



**United States House of Representatives  
Committee on Natural Resources**

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**Written Testimony  
On  
Various Bills Which Amend the Magnuson-Stevens Fishery Conservation and  
Management Act**

**December 1, 2011**

Chairman Hastings, Ranking Member Markey, and members of the Committee on Natural Resources:

Thank you for the invitation to participate in today's hearing before the Committee on Natural Resources on the various bills which amend the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.

My name is Peter Shelley and I am a vice president and senior counsel with the Conservation Law Foundation, Inc., on whose behalf I am testifying today. I have worked on a range of federal marine conservation issues during my career and have been in charge of fisheries management efforts at CLF since 1989. I am also co-chair of the Marine Fish Conservation Network, which is based in Washington, D.C., an umbrella network comprised of fishermen, conservationists, scientists and private citizens.

My testimony will be directed primarily at the way I believe that the various bills before this Committee may affect the groundfishery in New England. This fishery is just now emerging from more than twenty years of turmoil and economic instability produced by chronic overfishing and mismanaging and beginning to show signs of a positive economic future. We believe that it is important to this region that Congress act in ways that build on what now appears to be beginning to work in New England.

## Summary of Testimony

The Coastal Jobs Creation Act of 2011, H.R. 594, is a critical and necessary federal investment in the future of the nation's fisheries and fishing communities. The Committee should support this legislation. The other bills before the Committee have a number of problems that range from minor to significant. Those bills that would revise current law with respect to Limited Access Privilege Programs, applicability of annual catch limits, and rebuilding timeline requirements have major problems in our opinion and would undercut a carefully-designed Congressional scheme that is beginning to show positive results around the country. Accordingly, we do not believe they would be consistent with the best long-term interests of the country and should not be supported by the Committee.

## The New England Groundfish Context

I have attached a more detailed history of the New England groundfishery as Attachment 1. Suffice it to say here that that fishery has been in some form of crisis from at least 1994 to 2010. This crisis has weighed heavily on the nation as well: the Congressional Research Service has estimated that approximately \$100 million in federal dollars have been poured into this fishery between 1994 and 2008. *See* Attachment 1, p. 3.

In 2006, Congress passed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Pub. L. 109-479, 120 Stat. 3575 (2007). Mindful of the situation in New England and in other troubled fisheries around the nation and after receiving extensive testimony and material, Congress used this reauthorization to make some significant changes to the Magnuson-Stevens Act. Specifically, the reauthorization prohibited overfishing during the rebuilding period of a fish stock and it imposed accountability measures on the managers in the form of requiring annual catch limits and accountability measures if it was predicted that a fishery would exceed or had exceeded its annual catch limit. 16 U.S.C.A. § 1853(a)(15).

The reauthorization also emphasized the importance of having science-based fishery management plans in U.S. fisheries, requiring, for example, that all fishery management councils have a standing committee of science experts to advise the council on setting fishery specifications and having the authority to set maximum harvest rates that a fishery could not exceed. 16 U.S.C.A. § 1852(g) & (h).

This reauthorization advanced an express Congressional conclusion with respect to the nation's fisheries: that the historic flexibility, discretion, and latitude associated with many—but not all—of the fishery management plans being developed by the regional councils was doing harm to the Nation's interests by delaying the achievement of optimum yield on a continuing bases for the Nation's fisheries. Nowhere were the economic, social, and ecological costs of this delay more apparent and more devastating than in New England with the groundfish fishery. These were important and necessary legislative changes.

The changes associated with these new management requirements are only now beginning to be observed around the country. The New England Council adopted its first groundfish plan under the reauthorized Magnuson-Stevens Act in 2009, known as Amendment 16 to the Northeast Multispecies (Groundfish) Fishery Management Plan (Amendment 16). Amendment 16 was approved for implementation by the Department of Commerce in 2010 in time for the start of the 2010-22 fishing year. In addition to introducing the new accountability measures on annual catches, Amendment 16 also imposed new science-based catch limits, which required significant cutbacks in the first year of the new plan for some species. Amendment 16 also scaled up a pilot program that it had started four years before that allowed fishermen to voluntarily form cooperative organizations, called sectors. Sector management in Amendment 16 was specifically introduced to allow fishermen to have more of the regulatory flexibility they were seeking in terms of how and where they fished and is one form of a catch share program. In return, fishermen in the sectors agreed to limit their collective catches to a specified sector limit and to develop the capacity within their sectors to ensure compliance with those limits.

Analysts indicated that the potential economic losses associated with Amendment 16 in the first year could be on the order of 15.2%, or \$15 million, as a result of the scientific recommendation of cutting back groundfish landings by over 47,000 metric tons of fish.

#### Recent Results under Amendment 16

New England's groundfishermen now have had a year and one-half experience under the new science-based and fully accountable groundfish management regime. The results, albeit preliminary, have been encouraging based on relatively limited data. It is clear that Amendment 16 provided New England groundfishermen with a new and valuable flexibility to organize how they fished even in the first year of a major new management approach with which most of them had had no previous experience.

The groundfish fishermen who joined sectors for the 2010 fishing year represented the small businesses that had landed roughly 98% of the groundfish during the Council's 1996-2006 qualifying period. While for some of these businesses it was a Hobson's choice between sectors and the prior management program at the beginning of the fishing season, the first year's experience seems to be largely positive. The sector program seems to have directly translated at a fleet level into increased safety, increased profitability, and reportedly lower discarding of fish at sea (reducing the waste of the previous so-called regulatory discards). Sectors produced these results notwithstanding meeting the strict limits on overfishing that were set to allow timely rebuilding of all the stocks, a dramatically new system that depended on self-management and cooperation to a large degree, and a difficult economic environment with diesel fuel prices rising some 30% during the fishing year.

The Northeast Fisheries Science Center of the National Oceanic and Atmospheric Administration (NOAA) conducted an intensive economic analysis of the first fishing year. The

report is a rich source of data and identifies many areas that require additional scrutiny, including particularly the estimated loss of crew positions and revenues, but one sentence particularly captures the report's meta-conclusion of the economic performance of Amendment 16: "For the fishery as a whole in 2010, more nominal value was obtained from fewer fish landed and less fishing effort expended as compared to the previous three years." 2010 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2010 – April 2011) at 31. NFSC Reference Document 11-19 October 2011. With the exception of New Hampshire, which unfortunately had a 21% decline in nominal revenues for New Hampshire-based boats, every state with a groundfish boat in the New England groundfish fishery had higher, and often significantly higher, revenues in the 2010 fishing year than they had in the prior year, notwithstanding a major cutback in quota available to the fishermen and the new strict management requirements.

Paradoxically, this assessment of the fishing industry is actually supported by the November 15, 2011 Economic Emergency Declaration Request from Governor Patrick of Massachusetts to Secretary Bryson of the Department of Commerce. Governor Patrick did a full year, intensive inquiry into the economic impacts of Amendment 16 on Massachusetts groundfishermen in an effort to support his earlier belief that there were an estimated \$21 million in losses in Massachusetts associated with the implementation of Amendment 16. That report, which focused primarily on documenting the economic harm to the group of fishermen (Sector 10) who were considered to have been the most stressed by Amendment 16, concluded that the 27 businesses in that sector had 27% lower net revenues, an estimated loss from 2009 revenues of some \$405,000. But the report also states that Sector 10 failed to catch or lease more than a million pounds of groundfish they were allocated during the 2010 fishing year. The Governor's analysts estimated the value of those foregone fish revenues to be a minimum \$269,000, which would have reduced losses even in this sector to \$105,000 in the 2010 fishing year. The report did confirm the NFSC report with respect to a loss in crew earnings in Sector 10 (estimated by the Patrick Report to be in the range of \$240,000).

For the Massachusetts fleet as a whole, the Governor reported that while the nominal value for groundfish landings of Massachusetts boats dropped in fishing year 2010 by roughly \$875,000, the nominal value of the landings of all species by these same boats rose by \$6.89 million in that same year. The nominal value for the total landings in Massachusetts by all boats during the 2010 fishing year, regardless of homeport, rose by almost \$10 million. It is acknowledged that all fishermen did not share equally in those benefits and some continued to leave the groundfish fishery but by most economic measures the 2010 fishing year was an unexpected success. New England fishermen produced this success while staying within the science-based limits, with full accountability. Because harvest rates were kept within bounds by this catch share program, the New England Council was able to raise catch levels on a number of the rebuilding stocks for the 2011 fishing year, which started May 1, 2011.

Perhaps the most remarkable outcome in New England from Amendment 16 happened recently when 109 boat owners in New England, representing all New England states except for Connecticut and representing the full range of fishing businesses that comprise this small business fishery, wrote an open letter to New England's Senators and Congressmen. With respect to the impacts that Amendment 16 had on some businesses, they wrote: "[w]hile some individual businesses have unfortunately experienced hardship, there was no management alternative that could have avoided this." Open Letter to New England Delegation, November 14, 2011 (attached to testimony as "Attachment 2"). The letter goes on to state that politics in the fisheries were actually putting their businesses "at risk," concluding that "our fishery needs New England's elected leaders to promote stability, profitability, and flexibility. ... Our fishery continues to face many challenges and is still struggling to deal with some of the problems caused by the [former] days-at-sea system and inadequate management infrastructure. We ask you to please work with us ... to address these issues and move forward."

Such a communication from most of the leaders of New England's groundfish industry is unprecedented but not wholly surprising. The regulatory environment for fishing has been unpredictably volatile for more than 17 years. There have been 11 rewrites of the basic groundfish management plan, many in response to Congressional action, and over 40 more minor adjustments in the groundfish regulations since 1994. Fishing businesses in this fishery have seen changes in the rules under which they operated, on average, once every four months from March 1994 until May 2010. That is not a business environment that is conducive to either rational economic behavior or even clear scientific, social or economic assessments of the likely future impacts of management actions. Such constant change and uncertainty creates an environment that is hostile to the fishing communities and managers alike.

The current amendment they are operating under, Amendment 16, was approved by the New England Council with a single dissent and has been in place for 17 months. These experienced and successful small fishing businesses in New England are asking their politicians to stop making changes to the laws under which they have to operate. Moreover, the goal of federal fishery management policy should be to achieve full optimum yield for all the nation's fisheries as soon as possible. The National Marine Fisheries Service has estimated that the benefits of doing so could range as high as \$31 billion in fish sales and 500,000 new jobs. Any delay is costly.

It is in this context that I turn to the various bills to amend the Magnuson-Stevens Act that are before the Committee on Natural Resources. I have attempted below to thematically address the eight bills before the Committee where there is substantial overlap.

1. Coastal Jobs Creation Act of 2011 (H.R. 594)

CLF and many other marine conservation organizations and individuals strongly support this legislation and give great credit to the sponsors, Representatives Pallone and Pingree, for their dogged efforts to move this legislation during such a difficult economic period. It is perhaps

the greatest political challenge of all to make investments in the face of negative economic signals but there could hardly be a better target for such leadership and vision. A federal dollar spent on any of the purposes outlined by H.R. 594 would be repaid in multiples in the near future and would immediately create new employment opportunities.

All the purposes and objectives of the bill, including in particular the emphasis on the importance of maintaining working waterfronts throughout coastal America, are critical and desperately in need of funding and support. One suggestion we would offer to both improve ultimate funding levels and secure the necessary state-level partnership in these coastal activities and purposes would be to include a state or local matching requirement. In-kind support and services should be eligible as state or local match.

2. New Limited Access Privilege Program Restrictions (Saving Fishing Jobs Act of 2011, H.R. 2722; American Angler Preservation Act, H.R. 1646)

Section 5 of H.R. 1646 and sections 2 and 3 of H.R. 2772 propose to amend the Magnuson-Stevens Act in ways that essentially preclude the development of any limited access privilege program (LAPP) in the future in New England, the Mid-Atlantic, the South Atlantic, and the Gulf of Mexico fisheries. Currently, the general rule for initiation of a LAPP is that a fishery management council or a duly certified petition by 50% of the permit holders or permit holders representing more than 50% of the allocation in a fishery can initiate an LAPP. 16 U.S.C. § 1853a(c)(6) A special limitation applies to an individual quota system, a type of LAPP, in the Gulf of Mexico and in New England except for the Gulf of Mexico commercial red snapper fishery. *Id.* There is also a requirement in the Gulf of Mexico that the vote in multispecies fisheries has to be limited to people who have substantially participated in the fishery. *Id.* Section 1853a outlines exhaustive procedural requirements that must be followed for all LAPPs to ensure that proper consideration is taken of all relevant social and economic issues.

Under the provisions of H.R. 1646 and H.R. 2772, the barriers to implementing a LAPP are expanded geographically and substantively. No LAPP can take effect in any fishery from the Gulf of Mexico to the Gulf of Maine unless 2/3rds of the eligible fishermen in the fishery approve the plan. The language also requires the automatic termination of a LAPP unless there is a subsequent 2/3rds affirmative vote in favor of the program after 5 years (H.R. 1646, Sec. 5) and the assessment of the full costs associated with the fishery program to all LAPPs, a requirement that does not exist in any other fishery. (H.R. 2772, Sec. 4) Additionally, H.R. 2772 would automatically terminate a LAPP if there is more than a 15% drop in groundfish permits in the preceding year.

Those requirements are the legislative equivalent of a “poison pill” for any new LAPP program by giving veto power over any LAPP to the people least invested in the fishery. For example, there were 1413 permits issued in the New England groundfishery in 2007. Fifty-three percent of those permits (755) recorded no groundfish landings in 2007 and 331 of those permits

had no fish landings at all in 2007. In 2010, there were 1347 groundfish permits and 67% of those permits had no groundfish landings in 2010 and fully one-third of those permits recorded no landings of fish at all in 2010. Under the provisions of H.R. 1646 and H.R. 2772, that 1/3 of permit holders who had no current interest in the fishery could block the development of a LAPP in the New England groundfishery for any reason or for no reason at all. We believe that other fisheries around the country have similar situations with respect to inactive permits in their fisheries. Killing the LAPP approach as a reasonable management option makes no sense as a matter of federal policy.

LAPPs are an important tool that some fishery management councils have used and may want to use in the future in order to achieve optimum yield in their fisheries in a manner consistent with the Act's national standards. CLF does not believe that LAPPs or other catch share approaches are the only form of fisheries management that will work in U.S. fisheries, but they are one approach that does have a positive track record in many fisheries and managers should be encouraged to consider them in appropriate circumstances.

In approaching these issues, we believe members of Congress need to keep in mind that the regional fishery management councils that would evaluate the wisdom and propriety of LAPPs or other catch share programs under the current law are among the most representative of all federal public resource allocation mechanisms in the country. The management councils are made up of either state fisheries employees or non-governmental fishery experts, all of who have been endorsed and proposed by a locally elected governor in the region. We share the legitimate concerns Congress has about protecting economic minority fishing interests from a possible "tyranny of the majority" but our concerns are placated to a large degree by both the political accountability of the council members and the already rigorous procedural requirements for approving LAPPs in the Magnuson-Stevens Act.

It would be a significant policy mistake to take LAPPs off the management table or to make their formation so unrealistic that fishery management councils won't even consider them. These two proposed amendments effectively do that. The nation will never achieve optimum yield with respect to its fisheries if Congress legislatively forecloses the use of any of a range of management tools that may be essential to reaching that outcome.

3. Extending Rebuilding Deadlines and Suspending Annual Catch Limits (Flexibility and Access in Rebuilding American Fisheries Act of 2011, H.R. 3061; American Angler Preservation Act, H.R. 1646)

Two of the bills would extend the current requirements of the Magnuson-Stevens Act with respect to rebuilding deadlines for overfished fisheries and one of the bills, H.R. 3061, would additionally authorize the suspension of the setting of annual catch limits under certain circumstances. The current requirement is that overfished stocks of fish should be rebuilt in a time "as short as possible," 16 U.S.C.A. § 1854(e)(4), and, in any event, within 10 years of being

declared to be overfished “except where the biology of the stock of fish, other environmental conditions, or management measures under international agreement in which the United States participates dictate otherwise.” 16 U.S.C.A. § 1854(e)(4)(ii). One of the bills, H.R. 3061, would also change “possible” to “practical” so that rebuilding time frames become a function of the social and economic conditions in a fishery. These proposed changes to existing law are either unnecessary because they are already in practice or are harmful to the nation’s interests of achieving optimum yields in its federal fisheries as quickly as possible.

First, it is important to note that there is already significant flexibility and latitude built into the existing rebuilding program requirements. In New England, for example, the Council started to rebuild Atlantic cod in 1996 and the Georges Bank cod stock is not required to be rebuilt until 2026, some thirty years. Gulf of Mexico red snapper has a 32-year rebuilding requirement and South Atlantic red snapper has a 35-year rebuilding program. Numerous stocks of federally managed fish have rebuilding requirements that exceed 10 years and, in some regions, we understand that the majority of a council’s stocks exceed the 10 years under existing law. Many of the same factors that H.R. 1646 and H.R. 3061 seek to introduce are already taken into account when the rebuilding deadline is being set or re-evaluated over time.

Other provisions in these bills significantly weaken the current law with respect to rebuilding and delay achievement of optimum yield in the nation’s fisheries. Considerations such as “provid[ing] for the sustained participation of fishing communities or to minimize the economic impacts” (H.R. 1646, sec. 3(1)(B) and H.R. 3061, sec. 2(1)(B)), authorizing overfishing on one stock in a complex of stocks in a multispecies fishery (*id.*), the change in the biomass rebuilding target during the rebuilding period (*id.*), or because the biomass rebuilding target exceeds the highest 25-year biomass abundance (*id.*) have one thing in common: they all weight the short-term economic costs over the long-term economic benefits and the long-term ecological benefits of rebuilding the nation’s fisheries from the effects of prior mismanagement in as short a time as possible. The inherently vague nature of these considerations also introduces another element into fisheries management that has plagued New England’s groundfishery for decades: business uncertainty.

The 10-year default rebuilding requirement is a policy choice that Congress made but it is a policy choice that is backed by both science and experience. Congress received testimony from population dynamics scientists that indicated many of the nation’s overfished stocks could recover in less than five years without fishing. Other eminent marine scientists have estimated that 10 years is twice the amount of time that “the majority” of these fish populations would require without fishing pressures. Safina *et al.*, “U.S. Ocean Fish Recovery: Staying the Course,” *Science*, vol. 309 at 707 (July 29, 2005). Economics and social considerations and extrinsic environmental circumstances have already been factored into the current rebuilding requirement and should not be used to allow further delays in rebuilding. I have attached a joint letter from numerous marine scientists that support the approach taken under current law with respect to rebuilding. (Attachment 3)

Authorizing overfishing on one stock in a multispecies complex would also work against the nation's long term economic and ecological interests. One example from New England might illustrate this point. In 1996 in New England, haddock were determined to be collapsed. Haddock was, at that time, the "weakest stock" in the groundfish fishery. Under the proposed language, haddock rebuilding would not be bound by the 10-year period and overfishing on haddock could be authorized. Fortunately, that was not the rule. Haddock was put under the same rebuilding requirements as the more abundant Atlantic cod. That may have been one of the key factors in the ability of the haddock stock to produce several exceptionally large year classes of fish, enabling haddock to now be fully rebuilt well ahead of its rebuilding schedule.

The requirement in both bills that there be "evidence that the stock of fish is on a positive rebuilding trend" is of limited significance and does not change the fundamental truth: allowing a stressed stock of fish to linger at low levels as long as there is some "positive evidence" exposes that stock to further declines, perpetuates the imbalances in the ecosystem, and creates higher risks that extrinsic factors such as environmental change will overcome that species' reproductive strength. New England's groundfish experience has demonstrated that having a robust, diverse fishery of numerous populations of fish can make all the difference.

Indeed, these bills would provide the least protection for the most threatened fish stocks in any multispecies fishery. Every time a fishery manager or Congress takes its eye off the prize—optimum yield for the *fishery* as a whole—long-term benefits are being put at risk, if not forfeited. Moreover, in many, if not most cases, gear improvements and technology advances that emerge from the fishing industry, almost always driven by necessity, have demonstrated the ability fishermen often have to target desired stocks while substantially avoiding stocks in the greatest need for rebuilding. This language could easily remove the action-forcing incentives in current law and practice.

Turning to the bill language that would suspend or otherwise alter current annual catch limits (ACL) requirements in certain cases (H.R. 3061, sec. 4, H.R. 2304, sec. 2), we cannot support these changes. ACLs are a fundamental part of the new accountability system created by Congress in 2006 and they seem to be working well in New England. There is no need for an extension until 2014 for any of the New England Council's fisheries and the groundfishermen have already demonstrated that they are able to work within the current ACL framework.

The language of H.R. 2304 further appears to exempt fisheries permanently from the ACL requirement if there hasn't been a peer-reviewed stock survey and assessment within 5 years of the enactment of H.R. 2304. Even if the exemption was not permanent, we see no business or policy sense in linking a requirement that fishermen be accountable to their harvest limits of a public resource on a year-to-year basis and the presence or absence of a peer-reviewed stock survey and assessment. Moreover, without a recent survey or assessment, it is not clear on what basis the Secretary would make a determination that overfishing is not occurring, as specified in H.R. 2304.

This provision actually creates a perverse disincentive for a fishery management council keeping up with its surveys and assessments and removes even the most basic form of accountability at a time when funding for fisheries science may be declining below its already-inadequate levels. H.R. 3061 would further suspend annual catch limits if the Secretary determines that there is an insufficiently high level of uncertainty with respect to the scientific advice. The Secretary already has that power and an obligation to disapprove fishery management plans that are based on such data. There is no reason to focus the issue solely on annual catch limits or change existing law as H.R. 3061 proposes.

With respect to the suspension of the ACL requirements for ecosystem stocks, there is existing guidance language that addresses this issue under current law. While we recognize the issue we think H.R. 2304 is directed toward, defining and managing “ecosystem stocks” is a highly complex issue with a great deal of variation around the country. We believe that any ACL requirement for these stocks is best left for continued agency interpretation and implementation at a guidance level, rather than at a statutory level.

The provisions related to extending the rebuilding requirements and suspending the ACL requirements have two final problems. First, they each require significant additional fishery science, data collection and assessments at a time when there is not adequate funding for even basic fisheries management science, data collection and stock assessments. Second, because of the complexity and variety of the nation’s fisheries, it is almost guaranteed that these few paragraphs of vague legislative text will produce volumes of interpretive regulations and guidelines. Fisheries management is already sufficiently complex; any claims for change in the system that increase that complexity should be advanced only under the most compelling circumstances. Those circumstances are not present with these two management elements.

4. Modifications to the Management of the Asset Management Fund (H.R. 2610, sec. 2; H.R. 1013, sec. 3)

The genesis of these bills was the discovery and analysis of problems and management failures with respect to the Asset Management Fund in 2010, in most cases, longstanding practices and policies that the current Administration promptly investigated and largely addressed when the issues were brought to their attention. H.R. 1013 would add a requirement that the New England Council become the beneficiary of any of these funds that related to violations within the Council’s jurisdiction. The funds would be used for various specified purposes by the New England Council related to improving our regional fisheries. There are no accountability provisions. H.R. 2610 channels the same funding to the states in a region and would apply broadly across the country. A number of worthwhile activities are identified for the use of these funds by the receiving state. As with H.R. 1013, there are no specified accountability provisions to the American people on how these funds are actually used.

In New England as elsewhere in the country, additional funding for the purposes specified in these bills is critically needed, particularly in the area of improved fishery data, surveys, assessments, and monitoring. Improved funding in these areas is directly linked to improved fisheries management, reduced volatility in the fishing industry, and increased economic yield from the fisheries. We further believe that the funding for the enforcement function of the Magnuson-Stevens Act should be separated from the funds sitting within the Department of Commerce in the Asset Management Fund.

We are interested in further discussion around these topics with the following concerns. It is not clear that it is in the nation's broad interest to re-direct these funds either to the councils or the states without further controls and accountability measures. We are also not aware of a similar approach being used in any of the other federal natural resource management regimes and think that the underlying policy objectives with respect to enforcement-related funding in all these federal resource management programs should be examined. Finally, this source of funding would be a very unstable and variable source of funding for some of the most critical management functions in federal fisheries. We are concerned that these bills could be seen as a justification for cutting current funds in those science and research programs, which are already inadequate.

With respect to the attorneys' fees provisions in H.R. 2610, CLF is not categorically opposed to this mechanism. It would seem to be better public policy, however, while still keeping with the spirit of the bill that some language be included that required a finding of bad faith prosecution by the Secretary of Commerce on the government's part with respect to the "covered person." We do not take a position on whether it is appropriate to re-direct enforcement-related funds generated from violations around the country for this more narrow regional purpose.

#### 5. Legislating Risk Levels (H.R. 1646, sec. 2)

Section 2 of H.R. 1646 would mandate one level of risk across all federal fisheries in the nation. Identified as a "risk neutral" approach, this level of risk has been equated to the odds of a particular outcome on a coin toss: a 50% chance one will win. In the fishery case, a council would not be allowed to have any better than a 50% chance of accomplishing its fishery objectives. Further, this section would restrict any science and statistical committee from providing fishery advice that increases or decreases annual catch limits by more than 20% unless the recommendation has gone through a third party review process. In our opinion, a coin toss and a third-party review requirement are not good bases on which to manage the public's fisheries or set time-sensitive harvest levels. In New England, the SSC already produces a range of specification recommendations for the New England Council that range from risk neutral to risk adverse. The Council exercises its expertise and local knowledge in making its final policy

decision about risk levels in each fishery and often on each stock of fish in that fishery. It is reviewed by the agency before approval. Most of the SSC's work in New England is based on peer-reviewed science as well. As far as we know, it is similar in most other council systems. We think it is a bad idea for Congress to legislate either particular risk levels for all the nation's fisheries (especially requiring risk neutral recommendations) or a provision that would tie the hands of an SSC (and therefore the council) with respect to its recommendations to the council to which it reports.

6. Various Provisions in the Bills that Require Additional Funding

Most of these bills introduce new, expensive administrative and management costs on both the federal agencies as well as the management councils. Without commenting on their individual merits, these include requiring live internet coverage of council meetings and recorded audio and video files (H.R. 2753), investments in critical working waterfront infrastructure and fishery management improvements (H.R. 594), annual fishery impact statements and science and statistical committee reporting requirements (H.R. 3061), funding an NRC review on best practices for the assessment of recreational fisheries data (H.R. 3061), and new closure certification programs (H.R. 1646). We do not know the source of any of this funding. To the degree Congress imposes new mandates on the agency or the councils without new sources of funds, that money will have to come from some other critical program within NOAA or NMFS. Before Congress takes any action that presents even a possibility of that result, it should carefully consider its fishery management priorities and ensure that its action is fully consistent with achieving those priorities.

Thank you for considering our testimony.



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Peter Shelley, Esq.  
Senior Counsel

**Extended Testimony on the Background of the New England Groundfish Fishery To 2006**

The Atlantic Ocean is one of New England's most distinguishing and defining features, its vast beauty a fundamental part of our sense of place. The ocean's natural resources have supported America's oldest commercial industry, fishing, and continue to form the base of the economy of many of New England's most iconic coastal villages. But all that the ocean provides — tourism, recreation, sustenance, and commerce — has been under threat from overfishing, industrial development, pollution, and now climate change. Excepting climate change, responding to overfishing has proved to be one of our greatest challenges. The experience we have gained through our work in that area over the past thirty years is relevant to the bills before this Committee, which seek to amend the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The oldest commercial fishery in New England is the Atlantic cod fishery, which started in the 1600's and has continued without interruption through today. Once pursued as far away from New England as the Grand Banks off Newfoundland, Canada, since 1976 the U.S. cod fishery has been limited by the U.S. Exclusive Economic Zone at 200 miles offshore and includes the Gulf of Maine, a significant portion of Georges Bank, and southern New England waters. When the Fishery Conservation and Management Act of 1976 took effect, Atlantic cod became the subject of the first comprehensive federal management activity in New England. Atlantic cod are managed in New England as part of a "groundfish" complex, that is, a group of bottom-dwelling fish including cod, haddock, various flounder species, pollock, and redfish. In total, the groundfish complex comprises thirteen species, managed as 20 separate stocks.

A combination of excessive capital investments in the New England groundfish fishery that were heavily subsidized by federal tax, grant, and loan incentives, weak management, dramatic improvements in electronic fish finding technology that replaced personal expertise as the key to finding and catching fish, and ecological subsidies flowing from allowing continued overfishing to avoid short term economic impacts came close to destroying the commercial groundfish fishery in New England for the first time in history. Total New England groundfish landings dropped 60% between 1983 and 1993. U.S. cod landings declined 55% over the same period and U.S. haddock landings dropped over 90% and haddock were declared to be collapsed as a species. Stock assessments conducted later indicate that cod and haddock may have reached their lowest abundance levels ever recorded in the 1994-1995 period.

The economic costs were devastating to New England fishing communities: an estimated \$25 million (1993 dollars) was directly lost to the boats from cod, haddock, and yellowtail flounder alone from 1983 to 1993, even as new boats and fishermen were continuing to be added

to the fishery. Unknown numbers of fishermen were lost from the industry: some redirected their fishing efforts to other species like American lobster, others left fishing forever. Communities in eastern Maine that had been groundfishing for generations lost all their groundfish permits as the fleet contracted toward the areas of remaining populations of groundfish, which were generally located off Massachusetts. Many of those communities still do not have any fishermen with groundfish permits and are completely dependent for their survival on lobster fishing alone.

Rebuilding a fish population has several indispensable components: overfishing has to stop, the overfished population has to regenerate to a self-sustainable level, and the unintended catch, or bycatch, of those rebuilding fish in other fisheries has to be minimized. The New England Fishery Management Council (Council), first under court order and later under its own initiative, has been working to rebuild cod, haddock, and the other since 1994. For much of that time, operating under prior versions and interpretations of the Magnuson-Stevens Act, the Council designed fishery management programs that had significant flexibility built into them. They were, at best, risk-neutral in terms of their likelihood of success in achieving the rebuilding objective, i.e. only a 50% likelihood of achieving the objective, and in many cases they allowed continued overfishing during the rebuilding period. Additionally, there was no accountability for exceeding the annual catch “target,” producing even higher mortalities than the managers authorized. In some cases, like the Gulf of Maine cod stock, estimated catches were 5 and 6 times higher than authorizations.

One of the consequences of this approach was that fishermen in the region periodically faced significant “balloon payments” on the rebuilding plan, that is, significant new cuts in catch allocations based on the need to continue the progress toward rebuilding the fish. These dramatic, and often negative adjustments, to authorized fishing levels made groundfishing highly volatile and financing for operations on the boats difficult. In retrospect, the Council’s high risk management efforts failed on many levels but two failings stand out: the most important groundfish stocks were not getting rebuilt to a level that was biologically sufficient exposing them to continued risk of renewed collapse and the groundfish fishery was almost constantly in turmoil, making rational economic planning, decision making, and investing virtually impossible.

Groundfish jobs and the numbers of permitted boats in the fishery continued to drop as the fishery adjusted to the new catch levels. Twenty-three percent of the groundfish permits in the region disappeared between 2004 and 2008 with a similar decline in the number of groundfish boats that landed any groundfish. Groundfish landings from 2001 to 2007 dropped by 43% and gross revenues from groundfish fell by 37% in that period. Fortunately, some of these vessels were able to stay in fishing by diversifying onto other non-groundfish species and rising fish prices to the boat. There is little reliable data on employment losses for crew associated with these precipitous declines, although they must have been significant.

In addition to the ecological and economic costs that New England and New England fishermen paid as a result of this series of management failures, the turmoil came at a price to the nation. In August 2010, the Congressional Research Service tallied the following disaster assistance funds provided to the New England groundfish fishery:<sup>1</sup>

- 1994—\$30 million. Assistance: fishing industry grants that included employment for fishermen (training, new business opportunities, aquaculture, marketing, and by-catch reduction), demonstration buyback program, loan program, and family assistance centers.
- 1995—\$25 million. Assistance: vessel buyback, administration, and fisherman health program.
- 1999—\$6.8 million. Continuation from 1994 failure with assistance that included compensation for lost fishing time and cooperative research.
- 2000—\$25 million. Continuation from 1994 failure with assistance that included permit buyback and cooperative research.
- 2001—\$1 million. Continuation from 1995 of the fisherman health program.
- 2008—\$13.4 million. (Disaster not declared.) Assistance: funding for fishermen, fishing businesses, and a health insurance program.

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<sup>1</sup> Commercial Fishery Disaster Assistance. Harold F. Upton, Analyst in Natural Resources Policy, Congressional Research Service, July 29, 2010