 (May 2012).

<sup>2</sup>*Id.*



While the implementation of ACLs and AMS from the 2006 reauthorization are the foundation of my comments, there are numerous other issues that also are worthy of mention.

### III. The ACL and AM Requirement

The annual catch limit (ACL) and accountability measure (AM) requirement<sup>3</sup> added to the MSA in 2006 has had a profound effect on fisheries, Councils and stakeholders. The MSA's new catch setting system has made great progress toward achieving the goals of the MSA and is now viewed as a model for other nations. The new ACL/AM requirement is reaping the tangible benefits our nation has worked so hard to achieve and has allowed us to move toward striking the delicate balance between benefit for the nation and meeting fishing community needs.

At its core, the ACL/AM requirement is quite simple. It has two parts: (1) the permissible annual catch limit for each stock, and (2) accountability measures, which ensure that the annual catch limit is not exceeded. Or, if the ACL is exceeded, that the problem is mitigated or corrected.<sup>4</sup>

Councils have spent many hours in reshaping their fishery management plans to reflect the mandates of these changes and, indeed, are continuing to do so today. The Councils were able to meet the specified timelines but were not able to fully incorporate the methodology that was required. For example, the Gulf of Mexico Council's ABC Control Rule remains a work in progress. Changes to the ABC Control Rule have been and continue to be proposed by the scientific and statistical committee (SSC), but have yet to be approved by the Gulf Council. A control rule is an approach to setting the ABC for a stock or stock complex that addresses scientific uncertainty. Much discussion and consideration is expected to take place before the ABC Control Rule is close to its final form. There are additional steps that need to be taken to improve implementation and these steps will not be complete for some time to come.

However, this hard work has all been worthwhile because science-based catch limits have proven effective and achievable. The agency's most recent Status of the Stocks report found a decrease in both overfished stocks and stocks experiencing overfishing across the nation. 2011 was record-breaking year with a total of six fish stocks declared rebuilt—the most stocks ever declared rebuilt in a single year.<sup>5</sup> The ACL/AM requirement is working.

### IV. Data Poor Stocks

One area that needs additional consideration is how to better manage data poor stocks. That is not to cast aspersions on the need to continue to improve implementation, but more to reflect the huge effort all Councils have made, and will continue to make, to implement the full intent of the MSA and make the new requirements of 2006 a fully working reality. The Act is fundamentally sound, but some aspects of implementation have not gone smoothly. Part of the reason for that is the expectations exceed our capability of achieving them.

In the Southeast region, for example, our ability to provide timely stock assessments is severely limited in data and people, resulting in a fraction of the needed assessments. And assessments that are conducted tend to be concentrated on the species of most interest. The remainder, and the bulk of the species under management—so called data poor stocks, which are generally characterized by a sparse life history knowledge and only landings data, neither of which support a rigorous scientific approach to their management—are unlikely to ever see a stock assessment. Reasonably choosing legitimate ACLs for these species, especially those that are not targeted, is largely a conservative approach akin to the “first of all, do no harm” precept in the medical world. When you consider that most managed stocks fall into this category, you begin to appreciate the difficulties of managing on a single species basis much less that of an ecosystems management approach.

Legislation has been proposed that would remove the requirement for annual catch limits for stocks that have not had a stock assessment in the past five years

<sup>3</sup> 16 U.S.C. 1853(a)(15) (“Any fishery management plan . . . shall establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulators, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.”)

<sup>4</sup> 50 C.F.R. §§ 600.310(f)(2)(iv), 600.310(g)(1).

<sup>5</sup> NOAA, NMFIS, Status of the Stocks: Report on the Status of U.S. Fisheries for 2011 (May 2012). See also, “Good News on the Status of the Stocks, A Message from Sam Rauch, Head of NOAA Fisheries” (May 2012), available at [http://www.nmfs.noaa.gov/aboutus/leadership/may\\_leadership\\_message.html](http://www.nmfs.noaa.gov/aboutus/leadership/may_leadership_message.html).

regardless of the status of the stock.<sup>6</sup> This legislative proposal does nothing to actually improve the science or management of these stocks and could create more problems in the future if the stock becomes overfished or undergoes overfishing. In reality, by ignoring these stocks we push the science to the background and create a scientific vacuum for that species. The data poor species previously mentioned would effectively become unmanaged. Little science and no limits do not make for good management. Similar legislation proposes that the Secretary of Commerce may suspend ACLs for a fishery that has been rebuilt.<sup>7</sup> The legislation would allow managers to stop using the very tool that allowed the fishery to rebuild in the first place. This is akin to lowering a speed limit on a highway to decrease traffic fatalities and then when the number decreases, removing the speed limit. This is clearly a step backward and is not helpful in moving forward. Proper management of fisheries requires as robust a science basis as can be attained. It is not possible to control systems well that are not well understood.

*a. Improving Science*

It should be no surprise that we find ourselves struggling at times with various species. The challenges remain and will remain for many years, but we should continue building and strengthening the existing structure rather than make major changes mid-stream. That is not to say that we shouldn't be open to new approaches and innovative techniques. But we need to proceed cautiously lest we undo more than we gain.

The requirement for federally managed fish stocks to have ACLs and AMs has increased the need for scientifically sound, accurate and timely data so that fisheries managers can ensure ACLs are not exceeded or implement AMs if overages occur. However, the current state of our scientific knowledge is neither sufficiently advanced nor adequately funded to achieve the desired results. Conducting individual stock assessments for all 537 managed stocks is not economically feasible. Similarly, full stock assessments are not realistic for many fish stocks in U.S. waters. To achieve the goals of the MSA, we must develop less costly ways to address data poor stocks. Stocks without sufficient data to conduct a traditional scientific stock assessment can and must be assessed using alternative, semi-quantitative methods to provide information to fishery managers in order to meet MSA's goals and mandates.

Rather than roll back or discard fishery management tools that work, we must ensure fishery managers have the necessary information to better manage U.S. fish stocks. We need a significantly increased investment in science. Previously proposed legislation called for increased transparency in the prioritization of stock assessments and for NOAA to release an annual report identifying which stock assessments would be conducted in a given year and the needed budget<sup>8</sup>. This is a small first step in improving the science for fishery management. Much more importantly, we must recognize the urgent need to improve the data streams and the science that form the foundation of fishery management. This means money. I recognize the current climate is not favorable for additional funding, but I also realize that progress will be painfully slow without it.

As with all things with limited availability, the high cost of proper implementation, including science and stock assessments, often leaves out lesser priority tasks and needs. It is important to keep in mind the need for change versus the foregone efforts to improve the existing system and its associated requirements. While many fisheries have seen dramatic improvements, the disruption in the social side of the equation has also been significant in many areas, unfortunately in a negative way. We have arrived where we are today through many tough decisions and sacrifice. But the investment is yielding significant and long lasting benefits. We still need to strike a better balance between the biological needs and the human dimension; the social needs. Investing in improvements to science can help.

One of the downstream results of the lack of data and science is larger uncertainty in stock status. Larger uncertainty translates directly to larger buffers to compensate, at least in part, for the increased probability that overfishing might occur. The net result is fewer fish available for all fishermen. The human side is adversely impacted by the lack of proper science. Weakening the MSA will not improve the reality of this result.

<sup>6</sup>H.R. 6350, The Transparent and Science Based Fishery Management Act of 2013, 112th Congress

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

*b. Adapting Our Fisheries Management System for Environmental Changes*

Changing environmental impacts are already affecting the oceans and fisheries. Increasing acidity in the ocean is becoming an issue for shellfish and habitat degradation is a constant concern for fisheries and fishermen. Closer to home, the BP Deepwater Horizon disaster in 2010 called attention to the need for more and better baseline data for our ecosystem as a whole. These impacts on the broader ocean food web are not yet fully understood. Not unlike how coastal managers are tackling the far reaching issue of sea level rise by focusing on individual towns and counties, we must focus on environmental impacts on fisheries to ensure long-term fishery health. Our fisheries must be resilient in the face of a changing environment and managers must be provided with the tools and information needed to assess the impacts of climate change and other environmental issues.

One change in MSA that should be considered to ease the burden to communities and fishermen is a modest extension of timelines required for rebuilding stocks deemed overfished especially when overfishing is not the primary cause. However, any change to rebuilding requirements must be approached cautiously. The intent of such a change would be to achieve the goal of rebuilding the stock while not imposing unnecessary burdens on the multiple stakeholders of that fishery. Some overfished designations may have little to do with fishing. For example, the updated stock assessment of 2009 for gag grouper in the Gulf of Mexico found that the stock was overfished and overfishing was occurring. Yet, the cause of the low biomass wasn't necessarily fishing. The likely cause was determined to be the episodic mortality event from the numerous red tides in 2005 which added an estimated 18% mortality to the existing natural and fishing mortalities. This example also highlights the time lag and data need dilemma: the sudden decrease in stock size languished for four years before being analyzed and dealt with. This example is a stark reminder of the difficulties in reconciling what fishermen see on the water with the science that guides the management. The law must allow better adaptation for environmental changes.

**V. Council Makeup and Transparency in Councils and SSCs**

In order for our fishery management system to function properly and as intended by the MSA, transparency of the Councils and SSCs must be improved. The overall objective for all Councils should be to maximize transparency to the extent possible. The easy part is allowing web access to meetings and records of proceedings, and ensuring the public has access to the decision making fora. The more difficult aspect is to fully get the word out and not slow the process unduly as a result of notification requirements. This requires constantly trying new techniques and make improvements as appropriate.

From my viewpoint, the Gulf Council spends considerable time in this regard and does an excellent job. Yet, there remains much to be done in this never ending task. Improving transparency does not require amending the MSA. Rather, I believe that establishment of a policy to maximize transparency would be sufficient, and detailing specifics will do little to improve the achievement of this goal.

I urge caution in any attempts to revise the makeup of the Councils. The overriding consideration is that balance must be achieved or, if balance exists, maintained. There are times when an imbalance occurs in Council makeup, but these should be corrected at the earliest possible opportunity. I find it also true that both the recreational and commercial sectors believe the Council is unbalanced, when, in fact, such is not the case. Allowing one group to have a greater number of seats on a Council is tantamount to establishing a biased fishery management regime in that Council. Stacking the deck is ultimately a predicate to failure. To fully and fairly discuss difficult fishery management issues requires input equally from all sides. This balance should provide the best decision achievable. I would also note that the larger the Council, the more the overhead becomes and, more importantly, the more difficult it is to reach a consensus on a decision. The former is important because in the era of shrinking budgets we need to reduce overhead, not increase it in order to most efficiently use the budget available. The latter suggests exacerbation of an already difficult decision making process. As a rule of thumb, the minimum number needed to attain reasonable representation from the various stakeholders should be the maximum size of the Council.

**VI. Returning Penalty Money to the Regions**

I believe that the best use of any funding from fines and penalties is to improve the affected fishery from which they were derived. The needs of the enforcement, science and Cooperative Research Programs (CRP) far exceed the available monies and represent some of the areas for which these funds should be utilized. The use of funds that result from fishing fines and penalties has not been as big an issue

in the Gulf of Mexico as it has in other regions. Regardless, the MSA should authorize the proceeds from any penalties and fines to go to the region or fishery where the fine or penalty originates, rather than to NOAA at large or to the Treasury. I would go further and suggest that the regions be allowed to design programs with associated fees and allow those fees, again to the extent possible, be directed back to the region, and more specifically to the fishery as discussed above for penalties and fines. While there clearly needs to be checks and balances in such a concept, the fisheries should be able to benefit and made stronger by not sending the monies derived to the General Treasury.

### **VII. Catch Share Programs and Non-Traditional Management Approaches**

As you know, catch share programs have become highly contentious, overshadowing an honest discussion of their advantages and disadvantages. I believe that such programs are neither inherently good nor bad. The circumstances surrounding the fisheries in question and the proposed structure of such a program will define its validity, or lack of it, for the fishery under consideration. There is no management scheme that will always benefit both the fishery and all the participants. The question really is which way of managing is the best under the circumstances for the biology and the social needs.

I believe we need to be open to non-traditional management approaches that offer different advantages than traditional measures do. Doing business as we have in the past is not always best for the future. A case in point is Gulf of Mexico red snapper. We have a rapidly growing population as a result of severe management measures imposed to restrain catch. Now the stock is improving, expanding into areas where red snapper have not been prevalent for many years, and providing anglers with fish weighing twice as much on average than those 5 years ago. Yet, despite this, the recreational season grows progressively shorter. And traditional measures of bag limits, size limits and seasons don't appear to be of much help, nor does increasing the allocation of fish available to the recreational sector. It is clear that a new approach is required to alleviate this conundrum. I am not advocating a catch share program for this sector, but merely emphasizing the need to be open minded to different approaches than we are used to for a problem such as this.

As such, I do not favor shelving catch share concepts unilaterally. Our experience with catch share programs in the Gulf of Mexico, however, has convinced me that there are some constraints that should be considered. Options I prefer include a provision to favorably allow new entrants, and a restriction on the amount of shares that can be leased. While I favor some modest constraints on catch share programs, I do not support highly restrictive requirements that effectively gut the option of catch share programs being designed and implemented. I believe that the Councils need that flexibility to design management measures that are best for their region and fisheries.

### **VIII. Stakeholder Credibility**

From the vantage point of my experience I have serious concerns on the viability of the current fishery management process. These concerns emanate from an increasing disenchantment of and credibility in the system by the many stakeholders. This problem is certainly not unique to one region, but the consequences of the lack of credibility are far reaching. The fundamental basis for fisheries management rests on voluntary compliance. While there will always be some people who do not comply with regulations, and there will always be tension between state and federal jurisdictions, the current environment suggests that folks at many levels seek to disregard Federal regulations in Federal waters. The thinking is much more self-centered rather than taking a broader view of what's best for all. In the Gulf this is being manifested on many fronts. States are increasingly looking for ways to maximize fishing for their constituents to the disregard of offshore fishermen and other states. Texas and Louisiana have both chosen to go inconsistent with federal red snapper regulations and Florida is likely to follow suit. There is little to no working together to resolve problems and disagreements. Discussions regarding regional management in the Gulf of Mexico are ongoing and reflect this issue and could result in a fragmented management approach to the same fish population. This does not augur well. Our goal should be to work together to maximize fishing opportunities for as many people as possible, within the bounds of a prudent scientific basis. The trend, I fear, is in the opposite direction. While the MSA might not be able to resolve this difficulty, I urge you to keep in mind that a harmonious whole is better than a fractious assemblage of parts.

### **IX. Conclusion**

The Reauthorization of the MSA in 2006 contributed significantly to commendable progress in reducing overfishing and rebuilding our nation's fisheries. Fishery Man-

agement Councils around the country, acting in partnership with NMFS, have used the new requirements to establish science-based catch limits in the vast majority of U.S. fisheries. The work to achieve sustainable fisheries in this country is not finished, but wholesale changes to MSA are not needed. I believe that modest improvements can and should be made to MSA to help fulfill its mandate and intent, while not sacrificing the nation's citizens and their access to a natural resource that should be fairly shared amongst all. We may not agree as to what constitutes fairly shared, but we should agree that proper fisheries management should allow for healthy fisheries and a populace able to enjoy those fruits without being hobbled by an unbalanced approach. The 2006 Reauthorization has moved us in the direction of striking this balance. Now, we must improve on these advancements rather than abandon ship.

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The CHAIRMAN. Thank you, Mr. Gill.

And certainly—last, but not least, Mr. Joe Plesha from Trident Foods out of Seattle. Mr. Plesha, you are recognized.

**STATEMENT OF JOSEPH T. PLESHA, CHIEF LEGAL OFFICER,  
TRIDENT SEAFOODS CORPORATION**

Mr. PLESHA. Thank you, Mr. Chairman, members of the Committee. Like everyone else on this panel, I appreciate the opportunity to be here today. I am testifying on behalf of Trident Seafoods Corporation. Trident was founded in 1973 by Chuck Bundrant. Chuck invested all of the earnings of the company back into the industry to where, today, Trident is one of the largest seafood companies in the United States.

My written testimony focuses on a number of issues, but I would like to make my oral presentation deal with just one, and that is the need of rationalization programs to include both owners of processing plants and vessels when the fishery is rationalized.

Most everyone acknowledges the benefits of rationalization, from improved conservation and incentivizing conservation, to increasing net national benefits to the Nation. But industrial fisheries like those in Alaska, an open-access fishery might have 6 to 10 times the harvesting and processing capacity that is necessary when the fishery becomes rationalized.

Therefore, when an open-access fishery is rationalized, instead of lasting 1 month it may effectively go on for 6 to 10 months. So the hundreds of millions of dollars worth of harvesting vessels and processing plants that had operated in the 1-month fishery, making a market-rate of return on their investments, will compete for the resource throughout the 10-month period of time where they now can operate.

In doing so, they will bid up the price, so that they can cover only their daily operating cost, or what people call their variable cost of operation. And they do this because it is better to earn one penny during this period of time than it is to do the alternative, which is to earn nothing.

So, quota holders, the people who own the quota, get the value of the fish that is represented by the quota, but they also get to use the capital investments made by vessel owners and plant owners for free. It is an expropriation, just as effective as if the property had been condemned through eminent domain. Therefore, for that reason, both vessel owners and plant owners should be included in the rationalization program so their operations can continue after the program is rationalized.

One method that has proven to be very effective in rationalizing fisheries in a way that includes both vessel and plant owners is through harvester processor cooperatives. And these cooperatives have the additional benefit of reducing the consolidation that can occur in a straight individual fishing quota fishery, thereby preserving jobs both in the processing sector and the harvesting sector. A great example of this type of program is the American Fisheries Act, which was passed by Congress in 1998, and has turned out to be incredibly effective in rationalizing the largest commercial fishery in the United States, the Bering Sea pollock fishery.

In 2003, Congress passed legislation which instructed the North Pacific Fishery Management Council to rationalize a very, very small fishery in the central Gulf of Alaska, the Rockfish Fishery. And Congress passed the legislation asking that the Council preserve both harvesting and processing history, but didn't dictate how that would occur. The Council then developed a program with harvester-processor cooperatives, very similar to the American Fisheries Act, and it was proven to be very successful.

Unfortunately, that provision only lasted 5 years, so it needed to be renewed. In the process of renewing that rockfish program, NOAA came out with a legal opinion in 2009 saying that the Magnuson-Stevens Act did not authorize harvester-processor cooperatives. Despite the fact that the initial rockfish program was developed under the Magnuson-Stevens Act, this opinion came from a very old 1978 NOAA general counsel opinion saying that you couldn't give preference to domestic processors over foreign processors.

Congress very quickly changed the law to statutorily indicate that you could. And, in doing so, tried to clarify this issue of whether processors were part of the fishery. And I quote the Chairman of the Merchant Marine and Fisheries Committee saying, "It is the understanding of the House that fishing in Section 3 of the Magnuson-Stevens Act includes processing."

Well, despite my opinion about NOAA's opinion, NOAA continues to have this position. And the reason it is a problem is that the North Pacific Council is considering rationalizing all of the trawl fisheries in the Gulf of Alaska. The industry is working on trying to reach an agreement about how best to do that. And they were talking about these same harvester-processor cooperatives. Council members also want to see the option of harvester-processor cooperatives. Unfortunately, NOAA continues to take the position that they aren't authorized under the Magnuson-Stevens Act.

So, as you move forward with reauthorization, I encourage you to consider this issue, and include within the reauthorization the authority to include these type of harvester-processor cooperatives within the legislation. Thank you very much.

[The prepared statement of Mr. Plesha follows:]

**Statement of Joseph T. Plesha, Chief Legal Officer,  
Trident Seafoods Corporation**

Thank you Mr. Chairman, members of the Committee, for the opportunity to testify on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act has been remarkably successful in achieving the goals established by Congress when it was first enacted in 1976 and as it has been amended throughout the years. I would like to

specifically acknowledge the work of one of the Committee members in this regard. Congressman Don Young was not only instrumental in the writing of the initial legislation back in the mid-1970s, he has been a constant champion for Alaska's, and our Nation's, seafood industry since passage of the legislation. Throughout his career Don Young has been a leader in Congress for our fisheries and I would like to express my sincere appreciation and gratitude.

I am testifying on behalf of Trident Seafoods Corporation. Trident was founded in 1973 by Chuck Bundrant, one of the true pioneers in "Americanizing" the fishery resources off Alaska. The company started in 1973 with a single boat that harvested crab in the Bering Sea. Chuck is one of the most focused, intelligent and driven individuals whom you will ever meet. He literally worked seven days a week, took unbelievable physical and financial risk, and invested all that was earned back into Trident and the seafood industry. As one of countless examples, in the very early 1980s, when foreign factory trawler fleets still harvested virtually all of the groundfish off Alaska, Trident was the first shorebased processing company to buy and process large volumes of pollock and cod from U.S. fishermen at a plant located on the remote Aleutian Island of Akutan. It was difficult to find markets for these groundfish products because foreign countries that consumed pollock and cod already had ample supplies from their allocation of fish in U.S. waters. Akutan struggled financially. Then the Akutan plant burned down in 1983. To the surprise of many others in the industry, Chuck immediately began to rebuild at Akutan. Trident now employs over 1,000 people at its Akutan plant and the plant is the largest seafood processing facility in North America, if not the world.



Figure 1. Trident's Akutan Plant in 2012

Trident currently has processing plants in ten different coastal communities in Alaska, as well as primary and secondary processing plants in Washington State, Oregon and Minnesota. We operate five floating processors, three catcher processors, fourteen trawl catcher vessels, four crab catcher vessels and various tender and freight vessels. Trident is one of the largest seafood companies in the United States. It is still a family-owned business, however, and Chuck remains its chief executive officer. His son, Joe Bundrant, will take over as president of Trident in 2014.

Trident's story is a great example of how the fisheries off our coasts, which previously had been used exclusively by foreign fishing fleets, are now fully utilized by the United States fishing industry under the policies of Magnuson-Stevens Act.

#### **Catch-Share Programs and the Issue of Inclusion of Processors**

My comments regarding fishery rationalization programs are focused on the industrial fisheries in the United States. Rationalization is known by many names: Individual Fishing Quotas, Individual Transferable Quotas, Catch Shares, Limited Access Privilege Programs, and others. But the basic idea is to allocate the privilege to utilize a certain portion of a fishery resource so that, as a result, the fishery becomes more economically efficient, or "rational" than the open access race-for-fish. The North Pacific and Pacific councils have spent a great deal of time on the issues surrounding rationalization, but the fisheries they manage tend to be relatively large and with capital intensive harvesting and processing sectors.

#### **1. Benefits of rationalization.**

Open access fisheries under-perform rationalized fisheries in every relevant criterion by which performance can be measured. These include: conservation of the resource, efficient bycatch avoidance, safety at sea, gross value of products produced from the resource, and the cost of harvesting and processing the resource. Open ac-

cess fisheries systematically destroy the ability of society to collect net benefits from the fisheries.

This dissipation of benefits in open access fisheries occurs because uncontrolled entry into the fishery results in overcapitalization. A simple example of overcapitalization is as follows: Imagine a fishery that is fished at the maximum sustainable yield, and produces one million dollars worth of fish per year with the services of five boats, at a total cost per boat of one hundred thousand dollars per year per boat. This results in a private and societal profit of five hundred thousand dollars per year. In this case each boat is earning one hundred thousand dollars of revenue above its total cost which includes a return on invested capital. These excess profits (rent) induce entry into the fishery despite the fact that the new capital investments do not add anything to the total catch. Entry continues until all the rent is dissipated. This occurs when the fishery contains ten boats for a total cost that exactly equals the value of the catch. If the price of fish doubled this would attract ten additional boats. The open access fishery squanders whatever societal benefits a fishery is otherwise biologically and technically capable of providing. If the cost of managing the fishery is not totally borne by the industry, then any fishery managed under open access becomes a net cost to society.

## **2. Does it matter who receives allocations under Catch Share programs?**

The benefits attributed to rationalized fisheries occur regardless of whom receives allocations of the privilege to utilize the fish.<sup>1</sup> From the standpoint of efficient utilization of the resource, it is unimportant who receives allocations of quota. No matter whether initial allocations are granted exclusively to the owners of harvesting vessels, the owners of processing plants, fishermen (i.e., “crew”), processor workers, or taxi cab drivers in Anchorage, Alaska, the rationalized fisheries will be utilized by the most efficient industry participants.

As an example, the pollock Community Development Quota (CDQ) program allocates ten percent of the Bering Sea pollock TAC to villages in Western Alaska. When the CDQ program was initially implemented in 1991, the CDQ communities had no involvement in the pollock industry whatsoever. The pollock resource was already being efficiently utilized by the existing industry. The pollock quota allocated to CDQ communities was simply leased by those communities to companies involved in the pollock fishery. It was very similar to an auction, as the CDQ communities generally leased their pollock quotas to the highest bidder. Because the fishery was rationalized—albeit into the hands of entities that were complete outsiders to the fishery—the harvesting and processing of CDQ pollock was as efficient as if the a pollock company itself owned the quota.

## **3. Why not auction the privilege to utilize fishery resources?**

At first blush, there appear to be good reasons to auction the privilege to use fishery resources. Our Nation’s fishery resources belong to the general public.<sup>2</sup> It would be very simple to allocate all the benefits of rationalized fisheries to the general public through a simple auction of quota. The federal treasury can certainly use the revenue. If auctioned by the federal government, the fisheries will be utilized just as efficiently as if the privileges were instead allocated directly to industry participants.

Looked at another way, if a large un-exploited stock of cod were suddenly discovered off a remote U.S.-owned island in the Pacific ocean, for example, and fishery managers wanted to rationalize it prior to the resource being exploited, the federal government would likely auction the privileges to this undeveloped resource rather than allocate the privileges to utilize the fishery to processing plant owners or fishing vessel owners based in Alaska, Washington State or Oregon.

The typical progression of fisheries, however, is that we tend to wait until a fishery is overcapitalized through the uncontrolled entry process inherent in an open access fishery before attempting to rationalize the fishery. The fact that we tend to wait until a fishery is overcapitalized complicates the initial allocation process enormously.

## **4. Why fishing vessel and processing plant owners must be included in rationalized fisheries.**

In a fully capitalized, open-access fishery, where the harvest is controlled by a single quota (TAC) that the participants race to exploit, the investments in fishing vessels and processing plants that are specific to the fishery being rationalized (and

<sup>1</sup>Coase, Ronald, *The Problem of Social Cost*, Journal of Law and Economics, 3 (Oct. 1960) 1–44.

<sup>2</sup>The United States claims sovereign rights over all fish within the United States Exclusive Economic Zone. 16 U.S.C. § 1853a.



that are also relatively durable and non-malleable) will be lost as a result of rationalization. This lost investment value reappears in the value of the quota to utilize the resource. Wealth is unavoidably transferred from the fixed capital of processing plants and fishing vessels to the holders of quota.<sup>3</sup> In other words, after an open access fishery is rationalized, rationalization fishing vessels and processing plants have little value, potentially even negative value, especially in Alaska where these assets may have on other productive uses.

When such fisheries are rationalized, owners of fishing vessels and processing plants can suffer enormous financial losses. The amount of the loss depends upon three factors: (1) The extent the fishery is overcapitalized; (2) the durability (or how long it lasts with routine maintenance) of the physical capital in harvesting and processing; and (3) the degree that the capital is non-malleable (or has no alternative uses of near or equal financial benefit to the owner).

### 5. How do these losses occur?

The mechanism at work that causes investors in fishing and processing capacity to lose the value of their capital investments is that, by definition, the overcapitalized fishery has much more capital, and hence daily harvesting and processing capacity, than is necessary to prosecute the fishery once it is rationalized. A quota holder would not need to own a boat or a processing plant in order to participate in a fishery. When a quota holder decides to participate in the fishery, he or she could simply hold a reverse auction<sup>4</sup> among fishing vessel owners. The vessel owners would bid down to the point where the winning boat just covered its variable costs. The quota holders would then proceed to secure processing services with the same result. The winning bid for processing services would cover only the variable costs<sup>5</sup> of production.

As long as the price agreed upon by vessel and plant owners allows for any return above variable costs, processing and vessel owning companies have an incentive to make a more competitive offer until they cover only their variable costs of operation and make no return on their capital investments. This is a difficult concept for many to appreciate. Why would any rational businessman invest tens or hundreds of millions of dollars into an industry and later allow others to use that investment for free? When an overcapitalized, open access fishery is rationalized there is far more harvesting and processing capital than is necessary because instead of the fishery lasting, for example, one month in an open access race, under rationalization it can be efficiently utilized in six months; meaning there is six times more existing harvesting and processing capacity than necessary. Not all of this physical capital can remain busy during the new six-month fishery, but its owners will all have an incentive to keep the physical capital operating throughout this period. If this millions of dollars of excess physical capital earns one penny above the variable costs of its operation, its owner is better off than under the alternative of earning nothing. Thus, starved for production through their facilities, vessel and plant owners bid for product until the price reaches a level at which they no longer can cover their variable cost.

The holders of quota thereby will effectively own not only the fish in the fishery, but also usufructuary<sup>6</sup> rights to all the non-malleable physical capital used to harvest and process those fish. This situation, where the quota holders enjoy free-of-charge use of physical capital, continues until the capital stock wears out to the point where only the appropriate amount remains.

Immediately upon beginning operations under a rationalized fishery, therefore, owners of fishery-related capital will see the return on their investment fall to zero. This cannot be avoided and is, in fact, *absolutely necessary* in order to de-capitalize an overcapitalized industry. The owners of this physical capital cannot expect to realize any return on their investment until the excess capital stock leaves the industry to the point where it is at the optimal level for the rationalized fishery.

<sup>3</sup>Plesha, Joseph T., and Riley, Christopher C., *The Allocation of Individual Transferable Quotas to Investors in the Seafood Industry of the North Pacific*, (Jan. 1992). See also, Matulich, S.C., Mittelhammer, and Reberte, *Toward a More Complete Model of Individual Transferrable Fishing Quotas: Implications of Incorporating the Processing Sector*, *Journal of Environmental Economics and Management*, Vol. 31(1) 112–28 (1996).

<sup>4</sup>In a reverse auction, the sellers compete to obtain business from the buyer and prices will typically decrease as the sellers undercut each other.

<sup>5</sup>Variable costs are those expenses that increase with production. For processors, variable costs would include things like direct processing labor, packaging, and increased utility charges. For vessel owners, variable costs would include things like fuel.

<sup>6</sup>A usufructuary right is the right of enjoyment, enabling a holder of the right to derive profit from property that is owned by another person.

In industrial fisheries like the groundfish fisheries off Alaska, the financial losses described above are suffered by *owners* of fishing vessels and processing plants. Virtually every vessel and plant owner is a corporation; an entity invented by lawyers with the purpose of accumulating and investing capital for the financial benefit of its shareholders.<sup>7</sup> These corporations are not “fishermen.” The corporate owners of fishing vessels and processing plants do not themselves fish or process. They are not crew aboard fishing vessels or workers in processing plants. (Although it is possible some of the shareholders might be.)

The allocation of quota to vessel and plant owners in industrial, fully capitalized open access fisheries is essential to compensate those owners for the losses they suffer to the value of their vessels and plants as a result of rationalization. Some vessel owners may lament the fact that processing plant owners seek to be part of rationalized fisheries, but the rationale for including processing plant owners in the allocation of quota is also the *only* rationale for including vessel owners in the allocation of quota. If a corporation that owns a fishing vessel does not suffer losses in the value of its boat as a result of rationalization, there is no rational basis upon which it can be allocated quota.

#### **6. One of the reasons there is industry opposition to Catch Share management.**

Despite the potential benefits of rationalization, it remains controversial. Recently Congress has considered placing a moratorium on the development of any new rationalization programs. There are many who fear they will be negatively impacted by fishery rationalization. Certainly owners of processing plants in Alaska and along the Pacific coast collectively have well over a billion dollars at risk if the open access fisheries in which they have invested—and upon which they depend—are rationalized and processing plants are not included in the program.

In the North Pacific, however, the process of developing rationalized fisheries tends to be inclusive of the stakeholders who are most impacted by rationalization. Given the potential benefits of rationalization, it is appropriate for the “tool” of Catch Shares to be in the “tool box” of options for the regional councils and Secretary to consider. The National Oceanic and Atmospheric Administration (NOAA) is a strong proponent of allowing Catch Share management to be one of the tools available to manage fisheries.

One of the potentially effective ways to rationalize a fishery that includes both vessel and plant owners is through fishery cooperatives. Under this cooperative approach both vessel and processing plant historical participation in the fisheries is preserved. Despite the success of fishery cooperatives that include both vessels and plants, NOAA has taken the legal position that such management systems are not “authorized” under the Magnuson-Stevens Act. These cooperatives are a tool not available in the councils’ toolbox.

#### **7. History of harvester-processor cooperatives.**

With passage of the American Fisheries Act (AFA) in October of 1998, Congress rationalized the Bering Sea pollock fishery, the largest commercial fishery in the United States. The inshore fishing vessels and processing plants were rationalized based on the concept of protecting both vessel and processing plant market shares. The AFA allowed cooperatives to be formed and pollock quota was allocated to each cooperative based on the catch history of the vessels that are members of the cooperative. But the AFA protected a pollock processor’s market share by requiring that each vessel in a cooperative deliver at least 90% of its harvest of pollock to its historical market. A fishing vessel that was allocated quota could not deliver anywhere else without their historical processor’s approval. Thereby, each processing plant’s market share in the fishery was protected, as was each vessel’s. A vessel could move to a different processor without its historical processor’s agreement only by fishing in the open access pollock fishery for a year and delivering a majority of its harvest to the different processor. In addition, the AFA included “limited entry for pollock processors.” No new processors are allowed to enter the Bering Sea inshore pollock fishery.

The AFA’s inshore cooperative system was controversial and immediately after its enactment some pollock vessel owners petitioned the North Pacific Council to amend the AFA by removing the requirement that a vessel deliver its pollock to a particular processor. To quote one of the proposal’s sponsors:

Under the language of the American Fisheries Act, pollock vessels which enter into co-ops and deliver into shorebased processors are prevented from

<sup>7</sup>Micklethwait, John and Wooldrige, Adrian., *The Company, A Short History of a Revolutionary Idea* (2003).

forming a co-op if the processor doesn't bless it first. They're inhibited in their ability if a co-op is formed to get the *best fair price*. They are prevented from entering into a co-op with a different processor in the following year. And, last, they are prevented from freely moving between competing buyers. We are requesting that the Council consider and analyze regulations which would support reasonable vessel/plant negotiations. *Our proposed change would allow vessels in a co-op to deliver their catch history to the market of their choice.* For example, if one plant would pay nine cents a pound because they are producing fillets and another would pay eight cents because they are producing surimi, we feel that we should be able to deliver to the plant with the highest price, even though we may not have been in the co-op delivering to them with that processor in the previous year.

Margaret Hall, Testimony before the NPFMC, (Feb. 13, 1999).

The North Pacific Fishery Management Council did not adopt the proposal, instead choosing to keep the AFA's inshore cooperative intact while it watched how the system worked for the industry.

The AFA's inshore cooperative structure was implemented by regulation in 2000 and has proven to be remarkably successful. Whether measured in price per pound or percentage of finished product sales price paid for a vessel's harvest, pollock vessel owners receive considerably more for their catch now than they did prior to passage of the AFA.

Below is a historical review of the average ex-vessel prices Trident paid for pollock delivered to Akutan from 1993 to 2012. (See Figure 2, below.)

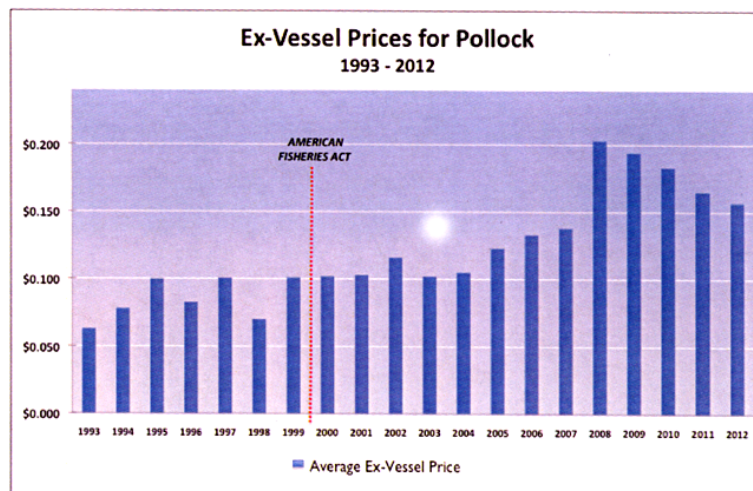


Figure 2. Ex-Vessel Prices for Pollock 1993-2003

Not only have ex-vessel pollock prices increased since passage of the AFA, but the value of pollock vessels has increased. But since passage of the AFA vessels are now bought and sold not on the value of the hull, but based primarily on the harvesting quota associated with the vessel. In 2001, for example, inshore pollock harvesting vessels sold at price from \$1,225 to \$1,250 per metric ton of quota assigned to the vessel. Now AFA pollock vessels sell for a price of about \$1,950 per metric ton of quota assigned to the vessel. The value of shorebased vessels in the pollock fishery is currently far greater than prior to passage of the AFA.

The success of the AFA did not go un-noticed. By the early 2000's Pacific Ocean Perch, as well as Northern and Pelagic shelf rockfish were fully utilized by the commercial trawl industry in the Central Gulf of Alaska. The entire rockfish total allowable catch for these species was harvested in two weeks in a true race-for-fish. There was a statutory moratorium in place at that time which prevented the Secretary from approving any new Individual Fishing Quota programs. By 2002, representatives of the trawl vessel owners and processing plants that utilized Gulf of Alaska rockfish were urging Congress to legislatively authorize rationalization of rockfish.

In 2003 Congress passed the Rockfish Pilot Program directing the Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, to rationalize the rockfish fisheries in the Central Gulf of Alaska. Congress required the Secretary to develop a program that protected the *harvesting and processing* histories of the existing participants. The legislation, however, did not direct the Council or the Secretary how to protect each sector.<sup>8</sup>

In June of 2005 the Council took final action to implement the Rockfish Pilot Program. The program developed by the Council was similar to the AFA's inshore cooperative structure. A vessel was eligible to join a cooperative only in association with the processing facility that the harvester delivered the most pounds of rockfish to during the years 1996 through 2000. The associated processor was expected to negotiate an agreement with vessel owners that contractually limited the vessels from delivering to any other processor.<sup>9</sup> Thus a vessel was allocated its historical market share and the processing plant was assured of its historical market share.

The Rockfish Pilot Program, however, expired after 2011 and the Council was required to take action to renew the program. Stakeholders in the program initially supported rolling-over the existing program as evidenced by the following testimony from the same individual who initially opposed the AFA cooperative structure:

Thank you. Good afternoon members of the Council. I am Margaret Hall, here today representing the vessels Progress and Vanguard.

The Rockfish Pilot Program has been a wonderful benefit to the community of Kodiak and the Kodiak processors. Currently 100% of the CV rockfish and secondary species are landed in Kodiak to associated processors. These processors hence, are protected through coop agreements and the rockfish regulations correlated to landings and processing history. *The Council action of choice preferred by many of us independent catcher vessels would be to roll-over the existing program, with minor changes selected after analysis.*

Margaret Hall, Testimony before the NPFMC, (June 8, 2008).

At its February 2009 meeting the Council chose to initiate an analysis of rolling-over the rockfish program beyond the statutory sunset date.<sup>10</sup> At the Council's October 2009 meeting, however, the alternative of extending the existing Rockfish Pilot Program was removed from the options for analysis as a result of a legal opinion from NOAA General Counsel for the Alaska Region. NOAA's legal opinion ("2009 Opinion") concluded that the Magnuson-Stevens Act did *not* authorize extension of the Rockfish Pilot Program.

NOAA's 2009 Opinion is wrong. The Rockfish Pilot Program legislation itself did not provide statutory authority beyond that which already existed in the Magnuson-Stevens Act and the Rockfish Pilot Program's cooperative structure was developed by the Council and approved by the Secretary. As a matter of policy, it is nonsensical for NOAA to limit its authority to develop rationalization programs, like harvester-processor cooperatives, that have proven to be successful for a broad group of stakeholders. NOAA's 2009 Opinion seems to ignore the 2006 amendments to the Magnuson-Stevens Act that require consideration of "employment in the harvesting and processing sectors," and "*investments in, and dependence upon, the fishery.*"<sup>11</sup> Certainly the 2009 Opinion unnecessarily removes a potentially useful tool from the toolbox.

NOAA's odd legal position on this issue originates from a 1978 NOAA General Counsel memo that concluded the Magnuson-Stevens Act did not authorize the Secretary to disapprove foreign processing vessels applications to operate in U.S. waters just because domestic shorebased processors had the capacity and intent to utilize the same U.S. fishery resources. Congress quickly passed the so-called "processor preference" amendment giving statutory preference to U.S. processors over for-

<sup>8</sup>The Rockfish Pilot Program legislation is short enough to recite in a footnote: "The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the **historic participation of fishing vessels** (1996 to 2002, best 5 of 7 years) and **historic participation of fish processors** (1996 to 2000, best 4 of 5 years) for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non-rockfish species and non-target rockfish species currently harvested with pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species."

<sup>9</sup>Final Review Draft, RIR, EA and IRFA for the proposed Amendment 68 to the Gulf of Alaska Fishery Management Plan, June 2005. p. 69.

<sup>10</sup>CGOA Rockfish Program Motion, NPFMC February 9, 2009.

<sup>11</sup>18 U.S.C. § 1853a(c)(5).

own operations.<sup>12</sup> In doing so, Congress believed it clarified the fact that domestic processors were part of the fisheries. As the Chairman of the House Merchant Marine and Fisheries Committee, Congressman John Murphy, explained during consideration of the amendment by the House of Representatives:

In the course of our discussions of the bill, some question was raised about whether the definition of “fishing” under section 3 of the [Magnuson-Stevens Act] includes “processing.” This question is important because the [Magnuson-Stevens Act] uses the term “fishing” so that the statute applies to the processing industry in the same situations only if “fishing” includes processing . . . In the end, we decided to leave the [Magnuson-Stevens Act’s] definitions unchanged on this point while, at the same time, making clear the Act was intended to benefit the entire fishing industry . . . [I]t is the understanding of the House that “fishing” in section 3 of the [Magnuson-Stevens Act] does include “processing” and that, for that reason, the proposed clarification is unnecessary.”<sup>13</sup>

Because of NOAA’s 2009 Opinion, however, a rationalization program was adopted by the Council that did not include processors and instead granted all the benefits of rationalization to the harvesters. The ex-vessel prices paid in the newly rationalized rockfish fisheries, compared to prices prior to and during the Rockfish Pilot Program, show the impacts of a rationalization program that does not balance the interests of both sectors of the industry. Prices paid to fishermen in 2012 nearly doubled from the previous three years. (See Figure 3, below.)

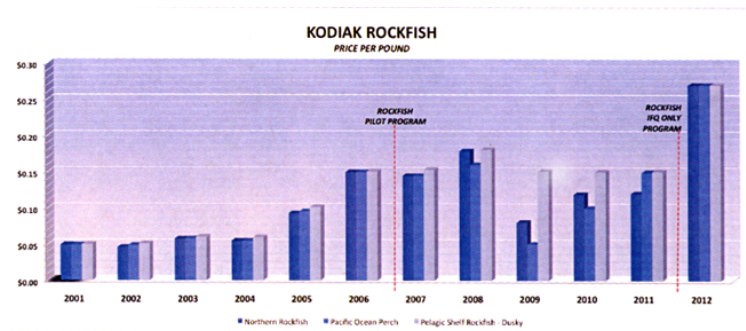


Figure 3. Ex-Vessel Rockfish Prices 2001 - 2012

#### 8. Need for Magnuson-Stevens Act amendment.

The Central Gulf of Alaska rockfish fisheries are very small compared with the other groundfish fisheries in the region. The North Pacific Council will begin exploring whether and how to rationalize *all* of the trawl groundfish fisheries in the Gulf of Alaska as early as June of this year. Vessel owners and processing plant representatives have been negotiating potential rationalization programs that contain harvester-processor cooperatives. There are also members of the Council who would prefer to have the option of considering some form of harvester-processor cooperatives as a way to include both sectors in the rationalized fisheries. It is not an option available to the Council at this time, however, due to the NOAA legal opinion.

Shorebased processors in the Gulf of Alaska have tens of millions of dollars at risk and fear that they will not be included in the rationalized groundfish fisheries unless there is the legal authority to develop rationalization programs with harvester-processor linkages. Despite the overall benefits of rationalized fisheries, processors are understandably anxious about proceeding with any effort to rationalize the fisheries if there is a chance they may be excluded as they were in the most recent rockfish program.

There are other Magnuson-Stevens Act issues I would also like to raise.

#### State of Alaska Jurisdiction Over Salmon Management in the EEZ

The North Pacific Fishery Management Council is considering updating its salmon Fishery Management Plan (FMP). The Council’s salmon FMP was last updated in 1990. The FMP does not contain some provisions now required under more recently adopted provisions of the Magnuson-Stevens Act and national standards

<sup>12</sup> P.L. 95-354 (1978).

<sup>13</sup> Statement of Congressman John Murphy, 124 Cong. Rec. H8266, Aug. 10, 1978.

guidelines; including Annual Catch Limits (ACLs) and accountability measures (AM).

Under an agreement with the federal government, the State of Alaska manages the salmon fishery in state waters. The salmon FMP also covers salmon harvest in the EEZ, outside of state waters. There are four salmon fisheries in the EEZ. They are: (1) the commercial troll fishery in Southeast Alaska; and net fisheries in (2) Prince William Sound; (3) Cook Inlet; and, (4) the South Peninsula area near False Pass. All of these EEZ salmon fisheries are managed by the State of Alaska under the existing salmon FMP.

Given its long history of sustainable fishery management, the Alaska salmon fishery is arguably the best managed fishery in the world. The State of Alaska manages the salmon fishery based on escapement goals, so it is not clear how ACLs and AM can be adopted for the Alaska's salmon management.

Because it would be extremely complicated to revise the salmon FMP to meet the new Magnuson-Stevens Act and national standards requirements, and because the federal government has no real role in salmon management in the EEZ, the Council might prefer to simply repeal the salmon FMP for the net fisheries west of Southeast Alaska, and allow the State of Alaska to continue management. The problem with repealing the salmon FMP, however, is that the State of Alaska has no authority to regulate vessels in the EEZ that are not registered with the State. If the salmon FMP were repealed, it would be possible for unregulated salmon fishing in the EEZ.

One option to resolve this problem would be to slightly modify section 306(a)(3)(C) of the Magnuson-Stevens Act to allow the State of Alaska to retain management of the salmon fishery in the EEZ if the Council chose to repeal the FMP.

The following simple modification of 306(a)(3)(C) would achieve the goal of allowing the State of Alaska to continue management of the salmon fisheries in the EEZ if the Council chose to repeal the salmon FMP.

306 State Jurisdiction

(a) In General—

. . . .

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there is no fishery management plan in place, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate while a fishery management plan under this Act is approved and implemented for such fishery.

### **Overfishing Definition and Rebuilding Requirements**

One issue that has been faced in the Pacific coast groundfish fishery is the application of fishery rebuilding requirements and how they relate to coastal communities. Unlike many other fisheries, all of the species that have been designated as “overfished” within the Pacific groundfish complex have biological characteristics that require more than ten years to rebuild the stocks. Under section 304(e)(4)(A)(i) of the Magnuson-Stevens Act, the council—in this case, the Pacific Fishery Management Council—must specify a rebuilding period that is as short a time as possible while taking into account a number of factors including the needs of fishing communities; in other words, balance biology and social/economic needs. Unfortunately, the courts have ignored this balance. In the case of *NRDC v Evans*, the 9th Circuit Court of Appeals ruled in 2005 that Congress’ use of the word “possible” meant that the Council must use the absolute minimal time to rebuild. From a practical standpoint, this means that a council has to start with zero fishing. To give a real life example, at one point the Pacific Council had a choice between a harvest level that would rebuild canary rockfish in January of a particular year, or a slightly higher harvest level that would rebuild the stock in December of that same year. According to NOAA’s lawyers, under the court decision, the Pacific Council had to use the lower harvest level.

A similar, almost humorous, problem exists in Alaska. The North Pacific Council has no overfished groundfish stocks, but one species of crab, the Pacific Island Blue King crab, is considered overfished and in need of a rebuilding plan, even though no directed fisheries have occurred for nearly two decades and the species is only occasionally taken as bycatch in other fisheries. The North Pacific Council is facing the prospect of curtailing certain groundfish fisheries because that is the only source

of mortality it can affect even though the analysis shows that the expected bycatch savings will not impact rebuilding success.

In summary, Congress should consider amendments to the Magnuson-Stevens Act that allow some flexibility in its rebuilding requirements when a stock is considered “overfished” under the Act.

**Reconciling the Magnuson-Stevens Act with the National Environmental Policy Act**

The 2006 amendments to the Magnuson-Stevens Act directed the Secretary to update agency procedures so that the Magnuson-Stevens Act and the National Environmental Policy Act (NEPA) align and that such procedures “shall conform to the time lines for review and approval of fishery management plans and plan amendments under this section.”<sup>14</sup> These procedures were to be developed in consultation with the regional councils and the Council on Environmental Quality. On February 19, 2013, NOAA presented its policy directive regarding NEPA compliance to the councils.

NOAA’s policy directive does not seem to coordinate NEPA and Magnuson-Stevens Act policies, nor improve efficiencies. Instead it seems to subsume the Magnuson-Stevens Act process and the councils’ prerogatives, within NEPA.

The regional councils cannot be exempt from following NEPA requirements. But the key provisions of NEPA should be incorporated within the framework of the Magnuson-Stevens Act and the Magnuson-Stevens Act remain the guiding law for fisheries management.

Thank you very much for your consideration of these comments.

The CHAIRMAN. Thank you, Mr. Plesha. And I want to thank all of you on the Committee for your testimony. And I particularly want to thank you for the timing of your testimony. That is very, very much appreciated, because we do have a lot of Members that want to ask questions.

I will recognize myself now for 5 minutes for my portion of the questioning.

I didn’t hear any of you in testimony say that the Magnuson-Stevens Act should go away. You all said that it ought to be reauthorized, but there needs to be whatever—whatever involved with that. And the one whatever, I guess, would be, while it is working, the implementation, how the Act works is where the criticism may come.

Now, that being the case, if that is a fair assumption on my part—well, let me just ask that. Is that a fair assumption on my part, that if there is criticism of the Act, it is the implementation thereof, various areas? We will go right down. Yes?

Mr. JONES. Yes.

Dr. SHIPP. I think that is a large part of it. Not all of it, obviously.

The CHAIRMAN. I understand that, yes.

Mr. DOOLEY. Yes, I agree with that statement.

The CHAIRMAN. OK.

Mr. PAPPALARDO. I agree.

Mr. LOGAN. Yes, sir, I agree, too.

Mr. GILL. I agree that it is the majority of it.

Mr. PLESHA. I agree completely.

The CHAIRMAN. OK. That being said, then it seems to me, at least from my perspective, because all of the regional councils are different, they have a different constituency, they have a different fishery, they have different stock, so it would just seem to me—and I know the definition of what I am going to say may be interpreted

<sup>14</sup> 16 U.S.C. § 1854(i).

in a different way, but it seems to me, when you talk about flexibility, from my perspective, that flexibility should allow each council to have, obviously, more flexibility within their area.

Now, the challenge that we are going to face is how that means one council decision may conflict with another council. That is the balancing act that we have.

OK. You have heard my assessment. Can I ask each of you if you would agree that ought to be the approach and the way the Committee should look at reauthorizing MSA? Let's go right down the list again.

Mr. JONES. I do, Mr. Chairman, and I believe that there were words that—in the main flexibility—that is, putting the determination of the ACL back into the council, rather than the SSC. That you could, in that change, allow any council who wanted to stay like they are, whether it be a—

The CHAIRMAN. Right. I understand. I mean I understand the conflicts. We have heard about SSC and how that interacts with the catch limits, and all that. I am just simply saying, from a matter of potential policy, the flexibility that is being desired is flexibility to address those issues more on the regional level than the national. That is what I am asking.

Mr. JONES. Yes, Mr. Chairman.

The CHAIRMAN. All right.

Dr. SHIPP. Yes, I concur with what Bob said. The lack of flexibility comes from the constraints put on the councils in the last reauthorization, especially regarding the SSC. But yes, sir.

The CHAIRMAN. OK, all right.

Mr. DOOLEY. I would agree with that, too, that the regional level would be the better place for this to happen, not mandated nationally.

The CHAIRMAN. OK.

Mr. PAPPALARDO. I believe that the regionalization is the way to handle the issue. However, I think the flexibility that we seek in New England is to have a scientific cycle in sync with a management cycle. And because that is not the case today, we do not have the flexibility to react in—actively or proactively manage our fisheries.

The CHAIRMAN. Captain Logan?

Captain LOGAN. Yes, Mr. Chairman, I agree that the flexibilities would be handed down to the councils to be able to have flexibility in their fisheries, because they know how their fisheries are being fished and also handled at the time.

The CHAIRMAN. Right.

Captain LOGAN. Also, the rigidity of the SSC needs to really be looked into, because this is having a big impact on the flexibility that is handed down from National Marine Fisheries and NOAA to each of the fishery councils. Thank you.

The CHAIRMAN. Mr. Gill?

Mr. GILL. Yes, Mr. Chairman, I agree and recognize that is a huge challenge.

The CHAIRMAN. All right. Mr. Plesha?

Mr. PLESHA. Mr. Chairman, I think the regional council system of the Magnuson-Stevens Act is the genius behind the Act, and the councils should be as flexible as possible.



The CHAIRMAN. All right. With that in mind—and I thank you very much. I mean what I tried to lay out here is the challenge that we are going to face in trying to do this with a national act. It is not the easiest thing that we have.

But when NOAA has gotten back—just one example—dealing with the catch limits is only one idea. I know it faces all the other areas you are talking about. And the mere fact that their rewrite of how to do the national guidelines is now taking a little bit longer is evidence that there needs to be a way to resolve that.

OK, listen. I very much appreciate that. That is a good starting place, I think, for us, as we go forward. I recognize the Ranking Member, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. Mr. Pappalardo, in your testimony you mention the difference in the frequency and quality of stock assessments that underpin management of two New England fisheries: Atlantic Scallops and Northeast Groundfish. Do you think we need a comprehensive, end-to-end review of the stock assessment process?

Mr. PAPPALARDO. I do. If what is meant by that is what I mentioned earlier, the syncing of science and making it available to managers, I think one of the fatal flaws that we have between the two fisheries is in groundfish the fishing industry has absolutely no involvement in the collection of data or assessment data for managers to consider. By contrast, in the scallop fishery, the scallop industry conducts the assessment, their own assessment, the government conducts theirs. They get together on an annual basis, and there is agreement that it is working.

Mr. MARKEY. Well, I do believe it has to be comprehensive. And let me ask this. What needs to happen for the successful cooperative science and management program in the scallop fishery industry to be replicated for groundfish?

Mr. PAPPALARDO. Well, for starters, I think we need to create a space outside of the council arena that will allow the industry and other agencies and perhaps academic institutions to get together and solve this problem. Right now we are getting assessments every 3 to 5 years. We are essentially trying to manage our checking accounts with 3-year-old data. And I think the scallop industry and what they have done stands as an example of what we would like to have in other fisheries.

Mr. MARKEY. And so, in your opinion, what role can technology play in improving fishery management and maximizing healthy stocks? Would improvements in electronic catch reporting and monitoring benefit fishermen and fish stocks?

Mr. PAPPALARDO. Thank you, sir. Yes, absolutely. There are technologies currently in use in other parts of the world, as well as in other parts of the country, that would rapidly take information from the fishing grounds and get it to the managers. Within a day, within 2 days. Currently, the reports from the human observers that we are required to take on our boats take 6 to 9 months to get to the management table. I think that is unacceptable.

Bank of America or any other institution can manage millions of accounts on a moment-by-moment basis. But when it comes to about 600 fishing boats in the groundfish industry it takes 6 to 9

months to figure out what the heck just happened. That is no way to manage.

Mr. MARKEY. You are saying in a modern world, with technology available.

Mr. PAPPALARDO. That is right.

Mr. MARKEY. So, I know that many of the fishermen in Massachusetts, especially those who target groundfish, are hurting right now. I have been working with others in the New England delegation, including Mr. Keating, to secure economic disaster assistance funding for that fishery. And I will continue to do so.

In the immediate term, though, what actions can the Federal Government take to provide fishermen with a bridge to the other side of recent quota reductions?

Mr. PAPPALARDO. Thank you, sir. In my written testimony I mentioned—I believe I mentioned a bill that was filed by now-retired-Congressman Frank that talked about re-purposing some of the SK funds that the Nation collects, and making them available to the regions to handle their issues on a region-by-region basis. I think that would be an interesting place to look.

In addition, I know that there are other programs available to other industries, whether in agriculture or livestock, where businessmen have access to Federally backed capital. I think that is something that some fishermen may find attractive, as they can make a transition into another fishery.

Mr. MARKEY. And finally, if we could, what impact are the warming oceans due to climate change having, for example, on the cod and lobster industries in New England and across the country?

Mr. PAPPALARDO. Certainly playing into our ability to rebuild some of these resources. I am not a scientist in training, but I can tell you that when you have a depressed stock like codfish on Georgia's bank, and you have a requirement to rebuild it, having an imbalanced ecosystem with lots of different stocks and different levels, as well as climate change, if you will, makes that task much more difficult.

Mr. MARKEY. So what does a warming ocean mean for that cod? Do they need colder water in order to survive than warmer water?

Mr. PAPPALARDO. I would say that we have always known we have the southern end of the range of that resource. That is what the scientific literature tells us. However, we are not sure if this is a cyclical issue, in terms of water temperature, or not. I know the waters this year have been relatively cold, and there is some hope amongst some of the fishermen that it will translate into a good year.

Mr. MARKEY. Great. Let's hope so. Thank you.

The CHAIRMAN. I thank the gentleman. I will now recognize Dr. Fleming, the Subcommittee Chairman dealing with oceans, for 5 minutes.

Dr. FLEMING. Thank you, Mr. Chairman. And, gentlemen, thank you for coming before us to testify. In NOAA's testimony on page five it says—and I quote—"Without high-quality fishery science, we cannot be confident that the Nation is attaining optimum yield from its fisheries.

Now, I have heard it mentioned several times that we really need to rely on science, we need to be more precise. But the truth

is stock assessments are being done less and less frequently and less and less accurately. And, as a result of that, the estimates are always leaning in the conservative direction toward less and less fishing. And what we hear from NOAA when they come and testify, they talk about their budget, they say that we are not funding them enough. But then, if you actually look at their budget, their budgets have increased dramatically over the years.

But here is what we are finding. NOAA has been redirecting its budget into climate science, with a budget increase of \$112 million, which is an 8 percent increase, in the environmental satellite program last year. And, at the same time, fisheries were cut \$15 million, 1.6 percent.

So, it seems to me that we are starving this aspect, the science part of this, the precise part, creating overly conservative estimates. And, really, in many cases, probably under-fishing. And I think some of the testimony here is that we are actually not even coming close to the allowable amounts in some cases.

So I would like to hear from the panel. I would like to open this up. Do you think that NOAA is using the funding in an efficient manner, and certainly with respect to catch-shares and fishing in general? Yes, that will be fine, we can start at that end.

Mr. JONES. Thank you, Mr. Chairman. No, I don't think that they are using it the way it should be used. I think that the NOAA people in our part of the world would be glad to have enough funds to do the stock assessment work if they had the money. I don't think they have a say-so of how much money comes their way. I think that decisions to reprogram money that could be used is really what is hurting us bad. And if we could get, in the South Atlantic, maybe \$500,000 or \$1 million—we are not asking for hundreds of millions—to do basic work on our stock of red snapper, black sea bass, and other things, it would pay significant dividends.

Dr. FLEMING. Well, and I will point out to you that one satellite, one climate satellite, costs as much as \$750 million. Yes, sir.

Dr. SHIPP. Yes, sir. Stock assessment science is very expensive, and especially it is in a transition phase right now. Previously, stock assessments were based on fishery-dependent data, the catches from the fishermen, which inherently is biased and flawed. And we are moving toward stock assessments based on fishery independent science. That is expensive. And just in the last few years, I think the Science Center has started to move in that direction, but it is very slow.

When you consider the complexities of a model of a hurricane track or a winter storm track, and 3 days out you lose almost all your reliability—and we are looking at stock assessments with a 30-year or a 20-year projection—who can have confidence in that? So I think that is one of our fundamental problems.

Dr. FLEMING. Again, the question is, is NOAA efficiently using its money or improperly funding or under-funding the stock assessments and the science that go with that, and putting the money elsewhere in perhaps an inefficient manner? Real quickly, because I am running out of time.

Mr. DOOLEY. I would—a short answer is going to be hard to give you. I would say that—and I will use a particular example, West Coast Groundfish rationalization, the catch-share program. Be-

cause of that tool, we have now been able to form cooperatives and been able to take some of the management away from NMFS, so they should be able to—like catch accounting in our particular whiting cooperative, for instance, resumes 98 percent of that burden.

Dr. FLEMING. OK, I am running out of time. Let's hear just yes or no among the other panel. Is NOAA doing a good job of efficiently funding the catch-shares program, the science, the surveys that go with that?

Mr. PAPPALARDO. I don't know about NOAA's budget, but I can tell you we are not getting the information we need to manage our fisheries.

Captain LOGAN. No, sir, we are not getting the information we needed to manage our fisheries through NOAA.

Dr. FLEMING. OK.

Mr. GILL. The fishery's money is under-funded. Whether it should be different priorities, I couldn't tell you. But there is not enough money to do it correctly at the fisheries level.

Mr. PLESHA. I concur the highest priority should be scientific survey work.

Dr. FLEMING. So it seems the consensus of the panel is that, definitely, the science of surveys is well under-funded, and that data is not reliable. And, most likely, where we appear to be overfishing, we are probably, in a sense, under-fishing, compared to what we are being told and what is being appreciated.

I thank you gentlemen, and I yield back, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentlelady from Guam, Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. I thank the witnesses this morning.

Well, the heart of the Magnuson-Stevens Act is to protect our fisheries. In 1976, it prohibited foreign fishing vessels from fishing in our waters. I represent Guam. This has not been the case in Guam. We find them within our 200-mile Exclusive Economic Zone.

I am committed, however, to finding the right balance with economic impact to our local fishermen. I am disappointed, however, that none of our panelists here directly represent the Pacific area, and yet we have representatives from Hawaii, the CNMI, myself, and Mr. Faleomavaega from American Samoa. So I am disappointed in that.

Your testimonies this morning have not addressed the very big problem of illegal, unreported, and unregulated fishing. Our fishermen are being cheated across this country. Catch that rightfully belongs to law-abiding citizens is taken by vessels from foreign countries that illegally enter our waters and fish. These bad actors unnecessarily compete with legally captured seafood from American fishermen. Illegal and unreported catch also biases the catch estimate used in stock assessments.

IUU vessels are less likely to adhere to management measures. In Guam, this may be preventing the traditional use of protected species such as the Green Sea Turtle. Throughout the Pacific, limited harvest of Green Sea Turtles is allowed, but is prohibited in Guam, CNMI, and Hawaii, and perhaps even Samoa. Targeted or

incidental catch of Green Sea Turtles by IUU vessels may be limiting the recovery of the Green Turtle population.

This is not a problem for just Guam. According to the 2011 commercial fisheries data, of the top 100 U.S. ports affected by job loss due to IUU fishing, 24 are in the Gulf of Mexico and 18 are in Alaska.

Around one in five fish caught in the world were done so illegally. So I am interested in your thoughts, Mr. Plesha. Given the problems that Alaska has with not only IUU fishing but also importing of illegally caught products, many of which are mislabeled, do you believe that legislation like my bill, which is H.R. 69—are you familiar with that bill?

Mr. PLESHA. Ms.—

Ms. BORDALLO. No? Well, let me just say it amends the High Seas Driftnet Fisheries Enforcement Act, the High Seas Fishing Compliance Act, the Northern Pacific Halibut Act, and the Magnuson-Stevens Fishery Conservation and Management Act. By amending these Acts we revised the violations, the penalties, the permit requirements, the port privileges, the IUU sanction, and other enforcements.

So, I would like to get your feelings on this. Do we need more tools to protect our seafood industries and fisheries?

Mr. PLESHA. Thank you very much. Mr. Chairman, members of the Committee, I very much do believe that we need to strengthen our IUU enforcement—

Ms. BORDALLO. Could you speak up a little?

Mr. PLESHA. Yes. I very much do believe that we do need to strengthen our IUU enforcement. I spoke 2 years ago on behalf of Senator Murkowski's and Senator Begich's legislation to accomplish that, and I haven't seen the specific provision you are talking to, but I very much support the effort.

Ms. BORDALLO. Thank you very much. And again, I have other questions for the next panel, but Mr. Chairman, I do think we should place our interest more into the Pacific area. It is the largest body of water in the world. Thank you.

The CHAIRMAN. The gentlelady yields back her time. The Chair recognizes the gentleman from New Jersey, Mr. Runyan.

Mr. RUNYAN. Thank you, Mr. Chairman. And my first question is going to be for Captain Logan. Obviously, up in my district, in New Jersey, I have quite a few charterboat captains. And I have heard many complaints about Magnuson-Stevens from disgust over lack of access to rebuild stocks and poor science resulting in reductions in the catch. And the big one is really fear of the future of catch-share programs being imposed on them.

The lack of access to rebuild stocks has really seemed to hit the biggest nerve, especially in New Jersey, where recreational fishermen have begged for greater access to black sea bass for years. I witnessed this myself, many times.

What is, in your opinion, the biggest regulatory hurdle, as a charterboat captain, to sustain your business?

Captain LOGAN. Our biggest regulatory hurdle now is not having the flexibility in the bill for the fishery councils to manage the fisheries that they need to manage at their local level.

And the funding from NOAA that has been taken from NOAA used in places to provide us with the data that we need to collect for studies of our fisheries, like it was stated earlier, we are dealing with 3- to 5-year-old data for our fisheries. And that data just isn't up-to-date. It wasn't available soon enough after it was collected. And that is what's hurting the fishermen.

As far as you mentioned catch-shares earlier, it seems that the East Coast fishermen are 100 percent against catch-shares. Catch-shares is not a management tool. It is a last resort to our fisheries. Catch-shares gives individual rights to fish. Our ocean belongs to everyone, not just individuals that have the right to fish it.

Mr. RUNYAN. Thank you. And the other one is for Bob Jones. You said in your statement when you were talking about the balance between economic and social, how do we make the change—obviously, it is in the law, but how do we make the change to strengthen it and make it, I don't know, in the forefront, and make it part of the process? Do you have any ideas on that?

Mr. JONES. I do. I think that you need to lean on NOAA. That is who is going to make the definition. That is who is going to write the regulations. They know that they are supposed to consider social and economic aspects, because that is in the law, but we are just in a state in this particular time where we seem to be only looking at the fish itself, and not the things that should be included, as far as the optimum yield.

And so, I think the law already requires them to look at that. I think what we perceive, whether we are right or wrong, is they are just not doing it to the extent that we think we are getting enough information.

Mr. RUNYAN. It is probably the same answer, but you also said in your testimony when a fishery is closed, there is no fishery-dependent data being produced that can be used in future stock assessments. Is it still kind of the same thing as leaning on them, or trying to put some more pressure on them?

Mr. JONES. Well, yes, sir. You need to lean on them hard. They are a tough group for us to deal with. There are a lot of good people, and we respect them. They have great employees. But under their policies, some of the policies, it just doesn't give us opportunity to see what they are doing, how you are doing it, what are you doing now, how can we best work together. You can't manage a fishery just looking at the harvest level, because if you put caps on the harvest level, then you are manipulating what product is coming in. So you need to look at everything.

But the main problem with the system is we just don't have, we think, access to how the system works, as far as getting the stock assessment.

Mr. RUNYAN. In other words, transparency?

Mr. JONES. That would solve most of our angst in the Southeast.

Mr. RUNYAN. Thank you very much. With that, I yield back, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The Chair recognizes the gentlelady from Hawaii, Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chairman, and thank you all for being here. It is kind of rare when you all agree on one thing, which is that you are not getting information, sufficient informa-

tion, to manage the fisheries. And we all know that the amount of seafood that the United States is basically importing from elsewhere is about 90 percent of what is being consumed. So that is a very striking number, as well.

So, given the fact that the other thing we can all agree on is the fact that the oceans are not just us—in other words, it is not just within the jurisdiction of NOAA and the United States, you have other parties and players that are dealing. As the gentlewoman from Guam says, we have concerns about our territorial and jurisdictional waters, as well.

So, given all of this, the question I have for each of you—and you can just go down and answer it—is if you are not getting the information you need to manage the fisheries, and if it looks like we are importing seafood into the country, versus being able to sustain ourselves, and we agree that the MSA is a good law, and the fisheries—I think one of you said that the fisheries, the regional fisheries is the genius behind the Act, tell me how is it that we are ever going to get to the point when we have players that we have no control over, and we are importing, and you are not getting sufficient information, tell me what you think would be the reasonable way a Committee like us should begin to look at this issue. It looks like we are just going around and around in a circle.

So, given that, you can start on the left and work your way down. And remember, we have about 3 minutes left, so keep it as concise as you can.

Mr. JONES. I am not sure I can answer that. I don't know how to get where it is that we need to be. And when you bring imports into this situation, there is always going to be that amount of imports, because we just can't produce enough fish to make up for that.

Dr. SHIPP. Yes, my main problem is that we are just totally obsessed with the concern about overfishing and not nearly as concerned about achieving optimal yield, as we should be. And part of that is sometimes translated in the buffers that are put in. But I think that is where we need to go. Let's focus on achieving optimal yield.

Mr. DOOLEY. I agree with Dr. Shipp on that, also, that we need to focus on optimum yield. But I think we need to, more than that, focus on increasing research and increasing research to define the stocks and to do good research. And maybe get the agencies less into accounting for fish and for managing the fishery that way, and maybe partnership with industry to do that so that it frees the Agency up to do research, and I would also add to that enter in a collaboration with the stakeholders in doing research.

Mr. PAPPALARDO. Well, I think certainly species that cross international boundaries are difficult to manage, and we have to do our best through these international agreements. I have a little bit of experience with that. But for those stocks that are under our control, under our purview, I think we need to focus on rebuilding them and maintaining them at rebuild levels.

The fact that we are importing so much seafood, I find that disturbing. I know for a fact that in some instances, as we have taken upon ourselves rebuilding of resources, we have lost market share. And gaining back that market share in a globally traded com-

modity is very difficult. So I think that there may be ways for this body or other bodies within Congress to look at, as our stocks come back, price support or government contracts to buy some of the seafood that we have rebuilt, until the private industry, private market, can re-establish market share.

Captain LOGAN. We are at 92 percent import of fish to the United States with 8 percent being caught by the commercial fisherman here in the United States. And this is largely in play with Magnuson-Stevens, with the restrictions that have been put on the fishermen, not being able to catch fish. Obviously, if we were allowed to catch more fish and still keep the sustainability, we would be able to produce more fish for the United States.

Yes, we cannot provide everybody with fish here in the United States, but we can definitely do a whole lot more for our part of it. And the biggest problem is we are not—NOAA is not letting us meet our maximum level of fisheries that we can.

Mr. GILL. My suggestion is that the Committee focus on the things it can control, and let the other ones react and be a result. So the focus should be maximizing the domestic fisheries, and whatever happens relative to imports will happen. We can't do any more than the maximum that the fisheries can sustain.

Mr. PLESHA. And thank you. I would first of all like to correct the record on just one item. We also have a plant in Hawaii.

And second, with regard to your question, I think it is important to recognize the U.S. industry exports a lot of seafood products, as well. And with regard to imports, what we can do is make sure that there are only legally harvested fish imported into the United States, and support strengthening of the IUU regulations. Thank you.

Ms. HANABUSA. Thank you, Mr. Chair.

Mr. YOUNG [presiding]. Thank you.

Dr. WITTMAN. Thank you, Mr. Chairman. And I want to go straight to Dr. Shipp. I want to ask you a question. Do you think that NMFS should consider data from fishermen, from academic institutions, from third parties, in order to improve fishery access through the acquisition of better data?

Dr. SHIPP. Yes and no to several.

Dr. WITTMAN. OK.

Dr. SHIPP. From individual fishermen, yes, but with the caveat that those data are going to be inherently biased. From research institutions, that is where you are going to get your best fishery independent data.

Dr. WITTMAN. Tell me. Why do you believe the data from fishermen would be biased?

Dr. SHIPP. Well, for example, let's take the red snapper commercial fishermen. They are focusing on a 2- to 4-pound fish, because that is where their biggest profit margin is. When those data go into the model, the model may interpret that as, well, the fish are too small. We don't have enough big fish. When, in fact, that is a result of the targeting of those smaller fish.

Dr. WITTMAN. Well, let me ask you this, then. What can NMFS do, then, to better improve access in the Gulf to the red snapper fishery?



Dr. SHIPP. If you are talking about the commercial guys, I think they are in pretty good shape. They have an IFQ program that—

Dr. WITTMAN. Well, access is across the board. So not just the commercial side, but—

Dr. SHIPP. But for—

Dr. WITTMAN [continuing]. The recreational side.

Dr. SHIPP. For the recreational fishermen I go back to my initial testimony. We need to turn it over to the States for at least the first 20 fathoms, because the regions of the Gulf are so very different from one area to another, to manage the whole Gulf as a single unit is extremely difficult and not nearly what we need to produce optimal yield.

Off of Alabama, we could have a year-round season, two fish bag limit, and it wouldn't make a dent in our population.

Dr. WITTMAN. Got you. Thank you, Dr. Shipp. Mr. Plesha, I want to go to you. I know in Alaska there has been a catch-share program that has been developed there. And in your testimony you talk at length about catch-shares being a tool in that tool box for fishery management decisions, and that these should be options for the regional council and for the Secretary.

Can you tell me, do you think it would be harmful if catch-shares were completely taken off of the table as a fisheries management tool?

Mr. PLESHA. I think it would be. I think there are fisheries, especially the fisheries that are industrial, like those off of Alaska, where catch-share programs have proven to be very successful, not just for incentivizing conservation, but for maximizing the benefits to the Nation. And when I mean that, I mean not just the producers, but the consumers, as well.

So, I think it is a tool that is useful to continue to have within the Act.

Dr. WITTMAN. How about Alaska's rationalization program? You talk about that. Can that success in the rationalization program in Alaska be replicated in other areas around the United States?

Mr. PLESHA. I feel very uncomfortable speaking for other regions in the United States. I just know that it has been successful in Alaska.

Dr. WITTMAN. All right. Let me ask you. In your view, the use of fishery cooperatives are an important component of the catch-share programs. As you know, this shared vision planning where people talk about the issues, talk about how do you manage in a cooperative way these fisheries, especially including the harvesters of the resource up front, and making those management decisions.

What could NOAA do to better encourage fishery cooperatives, or those types of concepts, as they make fisheries management decisions?

Mr. PLESHA. Well, in the case of the fishery cooperatives in Alaska, they really have been based around harvester-processor linkage and both harvesters and processors being part of the cooperatives. Unfortunately, NOAA has considered that to be not authorized under the Magnuson-Stevens Act.

So, one of the things they could do is either change their legal opinion, or the Act can be amended so that is clarified, that those type of cooperatives, which have proven to be very successful, are

allowed to be developed by the councils under the Magnuson-Stevens Act.

Dr. WITTMAN. Very good. Mr. Dooley, I want to go to you. I know that, through the process, there has been a lot of discussion about having NMFS consider data collected by fishermen, that observational data, that real time out there on the water. My son is a commercial fisherman and he tells me all the time, "Dad, let me tell you what I am seeing," and it is not showing up in the decisions that are being made by National Marine Fisheries Service.

What can be done to encourage the National Marine Fisheries Service to be more active in considering data collected by fishermen in their management decision scheme?

Mr. DOOLEY. I think several things could be done. One in particular that is being used in the North Pacific right now is most of the fishing vessels that I operate or operate around have very high-tech sounders and sonars. And these are of the same quality as they use in the research vessels. And there is an effort to collect that data from vessels while they are fishing. And it is black box data, cannot be manipulated. It comes directly from the receiver. It is very comparable to what is being collected. And it is used to augment and to prove what they are seeing in the research charters that they are doing, that NMFS is doing. So, I think that is a very good way to do it.

We have also—actually, this last year in the whiting fishery, we had a biannual survey. We needed a mid-year survey, because we had what we believed was a survey that dropped the quota of whiting almost in half, and we didn't believe it was warranted, from what we were seeing on the grounds. So industry funded a boat and crew and completely funded it, and followed with an anchovy survey and teamed with NMFS to do an alternate survey. And that survey proved to be very fruitful, and it looks like the quota—they are deciding that now—will be back up and what we had said was true.

So, I think those type of interactions are very, very useful. Industry funded it, industry supported it, and the agency collaborated with it, and it worked out very well.

Dr. WITTMAN. Very good. Thank you, Mr. Chairman, and I yield back.

Mr. YOUNG. Mr. Sablan. You, you are up.

Mr. SABLAN. All right. Thank you very much, Mr. Chairman, and good morning, everyone.

Mr. Chairman, I ask unanimous consent that a statement from Matt Ruby, the President of the South Atlantic Fishermen's Association, be included in the hearing record.

Mr. YOUNG. Without objection, so ordered.

[The prepared statement from Matt Ruby submitted for the record by Mr. Sablan follows:]

**Statement Submitted for the Record by Matt Ruby, President,  
South Atlantic Fishermen's Association**

The South Atlantic Fishermen's Association (SAFA) appreciates the opportunity to comment on efforts to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which is set to expire in September. The MSA is fundamental to ensuring that federal fisheries are sustainable, and SAFA generally supports the reauthorization of the MSA. For that reason, SAFA would like to take

this opportunity to raise two critical issues for the Committee to consider: management tools authorized by the MSA and improvements to data and science.

#### **Improving Data and Science by Working with Fishermen**

Much of the criticism of fisheries management relates to the quantity and quality of data and science used by managers. Science and data questions have led to mistrust of the regulators by fishermen, concerns about the reliability of established catch limits, and in many cases, these questions have led to bad management decisions.

The MSA provides an opportunity for Congress to address some of these data and science issues, by leveraging the resources of fishermen. The Federal government has finite resources available to handle collection of data for fisheries management. Those resources are further constrained by continued pressure on the Federal budget. Thus, changes must be made in order to make improvements in these areas by leveraging the resources of fishermen to help achieve the goals of the MSA.

Thus, the National Oceanic & Atmospheric Administration (NOAA) should be increasing its collaboration with fishermen to collect data. Fishermen are on-the-water. The data and information that they collect can and should be more effectively utilized by the government to improve the science supporting fisheries management. By encouraging the use of vessel monitoring systems and/or on-board observers, the agency could also further improve the quality and reliability of the information collected. Moreover, by engaging with fishermen, NOAA can build trust and get access to important data that can help better inform the agency in the development of management plans.

SAFA is a willing partner with Congress and the agency to both develop and implement methods to improve data collection and improve the scientific methods used to assess historical stocks that are data poor in the region.

#### **Ensuring a Broad Suite of Management Tools**

The MSA authorizes a number of different management tools, and also provides for local decision-making in fishery management through regional fishery management councils. Among the management tools considered and authorized by Congress when the MSA was reauthorized in 2006/2007 were limited access privilege programs, commonly referred to as catch shares.

Catch shares have been in existence in U.S. fisheries for decades, and have proven to be an effective tool for managing many federal fisheries. Unfortunately, some in Congress have attempted to eliminate their use as a management tool. SAFA is opposed to such efforts and urges the Committee to maintain catch shares as a management tool in any reauthorization of the MSA.

SAFA strongly believes that fishermen should have the ability to consider all fishery management options and choose those that are best for their businesses and the future health of the fisheries in which they work. The MSA provides valuable tools to achieve those objectives, including permitting councils to consider catch share programs. There is no justifiable reason for Congress to withhold a management tool—particularly one like catch shares that has proven very effective in some cases—when stakeholders in a region want to explore the use of that tool.

Our members strongly support efforts to improve fishery management and have been active stakeholder participants with the regional councils, NOAA, and Congress to do just that. But previous legislative proposals introduced in the prior Congress by Reps. Runyan (H.R. 1646, H.R. 2772, and H.R. 6350) and Pallone (H.R. 594 and H.R. 3061) undermine the process and the very efforts being undertaken by the councils to preserve jobs, improve the livelihoods of fishermen, and sustain our fishery resources. We hope that as the Committee considers the reauthorization of the MSA, it will not pursue similar approaches as those proposed in those bills, especially as it pertains to catch shares, rebuilding timelines, or flexibility.

Finally, we continue to believe that through the MSA Congress established a good approach to managing the resource—namely, the regional fishery management councils which are predominantly comprised of stakeholders in the fisheries. The council process, while it may not be perfect, is an effective means of ensuring fisherman input in decision-making on critical issues of management and conservation. It must be preserved.

#### **Conclusion**

SAFA stands ready to work with the Committee on making improvements to the MSA in order to bolster the data and science that is badly needed for our federal fisheries. It strongly opposes efforts to restrict the use of catch shares, or to make the implementation of catch share programs more difficult. It supports preservation of the regional fishery management council system.

Mr. SABLAN. Thank you very much, Mr. Chairman. Good morning, everyone.

In the Northern Mariana Islands, fishing has been a central part of our culture, and a critical source of food for over 3,000 years. Because our lives are so closely tied to the ocean, sustainable management of fisheries in the Western Pacific is necessary for our very survival.

Some of the witnesses today have said that the Magnuson-Stevens Act has made our fisheries management overly cautious. A friend of mine is opening a restaurant in a couple of weeks from now, and he told me that on top of the door to his restaurant he is going to say, "Hunters"—because his last name happened to be Hunter—so he says, "Hunters, fishermen, politicians, and liars, welcome." And I said, "Why fishermen?" And he says, "Well, because they usually talk about the big one that got away."

But my fishermen, those that actually catch fish, tell me a different story. They say that the fish they catch today are smaller than they used to be, and that they catch fewer of them. In our case, the culprit is illegal fishing, as Ms. Bordallo had spoken earlier about, by foreign fleets. But overfishing of any kind harms coastal communities, and particularly those of us in the Pacific Islands and in the island communities.

So, let me start by asking Mr. Gill. You mentioned, sir, in your testimony that the requirement to end overfishing and establish science-based catch limits has been beneficial to many fisheries. Could you please give us a couple of examples?

Mr. GILL. Thank you, sir. I will be happy to. Our red snapper in the Gulf of Mexico is an example where, prior to the implementation of the Magnuson-Stevens Act and ACLs, AMs, the fishery was constantly overfished, and overfishing was constantly occurring, resulting in almost a 50 percent reduction in the available fish for fishermen to catch. And today, 5 years later, it is roughly doubled in size, in terms of what fish can be caught, and the fish themselves have roughly doubled in size, as well. And it is an example of hard ceilings creating a lot of pain, but they also permit the regrowth of the fishery.

Mr. SABLAN. And so you are telling me—and if you are—you are explaining how continued overfishing and a failure to rebuild fish stocks would impact your business and others like it.

Mr. GILL. Could you repeat that please, sir?

Mr. SABLAN. So you are actually saying—and if you are, can you explain how continued overfishing and a failure to rebuild fish stocks would impact your business and others like it?

Mr. GILL. In the seafood business, the fish house is dependent on, generally speaking, many species but, more importantly, a high volume. Because the profit margin in the fish house is extremely slim. And the only way to accrue sufficient funds to keep operation requires a volume of fish.

If you have overfishing and the quotas go down, they can't catch as many fish. And so that imperils the fish house viability.

Mr. SABLAN. Yes. And because I am really trying to also reconcile in my own mind how we prevent overfishing as an intention of the Act, and yet also achieve optimum yield. And so I am going to try to continue to reconcile that, because I think we can achieve opti-

mal yield, once we stop overfishing. That is just my thought for now.

But let me go to Mr. Pappalardo. Sir, many people have blamed fishery management tools like catch-shares and sectors for pushing off small business—small-boat fishermen. So what strategies has your organization adopted to keep people in business? And can those strategies be helpful to fishermen elsewhere?

Mr. PAPPALARDO. Thank you, sir. We have invested money, we have borrowed money, we have bought fishing permits and fishing quota, and we hold it in trust for our fishermen in our community to access at drastically reduced rates. So we have essentially formed a buying cooperative where we have bought access to the fishery and make it available to fishermen. I think that there is a model there that could be shared with other regions in the country.

Mr. YOUNG. Mr. Southerland?

Mr. SOUTHERLAND. Thank you, Mr. Chairman. Mr. Jones, I wanted to ask you. You made reference in your testimony about the ban on red snapper fishing in the Southeast region, and you said that was passed on a 7 to 6 vote with very incomplete data. Can you just kind of elaborate on that a little bit?

I wasn't aware of the vote, and as far as the slim margin of the vote. But kind of just give us some understanding of, first of all, when that was, when the closure was instituted, how much warning people had that it was coming, and then I am going to ask you a follow-up question or two.

Mr. JONES. OK, thank you, sir. It happened over 2 years ago, and the South Atlantic Ocean from the Virginia line all the way to Key West has been closed to red snapper fishing by everyone. No recreational, no commercial. During the time it was going on, and testimony was given, by even members of the Council, we understood them to say that the information, the scientific information, is imprecise and incomplete.

And we, the industry, wanted more information on what the science really said. We begged for stock assessments, we begged for information. But the way I remember it, they were on a time schedule, they had to accomplish certain things by a certain date, and so the motion was made to ban all fishing, the vote was 7 to 6 in open session. And therefore, it became banned from that point.

Mr. SOUTHERLAND. So it is 2 years old. There is probably no way to be able to measure the economic impact, or the devastation as a result of making that decision with little data, at least data that was less than conclusive.

You know, I look at our national standards for fisheries, Section 301, and I look down here at the 10 standards that councils are to use. Then we do something as drastic as total closure of a fishery. And one of the 10 says that, to the extent practicable, minimize the adverse economic impacts on communities. Do you feel that was followed on a 7 to 6 vote with little to no good data or information to make the decision?

Mr. JONES. Absolutely not. I don't believe—

Mr. SOUTHERLAND. So, therefore, you believe that the Council that is supposed to be looking out for the regional interests violated one of the 10 required objectives that they are chartered to follow.

Mr. JONES. I would put it another way. I would say that the Council may not have adhered to the requirement they have in the same manner that we would have preferred. But they did not, in our opinion, ever consider anything but the biological standpoint of that particular fishery. And the economic impact to every person who is in the charterboat business, recreational business, hotels, motels, restaurants, you could get a calculation. But it would be higher than most people think.

Mr. SOUTHERLAND. Sure.

Mr. JONES. I think it was a political vote, and that happens in situations.

Mr. SOUTHERLAND. So, has there been a stock assessment done since the 100 percent closure of the red snapper in the South Atlantic?

Mr. JONES. I don't think there has. I am sure that the next witness will tell you where they are. But we don't see anywhere near what needs to be done. The industry itself had to come up with about \$20,000 to establish a tagging program to where we would pay a charter boat to allow two marine biologists from the State lab to come out and tag fish. That is the only tagging that I know about. And they know that we are not satisfied, no one is satisfied with what they are doing on the science.

Mr. SOUTHERLAND. Thank you very much. Dr. Shipp, a quick question, and I see my time is quickly leaving me.

You made reference to the explosives that are being used to remove rigs, especially over in your neck of the woods, south of Alabama, Mississippi, Louisiana, and that they are literally killing—I saw the news article, the new story done by a Mobile news channel that showed thousands upon thousands of red snapper floating dead in the water.

And I am amazed that when you look at all those fish—and obviously all those fish that are dead are not counted in the assessments, because I have asked NMFS numerous times, most recently during the field hearing in Panama City last year, “Do they count fish that are on artificial rigs,” and the answer was no, they do not—you, sir, represent a State and live in a State that makes up 40 percent of all of the red snapper landings in the Gulf of Mexico. So an enormous haul, basically, for a State that has gotten to that point because of artificial rigs.

I have run out of time. I will come back to that. But so—

Dr. SHIPP. I hope you do.

Mr. SOUTHERLAND. I am so sorry. I am so sorry. I think it is a topic that is worthy of greater exploration. And when we say that we cannot increase taxes on hardworking families that are making their living fishing, and yet we have the ability to go out and remove reefs with explosives that kill tens of thousands of fish, and we refuse to count those fish, it undermines the credibility of the institutions that have the responsibility to manage the fish. And so there is no trust, as long as that kind of stuff continues. That was my point. I yield back.

Mr. YOUNG. Thank you. Mr. Lowenthal.

Dr. LOWENTHAL. Thank you, Mr. Chairman, and Ranking Member, and all the witnesses. You know, I am a new Member and I am here primarily to listen, to learn. I represent a coastal district

in Southern California. We have a thriving recreational fishing industry, probably as large, if not larger, than even commercial fishing.

Recreational fishermen are working with NOAA and the State of California to reduce bycatch in new and innovative ways. For example, currently our local recreational fisherpeople have been working with the State, NOAA, and an NGO to develop devices to reduce trauma and the death of fish that live under very high pressures after being brought to the surface. They developed descending devices that bring rockfish back down to the depths, where they are able to regain their functions and swim away.

And what I am concerned about—now this is switching a little bit—is how we continue collaborative partnerships between recreational fisherpeople, NOAA, the State, and NGO's. So I am interested in how MSA can continue to bring all the stakeholders to the table. That is really what—including the recreational fishing people, to address some of these issues about bycatch, overfishing, how we can end that, how we can continue science-based management, which all of you have said is definitely needed, how we can create sustainable fisheries that support our communities and really do yield optimal yield, and so how we would create this balance.

So my question, really, is for Mr. Dooley from Central California. And it really has to do with how the council process works, in terms of stakeholder input. Do you feel there is an adequate, first, understanding by the public of how the council works, or how our councils work? And does that need improvement?

Mr. DOOLEY. Well, speaking from that perspective, from the Pacific Council, particularly—

Dr. LOWENTHAL. Yes.

Mr. DOOLEY. I think the Pacific Council does an excellent job of reaching out. I think it is well represented at the Council meetings by the public, by the industry. It is a very good process.

Speaking of the catch-share process and its development, it was developed from the bottom up. Many stakeholders involved worked hand-in-hand with the Council and the agencies to put together an excellent program.

I think, speaking to what you said earlier about recreational and the entire fishery, how do we get it sustainable, well, I think it really gets to one word: accountability. We have total accountability in the rationalized fishery. In the trawl, in the catch-share program, it is 100 percent—in most cases, 200 percent—observed. The cost of that is very high, that is a big issue; we need to talk about that. But talking about sustainability, you will never know what is being taken out of that ocean until we know—and have an accountable system for everyone, from recreational all the way through every commercial fisherman, to understand what is being removed and understand how to deal with that.

So, I think accountability is very important. Catch-shares help bring that to fruition. We are paying for it in our catch-share program. We are having subsidies at this time that are going to disappear from the government that are helping them. There are many issues with that. I would love to go into that with you in depth if you ever have the time. But I would—you know, there are a lot of issues there. But I think accountability is really important.

Dr. LOWENTHAL. Do you think that this kind of—you mentioned how, in the Council—and the Pacific Council has really included the input of the public now greatly, and you really like that—do you think that has helped to reduce litigation?

Mr. DOOLEY. There has been litigation against this program, a couple of cases.

Dr. LOWENTHAL. Yes.

Mr. DOOLEY. However, I was active in this whole process from the very beginning. It took 7 years, 8 years, to get this—with many committee-level meetings and hours upon hours of council time and agency time to put together a program that took into consideration communities, took into consideration control limits to maintain the flavor of small communities, so that they don't disappear, to not let excessive consolidation happen. This program did that.

I think the undoing of it, the undoing of all that good work, may be the cost. Because observer cost is very high. There are many other costs, a cost recovery for the program, there are several costs that move into this, the buy-back loan that is sitting out there at a 7 percent interest rate, and taking 5 percent off the top of the fishery. Those things are things that we need to deal with, to go forward.

However, the benefits to sustainability, the elimination of discards, the elimination of bycatch, a reduction of bycatch, are things that are just shining examples of a well-run, properly executed catch-share program, and a well-run fishery.

Dr. LOWENTHAL. Thank you. And I do wish to continue this discussion with you.

Mr. YOUNG. Thank you. Mr. DeFazio.

Mr. DEFazio. Thank you, Don. Mr. Dooley, I am well aware what an extraordinary burden has been placed on the West Coast fleet with the physical observers. And I find it very interesting, your comments here on page five. I have been urging a move toward some sort of electronic monitoring. But you raise an issue here, and I want to investigate what you have seen going on here. You are talking about—it sounds to me like we are dealing with the FAA. I mean they are famous for over-designing, re-designing, over-designing, I mean they have been trying to implement a new air traffic control system now since I have been in Congress, and that is 27 years, and they still haven't figured out what it is.

So, I am curious about your observations on where NOAA is headed with electronic monitoring. And you are talking about, you know, they are headed toward a Cadillac, we could work with a Chevy. Does the technology for the Chevy already exist? Is it off-the-shelf? Could we get that out there quickly? And what are they headed toward here?

Mr. DOOLEY. Thank you. Absolutely, the technology is there for a Chevy. We have that. There is also technology being developed for the Cadillac.

However, the one word that has been said here today most is flexibility. Flexibility is key. Not one tool fits all. You don't design one system and say, "Oh, that is great, everybody gets to use it." There are fisheries that are full retention fisheries. If you are fishing dover, you can keep everything that you catch and bring it in. These guys are coming in now with less than 2 percent that they



put over the side. They could bring that to town. All they need on that boat, rather than a \$450-a-day observer, all they need is a camera that documents whether you have had a discard or not.

And that is very, very low-tech, very simple, very little data to review. It has been in use before in the hake fleet, that camera system was used on the inshore hake fleet and very successfully. But now we all have observers that are costing a lot of money. And they are going to cost more.

You know, Alaska just instituted an observer program that is upwards of \$1,000 a day for observer costs per person. They are instituting a 1.5 percent or 1.25 percent, I believe, fee to all participants to fund this on their ex-vessel value. However, this only achieves a 15 percent observer rate and observer coverage. If you went up to 100 percent observer coverage on that model, nobody could afford to fish.

Mr. DEFAZIO. Right. So what, specifically, are they looking to add in the data monitoring that would make it more like a Cadillac? And are those necessary parameters or are they just over-designing here?

Mr. DOOLEY. I think there are desires to have speciation, to understand what every fish is that is going over the side, and somehow absolutely quantify how much is being discarded. And those type of camera systems, although they may be possible in the future, they are expensive right now. And I think that we need relief right now.

We need relief from these costs right now. Because particularly in the case of West Coast rationalization, we have many small ports up and down particularly—I mean California and Oregon have small ports with small fishing vessels. Four hundred and fifty dollars a day for an observer is unbelievably expensive, and it is a big portion of their income. If they were allowed to use less high-tech methods, and cheaper methods, they could survive.

Mr. DEFAZIO. OK. And then just your observation on maximum sustainable yield, optimal yield, and the rollover issue. This has been a problem for some folks. I mean you get locked out by bad weather, you got a quota but you can't fish it, and you can't roll it over. What kind of response have you got from NOAA on that?

Mr. DOOLEY. It is a problem with the ACL language, I believe. It makes it—

Mr. DEFAZIO. So it is just the language. It is not necessarily a biological issue, where they say, that would create a stock problem if you fished a little more one year and less another.

Mr. DOOLEY. I have heard no proof to that. I have heard some people could have that concern. But like I mentioned in my testimony, fish don't have calendars. Some years they run over from one year to the next. Just the way the fish present themselves. This is a biomassive fish of many species. Some years they will be over the calendar year, or some years they don't show up at all.

So, if you under-harvest one year, I believe you should be able to average this over the long term, to obtain optimum yield.

Mr. DEFAZIO. All right, thank you. Thank you, Mr. Chairman.

Mr. YOUNG. Thank you. I want to thank the panel. This has been interesting to me. I am sorry I was a little late.

But, Captain Logan, I understand the State of South Carolina once owned a fish survey vessel. Do they still own it? And, if so, could it be used to supplement Federal fishery surveys for important species such as black sea bass and red snapper?

Captain LOGAN. Yes, sir. They own the research vessel called Palmetto. It is funded through the Marpac program. And I have talked to Colonel Taylor, who is head of D&R, and they do not have any problem at all in helping with the Federal funding to make sure that we get the right data that we need.

My personal opinion is we need to defund NOAA. We need to take the money away from them. They are taking that money and using it somewhere else, instead of using it on our fisheries. Give it to the States. Like Mr. Shipp said, he said 20 fathoms. I look at 50 fathoms. Let each State govern their fisheries out to 50 fathoms. Give that money to them, let them do the research. Most States are already proving that research through creel clerks now that are doing these surveys. We can get a whole lot better data that way, it is a whole lot more controllable, and we know where the money is going, and it is not being misused.

But, yes, sir. That vessel is there, and they are willing to use it. They just need the direction of where to go. And the biggest problem they've had with that vessel is when they do get a order from NOAA, they send them out to a area where there is no live bottom. It is all mud bottom. There is no live bottom in that area. Many occasions we have been out charter fishing or commercial fishing, that boat has been there, and we call them up, say, "Hey, what you guys doing?"

"Oh, we are doing research, blah, blah, blah."

"Well, hey, you need to come over here, this is where the rocks are. Over there is just muddy bottom for miles and miles and miles."

"Well, we can't leave this grid. We are stuck in this grid here. This is the area we have to fish in."

So they are not sending them to the right places. They are sending them places where it is mud. Fish live on rocks. They live on structure. They need the good information to get them there. That is why they need to talk to the fishermen.

Mr. YOUNG. Well, but what I am interested in—I was listening to—I believe it is, let me see, what is it, Dr.—what is the last name?

Dr. SHIPP. Shipp.

Mr. YOUNG. Shipp. You know, I am mature and I can't see as far as I used to see.

[Laughter.]

Mr. YOUNG. I tell you there are much better-looking women now than there was when I was 18. I can tell you that right now. You all look good.

[Laughter.]

Mr. YOUNG. But I am interested in the council. It bothers me about NOAA and NMFS, that a lot of this studying is being done, I would say, by people that don't really understand fisheries. And it is like doing studies on a mud bottom, for instance. That is silly.

Why couldn't we use the information that you can collect from those black boxes, as long as it is sacred, and make sure that they

have to use it also? I am thinking about something in the bill that would make them have to use this information, instead of relying on, well, we don't have the money, or we can't do the study, and making, actually, recommendations that don't make sense. Because there is other documentation that gives them better information. So, if we can make them do that, I think that would work.

And I happen to like the idea of the States being involved in this. As long as there was some cooperation amongst the council, so it isn't—one State isn't killing all their fish, and sort of like Russia is doing now in Alaska, killing all their fish, and then come over and getting the other State's fish. So that is something we want to work on.

I do think that there is some improvement we can make to the Act itself. I want to suggest to all of you to write something up that makes sense.

I am not happy with NOAA nor NMFS right now—they all know this—because I think they spend an awful lot of money, like the gentleman brought up the fact about blowing up oil rigs with dynamite and killing fish. That does not make sense. Frankly, you would be better off leaving the rig there, or taking some divers and cutting it off. It was put in there one time by individuals.

So there are a lot of things I think that can be done to make sure this Act works—now, rationalization works. You can't overfish a fishery if it is properly rationalized. And that is something that people should recognize.

And I am proud of what Mr. Plesha has said. The fact is, we have a pretty good fishery in Alaska. Can there be improvements? I think if we get more cooperation from NOAA and NMFS, better recognition about what is endangered and what is not endangered. The idea that we are killing sea lions by overfishing the area, finding out it was the orca whale that was killing them. But orca whales are protected. I mean I can go on and on and on about this.

But the sustainable yield, one thing that does concern me—and I am lecturing now, but you have to put up with me, because I have the gavel.

[Laughter.]

Mr. YOUNG. What bothers me the most, I have heard two statements about we import 92 percent of our fish that we consume. That may be true. But the value of our fish is, in fact, it is not farm-raised. And in Alaska, that is one thing that drives me absolutely nuts. They are willing—and NOAA has promoted this, and we have stopped it so far—they want to put fish farms off our shores. And I argue that will destroy the wild Alaskan salmon, which is the most valuable species we have, with all due respect to the red snapper and the grouper, and the rest of those bottom fish, the salmon is the most valuable fish, and they are willing to destroy it by raising more. And their argument is, "Well, we are importing so much fish."

I don't think we can always supply all the fish wild. I will tell you that. If they want to raise them in a lake, man-made or something, I am all for that, if they want to do it. But don't mess with offshore, wild fish by contaminating it with something that, to me, does not make sense. I mean that is my little lecture for today.

And, Mr. Holt, did you have anything to say, or do you want to just be quiet?

[Laughter.]

Mr. YOUNG. You are recognized.

Dr. HOLT. That was a leading question, Mr. Chairman.

[Laughter.]

Dr. HOLT. Well, there is a lot to still discuss. And so, I would like to take my time, if I may, Mr. Chairman.

Let me begin with Mr. Pappalardo. Your organization was an early adopter of catch-shares. I would like to know why you chose it, and what the benefits have been. Maybe you have addressed this, but I think it is important enough, it is probably worth going over again.

When I think of the alternative to catch-shares, I think of the old movies of the Oklahoma Land Rush. People charging out at midnight. But the difference is in the land rush they didn't destroy the land. Here, I am afraid, the alternative is harming fisheries. And so I would appreciate your thoughts on that, please.

Mr. PAPPALARDO. Sure. Thank you, sir. The genesis for our organization requesting a catch-share through the New England Fishery Management Council was at the time we were managing fisheries through what we call input controls, or how many days you can fish, how many pounds you can bring in on a day, things of that nature. And the resource we were most dependent on at the time, Georges Bank cod, was in bad shape and going down.

And so, we knew the reaction from the Council was going to be to reduce us to such a small amount of days and such a small amount of pounds that it wasn't viable to turn the key on the boat and go fishing. So we went to the Council and asked them, "Translate our historical catch of this species into a poundage, and we will live and work within this zone on Georges Bank. We don't go into other areas. But give us the pounds. Allow us to convert the days and the trip limits into pounds." So it was a preservation issue that forced us to ask for a catch-share.

Additionally, we didn't like the common practice, because we had trip limits, of once you hit that limit you have to throw over the very thing you hope to catch the next day. So, it was to eliminate discards as well, sir.

Dr. HOLT. And the experience, how would you describe that?

Mr. PAPPALARDO. It gave our community and the fishermen within it much more flexibility to decide when they wanted to fish, how they wanted to fish, where they wanted to fish. And it allowed them to not have to throw over the resource.

Dr. HOLT. Thank you. Mr. Gill, my constituents are concerned about reports of seafood fraud, improper substitution, illegal substitution. It is not good from a consumer point of view. I would like to understand what it is from a fishing industry point of view, or individual fisherman's point of view.

Mr. GILL. Thank you, sir. Well, it is a bad practice by whomever practices it. And it smears, if you will, the entire industry from top to bottom.

Dr. HOLT. Well, in light of the legislation that we are talking about here, is there anything to be done about it?

Mr. GILL. Not that anything comes to mind. The difficulty is that one piece of fish is very difficult to tell, after it is cooked, from another. And so it is the unscrupulous—

Dr. HOLT. Mr. Dooley, Mr. Jones, would either of you point us toward any policy steps to address this? OK, yes, please.

Mr. PLESHA. One of the things that can be done is through FDA enforcement actions. FDA has really not taken any sort of lead in enforcing seafood fraud, whether it is short weights, whether it is mislabeling of species. That is really an issue within the jurisdiction of that agency. Their enforcement ability is, unfortunately, not able to spend the resources necessary to make sure that doesn't occur. But there are already laws in place to prevent it, if it were enforced properly.

Dr. HOLT. But because the fishery regulations require identifying the catch, there is a certain amount of enforcement here, particularly in catch-shares and other, of how many we are taking in, does that not translate into some control over how it is sold, how it is marketed? Or not at all?

Mr. PLESHA. Forgive me for saying this, but the Agency takes the position that the Magnuson-Stevens Act doesn't allow for regulation of onshore processing activities.

Dr. HOLT. Right.

Mr. PLESHA. So that is not something that, within that Act, is able to be managed.

Dr. HOLT. OK. Thank you. Thank you, Mr. Chairman.

Mr. YOUNG. Bless your heart, you even finished before your time was up. That is good.

Mr. LaMalfa, you have questions? Welcome, by the way.

Mr. LAMALFA. Thank you. Earlier in the testimony, when I was here, Mr. Gill, I think you alluded to the Magnuson-Stevens Act creating a system to involve stakeholders. Do you feel like it is weighted well enough to the stakeholders that actually have the investment? Or could more be done to have greater input from the people who are really out there with the investment, and trying to make a living from it, as opposed to stakeholders that usually just come in with demands?

How do you feel about that ratio, or that weighting of—because what I am frustrated by in other avenues is that people can come to the table and make demands, but they don't have the investment, they don't have the years of service, they don't have the risk out there. They can just simply make demands and then industry has to jump through the hoops. How do you feel about that stakeholder ratio? And anybody else on the panel that would like to speak to that, as well.

Mr. GILL. Thank you, sir. I think one of the things that we do need in proper fisheries management is as much involvement with the stakeholders as we can get. The difficulty comes—before I get to the ratios—in that the process is so complex that it is very difficult for the average person to understand. So it takes a huge amount of time and effort to understand where—what part they might play.

Having said that, the difficulty for either the commercial or the recreational fishermen is in order to participate you have to sac-

rifice whatever else you are doing to participate. So the folks, the NGO's that have—that is their job, don't have that burden.

What we typically see at council meetings tend to be the same folks from recreational or commercial participating in the process, because they are deeply invested in contributing to that process. And I praise them for that. However, there is a huge body of folks that are not in that mode. And part of it is the barrier to participating is huge.

Mr. LAMALFA. Meaning that you are busy doing your job, more or less, yes?

Mr. GILL. Yes, sir.

Mr. LAMALFA. Yes, I had that same frustration. I am a farmer in my real life, too. So as a younger man, having to go down to Sacramento all the time and go to meetings, like, well, why can't we just do our job? But I get that. So you have to get more people involved to be heard on that, on the invested side, on the stakeholder side, they live or die by what is going to happen with the possible regulation, or others that really don't have anything in the game. So thank you.

Anyone else on that? Yes, sir.

Mr. JONES. Thank you, sir. I think that having a way for the stakeholders to believe that their attendance is going to matter is where effort needs to be focused. Because so many of the fishermen, they have to take off, they have to spend their money, they may have to drive from Florida to North Carolina, they are going to get 3 minutes, and I know that you can't filibuster, but they just get to the point to where they go, they make that commitment, they try to be heard, but you can't say much in 3 minutes. And they sometimes feel that the decisions are already made. Whether that is true or not, I don't know. But that is what they get. And so it is hard to get them to say, "Come on, let's go back again, let's do it over again, it will matter."

So, if there was a way—and I don't have the answer—how you can get the stakeholders to believe that what they have to say matters would be a big step forward.

Mr. LAMALFA. That is correct, I run into that, too. Farmers and ranchers, they see there is yet another government agency doing a dog-and-pony show somewhere that they feel like, "Am I doing any good here? Is this wasting my time? Because I still have to make a living."

And so we do need to infuse more confidence that they are going to be heard, and actually take it into account. They have the meetings where they draw the nice pictures and such on butcher paper up there and say, "Oh, yes, we are going to take this back and use that as part of our decision," but people feel like the decision has been made, and it is not going to go their way on the industry side.

So, I would encourage you and your colleagues to show up anyway. You have to fight the fight, and you have to make yourselves be heard and on the other side they have to feel the heat. And so hang in there.

Mr. YOUNG. I thank the gentleman. And I hope you don't have the feeling that we short-shrift you in these hearings. This has gone on quite a while. Most of you need to go to the restroom, I can tell by looking at you.

[Laughter.]

Mr. YOUNG. But I am not going to let you go yet. I was interested in the observer program. And, Joe, this is just for halibut, right, the \$1,000?

Mr. PLESHA. Mr. Chairman, it is a way that the North Pacific Council can get observers on smaller boats in the Gulf of Alaska that currently don't have any observers at all, is to charge everyone within the industry and then place them on vessels where they think it is appropriate. A relatively low percentage, but it is vessels that traditionally have not had observers.

Mr. YOUNG. Now, where does the \$1,000 a day come in?

Mr. PLESHA. That is the first I have heard of that price.

Mr. YOUNG. Well, someone mentioned that. Yes, sir?

Mr. DOOLEY. Our Executive Director, Brent Paine, sat on the observer committee when they put this together and is intimately acquainted with what the costs and such are. He told that to me, that it is north of \$900 a day right now, approaching \$1,000, for the government to provide an observer.

Now, I know it is kind of technical stuff, but when the government does the observer program, their—I am sure I will get it wrong, but they are subject to the Fair Labor Standards Act, or something, which makes them pay an hourly wage for observers, as opposed to the observer programs that we, like in the pollock fishery or the whiting fishery, use a pay-as-you-go the industry pays for. Those are done on a daily rate.

We pay, in Alaska, somewhere around \$330 to \$350 a day, we pay it ourselves. When the government does it, it is three times as much. I think it is—so there needs to be some work in this front to reduce these costs.

Mr. YOUNG. Well, I am interested for another reason. I argue that observer is probably the worst thing that can happen to the sustainable yield rationalization, because the observer is human, he can be corrupted. He can be put into the trawl net and solve some problems.

[Laughter.]

Mr. YOUNG. He could be a drunk. And I am arguing—I go back to the idea of equipment that can—the camera that can be tampered with, like a State scale, or the black box which you are talking about gives us better data. And that is what we are going to base our rationalization on, is good data. And that is something we would like to look at, because I just think the observer program wasn't in the original Act to begin with, it was put in there because we wanted some better data for NOAA to make decisions on the quota.

And I am saying let's go beyond the mule skinner now and get into the computer age—and I am way beyond that—but in the computer age we can do better studies so we know exactly what the sustainable yield is, and rationalization is justified, not by someone sitting smoking a cigarette or playing his video game. Because there is no standard, as far as I know, about an observer.

And \$1,000 a day, that pays better than we do right here in Congress. I want you to know I have been thinking about that.

[Laughter.]

Mr. YOUNG. Anyway, Mr. Garcia?

Mr. GARCIA. Yes, sir.

Mr. YOUNG. Welcome aboard. You just about missed it. You would have been out of luck.

Mr. GARCIA. No, no. I am all right, Mr. Chairman. I met with some of the witnesses already privately, so I am good. Thank you very much.

Mr. YOUNG. All right. We now will call up the next panel. I want to thank the panel for a good job. And I am serious about submitting—I am no longer the Chairman of the full Committee, but submitting to the Chairman your legitimate request, what you think can be done to make the program work better, I think that is very valuable. Thank you very much.

Mr. SOUTHERLAND [presiding]. In our last panel we have just one person, Mr. Rauch, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, at the Department of Commerce.

You are again reminded that your complete written testimony will appear in the hearing record, and you have 5 minutes to summarize it. Mr. Rauch, thank you for joining us today, and you may begin.

**STATEMENT OF SAM D. RAUCH III, DEPUTY ASSISTANT ADMINISTRATOR FOR REGULATORY PROGRAMS, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE**

Mr. RAUCH. Thank you for the opportunity to testify before you today. My name, as you said, is Sam Rauch. I am the Deputy Assistant Administrator for Regulatory Programs at the National Marine Fisheries Service. NMFS is dedicated to the stewardship of living marine resources through science-based conservation and management. Much of this work occurs under the Magnuson-Stevens Fishery Conservation and Management Act, which sets forth standards for conservation management and sustainable use of our Nation's fishing resources.

Marine fisheries such as salmon in the Pacific Northwest, cod in New England, and red snapper in the Gulf, are vital to the identity and economies of coastal communities in the United States. Our most recent economic estimate for 2011 showed just how economically important they are. In 2011, U.S. commercial fishermen landed 9.9 billion pounds of seafood, valued at \$5.3 billion, increases of 1.6 billion pounds and \$829 million over 2010 figures. This represents the highest landings volume since 1997, and the highest value in nominal terms ever recorded.

In 2011, the seafood industry generated \$129 billion in sales impacts, \$37 billion in economic impacts, and supported 1.2 million jobs. Recreational fishing generated \$70 billion in sales impacts, \$20 billion in economic impacts, and supported 455,000 jobs in 2011. This is a 40 percent increase in jobs over 2010. In total, U.S. commercial and recreational salt-water fisheries added 200,000 jobs to the broader economy between 2010 and 2011. This success is a product of hard work and ingenuity by the industry, by the fishery management councils, and the overall sound Federal fishing management system that is effectively rebuilding fisheries.



Since its initial passage in 1976, the Magnuson-Stevens Act has chartered a ground-breaking course for sustainable fisheries. When reauthorized in 2007, the Act gave eight Regional Fishery Management Councils and NMFS a very clear charge and some new tools to support improved science and management. It mandated the use of science-based annual catch limits and accountability measures to prevent and end overfishing, provided for market-based fishery management through limited access privilege programs, focused on collaborative research with the fishing industry, and bycatch reduction, addressed the need to improve the science used to inform fisheries management, and sought to end illegal fishing and bycatch problems around the globe.

Working together, fishermen, NMFS, the councils, coastal States and territories, and a wide range of industry groups and constituents have made significant progress in implementing key provisions of this legislation. As of December 31, 2012, we put in place limits to ensure overfishing does not occur in all Federally managed stocks. And we have demonstrated that overfishing has ended for 58 percent of those stocks subject to overfishing in 2007.

In addition, 32 stocks have been rebuilt. A prime example of the benefits of rebuilding is seen in the New England sea scallop fishery, where revenues increased five-fold as the rebuilt fishery—as the fishery rebuilt from \$44 million in 1998 to \$353 million in 2011, making New Bedford the largest port by value every year since 2000.

Ending overfishing and rebuilding depleted fisheries brings significant biological, economic, and social benefit. But doing so takes time, persistence, and sacrifice, and adherence to scientific information. While significant progress has been made since the last reauthorization, we recognize that this progress does not come without cost. Fishermen, fishing communities, and councils have had to make difficult decisions, and many areas have had to absorb the cost of conservation and investment in long-term, economic, and biological sustainability.

Without high-quality fishery science, we cannot be confident that we are preventing overfishing and rebuilding stocks. That is why NMFS is committed to regenerating the best fishery science today to support the goals of the Magnuson-Stevens Act. Today we know more about fish stocks than ever, and it is vital that our science not regress, as this would inevitably lead to declines in our stocks and loss in the economic and social values they provide.

We are making great gains. We have great tools under the Magnuson-Stevens Act; 200,000 jobs added in the midst of the severe economic issues indicates just how successful we have been. We stand ready to work with Congress on moving forward this important Act, making the necessary changes that need to be made, if any, and continue to improve our management and ensure that the biological and economic sustainability of this vital natural resource continues.

Thank you again for inviting me to testify, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Rauch follows:]

**Statement of Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce**

**Introduction**

Good afternoon, Mr. Chairman and Members of the Committee. Thank you for the opportunity to testify before you today. My name is Samuel D. Rauch and I am the Deputy Assistant Administrator for Regulatory Programs for the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS). NMFS is dedicated to the stewardship of living marine resources through science-based conservation and management. Much of this work occurs under the Magnuson-Stevens Fishery Conservation and Management Act (*Magnuson-Stevens Act*), which sets forth standards for conservation, management and sustainable use of our Nation's fisheries resources.

Marine fish and fisheries, such as salmon in the Pacific Northwest and cod in New England, have been vital to the prosperity and cultural identity of coastal communities in the United States (U.S.). U.S. fisheries play an enormous role in the U.S. economy. Commercial fishing supports fishermen and fishing communities, and provides Americans with a sustainable, healthy food source. Recreational fishing is an important social activity for individuals, families, and communities, and it is a critical economic driver of and contributor to local and regional economies, as well as the national economy. Subsistence fishing provides an essential food source and is culturally significant for many people.

Our most recent estimates show that the amount landed and the value of commercial U.S. wild-caught fisheries was up in 2011 while recreational catch remained stable. U.S. commercial fishermen landed 9.9 billion pounds of seafood valued at \$5.3 billion in 2011, increases of 1.6 billion pounds (20%) and \$829 million (18%) over 2010 figures; the highest landings volume since 1997 and highest value in nominal terms ever recorded.<sup>1</sup> The seafood industry—harvesters, seafood processors and dealers, seafood wholesalers and seafood retailers, including imports and multiplier effects—generated \$129 billion in sales impacts, \$37 billion in income impacts and supported 1.2 million jobs in 2011. Recreational fishing generated \$70 billion in sales impacts, \$20 billion in income impacts, and supported 455,000 jobs in 2011. Jobs supported by commercial businesses held steady from the previous year, while jobs generated by the recreational fishing industry represented a 40% increase over 2010.<sup>2</sup>

The Federal fishery management system is effectively rebuilding fisheries. We continue to make progress towards long-term biological and economic sustainability and stability. Since its initial passage in 1976, the *Magnuson-Stevens Act* has charted a groundbreaking course for sustainable fisheries. When reauthorized in 2007, the Act gave the eight regional fishery management councils and NMFS a very clear charge and some new tools to support improved science and management. It mandated the use of science-based annual catch limits and accountability measures to prevent and end overfishing, provided for market-based fishery management through Limited Access Privilege Programs (or catch shares), focused on collaborative research with the fishing industry and bycatch reduction, addressed the need to improve the science used to inform fisheries management, and sought to end illegal fishing and bycatch problems around the globe so that foreign fishing fleets are held to the same standards as, and do not economically disadvantage, U.S. fleets.

While significant progress has been made since the last reauthorization, we recognize that this progress has not come without cost. Fishermen, fishing communities, and the Councils have had to make difficult decisions and many areas have had to absorb the cost of conservation and investment in long-term economic and biological sustainability. The U.S. now has effective tools to address marine fisheries management, and as we look to the future, we must look for opportunities to increase flexibility in our management system. We need to approach that challenge in a holistic, deliberative, and thoughtful way that includes input from the wide range of stakeholders who care deeply about these issues.

My testimony today will focus on NMFS's progress in implementing the *Magnuson-Stevens Act's* key domestic provisions, and some thoughts about the future and the next reauthorization.

<sup>1</sup>See NOAA Fisheries Annual Commercial Fisheries Landings Database available at <http://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/annual-landings/index>.

<sup>2</sup>See Fisheries Economics of the U.S. 2011. NMFS Office of Science & Technology, available at: [http://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries\\_economics\\_2011](http://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries_economics_2011).

### **Implementing the *Magnuson-Stevens Act***

The *Magnuson-Stevens Act* created broad goals for U.S. fisheries management and a unique, highly participatory management structure centered on the eight Regional Fishery Management Councils (Councils). This structure ensures that input and decisions about how to manage U.S. fisheries develops through a “bottom up” process that includes fishermen, other fishery stakeholders, affected States, tribal governments, and the Federal government.

The *Magnuson-Stevens Act* guides fisheries management by 10 National Standards for fishery conservation and management. These standards, which have their roots in the original 1976 Act, provide a yardstick against which all fishery management plans and measures developed by the Councils are measured. National Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. Optimum yield is the average amount of fish from a fishery that, over the long-term, will provide the greatest overall benefits to the Nation, particularly by providing seafood and recreational opportunities and affording protection to marine ecosystems.

The Councils can choose from a variety of options to manage fish stocks—quotas, catch shares, area closures, gear restrictions, etc.—and also determine how to allocate fish among user groups. These measures are submitted to the U.S. Secretary of Commerce for approval and are implemented by NMFS. Thus, the Councils in developing their plans must carefully balance fishing jobs and conservation. Other National Standards mandate that conservation and management measures be based upon the best scientific information available, not discriminate between residents of different States, take into account variations in fisheries and catches, minimize by-catch, and promote the safety of human life at sea.

Central to many of the Council decisions are fishing jobs. Fishing jobs, both commercial and recreational, are the lifeblood of many coastal communities around our Nation. Fishermen and fishing industries rely not only on today’s catch, but the predictability of future catches. Under the standards set in the *Magnuson-Stevens Act*, and together with the regional fishery management councils, States, tribes and fishermen, we have made great strides in ending overfishing, rebuilding stocks and building a sustainable future for our fishing dependent communities. Thanks in large part to the strengthened *Magnuson-Stevens Act* and the sacrifices of fishing communities across the country, the conditions of many of our most economically important fish stocks have collectively improved steadily over the last decade.

We all share the common goal of healthy fisheries that can be sustained for generations. Without clear, science based rules, fair enforcement, and a shared commitment to sustainable management, short-term pressures can easily undermine progress toward restoring the social, economic, and environmental benefits of a healthy fishery. Challenges remain in some fisheries, but in other fisheries, as fish populations grow and catch limits increase, the benefits for the resource, the industries it supports, and the economy are beginning to be seen.

### **Progress in Implementation**

Working together, NMFS, the Councils, coastal states and territories, and a wide range of industry groups and other constituents, have made significant progress in implementing key provisions of this legislation.

#### *Ending Overfishing, Implementing Annual Catch Limits, and Rebuilding*

One of the most significant management provisions of the 2007 reauthorization of the *Magnuson-Stevens Act* is the mandate to implement annual catch limits, including measures to ensure accountability and to end and prevent overfishing in federally managed fisheries by a certain deadline. An annual catch limit is an amount of fish that can be caught in a year so that overfishing does not occur. Accountability measures are management controls to prevent the limits from being exceeded, and to correct or mitigate overages of the limits if they occur. This is an important move away from a management system that could only be corrected by going back through the full Council process—often taking years to accomplish, all while overfishing continued. Now, when developing a fishery management plan or amendment, the Councils must consider the actions that will occur if a fishery does not meet its performance objectives. As of December 31, 2012, assessments demonstrate that overfishing ended for 58% of the 38 domestic U.S. stocks that were subject to overfishing in 2007 when the *Magnuson-Stevens Act* was reauthorized.<sup>3</sup>

<sup>3</sup>See Fish Stock Sustainability Index. This report was the source for the underlying data, but the numbers presented here were compiled specifically for this hearing. The report is available

Annual catch limits designed to prevent overfishing are in place for all stocks, and we expect additional stocks to come off the overfishing list as stock assessments are updated in the coming years.

We recognize that learning from our past actions and adjusting is important. With that in mind, the agency has already begun the process of reviewing the National Standard 1 guidelines, which were last modified in 2009 to focus on implementing the requirement for annual catch limits. This was a major change in how many fisheries were managed, and we want to ensure that the guidance we have in place reflects current thinking on the most effective way to meet the objectives of National Standard 1. An Advanced Notice of Proposed rulemaking was published in May 2012, which was followed by an almost six month public comment period where we asked the public for input on 11 topics addressed in National Standard 1. We received a lot of input, and are in the process of working through the comments and developing options for moving forward, be it through additional technical guidelines, regulatory changes, or identifying issues for discussion as part of a reauthorization.

The *Magnuson-Stevens Act* also includes requirements to rebuild any overfished fishery to the level that can support the maximum sustainable yield, and as of December 31, 2012, we have rebuilt 32 stocks.<sup>4</sup> Ending overfishing and rebuilding depleted fisheries brings significant biological, economic and social benefit, but doing so takes time, persistence and sacrifice, and adherence to scientific information. We estimate that rebuilding all U.S. fish stocks would generate an additional \$31 billion in sales impacts (including multiplier effects), support an additional 500,000 jobs and increase dockside revenues to fishermen by \$2.2 billion, a more than 50 percent increase over current annual dockside revenues.<sup>5</sup> A prime example of the benefits of rebuilding is seen in the New England sea scallop fishery, where revenues increased five-fold as the fishery rebuilt, from \$44 million in 1998 to \$353 million in 2011, making New Bedford the largest port by value every year since 2000.<sup>6</sup>

As the fishing industry rebounds and the money involved increases, so does the need for comprehensive enforcement to ensure adequate, fair, and effective enforcement of the management plans so that they can continue to function for the benefit of those who play by the rules.

#### *Improvements to Science and Recreational Fishing Data*

Without high quality fishery science, we cannot be confident that the Nation is attaining optimum yield from its fisheries, or that we're preventing overfishing and harm to ecosystems and fishing communities. Attaining optimum yield requires an investment in information about fish stocks, their fisheries and their ecosystems, including habitat requirements. NMFS is committed to generating the best fishery science to support the goals of the *Magnuson-Stevens Act*. Increasingly, we are conducting research and analyses to understand the environmental and habitat factors affecting the sustainability of fish populations. Today, we know more about our fish stocks than ever before, and it is vital that our science not regress, as this would inevitably lead to declines in our stocks and a loss in the economic and social values they provide.

The importance of increasing the frequency of stock assessments, improving the quality of fisheries science with a better understanding of ecosystem factors, investing in cooperative research and electronic monitoring technology, and enhancing our engagement with fishermen cannot be stressed enough. Partnerships with industry are a key component of successful fisheries management. Cooperative research provides a means for commercial and recreational fishermen to become involved in the science and data collection needed to improve assessments and develop and support successful fishery management measures. For example, the Northeast Cooperative Research program enhances the agency and the New England Fishery Management Council's capacity to respond to emerging management needs and research priorities associated with improving stock assessments, as well as supporting the industry during the transition to sector management and the implementation of annual catch

at: <http://www.nmfs.noaa.gov/sfa/statusoffisheries/2012/fourth/Q4%202012%20FSSI%20Summary%20Changes.pdf>.

<sup>4</sup>See Fish Stock Sustainability Index. Available at: [http://www.nmfs.noaa.gov/sfa/statusoffisheries/2012/fourth/MapRebuiltStocksCY\\_Q4\\_2012.pdf](http://www.nmfs.noaa.gov/sfa/statusoffisheries/2012/fourth/MapRebuiltStocksCY_Q4_2012.pdf).

<sup>5</sup>See The NMFS Commercial Fishing & Seafood Industry Input/Output Model. The change in landings revenue for each species was derived using the calculation: (Current Price\*MSY)—(Current Price\*Current Landings). If MSY is not available, a zero value is assumed for the change in landings revenue. These values were then entered into the model, which produced the job and sales impacts estimates. The model is available at: <https://www.st.nmfs.noaa.gov/documents/Commercial%20Fishing%20IO%20Model.pdf>.

<sup>6</sup>See Fisheries of the U.S., Vols. 2000–2011, Commercial Fishery Landings and Value at Major U.S. Ports (tables). Available at: <http://www.st.nmfs.noaa.gov/st1/publications.html>.

limits. In the Gulf of Mexico, NMFS supports a number of electronic monitoring programs including funding a project to test closed circuit televisions, gear sensors, and a data storage system to improve the overall catch and bycatch accounting system for the Gulf reef fish fishery thus improving management.

The *Magnuson-Stevens Act* also required improvements to recreational fisheries data collected by NMFS for use in management decisions. In October 2007, NMFS established the Marine Recreational Information Program, a new program to improve recreational fishery data collection efforts, consistent with the *Magnuson-Stevens Act* requirement and the 2006 recommendations of the National Research Council. The Marine Recreational Information Program is a national system of coordinated regional data collection programs designed to address specific needs for improved recreational fishing information. One major component of the Marine Recreational Information Program is the development of a national registry of anglers, also required by the *Magnuson-Stevens Act*, which NMFS has been using in a series of pilot studies to test more efficient mail and telephone surveys for the collection of data on recreational fishing activity. Based on the results of these studies, NMFS expects to be ready to implement new registry-based survey designs on all coasts in 2014. The Marine Recreational Information Program is also developing and implementing numerous other survey improvements to address the National Research Council's recommendations, including improved estimation methodologies, improved shoreside survey design, and improvements in for-hire fishery data collections.

### **Looking to the Future**

#### *Remaining Challenges*

Looking ahead, we must continue to increase the quality and quantity of scientific data, continue progress made on addressing overfishing and rebuilding stocks, and better address the difficult transitions that can come with management changes leading to more biologically and economically sustainable fishery resources.

The most effective annual catch limits and accountability measures will require further improvements to our stock assessments and monitoring efforts. Ensuring solid, science-based determinations of stock status and responsive management will also require better linkages to ever-shifting biological, socio-economic, and ecosystem conditions. U.S. fisheries are extraordinarily diverse in value, participation, and science needs. The *Magnuson-Stevens Act* provides flexibility in adapting management plans to the life history differences among species and nuances of particular fisheries as well as to the unique regional and operational differences among fisheries and in the fishing communities that they support. Together with our partners, we continue to explore alternative approaches that will produce the best available information to incorporate into management. It is also increasingly important that we better understand ecosystem and habitat factors, including climate change, and incorporate them into our stock assessments and management decisions, as well, because resilient ecosystems and habitat form the foundation for robust fisheries and robust economies. As we end overfishing and rebuild stocks, the strategic alignment of habitat conservation efforts to support the need of fish stocks will be a key component of NOAA's success.

### **General Views on Legislation Proposed in the 112th Congress**

NOAA supports the collaborative and transparent process embodied in the regional fishery management councils, as authorized in the *Magnuson-Stevens Act* and strongly believes that all viable management tools should continue to be available as options for the Councils to consider when developing management programs.

It is critical that we maintain progress towards meeting the mandate of the *Magnuson-Stevens Act* to end overfishing and, as necessary, rebuild stocks. Annual catch limits are an effective tool in improving the sustainability of fisheries around the Nation, and NOAA has concerns with efforts that would create exemptions or otherwise weaken provisions regarding annual catch limits. Uncertainty in the stock assessments upon which annual catch limits are based should not be used as a basis for exempting fisheries from annual catch limits. Managing fisheries using annual catch limits and accountability measures was a major change for some fisheries, and the initial implementation has identified some areas where we can improve that process. We will continue to work with the Councils to achieve the best possible alignment of science and management for each fishery to attain the goals of the *Magnuson-Stevens Act*.

In an increasingly constrained fiscal environment, we must not mandate duplicative or otherwise unnecessary actions. Additional stages of review for certain types of fisheries data, or repeating data collection and stock assessment efforts when there are already sound peer reviewed processes in place are examples of actions that will divert resources to a select few fisheries at the expense of others with little

additional benefit. Moreover, legislation should be cost-effective, particularly during this time of constrained funding. NMFS welcomes the opportunity to work closely with Congress, the regional fishery management councils, and the recreational and commercial fishing industries, to use the best available science to seek opportunities for efficiency and improved management in order to end overfishing, rebuild stocks and achieve stable economic opportunities for our fishermen and coastal communities.

#### *The Next Reauthorization of the Magnuson-Stevens Act*

With some of the largest and most successful fisheries in the world, the U.S. has become a model of responsible fisheries management. This success is due to strong partnerships among the commercial and recreational fishing, conservation, and science and management communities. Continued collaboration is necessary to address the ongoing challenges of maintaining productive and sustainable fisheries.

The upcoming conference, *Managing Our Nation's Fisheries 3*—co-sponsored by the eight Regional Fishery Management Councils and NMFS—will bring together a broad spectrum of partners and interests to discuss current and developing concepts addressing the sustainability of U.S. marine fisheries and their management.<sup>7</sup> The conference was developed around three themes: (1) improving fishery management essentials; (2) advancing ecosystem-based decision making; (3) and providing for fishing community sustainability.

The first theme, improving fishery management essentials, will examine the core principles, practices, and tools essential to the long-term sustainability of fishery resources. This includes challenges that arise in using annual catch limits, implementing stock rebuilding programs, and participating in international management. The topics related to the second theme, advancing ecosystem-based decision making, are designed to foster conversation around the fact that fisheries affect, and are affected by, an ever-changing ocean ecosystem, and that we therefore need to consider relationships between managed species and their environment when setting policy and developing management strategies. These topics include assessing ecosystem effects and integrating climate considerations, forage species management, and integrating habitat into fisheries management. The last theme explores fishing community sustainability, including recreational and subsistence fisheries, socio-economic trade-offs, and fishing communities. Discussion will focus on meeting management objectives while taking into account the needs of different user groups and their diverse social and economic objectives.

We are looking to this venue as a critical step in bringing together a wide range of stakeholders. The session speakers and panelists represent many points of view, from commercial and recreational fishing to the conservation and science and management communities. Before the last reauthorizations, we co-sponsored two of these conferences, and they played an important role in bringing people together and creating an opportunity to present ideas and understand different perspectives. Ideas that emerge from this event may inform potential legislative changes to the *Magnuson-Stevens Act*, but the benefits are much greater than that. The communication across regions and councils provides an opportunity to share best practices and lessons learned, and may also inform changes to current policy or regulations that can be accomplished without statutory changes.

#### **Conclusion**

Because of the *Magnuson-Stevens Act*, the U.S. has taken action to end overfishing in Federally-managed fisheries, rebuild stocks, and ensure conservation and sustainable use of our marine fisheries. Fisheries harvested in the U.S. are scientifically monitored, regionally managed, and legally enforced under 10 strict national standards of sustainability. But, we did not get here overnight. Our nation's journey toward sustainable fisheries has evolved over the course of 35 years.

In 2007, Congress gave NOAA and the regional fishery management councils a clear mandate, new authority, and new tools to achieve the goal of sustainable fisheries within measurable timeframes. Notable among these were the requirements for annual catch limits, and accountability measures to prevent, respond to, and end overfishing—real game changers in our national journey toward sustainable fisheries, and ones that are rapidly delivering results.

This progress has been due to the collaborative involvement of our U.S. commercial and recreational fishing fleets and their commitment to science based management, improving gear-technologies, and application of best-stewardship practices.

<sup>7</sup>The Managing Our Nations Fisheries 3 conference is scheduled to take place May 7–9, 2013 in Washington, DC. See [ManagingOurNationsFisheries.org](http://ManagingOurNationsFisheries.org).

It is important to take time and reflect on where we have been to understand where we are. We need to look to the future in a holistic, comprehensive way that considers the needs of the fish and the fishermen, and the ecosystems and communities. We look forward to the discussions that will take place during the upcoming Managing Our Nations Fisheries 3 Conference, and will happily work with Congress on any efforts to reauthorize the *Magnuson-Stevens Act*.

Thank you again for the opportunity to discuss implementation progress of the *Magnuson-Stevens Act* and future efforts of reauthorization. I am available to answer any questions you may have.

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Mr. SOUTHERLAND. Mr. Rauch, thank you for your testimony. Just like our first panel, each Member here today is given 5 minutes to ask you questions. And I reserve the next 5 minutes for questioning.

In the cases like the South Atlantic red snapper fishery, which has been closed for most of the last 3 years, how will a new stock assessment come up with the different results, when there is no new fishery-dependent data, and there is no new survey data?

Mr. RAUCH. So, that fishery actually was opened this year—

Mr. SOUTHERLAND. For, I think, a weekend.

Mr. RAUCH. A limited season.

Mr. SOUTHERLAND. Well—

Mr. RAUCH. So there is some data, but not much. And that is one of the concerns that we do have about closures, where you break the time series of fishery-dependent data, data that you get from the fishermen themselves. It creates a concern and a problem, as we go forward. That is why such large-scale closures are often viewed as a last resort in our case.

We do have a stock assessment coming up in 2014, which will deal with some of these issues. I don't know what the new information is going to be. I am pleased that we are able to offer some limited opportunities, even though it is not as much as what the fishermen, obviously, would like.

Mr. SOUTHERLAND. I am worried about that particular fishery because, like you heard in the testimony earlier on a 7 to 6 vote with data that was vague, at best. And when you close a fishery for 3 years, the economic damage that is out there is something that, well, quite honestly, 301 requires you to take into consideration.

So, with that being said, since that requires you to take that into consideration, do you know if that was, in fact, taken into consideration when basically that particular fishery was shut down? And has been fished—when you mentioned a season, I want to be very clear. It was a weekend, if you call that a season—maybe a sample of a season, but a season from Virginia to South Florida.

So, was that requirement of 301 that you have to take into consideration, did you consider the economic impact that followed when that closure took place?

Mr. RAUCH. Yes, sir. We took into account all of the requirements of the Fishery Management Act as we were developing that, and working with the Council to deal with that issue. We have actually been sued on that case, and have won on all counts, people raising claims such as that one, that we had not appropriately followed the requirements of the Magnuson-Stevens Act.

Mr. SOUTHERLAND. I am told that the Senate CR includes language regarding NOAA's lack of responsiveness toward commu-

nities in the Mid-Atlantic area, and requires a report on a number of issues, including how to improve relationships with fishermen.

Would you like to comment on why the Senate has felt—or do you even know why the Senate has felt it necessary to include this language, and how NOAA is likely to address the Senate’s concerns?

Mr. RAUCH. I cannot comment on the Senate’s language, nor do I know why they felt it necessary to include that.

But we do feel that one of our jobs, as a fishery manager, is outreach to the coastal communities. We control a limited industry, in terms of the fishing industry. Many of these coastal communities are not particularly diverse, and they rely heavily on these fishing industries. And that is, I think, the nature of the requirements in the Magnuson-Stevens Act reflects that, so that we believe it is part of our obligation to reach out to them, to understand their needs, to try to develop measures that impact them in as minimal a way as possible, being mindful of the other requirements of the Magnuson-Stevens Act.

But I can’t speak to the Senate CR language.

Mr. SOUTHERLAND. That is fair. One of the other topics that we addressed on the earlier panel was regarding the explosives that are used to remove rigs. And I am just curious about NOAA’s opinion. If you have tens of thousands of fish that are being killed and floating in the open water, with that being a fact, clearly in 301 there was a concern regarding the mortality of bycatch. Bycatch is specifically mentioned in 301 as something that NOAA and the councils must consider.

So, if my catch is a consideration in coming up with our regulations and our seasons, I mean, is it fair to say that we should be somewhat appalled at the fact that it seems to be OK with the government to blow up rigs, killing tens of thousands—it seems to be a contradictory—and undermine the integrity of the process.

Mr. RAUCH. Thank you. So on the issue of rig removal, that issue—we have a consultative role in that situation. We do not authorize the removal of rigs, nor the processes in which they do that. That is handled by the Interior Department. However, we have worked with them, and expressed some of the similar concerns about making sure that, as they carry out their obligations under their statutes, that they do so in a way that minimizes the effect on fishing and fish habitat.

I know that the Gulf Council is working on a potential amendment to identify the rigs as essential fish habitat. We are concerned about if they have to be explosively removed, that they are done so in a way that would minimize the effect on the fishery—bearing in mind, though, that it is the Interior Department’s ultimate decision as to how to carry that out.

Mr. SOUTHERLAND. I understand. OK. I see my time has expired. I will move now to Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chairman. Mr. Rauch, you must have been pleased to hear the prior panel. No one said that the MSA should be repealed. However, everyone says that it has problems, and it has to be fixed somehow.

One of the things that I was struck by in your testimony, you talk about MSA being in place for 35 years, and all the positives



that have come from it. And yet we do know that the United States is importing about 92 percent, 90 to 92 percent, of its fish coming in for consumption. So do you, by any chance, have an idea of what it was 35 years ago, in terms of the amount of fish that was being imported for consumption?

And you, in your testimony, stated that we are doing a lot better now, and the whole purpose of this Act was to basically address overfishing, how are we doing?

So, first question is do you know where we were 35 years ago, and also this idea of overfishing. And I would also like to know how you believe we are going to address—well, you have heard the fishermen saying it is not sustainable for many of them. They cannot make a living doing this. So I would like to hear your response.

Mr. RAUCH. I don't have the figures for 35 years ago. I do know that at that time, within U.S. waters, a significant portion of the catch was being caught by foreign boats in U.S. waters. And that has changed. There is little or no foreign fishing in U.S. waters any more. That doesn't change the global dynamic. We export an awful lot of fish. We import for consumption an awful lot of fish. Some of that is fish that we have exported out and has been processed and we import it back.

In terms of overfishing, I think we have made great progress. We have put in place measures to end overfishing in all Federally managed fisheries. We still have some concerns in international fisheries. I think you are starting to see—I gave some economic figures about job creation and job growth. I think that is a reflection of rebuilding fish stocks. That is a reflection of stability.

But what those figures mask is that this has come at a transitional cost. Many fishing communities are having difficulty adapting to these new requirements. There is great economic opportunity for rebuilt fish stocks and economic stability, but we have to get to that place. And what I think you are seeing are transitional costs that the fishermen are, quite rightly, indicating has been very difficult for them to bear.

So, we bring a lot of tools to bear in such a situation. The Magnuson-Stevens Act is not as rigid as many people believe it is. There is room in there to account for local communities to design programs to better allow for new entrance and those kind of issues, but it requires effort on both us and the councils to take advantage of all those provisions.

Ms. HANABUSA. But, Mr. Rauch, aren't the fishermen really one of the major players or stakeholders in this process? So if you are saying, for example, we have rebuilt and they have great opportunity, but you are almost saying, "But somehow they don't see that opportunity," or they don't know how to adjust to that opportunity.

What is NOAA going to do about that? Because it seems like they are the people you should be talking to. And do you feel any obligation to adjust the way you are approaching it so that they can better understand it, or they can better take advantage of the situation?

Mr. RAUCH. So I think fisheries are diverse around the country. And there are fisheries that are doing very well, and that are driving some of the economic numbers. And there are fisheries that are

not doing as well, based on local issues, environmental issues, regulatory issues, all kinds of different reasons.

So I don't think that one message fits all when you are talking to the fishermen, and you need to reflect that variability and diversity of situations. We try very hard, through the council process, to tailor our regulations and our approach and our communications directly to the fishing communities themselves, and to reflect that there is no universal, one-size-fits-all solution. What works in Alaska may not work in Hawaii. It may not work in the Keys. We need to be mindful of that. What works for an industrial commercial fishery may not work at all for a recreational fishery.

So, we need to be mindful in tailoring our message to talk to the fishermen themselves, and to understand what is driving that local fishery, because it could be vastly different around the country.

Ms. HANABUSA. Do you believe the law, as it now stands, gives NOAA enough flexibility to be able to address the needs of basically your regional councils of the various fishing regions, and addressing the fishermen in each one?

Mr. RAUCH. It gives us a lot of diversity and flexibility at the moment.

Two things that we are doing to actually answer that question. One is we put in these annual catch limits in 2012. And it was our first effort to do this nationally. And we do not know whether or not—I mean in that process we identify some things that didn't go as well as we wanted to. So we are engaged in a process of looking at the regulations and trying to change them within the confines of the Act to take advantage of those needs.

The other thing, as I think the Chairman mentioned at the outset, we are engaged with the councils in a broad process looking at managing our Nation's fisheries to decide that exact question, whether the Act currently provides the kind of flexibility and opportunities we need to address all the problems around the country.

Ms. HANABUSA. Thank you.

Mr. SOUTHERLAND. Thank you, Ms. Hanabusa. Next is Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman. Mr. Rauch, thank you for appearing. I was disturbed earlier to hear the figure for the observer costs when they can do a similar service for \$300 that, because it may come through a government entity, it is triple that price, \$1,000. And so, I was wondering why is there such a discrepancy. And, more importantly, what can be done to relieve this cost and have it be more in line with what the industry would be able to pay, since they do have to meet a bottom line, unlike around here, government does not?

Mr. RAUCH. So I am not familiar with the \$1,000 cost. I am not sure how it was derived. I am not saying it is not the right cost. I don't know. This is the first I had heard of that.

Often times, when we talk about observer costs, we split it into two categories. We talk about the cost that is borne by the industry, or the total cost. The total cost includes the cost to analyze the data, the cost to the government of the whole data collection process. I suspect that might be some of what you are hearing with the \$1,000, but I don't know.

On the broader issue, though, of decreasing that cost, it is clear to me that the pressure for more observers is out there. The observers are becoming more expensive. We need to find a different, better way to collect data. There has been a lot of talk in the prior panel about the use of cameras and monitoring, something that we very strongly support.

You have to realize that there are two issues with cameras. One is a technological issue. What can the cameras tell you now? On that issue, they are very good at the moment of identifying discard events. Did somebody throw something overboard? They are not yet to the point where they could identify individual fish. So if you are asking somebody using a big trawl net to say how much of any particular kinds of fish, a camera is not going to do that very well.

And then there is a regulatory side of the issue. We have to adapt our regulatory requirements to take advantage of cameras. If you wanted, as one of the prior panelists said, to have a full retention fishery, which means the fishermen basically keep every fish and they land it on the dock, you can have someone count the fish on the dock, and all the camera needs to say is they do throw something overboard. That situation, I think, is achievable in many fisheries today. But the fishing councils and the fishermen do not want to go to that full retention fishery. It requires a cost. Because if you have to catch everything that you brought on board, some of that is not going to be marketable. And so there is a cost to that.

So, the fishermen have not wanted to embrace full retention, so they have wanted a more complicated situation, where you look at the kind of fish that are caught, you make certain assessments about that, and you still discard some. That is not impossible, it is just more complicated to deal with, and we need to move forward on that. And hopefully we will be moving forward aggressively. But we have to do that to solve the observer problem.

Mr. LAMALFA. They don't always ask for extra complication, though. That is what I observe. I don't have a coastal district any more, but I do have an inland one where farmers and ranchers, for example—but it is a similar thing—are not asked, told to shoulder a greater and greater burden of cost of monitoring, of different things they have to do, on water use, and I think that would apply to the way fishing is done, as well, that the requirement by regulators, they have to shoulder more and more burden to do things that they didn't ask for that may not necessarily be producing a result for them.

So, we have to take into account that it is a huge—becoming a huge burden, and is pricing some people out of the business. So when we talked about the possibility of electronic monitoring, that in the part of the Pacific fleet that—in designing the program, electronic monitoring was seen as an integral part by the fleet for doing so. And then that has kind of fallen out, that component is not in it any more as a reliable part. You touched on that a little bit, but it seems like, again, the people from the fleet side were expecting certain things, and then that doesn't happen, and so they get a higher cost. What is going to be—what is fair for them?

Mr. RAUCH. There were a number of provisions, in terms of the Pacific groundfish fishery that balanced the need for a changing regulatory system with some things that would provide economic

flexibility. The monitors were one, there are certain other things that are all sort of packaged in what is called the trailing amendments to that.

We are working through those with the council as quickly as we can, because it is, as the fishermen have told me—and I am sure they have told you—there is a gap now. This has become more costly because some of the cost-saving mechanisms that they had expected to see aren't in place yet. Some of those are regulatory, some of those are the camera systems. We continue to move with the council, with the Pacific Commission on cameras. We had a meeting, the Pacific Council had a meeting 2 or 3 weeks ago to try to move out on how you can implement cameras more broadly within that fishery, as a cost-saving mechanism.

So, I am hopeful that, as a result of that meeting, the Council will take up management measures that will actually get us down the road to replacing some of these human observers with cameras.

Mr. SOUTHERLAND. Time has expired. Thank you, Mr. LaMalfa. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. A couple issues, Mr. Rauch. One is, as you know, that Mike Thompson and I and Huffman and Don Young have been working on lowering the burden of the cost of the buy-back program with lower interest rates. And I am hopeful that your agency would be supportive and helpful in that effort.

Mr. RAUCH. Yes. The Administration has not taken a position on the particular bills, but I think we are, in general, very supportive of working with the Hill and with the industry on trying to find a way to make this program cost-effective, and to achieve the benefits that we had originally designed it to achieve.

Mr. DEFAZIO. Great. Now, the observers you have just been talking a little bit about the observers. Do you know what the observer cost or what portion NOAA will cover this year?

Mr. RAUCH. I can get you the exact figure, or I can spend the time to look it up. I think that we had allocated—this fishery was designed that, over time, the government would start out funding all of the observers, and—

Mr. DEFAZIO. Right. There is a theory that the catch will become so much more valuable that—

Mr. RAUCH. Right.

Mr. DEFAZIO [continuing]. The fishermen should carry more of the burden. They are also paying 3 percent of their gross. And the fishery hasn't gotten substantially more valuable.

So my question is, you are going to be putting additional burden on the fishermen this year, on the observer program, even though they are not necessarily seeing those kind of gains. It is a pretty quick turnaround to say, "Gee, we have had this 2 years, now your fishery is so much more valuable now that you guys can pay for it." And I know you have budget problems. Is sequestration going to hit this?

Mr. RAUCH. I can't answer the question of sequestration. Plus, in reality, under my continuing—the resolution expires at the end of this month. So I have no budget after March 27th. And so maybe you can answer the question better than I.

We do envision, bearing in mind the uncertainties of sequestration and the budget, picking up a portion of the observer costs. I think it is somewhere around \$300-something for the observer day.

Mr. DEFAZIO. OK.

Mr. RAUCH. So that is a substantial amount.

Mr. DEFAZIO. Sure.

Mr. RAUCH. It is not the entire amount.

Mr. DEFAZIO. OK. But then, on the issue of the transition to other means of monitoring, essentially you talked about a full retention fishery could, with today's technology, off-the-shelf, relatively inexpensive cameras, be implemented at that point if it is full retention. And essentially, as I understand it, we are pretty much a full retention fishery for groundfish.

Mr. RAUCH. Some aspects of the groundfish are full retention, yes.

Mr. DEFAZIO. Right. So—

Mr. RAUCH. And so you could move forward in those fisheries fairly quickly.

Mr. DEFAZIO. Good. Then how do we move forward, toward cameras?

Mr. RAUCH. So that requires the Pacific Council to take action. I think the equipment is not an issue, because that is already funded through the Pacific Fisheries Commission. But it does require us to work with the councils to make sure that full retention, that those requirements, such as you have to keep the cameras on, and to figure out what happens when the cameras turn off, we have dealt with these kind of situations with other electronic equipment, with electronic log books, with vessel monitoring systems.

So, it is not particularly groundbreaking, but it does require the fishery management council to put in the supporting regulations to support that. And they are working on that, as I indicated in the last series of questions. They had a meeting earlier this month to deal with that exact issue about moving forward and transitioning to cameras where you could have them.

Mr. DEFAZIO. Yes. And, of course, your agency would save money, because you wouldn't have to help support the observers, and the fishermen would save money. So it seems to me that if we can give the Pacific Fisheries Management Council a sense of urgency here to both help the people who are fishing and to help an agency whose budget is strapped and about to be partially sequestered, it seems like we would all come out ahead.

Mr. RAUCH. I have had discussions with them along the same lines.

Mr. DEFAZIO. OK, good. Well, I will add my voice to that. Thank you. Thank you, Mr. Chairman.

Mr. SOUTHERLAND. Thank you, Mr. DeFazio. Next is Mr. Pallone. [Pause.]

Mr. SOUTHERLAND. I apologize. We are going to move to Mr. Horsford next. I apologize, Mr. Horsford.

Mr. HORSFORD. Thank you, Mr. Chairman. And thank you to the witness for being here. I just have a couple of questions.

First, can you talk to us about how the investments in stock assessments translate into greater fishing opportunities, more economic benefits, and reduced risk of overfishing?

Mr. RAUCH. Yes, thank you. As the prior panel indicated, increased investment in stock assessments decrease—give us a better indication of what actually is being caught. We can manage much closer to the target. As uncertainty is decreased, in certain fisheries we have been able to clearly tie that to economic opportunities. Like in Alaska, for every point reduction in uncertainty, you can set the quotas closer to the limit, and that means that you get a much higher economic benefit.

And I agree with what most of the prior panel had said. There is great return on investment from increasing the scientific support for that. You can, with better data, better manage the fisheries, extract as much economic opportunity as is available for the fisheries, all while ensuring that you have met the statutory standards. And we have a number of good examples of where that has happened.

Mr. HORSFORD. So then, would additional appropriations from Congress help ensure more timely and accurate stock assessments, then?

Mr. RAUCH. I can't speak to the appropriations. I do know that overall, the Fishery Service budget has decreased, in the last 2 years, the one area where we have seen modest increases has been in expanding stock assessments. And much of that has been directed toward the Southeast, but some of it has gone other places. Where we have made that investment, we will, over time, see returns on that investment. And I think that money is well spent.

Mr. HORSFORD. Good. Now, fish in United States waters are a common property resource that belongs to all Americans, not just the ones with harvest quota allocations. So how does that fact influence management decisions under the Act? And do you think that the Act adequately protects the interest of all Americans in achieving a healthy marine environment?

Mr. RAUCH. So the Act requires a very open, transparent, participatory process. You have fishery management councils that engage the public in an open way that has representatives from a cross-section of the public, including the States, and it is not limited to just quota holders. Sometimes there are environmental groups, other public groups, universities, and the States. So I think that one protection is the participatory process. And we need to make sure that it is as transparent and open as possible.

Within that there are a number of requirements that require us to look not just to the short-term economic needs of the industry, which are important, but also to balance a broader range of social and environmental issues. One of the provisions which was mentioned here earlier is the requirement to consider the effects on communities. Some of those communities do not hold quota share. So you might theoretically make a decision to benefit a community which would not be in the best interest of all the quota shareholders.

There are also provisions to look at the broader habitat impacts and the ecosystem impacts in the Magnuson-Stevens Act. So there are flexibilities in the Act which allow you to consider the broad range of societal interest in the fishery, but the most significant is the council process itself, and the members of the council.

Mr. HORSFORD. So, based on the concerns that there needs to be additional regulatory flexibility, can the NOAA work with councils and fishermen to address some of their concerns?

Mr. RAUCH. We are trying to do that. We are looking at what we call National Standard 1. That is our overarching guideline on how you adopt the annual catch limits and accountability measures. After the first suite of accountability measures and catch limits were put in place at the end of last year, we need to go back and look at how we did that work? Did we do it well? Did we not do it well?

So, we are engaged in a regulatory process within the statute, within the bounds of the statute, to find out whether we can change our approach to deal with some of the issues that you heard earlier today and other issues that have been raised by the other fishermen.

Mr. HORSFORD. Thank you, Mr. Chairman.

Mr. SOUTHERLAND. Thank you. Next is the Ranking Member, Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask Mr. Rauch. The 2006 reauthorization of Magnuson-Stevens required NOAA to implement recommendations from a National Research Council report, and to put in place improved science and data programs, including a recreational angler registry program. Since I was a part of the Committee at the time, I know the idea was to have NOAA replace the faulty MRFSS system with an improved recreational registry system that would be more accurate. And the deadline written into the law to complete the program and implement the improved program was January 1, 2009.

Has the NMFS entirely moved away from using the MRFSS system at this time? And is the recreational angler registry the primary source of fisheries management information at this time?

Mr. RAUCH. Thank you. It is correct that—as you indicated—that we had a 2009 deadline that we did not entirely meet. We have been working diligently in implementing the Marine Recreational Information Program, or MRIP. And it has been more of a transition than a flipping-the-switch kind of situation, where we have implemented pieces of it as we move forward.

Currently, we have released revised estimates for catch for Atlantic and Gulf Coast fisheries from 2004 to 2011 based on MRIP, as opposed to MRFSS. It is a more accurate way of collecting the catch. We are implementing this year a new onsite intercept survey as part of MRIP—

Mr. PALLONE. Well, let me ask you that, because that was my second question. I wanted to ask whether there are adequate number of intercepts being made to accurately estimate recreational catch, as required in the 2006 reauthorization. So maybe you can throw that in, too.

Mr. RAUCH. Yes. So I think that is an issue of statistical power. Are you looking at the right places in order to make the assumptions that you are making? And this is one of the things that they have been trying very hard to address in that issue. I can't tell you exactly how many we have made, or how many intercepts that we are doing this year. But we are working on that. That is a part of the MRIP process. I believe that we plan to cover enough to give

us the right kind of statistical significance. I can get you more information on that, though.

Mr. PALLONE. But in terms of—going back to what I originally said—I mean you still are using the MRFSS to some extent. You still consider yourself in transition from MRFSS to the registry at this point?

Mr. RAUCH. Yes. If you had asked me last year, we were more on the MRFSS end. This year we are more on the MRIP end, I think.

Mr. PALLONE. Now, what about the development of a weather corrective factor that can be applied to recreational catch and for estimates? Again, that was required under the 2006 reauthorization.

In other words, how are storms calculated into harvest levels and fishing efforts? I mean, obviously, this is important to me, given Hurricane Sandy. I am going to ask you to go quickly, because I am trying to get to two more things.

Mr. RAUCH. OK, I am going to have to get back to you on that issue, about—

Mr. PALLONE. On the weather?

Mr. RAUCH [continuing]. Calculated in there. I am not clear.

Mr. PALLONE. All right. If you could, I would appreciate it. Through you, Mr. Chairman, he can get back to me in writing?

Mr. SOUTHERLAND. Yes.

Mr. PALLONE. OK. The Secretary of Commerce, following Superstorm Sandy, made a Federal fishery disaster declaration for New Jersey and New York. And under Magnuson-Stevens, NOAA has 2 months to develop a comprehensive, economic, and socio-economic evaluation of the affected region's fisheries.

And I wanted to ask you if this evaluation has been done and what do you see as a result are the needs, and whether changes in Magnuson-Stevens could allow NOAA to further better assist the region after the disaster. Do you have that? Is that evaluation done? Can you share it with us?

Mr. RAUCH. Shortly after the hurricane, or the superstorm, we did send out teams to do an economic survey. We have provided the data that we collected directly to the States about a month-and-a-half ago. The report is not complete yet. That is, the accumulation of that data. But the States do have that data.

Mr. PALLONE. When do you think the report would be complete?

Mr. RAUCH. I cannot say.

Mr. PALLONE. All right.

Mr. RAUCH. Hopefully soon.

Mr. PALLONE. All right. Obviously, we would like to see that as soon as possible. And I guess I can't ask you what the follow-up would be on the report until you finalize it, right?

Mr. RAUCH. Yes.

Mr. PALLONE. All right. Well, let me ask you a last question about resources. In terms of funding, do you think that NOAA has the funds and resources necessary to do adequate data collection, to perform an adequate number of intercepts, to include weather in your model, to provide information sufficient for fisheries management? I am just basically asking about the funding of all the things I have brought up, whether you have enough funds to do the



different things I mentioned, the data collection, the weather, the intercepts, and ultimately, respond to the storm.

Mr. RAUCH. Well, as I indicated before, I have no funds after March 27th. So I can't speak to what the future will hold, and we are still working through sequester issues. We have made a substantial economic commitment to the MRIP program and to other scientific data, as I indicated. While our overall budget was decreasing, the investment in stock assessments was increasing.

You could always do more, and you can get a good return on your investment from doing more. The current Magnuson-Stevens Act requires an awful lot of data collection in order to operate well. And we have struggled with—as we are starting that program—with getting the right kind of data collection to match the regulatory needs. But, as I said, at this point I don't have a budget after March 27th, so I can't say what the future will hold on that one.

Mr. PALLONE. All right. Thank you. Thank you, Mr. Chairman.

Mr. SOUTHERLAND. Thank you, Mr. Pallone. Just a follow-up question. I am curious. I asked you earlier, in reference to the removal of the rigs, and you had mentioned that the removal of the rigs was instituted by another department that did not fall under the oversight of NOAA. But with the thousands, tens of thousands of fish that are killed as a result of another department's actions, I am just curious. Could you share with us the concern of NOAA that another department has, in such a, I think, damaging way undermined what Magnuson-Stevens was set in place to do in the first place?

Mr. RAUCH. Yes. So that other department is the Interior Department, who authorizes rig removals and those kind of things. And we have been concerned over the course of time with the way they operate their oil and gas program in the Gulf of Mexico, not just with rig removals, but with the entire suite of activities, because it can have an effect on fish stocks, and also on endangered species-listed stocks and things like that.

We have worked with them over time on limiting the size of explosives charges, on placing them in such a way to minimize impacts, on requiring site clearance procedures, on looking at no-activity zones, in terms of things, issues. So we have worked with them on their program. We do not consult with them on an individual—because we don't have the resources to do it—on an individual, rig-by-rig removal. We consult with them generically. And we have shared our concerns with them about the way that they operate. And they have been responsive, over time, to our concerns.

Obviously, there is more work that may still need to be done between us and them, and the Administration has convened a work group led by the CEQ and the National Ocean Council to bring all the agencies together to try to find a path forward on rig removals, to balance the need for the fish enhancement that they can bring, versus the need for the oil companies to limit their liability.

So I can't say more about it than that. But we are concerned, and we are working through the interagency process to share those concerns with them.

Mr. SOUTHERLAND. How are you going to—last year, as a result of the storms that we had in the Gulf, the season, the fishing sea-

son in the summer, was extended for 6 days, from 40 days to 46. I am curious. When you have tens of thousands of fish, and there is so much that goes into an extension of a season—I mean it is like it requires an Act of Congress—how should tens of thousands of dead fish, snapper, affect the season, as far as the assessment towards a total allowable catch? I mean they are real fish. Well, wait a minute, I take that back. NMFS doesn't count those fish, because they are on artificial reefs. But if we picked them up, they would be counted.

So, how do you determine how those fish affect the total allowable catch, because we want good data, and that seems to be something that you need to address.

Mr. RAUCH. So they have been doing rig removals for a long time in the Gulf. That mortality should be accounted for in the overall population. So if those fish are dying, and they are not contributing to overall population, then the population numbers are depressed as to what they should be.

Mr. SOUTHERLAND. But how could they be, if you don't count those fish because they are on artificial rigs?

Mr. RAUCH. Well, we are going—so on that issue, in the new stock assessment, which is expected in June, I believe, we are going to start taking into account surveys on artificial reefs and those issues. So we have heard the concern about the way that we don't trawl on artificial reefs. And some of that issue is going to be taken into account in this new stock assessment for red snapper that is coming up.

Mr. SOUTHERLAND. So one could surmise that the mere fact that you all have made that recognition that the stock assessments in the past could have been significantly flawed because, as we have talked about earlier, 40 percent of all the red snapper landed in the Gulf of Mexico or landed off of Alabama, which has done an extensive push to build their artificial reef program, accounting, thus, for the increased landings. So I, first of all, want to thank you for that acknowledgment, going forward, that you are going to count fish on artificial reefs. And I appreciate your concern with Interior, and I will be interested to hear how that goes.

Obviously, this action out there killing tens of thousands of fish is one that is gaining a lot of attention.

So are there any other questions, I think I am it. So I am it. Let me say this to Mr. Rauch and to the members of the previous panel. Thank you very much for being with us today. Thank you for standing here and taking the questions, and your responses.

Members of the Committee may have additional questions for the record, and I ask that you respond to those in writing.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 1:04 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

**Statement Submitted for the Record by Mike Jennings, President,  
Charter Fishermen's Association**

My name is Captain Mike Jennings and I am the President of the Charter Fishermen's Association ("CFA"). CFA represents for-hire charter boat captains and private recreational anglers throughout the Gulf of Mexico. I appreciate the oppor-

tunity to testify in support of achieving sustainable and accountable fisheries in a way that will increase access to our nation's natural resources. To reach these goals, it is critical that the congressionally-created Regional Fishery Management Councils have the flexibility to explore all available management options. Dictates from Washington, D.C. that take management options off the table inhibit our ability to craft solutions that work for our regions and could devastate our businesses. At the same time, Congress should support efforts to improve data collection necessary for effective fisheries management and protect valuable fish habitat.

I have been a licensed charter boat captain fishing the Gulf of Mexico off Texas for over 25 years. I grew up fishing Texas's inshore and offshore waters and I am proud to make a living by taking my clients fishing and giving them access to the fisheries in the Gulf of Mexico. In fact, the for-hire industry in the Gulf of Mexico provides access to millions of recreational anglers every year who cannot afford their own boats, live far away or who want to fish with an experienced captain. Last year my boats took more than 1,500 people out to fish in the Gulf. Our customers come from all over the country and are a large part of the economic machine that supports thousands of small businesses like mine in our coastal communities.

The recreational fishing industry in the Gulf is suffering under increasingly restrictive management measures that threaten our businesses. Fishing seasons have gotten shorter and bag limits have gotten smaller. These factors make it very difficult for charter boat operators like me to stay in business. The service we provide to our customers is access to ocean fisheries, but in recent years government regulations have prevented us from providing this access. In some cases, recreational fishing seasons have shrunk to just a few weeks in duration. It is nearly impossible to operate a successful business of taking people fishing when fishing is closed for 11 months of the year.

Fortunately, there are solutions that can simultaneously provide increased access to our fishery while also providing for the long-term conservation of those resources. We do not want to return to the days when unrestricted fishing depleted our fisheries. Instead, we want to use the flexibility that currently exists in the Magnuson-Stevens Act ("MSA") to increase access while also preventing overfishing and ensuring that fish stocks rebound. Congress should do four things: 1) allow fisheries managers the flexibility to use all available management tools; 2) improve monitoring and data collection on our fisheries; 3) protect valuable fish habitat now in place throughout the Gulf of Mexico; 4) explore the issue of 10-year arbitrary time lines that are currently overly restrictive for some fisheries. Congress should set a science based approach that allows Fisheries managers the ability set species specific rebuilding periods in order to help keep fishing communities economically viable, without compromising the ultimate rebuilding goal.

#### **ALLOW MANAGERS TO USE ALL AVAILABLE MANAGEMENT TOOLS**

What we need is continued flexibility to explore different types of management approaches. At least in the Gulf of Mexico, traditional methods of managing our fisheries—setting of fishing seasons, size and bag limits—simply are not working. The MSA allows local regions to explore other options that might work better. These options include sector allocations, Limited Access Privilege Programs ("LAPPs") and Individual Fishing Quota ("IFQ") programs among others. Right now there are several pilot projects in the Gulf under development or consideration that would test whether these alternative approaches could work better to manage our fisheries.

There is absolutely no reason Congress should dictate to local regions that these options cannot be explored. Now is the time when stakeholders need the flexibility to be innovative and find creative solutions. Now is not the time for bureaucratic dictates from Washington, D.C. that tell us what we can and cannot do. Why on earth would Congress want to prevent us from even considering management options that might work to both conserve our fisheries and boost our revenues?

We acknowledge that LAPPs may not be appropriate for all fisheries and all fishermen. For example, LAPPs may not work for managing fishing by private anglers. But the charter industry or any other group of stakeholders should have the option to explore LAPPs if it sees fit. Under the MSA, the Regional Fishery Management Councils now have the option to implement a LAPP where the stakeholders in a fishery want such a program. Here in the Gulf of Mexico any new LAPP is subject to a fishermen referendum and must be approved by a majority of the active participants in the fishery before it can be implemented. No other fishery management program requires that level of fishermen input.

There have been numerous attempts—some of which have been successful—to strip our right to explore options for our industry in the Gulf of Mexico. But Congress should not decide what tools fisheries managers and fishermen can and cannot use in their regions. Congress got it right when it set up the MSA to allow local

issues to be managed at the local level. Congress should allow those local processes to take place.

#### **IMPROVE MONITORING AND DATA COLLECTION**

Fisheries management cannot be successful without good data on what fishermen are catching. In some commercial fisheries, such as the commercial IFQ programs for red snapper or grouper in the Gulf, there is near 100% accountability for all fish caught. By contrast, the recreational fisheries lack sufficient methods of monitoring and accounting for their catches. Fortunately, new methods of electronic monitoring and catch reporting—such as user-friendly software programs that can be used on a smart phone—are being developed which could revolutionize data collection in recreational fisheries and provide a mechanism to achieve a level of accountability for catches commensurate with what is achieved in the commercial sector. CFA has been actively involved in developing and testing these new products to improve catch accountability. We support electronic monitoring requirements for the entire for-hire sector in the Gulf of Mexico.

In addition to supporting efforts to improve catch accountability in recreational fisheries, Congress should also make funds available for fisheries data collection and stock assessments through the RESTORE Act. The Deepwater Horizon oil spill had untold effects on Gulf fisheries, and dedicating some of the RESTORE Act funds to fisheries-related research would help quantify the extent of those effects and improve our ability to respond to them through the fisheries management process.

Finally, Congress should also consider methods to improve fisheries science in general. In recent years there has been a lack of stakeholder buy-in to the science that supports fishery management decisions. Congress can improve the science and stakeholder buy-in by ensuring more timely and valid stock assessments, having more direct involvement by fishermen in data collection and analysis, increasing access to fisheries where necessary data can be supplied by fishermen, academics or other third-parties, and ensuring that any monitoring required in fisheries is cost-effective and expanding cost-sharing by industry.

#### **PROTECT VALUABLE FISH HABITAT IN THE GULF OF MEXICO**

One of the top priorities for recreational fishermen in the Gulf of Mexico today is maintaining the Rigs to Reef program. Gulf of Mexico offshore oil and gas production platforms were originally designed and built to provide our nation with energy. Today, however, these structures have also become critical habitat for many types of marine life and are also a valuable asset for recreational fishing and diving. The federal Rigs to Reefs program successfully allows removal of hazardous materials while allowing the useful habitat to remain and has been working great for decades. Many businesses and user groups have come to rely on the structures, which have improved our quality of life and ability to enjoy our Gulf of Mexico.

Unfortunately, recent changes to federal policy are causing this beneficial habitat to be destroyed at enormous cost to our communities and the Gulf ecosystem. The Department of the Interior has sped up the process of removing non-producing rigs, regardless of their value as fish habitat. As a result, much habitat has been lost and continuing to remove more rigs will harm our businesses.

The Gulf of Mexico Fishery Management Council also has expressed concern about the method and rate of oil and gas platform removal. The Council sent a series of letters asking the agencies responsible for rig removal to reconsider the use of explosives to remove rigs because explosives are known to kill fish dwelling near those structures. The Council also asked that the rate of rig removal be slowed or discontinued until more information is gathered regarding the effects of structure removal on the fishery. We strongly support the Council in these efforts.

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Sustainable fisheries provide healthy seafood to Americans, public access for sportfishing enthusiasts, and long-term economic benefits for fishermen and our coastal communities. Current rules that limit fishing with short or closed seasons are hurting anglers, fishing businesses, our coastal communities and the fisheries they all depend upon. These problems can be solved by giving fishermen management flexibility and not through rolling back conservation provisions and creating management loopholes.

CFA members see our role as providing access to the average American who just simply has no other avenue or opportunity to fish in the Gulf of Mexico. Current management practices are stripping the American public of this access. Now should be the time when Congress is giving us more tools to manage our fisheries, not less. The CFA looks forward to working with the Regional Fishery Management Councils, Congress and the Administration towards long-term solutions, including any and all

options that may increase fishing time, improve the economics of our businesses, and ensure a sustainable fishery. We need all the options at our disposal and we need to allow the user groups to work within the guidelines of the MSA at the regional level to best manage our fisheries.

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[A letter and statement submitted for the record by Lee R. Crockett, Director, U.S. Fisheries Campaigns, The Pew Charitable Trusts, follows:]

March 20, 2013

The Honorable Doc Hastings  
Chairman  
Natural Resources Committee  
United States House of Representatives  
Washington, DC 20515

The Honorable Edward J. Markey  
Ranking Member  
Natural Resources Committee  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Hastings and Ranking Member Markey,

On behalf of The Pew Charitable Trusts, I would like to thank you for the opportunity to submit the attached statement for the record for the Committee's March 13 oversight hearing on the Magnuson-Stevens Fishery Conservation and Management Act (MSA). As we begin discussions on reauthorizing this landmark law, it is important to take note of the significant benefits the MSA is delivering to the nation as a result of the conservation requirements Congress added to the law in 1996 and 2006.

Thanks to these requirements, 32 fish populations have been rebuilt since 2001, including Atlantic sea scallops (one of America's most valuable fisheries) and mid-Atlantic bluefish; and other important fish populations, such as red snapper in the Gulf of Mexico, are on the road to recovery. Last year, we also achieved a significant management milestone by putting in place science-based annual catch limits that do not allow overfishing on all federally-managed fisheries. We can now boast one of the best fishery management systems in the world, and many countries are emulating the conservation requirements of the MSA as they seek to bring about sustainability in their fisheries.

As we look forward to the next reauthorization, I urge you to protect these hard-won gains and adopt new, ecosystem-wide approaches that will build resilience in our oceans to withstand the impacts of changing ocean temperatures, acidification, and other emerging threats. The future of our nation's fisheries depends upon these actions.

If you have any questions, please feel free to contact me at 202-552-2065 or at [lcrockett@pewtrusts.org](mailto:lcrockett@pewtrusts.org). Thank you for your time and consideration.

Sincerely,

Lee R. Crockett  
Director, U.S. Fisheries Campaigns

cc: Members of the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs

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**Statement Submitted for the Record by Lee R. Crockett, Director of U.S. Fisheries Campaigns, The Pew Charitable Trusts, on "The reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act"**

The Pew Charitable Trusts (Pew) appreciates the opportunity to provide a statement for the Committee's oversight hearing on the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In this statement, we will offer a brief historical perspective on the MSA, illustrate how conservation reforms added to the law in 1996 and 2006 are beginning to bear fruit, and urge you to continue supporting these critical reforms. Finally, we will provide you with our recommendations on how the MSA reauthorization can build upon these successes by adopting new, ecosystem-wide approaches that will build resilience in our oceans to withstand the impacts of changing ocean temperatures, acidification, and other emerging

threats. Such measures are vital to the future of U.S. fish populations that our fisheries depend upon.

### **Historical Perspective**

Ocean fishing is one of our nation's oldest industries, providing nourishment, employment and recreation to generations of Americans. Unlike other natural-resource related industries such as farming or forestry, ocean fishing involves hunting wild animals inhabiting ecosystems that are vast and varied. When healthy, ocean ecosystems sustain a national commercial seafood industry that is currently estimated to support 1.23 million jobs, and a recreational fishing industry that is estimated to provide more than 454,000 jobs.<sup>i</sup>

Congress first recognized the need to manage U.S. ocean fish populations in 1976 when it passed the Fishery Conservation and Management Act, the precursor to the MSA, to phase out rampant foreign fishing off the U.S. coast and promote the domestic fishing industry. However, over the course of the next two decades, policies focusing on expanding fishing, as well as dramatic improvements in technologies to locate and catch fish, resulted in overfishing (i.e., catching fish faster than they can reproduce) becoming a national problem. Historic overfishing led to the collapse of many important fish populations around the country, including cod in New England, red snapper in the South Atlantic and Gulf of Mexico, and rockfish off the west coast. Today, coastal communities continue to grapple with the impacts of these fisheries collapses.

In response to this problem, Congress amended the law twice (first in 1996 and then in 2006), changing the focus of the MSA from promoting fishing to conserving fish populations. The goal of these amendments was to halt the decline of valuable U.S. fish populations and end the boom and bust cycle of fishing in order to create a more stable industry. The 1996 amendments (known as the Sustainable Fisheries Act) put in place critically important measures to advance sustainability including specific requirements to rebuild depleted fish populations to healthy levels; and the 2006 amendments finally put an end to sanctioned overfishing by requiring managers to abide by the recommendations of scientists in establishing annual catch limits (ACLs) that do not allow overfishing.

### **The MSA today**

Today, with science-based catch limits and accountability measures established for all federally-managed fisheries, the U.S. can boast one of the best fishery management systems in the world. Other countries, including the European Union, are seeking to emulate the central tenets of the MSA, including science-based catch limits and commitments to ending overfishing and rebuilding depleted species in a set time period.

Though it takes time for these measures to result in change on the water, we are beginning to see tangible improvements. While 40 of the managed fish populations were subject to overfishing in 2010, we have seen significant progress, with 29 populations subject to overfishing in 2012, according to the most recent data from the National Oceanic and Atmospheric Administration (NOAA). Furthermore, 32 fish stocks are fully rebuilt, compared to just 21 in 2010.

NOAA Fisheries estimates that the economic benefits of rebuilding depleted species will be an additional \$31 billion in sales nationwide, as well as more than a million jobs. The economic toll of allowing unsustainable fishing is equally stark—in a recent analysis, Ecotrust estimated that in 2009 alone, the cost of overfishing in New England, the South Atlantic and Gulf of Mexico commercial fisheries was \$164.2 million.<sup>ii</sup>

### **Transitioning to Long Term Sustainability**

The conservation requirements added to the MSA in 2006 represented a fundamental transformation in the way we manage our fisheries by placing science-based catch limits at the core of our management system. Some regions such as the North Pacific have been managing their fisheries under this approach for many years, and the value of their fisheries demonstrates the long-term pay off of this system. For example, Alaska's commercial seafood industry has more than doubled its revenue in the last decade, from \$845 million in 2002 to \$1.9 billion in 2011.<sup>iii</sup>

<sup>i</sup>National Marine Fisheries Service (NMFS), 2011. Fisheries Economics of the United States, 2011. U.S. Department of Commerce, NOAA Technical Memo. NMFS-F/SPO-118, 175p. Available at: <https://www.st.nmfs.noaa.gov/st5/publication/index.html>.

<sup>ii</sup>Ecotrust, *Hidden Cost of Overfishing*, 2011. <http://www.pewenvironment.org/news-room/reports/the-hidden-cost-of-overfishing-to-commercial-fishermen-85899361965>.

<sup>iii</sup>NMFS, 2011. Fisheries Economics of the United States, 2011. <https://www.st.nmfs.noaa.gov/st5/publication/index.html>.

As we look at the challenges facing certain regions transitioning toward sustainable management, we must bear in mind the progress we are making as a nation in turning the corner in our decades-long effort to end overfishing and recover from its troubling legacy. Problems in regions like New England are a direct result of decades of excessive fishing and collateral damage to the ecosystem caused by damaging fishing practices and gear. Offering more “flexibility” to allow continued overfishing and further deplete stocks that are already at unsustainably low levels will exacerbate problems for fishermen in the future. We only need look at our neighbor to the north, where the Canadian cod industry collapsed, putting thousands of fishermen out of work, to see how this story could unfold.

Another controversial issue in the transition to sustainable fisheries management is setting science-based annual catch limits (ACLs) for fish populations that lack recent stock assessments, a situation that is most pressing in the South Atlantic, Gulf and Caribbean regions. Some are concerned that managers are making decisions based on inadequate science, and some have advocated for weakening or eliminating the requirement to set annual catch limits for these so called “data poor” species.

However, there are no fish species managed under the MSA for which there are no data. Information is available on basic biology, life history characteristics or commercial and recreational catch numbers that can be used to set catch limits even for fish without complete assessments. For these fish populations, there are tools available for managers to set annual catch limits, some as simple as locking in current catch levels until more complete scientific evidence indicates that the population can support more fishing. Please see the attached factsheet for more information on setting catch limits in the absence of conventional stock assessments.<sup>iv</sup>

The lack of complete assessments should not allow managers to sidestep the legal requirement to establish catch limits that prevent overfishing. In essence, this would allow unchecked fishing unless or until a full scientific stock assessment is available to establish limits. Failing to establish science-based ACLs has created disastrous and demonstrably negative consequences in many parts of the country. For example, managers allowed overfishing of Gulf of Mexico red snapper for decades, reducing the breeding population to less than 5 percent of what scientists considered a healthy level by 1988.<sup>v</sup> In 2007, fisheries managers finally heeded the advice of their science advisors on sustainable catch limits and lowered allowable red snapper take from 9 million to about 6 million pounds and then again to 5 million pounds in 2008. These significant cuts may have been avoided had managers listened to the science and addressed red snapper overfishing years earlier. As a result of establishing science-based ACLs, Gulf of Mexico red snapper is now recovering and catch limits are gradually increasing.

#### **Addressing New and Emerging Threats**

The 1996 and 2006 amendments to the MSA have resulted in remarkable progress in ending overfishing and increasing the value of U.S. fish populations through rebuilding. However, as our understanding of the ocean and its inhabitants increases, we are recognizing that it is not only critical to protect economically important populations of fish, but also interrelated species and surrounding habitat. Ending overfishing is just the beginning of sustainable fisheries management.<sup>vi</sup> As we grapple with emerging threats related to changing ocean temperatures, acidification and other stressors, we must now make the shift to ecosystem-based fishery management to ensure that our fisheries can withstand these new challenges.

Changing environmental conditions are already affecting our oceans and fisheries. The Gulf of Maine experienced the warmest summer on record in 2012, and some scientists believe that this may have contributed to the poor condition of groundfish stocks there. Increasing acidity in the ocean is becoming an issue for shellfish in the Pacific Northwest, and its impacts on the broader food web are not yet fully understood. In addition to impacts on ocean health, changes in fish population sizes and distribution have a direct impact on the U.S. commercial and recreational fishing industry, which generates billions in revenue and provides jobs for millions of people.

The MSA has tools in place to begin this process by protecting habitat and reducing the incidental catch of non-target species, or bycatch. As you begin to consider possible reforms to the MSA, we urge you to strengthen these existing tools and ex-

<sup>iv</sup> [http://www.pewenvironment.org/uploadedFiles/PEG/Publications/Fact\\_Sheet/FF-CatchLimits.pdf](http://www.pewenvironment.org/uploadedFiles/PEG/Publications/Fact_Sheet/FF-CatchLimits.pdf).

<sup>v</sup> Goodyear, C.P. 1988. “Recent trends in red snapper fishery of the Gulf of Mexico,” NMFS. SEFSC. Miami FL. CRD 87/88-16. Memo. Rpt. 98p, see pages 12 and 24.

<sup>vi</sup> *Prelude to Sustainability: Ending Overfishing in U.S. Fisheries*. Our Living Oceans 6th edition, pps 57-66.

amine new tools that can be used to protect the prey base of commercially and recreationally-important species. Finally, we must move toward an ecosystem basis for management so that fisheries management decisions are taken after considering the needs of the larger ecosystem. These reforms will restore and maintain healthy and resilient marine ecosystems that are critical to our nation's fisheries.

**Attachment**

**[NOTE: The fact sheet has been retained in the Committee's official files. It is available at: [http://www.pewenvironment.org/uploadedFiles/PEG/Publications/Fact\\_Sheet/FF-CatchLimits.pdf](http://www.pewenvironment.org/uploadedFiles/PEG/Publications/Fact_Sheet/FF-CatchLimits.pdf).]**

**Statement Submitted for the Record by Glen Brooks, Vice President,  
Gulf Fishermen's Association, Clearwater, Florida**

My name is Glen Brooks and I have been a commercial fisherman in the Gulf of Mexico for over 30 years. On behalf of the board of directors for the Gulf Fishermen's Association, I would like to thank you for the opportunity to submit testimony related to Magnuson-Stevens Act reauthorization.

The Gulf Fishermen's Association is the leading offshore commercial fishing organization in the southeastern U.S., with several hundred members. Our fishermen range from lifetimes of fishing experience to new entries to the fishery. We are dedicated to providing fresh domestic seafood to America's citizens year-round in *sustainable fisheries*. This is important because more than 97% of Americans do not have the means to catch their own fish in federal waters. Instead they rely on us. In addition to providing the best seafood in the world to American citizens, the economic contribution of the commercial fishing industry in the Gulf of Mexico is 128,000 jobs & \$17 billion in sales.

Until 2006, our Gulf fisheries were managed with traditional systems of seasonal closures, endorsements, income qualifications, gear restrictions, and other indirect means of controlling how many fish were caught. In 2005, as the Gulf Council tried to restore our fishery with conventional management, our season was cut short and restaurants had to take grouper off the menu. Fishermen sat at the dock for one-third of the year because managers hoped that would help rebuild the stocks, yet overfishing still happened. Fish prices were among the lowest in the United States, leaving more than 70 percent of fishermen with incomes below poverty level. Quality was poor because of gluts caused by fishermen catching all they could during the open season. Imports increased to fill the void caused by the closed season.

The fishery was unmanageable, depleted, and without a future. Most fishermen were going out of business and very few could pay taxes or maintain their vessels. Things got so bad that in 2005 some in the industry developed a plan to reduce the fleet from 1,100 down to 400 boats. It was eventually abandoned, and fishermen looked for a better solution.

The catch share system was the fairest solution that didn't force fishermen out. We worked with federal managers and the regional Gulf of Mexico Fishery Management Council to establish our own program. At the local level—not through federal mandate or expanded regulations—we established individual fishing quotas (IFQs) that would enable us to spread out our fishing season and rebuild our fishery at the same time. In 2009, 81 percent of qualified fishermen voted in favor of an active fishery management program that was focused on rebuilding our grouper stocks. In 2010 the Grouper catch share program took effect as a companion to the red snapper catch share program.

Now, for the first time in history we have year-round sustainable fishing jobs and no closed season. The fishery is more valuable because we provide fresh grouper throughout the year. The product is the best it has ever been. Fresh fish has become a reality again in our region and restaurants are putting fresh Gulf Grouper back on the menu.

The fishery dependent science produced is among the best in the world and fishermen help pay for this through the cost recovery program as the fish are landed. The enforcement system and regulatory compliance by fishermen are the Gold Standard for fisheries in the Eastern United States, and fishermen help pay for that with their Vessel Monitoring Systems.

This is a tremendous accomplishment for our country and the future is brighter if we support the rebuilding plans in place. American fisheries Management is among the best in the world. No agency of the federal government has more stakeholder interaction than the fisheries management system created by the Magnuson-Stevens Act. The Gulf Fisherman's Association feels that our management system is not broken and does not need an overhaul by Congress.



Gulf fishermen have lived through overfishing; we know what it causes and how hard it is to reverse. We are very grateful for the courage and foresight that our nation has had to end overfishing and rebuild our fisheries. Already we are seeing signs of improvement in our fisheries in the Gulf. For the first time in our lifetimes, management plans are in place to increase catch limits as the fishery improves rather than decrease them as the fishery declines.

We want to thank Congress for the role it has played and America for the commitment it has made to healthy fisheries. The Magnuson-Stevens Act is working. We urge the present Congress be patient and let it continue to work to achieve a sustainable fishery now, and in the future.

Sincerely,

Gulf Fisherman's Association Board of Directors:

Glen Brooks: President, Cortez, FL: 941-920-7302

Dean Pruitt: Vice President, Clearwater, FL: 727-512-2609

Jim Clements: Board Member, Carrabelle, FL: 850-544-5703

Brad Kenyon: Board Member, Tarpon Springs, FL: 727-639-0643

Jason Delacruz: Board Member, Seminole, FL: 727-639-6565

John Schmidt: Board Member, Palm Harbor, FL: 727-403-6281

Will Ward: Board Member, St. Petersburg, FL: 727-638-8316

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**Statement Submitted for the Record by The Honorable William R. Keating,  
a Representative in Congress from the Commonwealth of Massachusetts**

Thank you to Chairman Hastings, Ranking Member Markey, and Members of the House Natural Resources Committee for holding the first hearing on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) today. I know a number of my colleagues on the Committee serve coastal districts and understand the complexities of fisheries management thoroughly. I would also like to thank both panels of speakers today. We have much to gain from their perspectives on how implementation of the MSA has affected fishing communities nationwide and it is my hope that Members of the Committee will keep these testimonies and eye-witness accounts in mind as reauthorization progresses.

I have the distinct honor of representing Southeastern Massachusetts, including the Islands of Cape Cod and Martha's Vineyard, where the fishing industry has been an integral part of the history for centuries. The South Coast was once the home of the epic whaling industry and the lore of whaling trips lives on its streets and piers, as well as in those of Martha's Vineyard and Nantucket across Buzzards Bay. Today, the industry remains a vital economic lifeline for the region. The Port of New Bedford is the top fishing port in the country, with landings valued at approximately \$400 million each year. New England's largest fleet of commercial fishermen has access to a variety of fish stocks and sea scallops in Nantucket Shoals, Georges Bank and the Great South Channel. In fact, nearly 50 million pounds of sea scallops pass over New Bedford's docks, which are also home to over 30 processors and distributors of all sizes. On Cape Cod, over 100 commercial fishing businesses catch over 12 million pounds of seafood worth \$17 million each year, from cod and haddock, monkfish and dogfish, skates, clams, striped bass, and tuna. Massachusetts' lobstermen have landed over 13 million pounds at docks along the Commonwealth's coast, including nearly 8 million pounds from near shore state waters, accounting for over \$50 million in revenue.

However, one size does not fit all when it comes to fishery management policies. It is important that each fishery is assessed using the most sound, comprehensive, and accurate data available—and that is exactly what I have committed to achieving in Congress. We have learned that management is best left to regional stakeholders who understand the ebbs and flows of the industry and can identify the areas that need reform while the role of Congress should be to prioritize funding to improve on science and collaborative research. It's important to ensure that interpretation of the law is met with congressional oversight to ensure that the law is being implemented in the way Congress intended. In some cases managers have refused to take advantage of the flexibility already provided in the law and in other cases they can abuse this flexibility. We must focus on the challenges at hand and promote the maximization of harvests of healthy species, the reduction of bycatch, and the improved management of areas closed to fishing.

The issues currently plaguing the industry are not only complex, but repetitive. In September 2012, the Northeast Multispecies (groundfish) Fishery was issued a disaster declaration by the Department of Commerce after the National Oceanic and Atmospheric Administration (NOAA) allowed for a one-year interim measure before

implementing drastic cuts in quota for Gulf of Maine and Georges Bank cod and yellowtail flounder. New England's fishermen are now facing such severe restrictions in allowable catch for the 2013 fishing season—which begins in just over six weeks—that many of them are facing the reality of losing their livelihoods and only source of income. It is my belief that many of the challenges of the fishing industry have been due to infrequent and inadequate data collection that then dictates catch quantities. In the face of ongoing challenges outside of our control—from increasing water temperatures, ocean acidification, and regime changes—it is imperative that Congress implement fair and effective fisheries management policies that support the existing successes of this implementation while helping to preserve those that are struggling.

On December 1, 2011, this Committee hosted a hearing on several bills introduced in the 112th Congress to reform the Magnuson-Stevens Act and better fisheries management. I joined my colleagues from both sides of the aisle in testifying on behalf of my legislation, *H.R. 1013, the Strengthen Fisheries Management in New England Act*, which would have rerouted funds collected through penalties imposed by NOAA to the improvement of New England fisheries. In April 2012, we sent a letter to the Committee urging them to take up legislation to reform federal fisheries law in the immediate future. It was to our disappointment that a second hearing was not scheduled and that none of our legislation was considered. I am committed to working with my colleagues and Members of the Committee to ensure that the proposals included in these bills are thoroughly considered as reauthorization of Magnuson-Stevens progresses.

The New England Fishery Management Council is charged under the Magnuson-Stevens Act to manage fisheries in the federal waters of New England. Each year it identifies research and monitoring priorities, most of which lack adequate funding. In order to make sound management decisions, the Council must have the increased capacity to address these knowledge gaps. In today's age of austerity, it is essential that we maximize our reallocation of existing resources for best results. With the onset of sequestration and fiscal uncertainty, I hope that Members can work together to assist NOAA Fisheries in their ability to continue to provide at-sea monitoring coverage through the 2013 fishing year. Currently, the Agency has announced its intent to cover this cost as they have in previous years, provided that the number of trips not exceed the number from the 2012 fishing year. I am very concerned that the Agency's ability to meet this assurance comes at a cost: the very research that we are striving to improve.

Furthermore, NOAA has also committed to participating in an end-to-end review of the flawed stock assessment process led by the University of Massachusetts Dartmouth's School of Marine Sciences and Technology (SMAST). SMAST will be collaborating with NOAA Fisheries and the industry in holding workshops on three focus areas: incorporating environmental change in assessments and management, fishery monitoring and survey selectivity, and overfishing reference points and uncertainty buffers. This is a unique opportunity for industry engagement and I look forward to helping facilitate the review and provide my full support to this process.

Finally, there is an urgent need for fishing communities—from legislators and regulatory officials to healthcare providers and families—to fully understand the socioeconomic impact of fishery regulations and management on all industry stakeholders. In Massachusetts, we are increasingly bearing witness to heart wrenching scenes of frustration and grief as members of the fishing community find themselves out of work without an alternative source of income. I implore the Committee to listen to the suggestions of the industry and incorporate mechanisms to measure both the social and economic consequences of job loss, uncertainty, and hardship within fishing communities.

Thank you once again to Chairman Hastings, Ranking Member Markey, and Members of the Committee. With challenges comes great opportunity, and I look forward to continuing to engage with the Committee and participating in the robust conversation that will surely follow throughout the next year as we work toward constructive reform and reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.

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**Statement Submitted for the Record by Elizabeth Mitchell,  
Association for Professional Observers, Eugene, Oregon**

Mr. Chairman and Members of the Committee:

My name is Elizabeth Mitchell and I am president of the Association for Professional Observers (APO). The APO is a non-profit association of biologists who advocate strong data collection programs for our national fisheries and a support net-

work for the biologists who collect the data. In addition, I have over 25 years of experience working as a fisheries observer, primarily in the North Pacific Groundfish Observer Program (NPGOP). The underlying principle behind all of the APO's activities is the belief that collection of high quality, unbiased data is essential to sustainable management of resources and that well prepared professional biologists are necessary to articulate this course of action.

I had the opportunity to listen to the archived version of this hearing after it was held. I wanted to add written testimony to those panelists who presented. Since all but one panelist were exclusively from members of the fishing industry, and some of the discussion involved fisheries observers, I felt it was important to provide a fisheries observer's perspective regarding several issues raised at this hearing.

#### **What Does a Fisheries Observer Do?**

Some of the discussion at the hearing was on the topic of replacing observers with electronic monitoring (EM) and ensuring that the next reauthorization pushes this forward aggressively. When changing technologies, we should proceed with caution to ensure that EM will provide us with the necessary information to effectively manage our marine resources. I thought I would provide an outline of just some of the observer duties but I would encourage a detailed outline specific to regions and fisheries of what information fisheries managers require, and a comparison of what observers now provide with what EM is capable of doing. We cannot sacrifice for the sake of convenience data and specimen collection that is necessary to manage our nation's public fisheries resources in a sustainable way.

Observers gather unbiased, objective data on daily fishing effort, including, but not limited to:

- Total catch quantification by species, weight and number
- Identification of all organisms using scientific taxonomic keys
- Record incidental catch of protected species
- Record interactions of protected species with fishing gear
- Conduct rehabilitation of injured protected species
- Make observations of seabird and marine mammal bycatch reduction mitigation measures
- Conduct randomized samples of total catch to determine species composition of both target fish and bycatch
- Determine disposition of catch by weight
- Conduct a variety of randomized biological data collections and tag recoveries for basic research on age distribution, prey species and genetics studies
- Monitor vessel compliance to U.S. fishery regulations as well as other regulations such as MARPOL (the International Convention for the Prevention of Pollution from Ships)
- Conduct safety checks of vessels prior to boarding

Observer-collected data is used for in-season management of fish stocks and quotas and are essential for fishery management councils to write fishery management plans (FMP), which must comply with the Magnuson Stevens Act (MSA). Among other requirements, the MSA requires the use of the best scientific data available and efficient use of marine fisheries resources.

#### **Access to Observer Data and Information, Including Electronic Monitoring**

One of the sections of the last reauthorization of the MSA in 2007 caused a lot of consternation for users of observer data and information. The confidentiality provisions added in the 2007 reauthorization placed a blanket of secrecy over all information that observers collect, and specifically added electronic monitoring (EM) in the definition of observer information, assuming future trends toward the replacement of observers with EM. As mentioned above, observer data is essential for a whole suite of analyses to ensure sustainable management of our public marine living resources. The confidentiality provisions of this Act remained in limbo for five years, as National Oceanic and Atmospheric Administration (NOAA) grappled with its implementation. Discussions, working groups, workshops and task teams languished behind closed doors, despite a MSA mandate to be inclusive of stakeholder input.

In 2012, NMFS issued a proposed rule that appeared to go beyond the requirements of the MSA and in many ways conflicted with the Act's mandates, including being "responsive to the needs of interested and affected States and citizens" and drawing "upon Federal, State, and academic capabilities in carrying out research, administration, management and enforcement". It included not only protection of identity of the fisherman, but also the protection of the fishermen's business information. This included everything that is needed to study fishery impacts on the marine environment. The rule neglected to inform the public how the data would be

aggregated for public disclosure and a future decision on this would have been made behind closed doors without public input. It placed ownership of the data in the hands of the fishing industry, which is a direct conflict of interest, since this could enable the fishermen to release the data or not, according to their own exclusive benefit.

Transparency is the cornerstone of a democratic society and observer data has long been considered to be the cornerstone of fisheries management. Observers risk their lives to collect this data for public good, not just for those we're monitoring. The ocean belongs to us all. The fisheries are a public resource, an inheritance given to us for simply being born. Since not all of us have the capacity to fish for ourselves, we entrust our government to take care of these resources on our behalf and those of future generations. We request your consideration in re-examining the confidentiality provisions of the MSA to ensure adequate public access to observer data and information, including electronic monitoring information. Without access to observer data and information, other provisions of the MSA would be impossible to carry out, including the ability to monitor the effectiveness and efficiency of our monitoring programs.

#### **The Committee Must Treat its Citizens with Respect**

U.S. citizens have a right to expect respect and consideration from our Congressional representatives. I was appalled by the comments of Congressman Don Young about observers. He said: "I argue that observers are probably the worst thing that can happen to the sustainable yield rationalization. The observer is human. He can be corrupted. He can be put into the trawl net to solve some problems. He can be a drunk."

Observers are recognized worldwide to be an essential component to fisheries managers so that they may make the difficult objective decisions in order to sustainably and fairly manage public marine resources. Observers believe in this role and are extensively trained for it, so to hear a U.S. Congressman marginalize observers at a "public" hearing, where only fishermen are invited, is contemptible.

I understand his point—that humans sometimes come with negative variables. So do cameras, with much more ease and likely with less consequence, not to mention less oversight. So too are fishermen and politicians corruptible. In Mr. Young's home state, small boat fishermen are the recipients of the first time observer coverage this year that he was referencing. It was one of these fishermen who served in powerful political positions in Alaska who influenced fisheries policies in Alaska and the nation. He was then vetted to become the head of the National Marine Fisheries Service (NMFS) until it was discovered that he had been fishing illegally for five years.

Jesting in front of a bunch of fishermen that killing observers would solve the problem of having them on board is beyond contemptible given the reality of our already risky and vulnerable situation. Harassment, assault and interference with our duties is a regular and serious problem for observers. Rationalization actually exacerbates this, so his statement about rationalization is the other way around—rationalization is the worst thing to happen to observers. Observers' data is no longer pooled with other observers sample data in the fleet. Instead it is used to monitor the individual vessel's quota. When the observer's data is directly impacting a vessel's quota on which he/she is monitoring, observers are often faced with additional pressures from fishermen to "match" their data with the vessel's quota accounting. It's not uncommon for fishermen to make attempts to subtly (or outright) influence the observers' sampling protocols. Additionally, fishermen in Alaska tripled many observers' already heavy workload with rationalization—demanding that NMFS implement complex randomized and larger sample schemes of an impossibly small population—the individual vessel. What the fishermen want is actual accounting against their quota, not a sample. However, we just don't have that technology yet. That's the Cadillac version. So rather than insult observers and feed the resentment, we need to pull together to accept them as an essential component of fishing sustainably. It is reprehensible for a politician to joke in front of fishermen about killing us. With an expected rise in harassment and interference that accompanies a new program, we'll know who to partially blame.

#### **EM is not Proven to be Cost Effective**

Another panelist at this hearing, Bob Dooley, stated that observer costs (in the NPGOP) went up from \$300/day to over \$1000/day "once the government got involved". However this is misleading because the 300/day figure only includes cost to industry and the 1000/day includes costs to industry *and* for NMFS program management. Because contractors consider observer charges for service fees proprietary information, this makes it impossible to accurately analyze ways to save costs to industry or the government—only total cost after the service is completed. Since

cost effectiveness is a driving force for many, transparency about these costs should be of the first order.

In addition, costs of enforcement of EM regulations is not included in cost analyses. Nor are non-compliance fee schedules. Non-compliance fee schedules should be a part of any cost analysis. Fines sometimes become the "cost of doing business" for some industries, so depending on the cost of non-compliance fines, these may not be effective in deterring EM violations.

Thank you.

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**Statement of The Honorable Austin Scott, a Representative  
in Congress from the State of Georgia**

First, I would like to thank Chairman Hastings for bringing this important issue to the committee's attention. The Magnuson-Stevens Fishery Conservation and Management Act plays a major role in the recreational and commercial fishing by Georgia citizens. This is no more apparent than with the management of Red Snapper in the Gulf of Mexico and the South Atlantic. Over the last several years, the Administration has decided to severely limit the access to Red Snapper stating the erratic fluctuation of population. However, previous and current regulations of red snapper have lead to a steady and of late explosive growth in the Red Snapper population. This growth has been ignored by NOAA and National Marine Fishery Service in implementing new catch seasons and limits.

There is only one answer for the contradiction in data and NOAA/NMFS actions. The quality and quantity of science and data used by NOAA/NMFS is fatally flawed. NOAA has chosen to actively pursue a path of severe and unwarranted closures while failing to address the severe deficiencies in its science and data collection. Many of my constituents fail to understand how generally actions by NOAA, much less acts of closures and restrictions, can be conducted without accurate, timely data collection and sound science.

Further, NOAA has failed to conduct timely economic studies or assessments to determine the economic impact on communities who rely on fishing as a source of revenue. The basis of economic studies when conducted by NOAA are based on inadequate samples of fishing operations and could be argued, due to the sample size, that no economic study was actually conducted. If NOAA continues to implement severe policies based on flawed incomplete, poorly implemented science, an adversarial relationship will continue to grow between fisheries and NOAA. If not corrected, this will undoubtedly spill over into the other species and over 4,000 square miles of water that is regulated. This is no more evident than with the actions taken by states in the past few years who have extended their seasons past NOAA set dates.

With the current economic climate, many communities need all the help that can acquire to provide their citizens with sustainable and fair economic stimulus. I charge NOAA/NMFS to discontinue its current practices and accept their responsibility to regulate the fishing industry with sound and adequate science, and in a manner that is first and foremost beneficial to coastal communities but also mandated by Congress.

