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Legislative Hearing on H.R. 594, H.R. 1013, H.R. 1646, H.R. 2304, H.R. 2610, H.R. 2753, H.R.
2772 and H.R. 3061

December 1, 2011

House Natural Resources Committee

Chairman Hastings, Ranking Member Markey, and Members of the Committee, thank you for the opportunity today to speak on these bills and on the importance of successful fisheries management in ensuring sustainability in our nation's fisheries. My name is Mike Colby and I have been a participant in the Gulf of Mexico fishery for the better part of 50 years. I spent many years part-time in the for-hire fishery while I was a contractor for the U.S. Fish & Wildlife Service and an adjunct instructor in the environmental sciences. In 1986, I received my first Merchant Mariners License and became a full-time operator in 1995.

Over the past several decades, I began to see myself not just as a participant in the fishery, but as someone who is responsible for the fishery. This was a growth in perspective that I attribute to my background in the biological sciences and a true concern for natural resources. My involvement in current fishery management issues is the direct result of my vested interest in our fishery resources.

The legislation being considered by the Committee today, calls attention to the importance of sustainable fisheries to our coastal communities and economies. NOAA, the National Marine Fisheries Service (NMFS) and regional fishery management councils have made strides over the past decade to rebuild stocks and to end overfishing and increase the number of stock assessments and status reviews. Since 2000, 21 fish stocks have been rebuilt and many more have been assessed. In 2010, NMFS reviewed more stocks than ever before, including numerous stocks in the Gulf of Mexico. For example, black grouper in the Gulf of Mexico was determined to not be undergoing overfishing nor is overfished. The Magnuson-Stevens Fishery Conservation and Management Act is working and fish populations are rebuilding. This is good for fish, fishermen and the coastal economies that depend on a healthy resource.

However, the bills under consideration today would not improve fisheries management or fisheries science; rather they would inhibit the ability of NOAA and the fishery management councils to effectively manage our nation's fisheries. These bills contain provisions affecting numerous aspects of fisheries management from use of different management tools to disaster declarations, but there are three overarching ideas that appear in several of the bills being considered here today. These bills:

- 1) Challenge current fishery science without providing solutions to the underlying problem of the need for more fisheries data and management tools.

- 2) Contain provisions to override the fisheries management council process; a stakeholder driven process that includes representatives from all aspects of fisheries including federal and state managers.
- 3) Show a rush to amend the Magnuson-Stevens Fisheries Conservation and Management Act (MSA), even though the law is working and fisheries are rebuilding.

Fisheries management and science are inherently complex. As such they pose unique challenges for managers due to the complex nature of the marine environment, fishery population dynamics, the needs of fishing communities and the variety of management solutions. One example is management of near shore fisheries versus offshore fisheries in Florida. In the near shore environment, slot limits, a restriction on the minimum and maximum size a fish must be in order to retain it, are often used where waters are shallow and release mortality is low. However, in an offshore environment where fish are pulled from depths greater than 20 meters, the release mortality is higher and managers depend on other tools such as area closures and fishing season length to manage the fishery. This challenge is seen throughout all fisheries management regions, and fishery management councils must be allowed to use the tools that work best for that region.

However, regardless of region or stock or water depth, there are tools that have shown success in all regions: establishing science based annual catch limits (ACLs) and corresponding accountability measures (AMs) that ensure the catch limits are not exceeded. ACLs can prevent overfishing, rebuild fisheries and allow for long-term sustainability of the resource. Unfortunately, several of the bills being considered today, take aim at this critical tool and would create exemptions, loopholes, and otherwise delay the implementation of ACLs. Weakening of the ACL requirements under current law poses a major threat to the effective management of federal fisheries.

The legislation being considered today does contain a few provisions that would increase transparency in the fisheries management process. For example, currently each council in conjunction with its Scientific and Statistical Committee (SSC) has to submit 5 year research priorities for fisheries management to the Secretary of Commerce, Regional Science Centers and NMFS for their consideration in developing research priorities and budgets. H.R. 1646 would require this report be submitted to Congress as well. This report would provide Congress with additional insight into the funding needs for fishery management councils. Rather than amending MSA, Congress can simply request the report from NMFS. While this provision is commendable we do not need to amend the MSA to implement transparency in fisheries management.

The ten national standards and provisions to end overfishing and restore overfished populations provide the right framework to ensure success. Rather than amending the MSA, Congress should support the fishery management councils, fishing communities and NOAA by providing the resources and oversight necessary to fully implement the landmark changes Congress made to this law in 2007 that are putting us on the road to sustainable fisheries and communities. Congress should 1) allow the law to work, 2) increase funding for fisheries management, and 3) promote innovation in fisheries data collection.

LEGISLATION:

Challenges to data collection methods and use of fisheries science in successfully managing US fisheries:

As a young wildlife and fisheries student I can remember a fishery biologist telling me that he “never saw a perfect data set”. He also reminded me that all data give us direction, trends and the need for more data. While I can think of no one who would argue the need for more reliable fishery data, H.R. 1646 and 2304 seem to argue the need for better data while circumventing and ignoring the existing science and scientific process we have now.

The Marine Recreational Fisheries Statistics Survey (MRFSS)/Marine Recreational Information Program (MRIP) is relied upon to predict catch per unit effort for the recreational angler; not an easy task given there were more than 2.3 million recreational anglers in the State of Florida in 2009. This model is commonly referred to by some fishermen as “junk science”. In August 2010 the Gulf Regional Council re-opened the Gulf red snapper season for a fall fishery after the BP Deepwater Horizon disaster based on data from MRFSS. The data indicated that the recreational quota had not been caught during the regular fishing season and that additional quota could be released to the recreational sector allowing for a fall fishing season. Recreational fishing organizations praised this decision. Yet, when MRFSS showed that a fishery closure was needed in the recreational greater amberjack fishery, it was dismissed as faulty data. Interesting, that the data are decried as “junk science” when they tell us what we don’t want to hear, yet applauded when they give us the outcome we want.

The bottom line is that it is what we have and rather than trying to circumvent the role of science we should be increasing funding and encouraging innovation in data collection and monitoring. The legislation before you today would not improve or advance fisheries science. It would create loopholes and exemptions and could threaten the sustainability of fisheries around the US.

H.R. 1646, The American Angler Preservation Act:

This legislation seeks to ensure that best science and practices are used in fisheries management, but this bill would increase the cost of managing fisheries and cause unnecessary delays. H.R. 1646 would require that any SSC recommendation that results in an ACL quota increase or reduction of 20% or more would trigger an automatic peer review of the SSC recommendation. The new ACL could not be implemented until the outside peer review has verified and upheld the SSC’s recommendation.

This costly provision could slow down the quota setting process and could delay approved increases in quota, which would then delay increased fishing opportunities. In addition, many stock assessments already go through an extensive peer review process. Each stock assessment is first reviewed in-house by the relevant science center before it goes through the region’s peer review process (STAR in the Pacific, SARC in the Northeast, SEDAR in the Southeast, WPSAR in the West Pacific, and plan teams in the North Pacific), most of which include reviewers from the Center of Independent Experts. The third and final peer review is conducted by each

Council's SSC. Updates of stock assessments generally receive only in-house and SSC review intended to avoid unnecessary duplication.

Our Southeast Data Assessment Review (SEDAR) process already incorporates a data workshop, assessment workshop, and review process. The majority of SEDAR panel members are non-governmental persons from sea grant colleges, independent scientists and others. Adding another layer of review, as far as the Gulf of Mexico is concerned, would add unnecessary delays to a process that is already time consuming.

This legislation would therefore be redundant and costly, decreasing resources available for other aspects of fisheries management.

H.R. 2304, The Fisheries Science Improvement Act:

This legislation seeks to provide the necessary scientific information to properly implement annual catch limits. However, the bill would not improve fisheries science; rather it would significantly weaken critical fishery management requirements under the MSA. The proposed legislation would create significant loopholes in the current requirement that ACLs be established for federally-managed fisheries. It creates loopholes in the ACL requirement through several means:

1. The bill would delay the current 2011 deadline for the establishment of ACLs for all stocks not undergoing overfishing to 2014;
2. For all fish stocks for which a formal stock assessment was NOT conducted in the five years prior to the bill's enactment, those stocks could be permanently exempt from the ACL requirement as long as the Secretary determines that overfishing is not occurring;
3. The bill creates a new, undefined category of fisheries called "ecosystem stocks" that would also be exempt from the ACL requirement. If the Secretary classifies any fishery stock as an "ecosystem stock" that fishery no longer has to have annual catch limits as part of its management.

The bill delays the use of science-based catch limits for the vast majority of this country's fish stocks, including those with excellent, up-to-date science. Overfished stocks that are starting to recover (and thus may no longer be subject to overfishing) would also be subject to the delay, even though ACL implementation is a critical part of ensuring rebuilding momentum for many stocks. In addition, H.R. 2304 would exempt from the ACL requirement any stock that has not had a stock assessment in the five years prior to the bill's enactment. Currently, this provision would apply to 64 stocks including Cobia in the South Atlantic and Red Drum in the Gulf of Mexico. Even once a stock assessment is done for such a stock, it could still not be subject to ACLs. Lastly, the bill creates a permanent loophole from the ACL requirement for stocks that the Secretary deems to be "ecosystem stocks." This term is not defined in the law, regulations, or guidance. The bill notes that such a stock specifically could encompass a stock that is harvested, retained or sold.

Numeric ACLs set at or below scientifically-recommended levels are a critical tool for preventing overfishing, maintaining the long-term health of fish stocks, and ensuring the long-term economic viability of fishing fleets. Prior to the legislative mandate for ACLs enacted

through the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a consistent failure to set and enforce hard quotas led to chronic overfishing. Delaying the 2011 deadline for setting ACLs will only prolong the long-overdue transition to sound fisheries management.

Exempting fisheries that don't have stock assessments would likely doom those fisheries to chronic mismanagement, regardless of whether updated stock assessments and thorough scientific analyses are conducted in the future. And the larger threat – creating a vague and undefined category of fisheries that would be exempted from ACLs – would create an easy “out” for any fisheries in which setting ACLs would be difficult or painful, relegating those fisheries to a much lower management standard. Taken together, these loopholes in the ACL requirement, if enacted, would lead to significantly less sustainable long-term management of federal fisheries and be a major step backward for fisheries conservation.

H.R. 3601 Flexibility and Access in Rebuilding American Fisheries Act of 2011:

This legislation would allow rebuilding plans to be extended, possibly indefinitely, and slow down rebuilding and associated benefits. The MSA requires all stocks to be rebuilt in as short a time as possible not to exceed ten years. The addition of this requirement in 1996 has resulted in the rebuilding of a number of key fisheries around the country. While many have focused on the ten year deadline, the MSA includes ample flexibility in establishing appropriate rebuilding timeframes by allowing exceptions for the biology of the stock, other environmental conditions and international management measures. In fact more than half of all rebuilding plans exceed ten years, including red snapper in the Gulf of Mexico which has a thirty-one year rebuilding plan and a rebuilding deadline of 2032. When the stock is fully rebuilt catch levels are estimated to be three times greater from when rebuilding began

H.R. 3601 would allow managers to put short term economic gain above long-term economic viability and fishery sustainability, threatening fish populations and fishing communities. NOAA estimates that fully rebuilding US stocks would create 500,000 new jobs and generate and additional \$31 billion in economic gain. Passage of this legislation would revert management back to pre- MSA standards, weakening the legal mandates responsible for the recovery of our nation's fisheries necessary to ensure a sustainable supply of jobs and seafood for future generation of fishermen.

The Role of the Fisheries Management Councils:

The MSA allows for a regional approach to management through the establishment of fishery management councils. These councils are comprised of stakeholders from all aspects of the fishery including commercial fishermen, recreational fishermen, fish processors, tribal representatives, state and federal fisheries managers, scientists and more. The fishery management council process is a true stakeholder process. Congress should allow the councils to work as they were intended.

H.R. 1646 the American Angler Preservation Act:

This bill would require that all rulings and decisions from the SSC be risk neutral. However, the SSCs already provide risk neutral fishing advice in the form of the over fishing limit. The control rule for acceptable biological catch (ABC) established under the current regulations by the councils determines the level of risk aversion in the SSC's ABC recommendation. MSA requires that we end overfishing and that ending and preventing overfishing require some risk aversion and accounting for uncertainty. If we use risk neutral science it would allow for a 50-50 chance, a flip of a coin, that overfishing is not occurring. Councils have the option under the current law, regulations, and guidelines of pursuing such a risky strategy, therefore this proposed amendment of the MSA is unnecessary.

H.R. 2772 The Saving Fishing Jobs Act:

This bill establishes criteria for implementation of a limited access privilege programs (LAPP) in New England, the Mid-Atlantic, the South-Atlantic and the Gulf Mexico Regions. The bill requires:

- 1) Fifty percent of the legible fishermen to submit a petition requesting development of the LAPP;
- 2) Two-thirds of eligible fishermen must approve the LAPP;
- 3) The Secretary shall terminate a LAPP if there is a 15% decrease in eligible fishermen within a year of the LAPP being implemented.

LAPPS are not mandatory and councils can use this tool at their discretion and tailor to local needs. *If* councils choose to implement LAPPs there are a wide variety of options to choose from and they can tailor the LAPP to the specific needs of that fishery. Currently, Gulf commercial fishermen are successfully fishing under LAPPs in the red snapper and grouper fisheries. Congress should not take tools out of the fisheries management tool box. I believe our fishermen want to investigate and deliberate this issue so they have the necessary information to make an informed decision on the usefulness of this kind of management model. Stakeholders must be allowed to work with their regional councils to this end.

RECOMMENDATIONS:

1. *Allow the MSA to work:* Stocks are rebuilding and populations are recovering. Gulf of Mexico red snapper is a good example of how fisheries management can work to rebuild a stock. Red snapper had been chronically overfished for years, but in 2007 new management measures were implemented. In 4 short years we are seeing progress towards rebuilding. Fishermen are seeing more snapper on the water, and science has supported recent increases in quota. Since 2008 the total allowable catch has increase from 5 million pounds to 7.185 million pounds in 2011; a 43% increase.

Red grouper is another example of successful fisheries management. After red grouper were determined to be undergoing overfishing and overfished in the late 1990s, NMFS put a rebuilding plan in place containing science based catch limits and accountability measures. A subsequent 2006 SEDAR stock assessment found the population had recovered from its overfished conditions and that catches could be increased, which the Gulf Council did in 2009. An update stock assessment completed in 2009 showed that

allowable catches could be further increased, and as a result the SSC recommended an increase in ABC effective in 2012.

2. *Increase funding for data collection and monitoring:* US commercial and recreational fisheries represent a multi billion dollar industry; in 2008 US fisheries contributed \$163 billion in sales impacts to the economy and supported 1.9 million full and part-time jobs. Congress should invest in fish and fishermen through increasing funding for fisheries management. Increased funding would help provide additional stock assessments, an important tool in setting ACLs; improve recreational data collection and monitoring; and facilitate cooperative research.
3. *Promote innovation in fisheries data collection:* One of the key ways NMFS could improve data collection without the need for Congressional legislation is to explore the use of modern, electronic methods for collecting data from fishermen. Electronic data collection can be more timely, accurate, and cost effective compared to traditional sampling methods. Recently a pilot study conducted by the Texas A&M Corpus Christi demonstrated that data could be collected from for-hire fishermen using a mobile device, in this case an iphone, and sent directly to the NMFS. This application collected catch, discard, location, fishing effort, and economic data. Congress should support efforts to modernize our fisheries data collection by funding efforts to expand these types of programs to support region-wide implementation.

CONCLUSION:

Our Nation's fishery resources are an integral part of our coastal economies and cultural heritage. Healthy fisheries not only promote strong business and coastal jobs but also our way of life. Nationwide, progress is being made to end overfishing. Creating loopholes and exemptions to the Magnuson-Stevens Act will only undermine this progress and jeopardize the long term sustainability of our fisheries. We need to let Magnuson-Stevens keep working towards healthy fish populations. This combined with innovation in data collection and management that works for our country's fishing public will ensure the long-term prosperity in our coastal fishing communities. Thank you for the opportunity to share my thoughts on this important issue.