COMMENTS OF CHARLES A. WITEK, III, RECREATIONAL FISHERMAN, WEST BABYLON, NY

My name is Charles Witek. I am a recreational fisherman residing in West Babylon, New York.

I have fished for most of my life, and have more than fifty years' experience angling on every coast of the United States, including Alaska and Hawaii, although most of my angling has taken place in southern New England and the upper Mid-Atlantic region. I am a writer specializing in salt water fishery conservation issues, and a vice president of the New York State Outdoor Writers Association.

I have also been active in the fishery management process. I formerly held a seat on the Mid-Atlantic Fishery Management Council, and currently sit on the New York State Marine Resources Advisory Council, and on the Atlantic States Marine Fisheries Commission's advisory panels for winter flounder and coastal sharks.

My observations while on the water and my experience with the fishery management process has made me a strong supporter of the Magnuson-Stevens Fishery Conservation Act (Act) and, in particular, the conservation and stock rebuilding provisions of such Act which were added during the previous two reauthorizations. Thanks to the Act, the federal fishery management system is undoubtedly the most comprehensive and most effective fishery management system in the nation, which has successfully ended overfishing in most American fisheries, and has successfully rebuilt 39 once-overfished stocks.

Unfortunately, the most important and effective provisions of the Act are coming under attack by some members of the recreational fishing community, persons and organizations who apparently value the short-term exploitation of America's marine resources more highly than the long-term health and abundance of the nation's fish stocks. Years of experience as an angler and as a participant in the management process have taught me that such an approach is ultimately self-defeating; while it may provide a greater short-term economic benefit, in the end, it depletes fish populations and causes far greater economic hardship than the fishing industry would have experienced had adequate regulations been imposed, and the stocks rebuilt to sustainable levels.

Nothing illustrates that better than the recreational winter flounder fishery in the State of New York.

New York fishes on what is known as the Southern New England/Mid-Atlantic stock of winter flounder (Southern Stock). Such flounder spawn in inshore bays and estuaries during late fall and early spring. When waters warm in late May and June, much of the population moves offshore for the summer, then returns to the bays when the waters cool in the fall; the remainder of the population remains in inshore waters, where it once supported a modest fishery during the summer.

When winter flounder are offshore, in federal waters, they are managed by the National Marine Fisheries Service (NMFS), acting in conjunction with the New England Fishery Management Council, which refused to impose hard quotas on the fishery until compelled to do so by the most recent reauthorization of the Act. As a result, the Southern Stock became seriously overfished, and remains so today.

When winter flounder are in state waters, they are managed by the states, acting collectively through the Atlantic States Marine Fisheries Commission (ASMFC). While in state waters, winter flounder may be particularly vulnerable, both when they are aggregated on their spawning grounds and when they group together in thermal refuges near ocean inlets during the summer. Despite such vulnerability, ASMFC has been reluctant to adopt regulations more restrictive than those adopted by NMFS (although when NMFS imposed a brief moratorium on harvest of the Southern Stock a few years ago, ASMFC refused to impose a similar moratorium inshore, instead merely imposing more restrictive regulations that allowed both the commercial and recreational fisheries to continue).

In the late 1980s, when New York recognized that the Southern Stock had begun to decline, it proposed rules to limit the recreational harvest, which had previously been completely unregulated. The recreational fishing industry objected, arguing that their customers needed the "perception" that they could have a "big day," and bring home a large number of fish, or they wouldn't bother to go fishing at all. That argument won the day, inadequate regulations were imposed, and the fishery entered a cycle of decline in which regulations, always opposed by the recreational fishing industry, were never stringent enough to halt the Southern Stock's decline.

The effect on both the fish and the recreational fishing industry was catastrophic. New York's winter flounder population collapsed, and so did the fishery. NMFS' recreational effort estimates show that in 1986, New York anglers made over one million fishing trips targeting winter flounder. Thirty years later, in 2016, New York anglers made only about 74,000 such trips, less than 7% of the trips made three decades before.

Because they sought to avert the whatever minor economic impacts might have accompanied regulations restrictive enough to rebuild, or at least stabilize, the Southern Stock, New York's recreational fishing industry has now lost the economic benefits that would have accrued from nearly one million winter flounder fishing trips each year. That is not income that can easily be replaced by anglers fishing for other species, because the winter flounder fishery was most actively prosecuted during seasons when few other inshore fish are available; in the 1980s, I used to have my boat in the water by mid-March, so that I could fish the entire winter flounder season. Today, I launch the boat in mid-May, as without the flounder, there is little reason to be on the water any sooner. Most other local anglers have done the same thing. That delay represents two months' income denied to tackle shops, gas docks, boat liveries and other fishing-related businesses, all because the industry fought needed fishery regulations that could have kept the stock healthy and kept anglers on the water.

When some angling spokespersons argue that Magnuson-Stevens doesn't adequately address the needs of recreational fisheries, that "alternative management measures" are needed to properly regulate anglers or that Magnuson-Stevens needs to be more "flexible," they are, in effect, arguing that Magnuson-Stevens should be weakened, to allow other fish to be managed in the same way as winter flounder, with economic concerns given parity with biological imperatives. The story of the Southern Stock winter flounder demonstrates that such management, while superficially attractive to the recreational fishing industry, will ultimately cause such industry serious harm.

Critics of the Act, who claim that the law needs more "flexibility," are essentially arguing that firm rebuilding schedules and hard-poundage catch quotas often do not allow anglers to take home enough fish. They ask that the Act be amended to allow longer rebuilding times and the less restrictive regulations that such longer rebuilding times would bring.

However, most anglers are more concerned with the abundance that comes from a fully-rebuilt resource than they are with bringing a lot of fish home.

In 2013, the National Marine Fisheries Service released a report titled "Attitudes and Preferences of Saltwater Recreational Anglers: Report from the 2013 National Saltwater Angler Survey, Volume I." That report, developed from a survey of anglers on every coast of the United States, found that more than 80% of anglers just thought that it was important (either "extremely important" or "somewhat important") to merely catch fish when they go fishing. More than 60% said that that it was important to "know that I will encounter abundant fish." On the other hand, only about 40% said that it was important "to catch as many fish as I can for consumption," while fewer than 40% thought it was important to catch the bag limit of whatever they were fishing for. Most anglers surveyed, roughly 90%, valued spending fishing time with family and friend more than they did any fish-related aspect of the sport. Thus, the need to add "flexibility" to the Act in order to keep anglers fishing appears to have little objective support.

Striped bass, although not a federally-managed species, illustrate the importance of abundance. In 1986, when the Atlantic striped bass stock was in the midst of a collapse, NMFS data reveals that East Coast anglers made about 300,000 trips targeting the species. Strict harvest regulations imposed by ASMFC managed to successfully rebuild the population; in 1995, the year that the stock was officially declared "recovered," increased abundance caused that effort figure to increase by more than an order of magnitude, to more than 5,000,000 trips. As the stock continued to grow, anglers fished even more, making over 8,700,000 million trips in 2003, the year the biomass peaked, and more than 10,500,000 trips in 2007, when larger fish from the dominant 1993 and 1996 year classes were readily available to recreational fishermen.

However, as the striped bass stock began to decline, plagued by the twin problems of below-average recruitment and overfishing, effort declined as well, dropping to about 6,100,000 million trips—nearly as few as were made in 1995, when the stock was newly recovered—in 2014, when the flexibly-managed striped bass population again hovered just above the threshold that denotes an overfished stock.

ASMFC left recreational striped bass regulations unchanged from 1995 through 2014; for all of that time, it allowed coastal anglers to take home two striped bass per day, provided that they were at least 28 inches long (regulations were slightly different, but still consistent, in the waters of Chesapeake Bay).

Thus, it is clearly abundance, rather than the size of the allowable harvest, that drove angler effort, and what is true in the striped bass fishery is true in other fisheries as well. Abundance, that allows anglers to reliably encounter fish, is far more important than bag and size limits in encouraging angler participation.

There is another strong argument against adding flexibility to the Act: It doesn't work.

On the East Coast, fishermen exist in a living laboratory that allows us to experience the consequences of various approaches to fisheries management. In the Mid-Atlantic, where our regional fishery management council was quick to adopt regulations consistent with the intent of the Act, we enjoyed a number of years where no council-managed stock was either overfished or experiencing overfishing. Although a combination of six years of below-average recruitment and recreational overharvest has recently subjected one species, summer flounder, to overfishing again, other species under the jurisdiction of the Mid-Atlantic Fishery Management Council remain abundant and support active fisheries.

In New York, we once fished for species such as cod, pollock, various hakes and winter flounder, all of which are managed by the New England Fishery Management Council. The New England council, unlike the Mid-Atlantic, inevitably tried to temper the Act's mandates with various economic considerations. Thus, it eschewed hard-poundage annual catch limits for most species until it was compelled to impose them. Instead, it adopted alternative management measures such as trip limits, limits on days at sea and other so-called input controls, which theoretically complied with the Act, but never managed to get overfishing under control or rebuild most overfished stocks. As a result, New York's recreational fisheries for cod, pollock, silver hake ("whiting") and white hake have declined precipitously, winter flounder have collapsed and red hake ("ling") are far less abundant than they were a few decades ago.

New York's inshore fisheries are managed in cooperation with ASMFC, which employs a "flexible" management system that does not require overfishing to be ended, stocks to be rebuilt by a particular deadline or the best scientific information to be used when evaluating the health a stock. It hasn't worked.

The fate of tautog, an inshore food fish caught between Massachusetts and Virginia, demonstrates that fact. ASMFC knew as early as 1996 that fishing mortality had to be significantly reduced. However, since the reduction would inevitably involve some economic distress to the fishing industry, and there was no legal requirement to end overfishing or rebuild the stock by any time certain, ASMFC kept putting off the required reductions. Today, twenty-one years later, the species remains overfished and subject to overfishing, as large segments of the local recreational fishing industry are again girding to fight the regulations needed to rebuild the stock.

Since the Act was amended in 1996, and provisions that required managers to end overfishing and rebuild overfished stocks by a time certain became a part of the law, federal fisheries managers have successfully rebuilt 39 stocks, and many others are well on the road to recovery. During the same period, ASMFC, employing its flexible management approach, has failed to rebuild a single stock that falls under its sole jurisdiction, and has seen a number of stocks, including American eel, the southern New England stock of American lobster, American shad, northern shrimp, tautog and weakfish, decline during that time.

It could also be easily argued that ASMFC, and its failure to impose adequately restrictive restrictions on its member states, is responsible for the overharvest in the recreational summer flounder fishery, as it is ASMFC, and not NMFS, which approves all recreational regulations for that species.

Even striped bass, ASMFC's singular fisheries management success story, are now far less abundant than they once were. Although the stock was declared fully-recovered in 1995, and became even more abundant shortly after that, the lack of an annual catch limit, coupled with a failure to respond to increased recreational fishing effort, led to a decade-long decline that now has the population hovering just above the biomass threshold that determines an overfished stock.

It is thus clear that the Act, with its current, mandated annual catch limits and clear rebuilding deadlines, provides the only framework for fisheries management that has met with consistent success. It should also be clear that so-called flexibility provisions would only weaken the Act and render it less effective.

The same can be said of so-called "alternative management measures" that would replace hard-poundage annual catch limits with other means of regulating recreational fisheries.

Annual catch limits are established to prevent overfishing that could threaten the health of the stock. Because any regulatory scheme involves judgment calls, there will sometimes be miscalculations and overfishing will occur. However, a single incident of overfishing, so long as it is quickly detected and remedied, is unlikely to harm a healthy stock, although undetected overfishing can cause real harm, particularly if a stock is already in decline.

Some angling and boating organizations have argued that poundage-based catch limits should be replaced with limits based on a fishing mortality rate. On its face, such suggestion is pointless, as poundage and fishing mortality rates are just two ways to express the same value. An instantaneous fishing mortality rate is easily translated into the percentage of fish that may be removed from a stock each year; multiplying that percentage by the biomass estimate yields a hard-poundage annual catch limit. Similarly, the number of fish removed from the stock over the course of a year, divided by the biomass estimate, yields a percentage that can be translated into the fishing mortality rate. Thus, from a management standpoint, there is no real difference between the two values.

However, what proponents of a fishing mortality rate standard seem to be seeking is not an annual evaluation of fishery performance, but rather a longer-term process that requires a full stock assessment. While estimates of recreational landings are available 45 days after the close of each two-month "wave," so overfishing can be detected, and addressed, relatively quickly, preparing even an interim stock assessment is a much longer process.

Because of that, using assessment-based fishing mortality rates, rather than annual catch limits, to regulate a recreational fishery could allow overfishing to continue unabated for a substantial period of time; depending upon the frequency of the assessments, it could take several years before it is even detected.

Again, striped bass provide an example.

Transcripts of ASMFC Striped Bass Management Board meetings, along with Striped Bass Technical Committee reports and stock assessment updates show that there was concern about a decline in striped bass abundance as early as 2007. A 2011 stock assessment update indicated that the striped bass stock would probably become overfished by 2017. However, the Striped Bass Management Board chose to take no action because the stock was not yet overfished. A new stock assessment was finally undertaken in 2012, and completed in 2013. Based on that assessment, which showed that overfishing had occurred in six of the previous ten years, more restrictive regulations were adopted in 2014, but not imposed until the 2015 fishing season. Because of the long delay, a stock that had still been very abundant, if already declining, in 2007 nearly became overfished a decade later due to a delay in adopting needed harvest cutbacks.

While the once-abundant striped bass stock could survive such a dilatory process, applying it to populations that have already suffered sharp declines in abundance, such as summer flounder, or to still-overfished but rebuilding stocks such as Gulf of Mexico red snapper, could easily result in undetected years of overfishing driving the stock well below the biomass threshold before any action is taken, an event that would do serious harm to both the stock and those who fish for the affected species.

The same problems occur when efforts are made to change the way fisheries data is gathered.

As a rule, fishermen don't understand the concept of unbiased surveys, which are needed to properly assess fish stocks. Instead, they constantly complain that scientists aren't fishing "where the fish are," and argue that if they could do the sampling, they would prove that there are more fish in the ocean than managers believe. Thus, we see some pending legislation propose that data obtained from fishermen and fishing communities be used by fishery managers when preparing stock assessments, without providing any standards that should be used to assess the quality and accuracy of such data.

When the striped bass population collapsed in the late 1970s and early 1980s, there were anglers on Cape Cod, Massachusetts who didn't believe that there was any scarcity, because they happened to have a local abundance of big fish off their shores, and were catching plenty of them. Winter flounder have become so scarce in New York's bays that they are suffering from inbreeding, yet the few fish that remain tend to be found together, so the angler that happens to know where to find them can catch a number of flounder in a short time. The same thing is happening with cod off New England; some commercial fishermen are saying that they are catching more cod than they ever have before, because the remaining fish school tightly together, and those who know where to find them quickly fill their nets. The Commonwealth of Massachusetts has created its own cod survey, hoping to find that its fishermen are right, but up to now, the survey, conducted according to scientific protocols, is confirming NMFS' contention that the cod population has fallen into a very deep decline.

Using anglers' reports, whether voluntary or required, to supplement or contradict NMFS' Marine Recreational Information Program (MRIP), is flawed for similar reasons. Historically, anglers' reports, even when mandated by law, are not reliable. When I attended NMFS' recreational fishing conference in 2014, I spoke with a member of the agency's Highly Migratory Fisheries division, who lamented that

only about 20% of anglers report their bluefin tuna landings, even though reporting within 24 hours in required by law. More recently, according to the *Tuscaloosa News*, the State of Alabama has revealed that, during the state red snapper season, only about 7% of anglers that caught red snapper reported those catches to the state, even though such reporting is mandatory. Such discouragingly low compliance rates cast serious doubts on the validity of angler-generated data.

Accurate stock assessments, and the effective regulations that are based on such assessments, require unbiased data collected in accordance with a statistically-valid methodology, which can survive the rigors of a scientific peer review. Thus, data obtained from non-scientific sources should be viewed with great skepticism.

Having said that, some of the criticism of MRIP is valid, not because MRIP is flawed, but because the data isn't being used properly. The Act states that stocks of fish should be managed as a unit, and the MRIP Handbook issued by NMFS makes it clear that MRIP accuracy increases with the number of samples taken. That being the case, when NMFS permits the states to adopt state-specific regulations, that differ from those of their neighbors, will inevitably cause problems.

MRIP estimates for landings in any particular state are based on far fewer samples than estimates for landings along the entire coast, and thus are less accurate. When the state data is broken down further, to allow states to change size and/or bag limits during the same fishing year, as is the case with black sea bass, samples become smaller yet, and the data even less accurate. Regulations that are based on such data cannot properly govern harvest, as they are not based on reliable information. Language that clarifies the requirement that a stock be managed as a single unit, with consistent regulations, would significantly improve the accuracy of fishery management measures.

In the end, we must all realize that if we want a fishing industry, it helps to have fish. Not just small, overfished populations, but an abundance of fish so that even anglers will very modest skills can go down to the shore with a reasonable expectation of catching something, even if they don't catch too many at any one time.

The decline of New York's recreational fishing industry parallels the decline of its recreational fishing experience. At one time, we had a vital, year-round recreational fishery.

Throughout the year, angling businesses did well. Some season saw some fish more abundant than others, but there were always enough fish of some sort to keep anglers active and content.

Today, New York's angling industry sits atop a tippy, three-legged stool. One leg of that stool is made up of striped bass, another of summer flounder. The third is made up of everything else, none of which is abundant enough or popular enough to support the stool by itself.

The spring mackerel and pollock runs, and the New York bight silver hake fishery, are entirely gone. Swordfish no longer fin out within sight of Montauk Lighthouse. Winter flounder have collapsed, and the cod, weakfish and tautog fisheries are badly diminished. Offshore, white marlin are rarely seen on the inshore grounds, the canyon tuna fishery is a shadow of it was and giant bluefin are scarce. Atlantic

bonito and inshore yellowfin tuna are also scare, and even sharks have become smaller and harder to find. Only black sea bass, bluefish and scup, all managed by the Mid-Atlantic Fishery Management Council in strict compliance with the Act, give this leg strong support.

That should cause concern, because if any leg of that three-legged stool collapses, New York's angling industry will collapse right along with it. The fact that populations of both striped bass and summer flounder are close to their biomass thresholds should make that concern greater still.

Making the Act more flexible, weakening its requirements to use the best available science, or allowing anglers to overfish will not, in the long run, help fishermen, and the businesses that they support. Our fishery cannot long survive if it depends on a handful of still-available species; we must return currently depleted species to real abundance, so that anglers and angling-related businesses can spread their effort over a number of stocks, instead of concentrating on just one or two.

Thus, it is critical that the conservation and management provisions of the Act remain strong, so that stocks are promptly rebuilt and not subject to overfishing. Only the best, peer-reviewed science should be used in assessments, and managers must act on such science, whatever its conclusions. Finally, the Act must not concentrate merely on the species we fish for, but on the habitat in which such fish live, assuring that there are adequate forage species for them to feed on, healthy corals, sponges and other sessile life to provide habitat and nursery areas, and intact ecosystems in which our fish function.

By achieving those goals, Congress can assure that the Act remains the most comprehensive and most effective fisheries management law not only in the United States, but in the world.

Thank you for considering my comments.