Written Testimony of New Bedford Mayor Jon Mitchell
Before the U.S. House Committee on Natural Resources
Subcommittee on Water, Power and Oceans
Tuesday, September 26, 2017

Good morning, Chairman Lamborn, Ranking Member Huffman, and Members of the Committee. My name is Jon Mitchell, and I am the Mayor of New Bedford, Massachusetts, the nation's highest grossing commercial fishing port. I appreciate the opportunity to speak to you today about the proposed reauthorization of the Magnuson-Stevens Fishery Conversation and Management Act (the "Magnuson-Stevens Act" or "MSA").

Generally speaking, the Magnuson-Stevens Act has been a success story. America's fisheries are at once among the world's largest and most sustainable. For forty years, the Act has demonstrated that a scientifically-based, regional approach to fisheries management is necessary to sustain marine ecosystems and fishing communities alike. By facilitating the rebuilding of stocks, the Act has enabled the fishing industry for the most part to preserve steady jobs and to make available to Americans a critical source of food.

That the Act is subject to reauthorization every ten years is a recognition that marine environments, fishing technology and scientific methods are dynamic, and that the statutory framework governing commercial fishing must keep up.

That time is upon us now, and it is a testament to the success of Magnuson-Stevens that none of the proposals from either side of the aisle would rework the Act's basic framework. Rather, the range of discussion has focused on reasonable adjustments to the Act in light of the last ten years of experience. In my view, many of these adjustments can advance the Act's seemingly conflicting goals of promoting commerce and preserving the environment.

I will outline what I believe are the key areas for reasonable reform.

Flexibility in the Rebuilding Periods

One of the central tenets of the Magnuson-Stevens Act is that fisheries management can be effective only if it is tailored to the unique characteristics of America's various fisheries. There is enormous diversity in marine ecosystems and fishing communities along America's coasts. Under Magnuson-Stevens, fisheries management is designed, therefore, to be bottom-up.

Rule making is driven accordingly by the eight regional fisheries management councils, which are comprised largely of individuals drawn from industry, academia, and government. The councils are empowered with a variety of tools to manage fish stocks and pursue the goals of the Act, relying on the input from their scientific committees and public input from fishermen, local government officials, environmental groups, and other regional stakeholders. Although council decisions are subject to approval by the Secretary of Commerce to ensure some semblance of national uniformity in rule making, the whole system is based on the idea that the councils, not officials in Washington, are in the best position to evaluate the economic and ecological conditions in their regions, and that they should have sufficient flexibility to promulgate rules in light of those conditions and the goals of the Act.

One of the major problems with the existing law is that council flexibility was severely limited in 1996 with the passage of the Sustainable Fisheries Act, which sought to end overfishing immediately, rebuild stocks as quickly as possible, and to reduce fishing capacity through limited access programs. To effectuate these laudable goals, the '96 Act imposed a strict, ten-year rebuilding schedule for overfished stocks. There is, however, no real biological justification for such a timetable. Suffice it to say, nature doesn't adhere to round-number deadlines.

As a result, our fishermen are often unable to catch their full scientifically-justified quota. Let me explain.

The ten-year requirement places unrealistic mandates on fisheries managers, especially given that many stocks do not have the quality and quantity of scientific data that would be necessary to make accurate ten-year estimates. Many species have their annual allocations set too conservatively as a result. When quota is set too low on certain species, it prevents fishermen from catching the other, healthy species that intermingle with them. These so-called “choke” species are the reason why fishermen in the North Atlantic cannot catch their full quota of healthy and abundant species such as haddock.

The ten-year rule is arbitrary, and its establishment was at odds with the underlying premise of regional management. Regional councils should have the flexibility to set rebuilding timelines for stocks under their jurisdiction based on the unique biological and ecological conditions, and by giving appropriate weight to the economic wellbeing of fishing communities.

Eliminating the ten-year rule should not be regarded as a compromising of the conservation imperatives of the Act. Quite to the contrary, replacing the ten-year rule with one that is based on the regeneration rate of a threatened fish stock -- as some members have proposed -- will lead to clearer, more predictable outcomes without causing unnecessary disruption to fishermen, and without compromising the rebuilding of fish stocks.

The term "flexibility" should not be understood as a euphemism for deregulation. The councils are in the business of finely calibrating decisions in light of relevant environmental and economic data, and their own experience and expertise. In the discharge of their duties, they tend not to win friends either in the fishing industry or in the conservation community, and given the goals of Magnuson-Stevens, that's probably the way it should be.

It may not be easy, but by working together, across the aisle and across the sometimes gaping divide between the fishing industry and conservation communities, it should be possible to formulate a biologically-based rebuilding framework that provides both scientifically-justified flexibility and appropriate accountability.

Setting of Annual Catch Limits and the Mixed-Stock Exception

In a similar vein, the councils should have greater flexibility in setting Annual Catch Limits, or ACLs, to ensure that management decisions fairly reflect all of the goals of the Act. Recently, NOAA revised the National Standard One Guidelines, instructing the regional councils to consider both scientific and management uncertainty when setting quotas. Many of these recommendations, such as the application of a mixed stock exception to the Act's annual ACL requirement, and the authorization for Optimum Yield (OY) to be expressed qualitatively in data poor situations, would significantly improve the Councils' ability to achieve the Act's stated goal of achieving optimum yield "on a continuing basis." This is a step in the right direction.

Inasmuch that the Act calls on councils to balance the health of the fishery and the socio-economic impact of its decisions on fishing communities, the setting of ACL should reflect that careful balancing.

Encouraging Collaboration

The Act also should encourage cooperative research, especially between government and the industry, as well as to encourage the creation of new scientific working groups to ensure that information used by NOAA and the management councils undergoes proper scientific review.

In New England, some of our best scientific innovations have come from collaborations between the industry, government and independent scientists. For example, in the 1990s, the Atlantic scallop fleet began deploying video survey technology to generate additional measurements of the scallop population. These surveys, together with additional research

on gear and habitats, led to revised, more accurate estimates of scallop abundance, and are one of the primary reasons the Atlantic scallop fishery became the most successful in the world. Scientists at the University of Massachusetts-Dartmouth are currently developing new methods to apply the same video survey techniques to the region's groundfish stocks.

The problem is that these collective victories tend to be one-off. The Act must lead to a more systematic approach to encouraging cooperative research. Requiring NOAA to come up with a plan to implement and conduct cooperative research programs would go a long way. Gathering data from various sources will lead to greater accuracy in stock assessment and reduce the need for uncertainty buffers in the setting of annual catch limits.

Cooperation also could be greatly facilitated by siting NOAA facilities in fishing communities. In too many places across the country, geographic distance between regulators and commercial fishermen is an impediment to cooperation. The reality is that many key NOAA scientific and administrative facilities are not located in or near fishing communities, making it more difficult to achieve some level of understanding between the regulators and the regulated community. One of the more egregious examples concerns the Port of New Bedford. Despite accounting for more than a third of the landings in New England, New Bedford is the site of fewer than ten out of over five hundred of NOAA employees in New England. If there is to be real collaboration, NOAA must give strong consideration in its siting decisions to locating facilities in places where commercial fishing is actually taking place.

Antiquities Act

In March, I submitted testimony to this subcommittee concerning the implications of last year's designation of Northeast Canyons and Seamounts Marine Monument under the Antiquities Act. The problem with the designation was fundamentally a procedural one. The process that led to the designation lacked the scientific rigor and industry input that ordinarily come with temporary ocean closures, much a less a permanent closure.

As I argued then, the continued use of a parallel process outside the Magnuson-Stevens Act, however well-meaning, ultimately works against the long-term interests of all stakeholders.

We all lose when the checks and balances employed in the council process are abandoned. A decision-making process driven by the simple assertion of executive branch authority ultimately leaves ocean management decisions permanently vulnerable to short-term political considerations.

Although the current administration has taken steps to revisit the Atlantic monument designation, I believe there needs to be a legislative fix of the inherent conflict between the Magnuson-Stevens and Antiquities Acts, so that decisions to close areas of the ocean to commercial activity can have the full benefit of a rigorous and transparent process.

"Overfishing"

I agree with the proposals to revisit the term "overfishing," which is used in the Act to describe a stock that has fallen below a minimum biomass such that "maximum sustainable yield" (MSY) cannot be generated. "Overfishing" is a charged term that may not accurately describe why a particular stock is diminished. There can be a number of reasons for the loss of biomass of a given fish stock that have nothing to do with fishing activity, including the effects of climate change, pollution, changes in migration patterns, other offshore activity, or increased presence of natural predators. The term also can complicate management of multi-species complexes and management measures that are necessary to address stock diminishment. Describing threatened stocks instead as "depleted" would be a more neutral, and often more accurate, label.

Resources

Stock assessments are the most important source of information in the regulatory process. If there is one area where the regulators and the regulated community always agree, it is that maintaining, and indeed enhancing, funding for scientific research will be imperative in the long run to fishing communities and fish stocks, alike.

Conclusion

Our Nation's fisheries are already some of the best managed and most conservation-minded and sustainable fisheries in the world. By making reasonable revisions to the Magnuson-Stevens Act, Congress can ensure that our fisheries are environmentally sustainable, and that commercial fishermen can continue making vital economic contributions to their communities.