

Testimony of Robert P. Gill

On Magnuson-Stevens Fishery Conservation and Management Act House Natural Resources Committee March 13, 2013

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.¹ 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.² 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.

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) requirement³ 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

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

² *Id.*

³ 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.”)

annual catch limit is not exceeded. Or, if the ACL is exceeded, that the problem is mitigated or corrected.⁴

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.⁵ 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

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

⁵ NOAA, NMFS, 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.

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 regardless of the status of the stock.⁶ 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.⁷ 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

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

⁷ *Id.*

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 budget⁸. 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.

b. Adapting Our Fisheries Management System for Environmental Changes

⁸ *Id.*

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 Management 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.