

The Committee on Natural Resources
Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act
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Testimony of
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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 US 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, US 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 US 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 non-compliant 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.