

**WRITTEN TESTIMONY
OF
CAPT. ROBERT F. ZALES, II
PRESIDENT**

NATIONAL ASSOCIATION OF CHARTERBOAT OPERATORS

FOR 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**

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES**

DECEMBER 1, 2011

Chairman Hastings and Members of the Committee, my name is Robert F. Zales, II and I am appearing today on behalf of the National Association of Charterboat Operators (NACO). I wish to thank you; my Representative Steve Southerland and the other Members of the Committee for your kind invitation to present testimony on the various amendments that will add flexibility and dramatically improve the Magnuson Stevens Conservation and Management Act (MSA).

NACO is a non-profit 501 (c) (6) association representing charter boat owners and operators across the United States including the Great Lakes. I am also a National Board Member of the Recreational Fishing Alliance and serve as an Officer and Director of several other fishing organizations. Sadly, we are acutely aware of the devastating impacts of the last reauthorization of the MSA as amended through January 12, 2007 to fishermen, their families, supporting businesses, and fishing communities by the increasing loss of JOBS. The current requirements of the MSA are overly restrictive and

require arbitrary rebuilding timelines based on no science. Congress mandated a new recreational data system be provided by January 2009. Your mandate was completely ignored by the leaders of the NOAA/NMFS as we still do not have the new data system as of today. Your mandate also required a report be provided to you no later than January 2011 by the NMFS on the progress made in achieving those goals. Have you received such a report? The rigid requirements of the MSA prevent the management Councils from having any flexibility in recommending management measures that will rebuild our resources while allowing fishermen to fish. Both can and should be allowed.

Charter, commercial, and saltwater recreational fishing is extremely important to the United States, both economically and socially. According to the NOAA publication *Fisheries Economics of the United States for 2009 Recreational Saltwater Fishing* produced sales impacts from angling and durable expenditures totaling **\$50 BILLION and value added impacts of \$23 BILLION while providing over 327,000 JOBS** in 2009. In addition the Commercial Fishing industry provided over **1 MILLION JOBS, \$116 BILLION in sales and \$32 BILLION in income impacts**. Seafood Retailers added another **484,000 JOBS and contributed another \$10 BILLION** to the nations' economy. Just in my small coastal community of Panama City, Florida, according to the local Tourist Development Council, **15% of Tourism Dollars** comes from saltwater recreational fishing. All of these industries depend on our healthy and resilient stocks and must have flexibility in management in order to survive.

All 8 proposed bills contain language that will require needed changes in the MSA that will help maintain and produce the JOBS necessary to maintain our fishery heritage. Congress must have clearly understood that fishery data is a most critical component to

providing proper fishery management as in the reauthorized MSA a timeline to achieve various goals was set. Recreational Fishing data was to have a new program by January 2009. Measures to prevent overfishing of all fisheries overfished or undergoing overfishing were to be established as of 2010, and all other fisheries by 2011. The NOAA/NMFS is required to establish Annual Catch Limits (ACL) and Accountability Measures (AM) for all federally managed fisheries by the end of 2011. It is clear to me that Congress clearly intended to have a new recreational data system in place before measures were established to prevent overfishing and setting ACLs and AMs by the stated timelines. It is also abundantly clear that the managers of the NOAA/NMFS completely ignored the mandate to establish a new recreational data system but moved forward with using the fatally flawed recreational data in creating regulations to prevent overfishing and establishing ACLs and AMs. Our Nation is in dire straits and JOBS are desperately needed. Why is the NOAA/NMFS free to ignore the will of Congress and do as they please with no accountability to anyone while their efforts continue to eliminate fishery JOBS?

Here is a clear example of the overly restrictive requirements of the MSA. When working to establish ACLs and AMs for some fish species, the NOAA/NMFS has recommended and in some cases the Councils have followed simply removing the species from the current fishery management plans. This had to be done in order for the NOAA/NMFS to comply with the MSA. We will now have some species without any management leaving them vulnerable to unrestricted harvest.

The NOAA/NMFS has used the provisions of the MSA that pertain to catch shares as rationale to create and establish new catch share programs along the East Coast and Gulf

of Mexico. They have created a catch share policy they use to push catch share programs on fishermen. Managers of the NOAA/NMFS will tell you they do not push such programs but it is clear from the head of NOAA/NMFS on down that catch share programs will be implemented in order to reduce fleet capacity which eliminates more fishing JOBS.

The Science and Statistical Committee (SSC) was granted new and indisputable power by the reauthorized MSA for the first time. The SSC is required to recommend Over Fishing Limits (OFL) and Acceptable Biological Catch (ABC) limits for species to each Council. The OFL recommendation cannot be exceeded by the Council. The SSC ABC recommendation is typically set between 50% and 75% of the OFL and due to the MSA the Councils cannot recommend an ACL in excess of ABC. The original MSA allowed the Councils to consider an SSC recommendation while also considering other relevant factors. While the SSC recommended OFL and ABC cannot be exceeded in establishing an ACL, an ACL can be set far below the recommended ABC. In my longtime fishery management participation in the Gulf of Mexico the Gulf Council SSC has always had concern about the uncertainty of the data presented to them. This concern for the uncertainty is also felt by the Council. The current MSA has caused this whole process to work against fishermen by excessively constraining harvest limits based on uncertain data and the overly restrictive requirements. Here are two examples of recent SSC and Council actions from the Gulf.

(A) Gulf Red Snapper are considered overfished, current recreational data used is from the fatally flawed MRFSS, and there is much scientific uncertainty because the last full stock assessment was done in 2004. The SSC recently

recommended an OFL of just over 9.3 Million Pounds and set an ABC of just over 7 Million Pounds. In their discussions, the members of the SSC had serious concerns about the uncertainty of the data and some stated they felt the ABC could be set closer to the OFL. Most of the members had serious concern about the data on which their recommendation was based. Many Council members also questioned the data and many of them felt the ABC could be set closer to the OFL but because of the requirements of the MSA they could not make that recommendation.

(B) Gulf Vermillion Snapper were recently assessed to be not overfished or undergoing overfishing and the SSC recommended an OFL of 6.6 million pounds and an ABC of 6.5 Million Pounds. The same uncertainty of the data exists and the same concerns were expressed by some members of the SSC and Council. The Council is currently considering setting the ACL for Vermillion Snapper substantially less than the SSC ABC recommendation because they have little confidence in the data.

The point to these examples is because of the requirements and power granted to the SSC by the MSA, the Councils cannot exceed a SSC recommendation but can set ABC at any level below. Lack of confidence in both examples can be enhanced with real world information presented by fishermen and others who have the knowledge and experience of working with their resource. Although a Council may be presented with other relevant information that may increase their confidence that an ACL may be set higher than the SSC recommendation the requirements of the MSA prevents them from doing so.

In addition, the membership of some SSCs includes NOAA/NMFS science center staff which creates a conflict of interest. The SSC is supposed to be an independent body of experts with no individual agenda other than to consider the science and data and formulate an unbiased recommendation of stock status and fishing levels. While it is difficult to have members appointed to the SSCs who are totally independent and unbiased, it is impossible to have a NOAA/NMFS staff scientist sit on the SSC and be unbiased while being directed and paid by the very agency regulating fisheries. I have had private discussions with several current and former SSC members who agree with this. Some have also said they feel pressured by the NOAA/NMFS to make ultra conservative recommendations or risk reprisals in the form of lost grants for research and other issues. During the last Gulf Council meeting the Chairman of the Gulf SSC was chastised by the NMFS SERO Regional Administrator (RA) for making a statement in a local news paper about his opinion of the status of the red snapper stock that differed with that of the NMFS.

Council appointments are one more issue. The Councils are supposed to be an independent body of balanced experts that are to consider the best available science and other relevant factors in making recommendations for management of fisheries. The MSA provides for the Governors of the coastal states to recommend persons to serve on their respective Councils. The NMFS RAs currently make their recommendation to the Secretary of Commerce which generally is accepted and then appointed. In many cases, if an appointed Council member does not follow the NMFS RA agenda, that member is not recommended for reappointment. In some cases a person recommended by a Governor who is known to not follow the NMFS RA agenda, that person is not recommended by

the RA and thus is not appointed. The NMFS RAs should not be able to determine who should or should not sit as a Council member.

RECOMMENDATIONS

I have attempted to provide some of the key issues of the MSA that are negatively impacting fishermen, their families, supporting businesses, and communities. Here are my recommendations of the proposed bills that will do the most to allow us to fish and provide the JOBS necessary to support our Nation while continuing to enhance our fishery resources.

H.R.2304, H.R.1646, H.R.2772, and H.R.3061 should all be combined and approved as one amendment. While H.R.2304 introduced by Representative Wittman is a very good start it does not go far enough to ease the overly restrictive and regulatory requirements of the current MSA. Mr. Wittman's proposed bill eases requirements that will provide more access to fisheries by recreational fishermen but does little to allow commercial fishermen similar access to their fisheries. H.R.1646, 2772, and especially 3061 provide the real flexibility all fishermen must have in order to survive. Section 2 of H.R.3061 introduced by Representative Pallone meets the real need we have to be able to fish on rebuilding stocks whether they are overfished or undergoing overfishing. In simple terms his proposed legislation allows us to take a set of stairs to reach the top rather than being forced into an elevator. As long as a fishery is improving every year and moving toward being rebuilt why should we be more restricted in our ability to harvest and continue providing for our families and communities. Should a fishery begin to falter, current management measures allow for quick response.

In addition to the language suggested for rebuilding and easing requirements for ACLs and AMs, combining the language affecting catch share programs will allow fishermen, not the NOAA/NMFS and extremist environmental groups such as the Environmental Defense Fund, to control if a catch share program is desired or not. All available information suggest that the vast majority of fishermen, supporting businesses, and communities do not support implementing any new catch share programs under the current efforts of the NOAA/NMFS. The language contained in H.R.1646 and 2772 provide clear requirements, objectives, and definitions to establish catch share programs and remove the ability of the NOAA/NMFS from creating their own rules. Combining the language of these 4 proposed bills will provide the necessary changes to the MSA that will enhance our ability to fish, to work, to create JOBS, provide for our families and communities while ensuring the continued sustainability of our fishery resources.

H.R.594 should be approved to be used in addition to the other recommended changes and not as a replacement. Cooperative research is currently being done utilizing fishermen and their expertise and this should be expanded. Utilizing fishermen to help with debris removal and other water born activities should also be increased. This bill should not be used as mechanism to pacify fishermen who have lost their JOBS due to the overly restrictive requirements of the MSA but should be included as a means to continue to improve our fishery science and reduce uncertainty.

H.R.1013 and H.R.2610 should be combined and approved for the same reasons stated for H.R.594 and the utilization of the funds received from that area should be used for that area. Together these two bills should help bring some accountability to the NOAA/NMFS and their law enforcement efforts. Fishermen should be respected for their

concern of the resource and providing seafood for the American consumer rather than be treated as criminals.

H.R.2753 should be approved as openness of our governmental processes should always be available. I am from Florida and our government operates in the sunshine. Everyone should have access to open government and the process that governs us.

Mr. Chairman, this concludes my testimony. Again, I truly appreciate the invitation and opportunity to provide you and the committee with this information. I will be pleased to respond to any questions.