

**Statement of**  
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**to the**  
**House Natural Resources Committee**  
**on the**  
**“Strengthening Fishing Communities & Increasing**  
**Flexibility in Fisheries Management Act”**  
**and**  
**Reauthorization of the**  
**Magnuson-Stevens Fishery Conservation & Management**  
**Act**  
**Friday, 28 February 2014**

Good morning Mr. Chairman and members of the Natural Resources Committee. My name is Zeke Grader and I am the Executive Director for the Pacific Coast Federation of Fishermen’s Associations (PCFFA). I wish to thank the committee for its kind invitation to testify here today.

By way of introduction, I grew up on California’s north coast where my father was a fish processor and I worked in fish processing plants through law school and until I was hired by the PCFFA in 1976.

PCFFA was incorporated the same year as the passage of the Fishery Conservation & Management Act; prior to that, a number of PCFFA’s 14 member organizations supported establishment of a “200 mile fisheries act.” That campaign, as you know, culminated in the passage and signing of HR 200 in 1976, creating a 200-mile fishery conservation zone and establishing the eight regional fishery management councils to develop management measures within these newly established federal waters. PCFFA, thus, has considerable experience with the law and this upcoming reauthorization of the MSFCMA will be the fourth now that PCFFA and I have participated in.

In addition to my position with PCFFA, I also serve as Executive Director for PCFFA’s sister organization, the Institute for Fisheries Resources (IFR), a 501(c)(3) non-profit engaged in research, outreach and education on behalf of working men and women in the commercial fishing fleet. I should also add that I am the vice-chairman of the Golden Gate Salmon Association, a member of the executive committee of the Marine Fish Conservation Network and am currently working with the Pew Charitable Trusts, principally on funding issues related to our fisheries. My testimony here today, however, is on behalf of the PCFFA and no other organization.

I have attached two PCFFA columns from *The Fishermen's News*, one from last year and one from this month, of our ideas on the upcoming reauthorization of the Magnuson-Stevens Act (MSA), including in the February some thoughts on the Natural Resource Committee's draft legislation, the "Strengthening Fishing Communities & Increasing Flexibility in Fisheries Management Act"

## Some Context

To provide the committee the rationale behind our position, it is useful to review PCFFA's involvement in the past three reauthorizations. In the 1980's reauthorization, PCFFA, based on its experience with salmon and the Pacific Fishery Management Council, worked to include fishery habitat language in the FCMA, where the impacts of habitat degradation on Pacific salmon stocks was being largely ignored by the Pacific Council. PCFFA also worked to get report language on the need for a commercial salmon fisherman representative on that council. The most regulated fishery under the Pacific Council at that time, commercial salmon trollers were treated as poor stepchildren by the Pacific Council and National Marine Fisheries Service until passage of that first reauthorization.

The Pacific Council and NMFS aggressively regulated the ocean salmon fishery from the beginning, heeding the FCMA's prohibition on overfishing. That was not the case with other fisheries, however, particularly mixed stock fisheries. By the 1990's it was becoming evident that some stocks were being overfished, such as some of the groundfish complex. In the 1995-96 reauthorization, PCFFA, as a commercial fishing member of the Marine Fish Conservation Network, a broad coalition of organizations working for sustainable fisheries, supported language aimed at ending overfishing. We recognized that overfishing was not in the best long term economic interest of the fleet and had to be ended if we hoped to have robust fisheries again.

In 2006, PCFFA supported further amendments to the Magnuson-Stevens Act -- beyond the explicit language to end overfishing -- requiring strict stock rebuilding plans and adherence by the council's to the fishery science. Based on the past two years' status of U.S. fishing stocks reports, the 1996 and 2006 amendments to the MSA -- on overfishing, stock rebuilding, and adherence to science - are working.

We also recognized the problems with much of our fishery science; it sometimes did not cover the total range of a stock, in other instances the stock assessments were too infrequent and not accurately reflecting the condition of the current population, and sometimes those doing the stock assessments simply didn't know how to fish to be able to accurately assess fish stock abundance. The problem we saw, that still exists today, is not with the MSA, but that there never have been sufficient resources appropriated for the research and stock assessments needed to sustainably manage our fisheries.

In recognition of the problem of funds for fishery science, PCFFA in its August 2003 *The Fishermen's News* column (<http://www.pcffa.org/fn-aug03.htm>) called for establishment of a national fisheries trust fund, with its own financial support source(s) and outside of the annual congressional appropriations process, to pay for fishery science, as well as other fishery needs,

including development of more selective fishing gear, disaster relief, even underwriting a catch insurance program. In the 2006 reauthorization, language by Senators Stevens and Boxer to establish a fishery trust fund was incorporated in the reauthorization bill. Identifying a financial source, or sources, to provide the support needed for the fund, however, was left until another day. And, it is establishing a stable and ample funding source for fishery science and other fishery needs is what is really needed now, not weakening the existing MSA.

### **Some Thoughts on the “Strengthening Fishing Communities & Increasing Flexibility in Fisheries Management Act”**

Given the history PCFFA has with the Magnuson-Stevens Act, we have the following recommendations regarding provisions of the draft “Strengthening Fishing Communities & Increasing Flexibility in Fisheries Management Act”:

**“Flexibility,” Overfishing, and Rebuilding Periods.** PCFFA is not insensitive to the plight of fishermen in other parts of the nation, particularly New England. We have felt the pain. Our members have gone through highly restricted seasons, when stocks were down - and through no fault of our own. In the early 1990’s we were forced to seek disaster relief, as a result of the impacts of a multi-year drought on salmon stocks. In this century our salmon fisheries were all but closed for a two-year period in 2004-2005 because of federal water policy impacts on salmon in the Klamath Basin. Our salmon fishery was totally closed in 2008-2009 due to impacts from earlier state and federal water operations in the Sacramento-San Joaquin Delta estuary that decimated juvenile salmon populations.

The problem is, we don’t see what will be gained by continuing to fish down stocks or put-off rebuilding – which is exactly what would happen under the “flexibility” that is being proposed by some fishing groups and incorporated in the draft bill. What is to be gained by overfishing for an additional 5 or 7 years? It simply puts off the day of reckoning, with the fleet trying to survive in the short term on depleted stocks when it could be thriving in the long term fishing on rebuilt stocks.

In fact, the MSA already has a great deal of flexibility in how long those plans should be. As you know, the law’s 10-year target for rebuilding can be exceeded due to the biology of the species, other environmental conditions or if the stock is managed under an international agreement. In addition, the Councils have amended a rebuilding plan when new scientific information indicates conditions have changed. The existing flexibility in the law is clear when you consider that more than half of the current rebuilding plans (23 of 43) are longer than 10 years.

For example, the rebuilding time for ocean perch off the Pacific coast was recently extended for an additional 3 years based on a new stock assessment. Other stocks, like cowcod, have had their rebuilding times modified based on updated scientific information, and have rebuilding timelines that far exceed the 10-year limit- in the case of cowcod the rebuilding period is 67 years.

There is significant flexibility in the MSA, and we need to use the Pacific as an example of how the existing flexibility can produce results in rebuilding and advance sustainable fisheries and coastal communities.

The better answer it would seem would be to provide some form of interim financial help to the affected fleets, allowing stocks to rebuild, while working to improve our fishery science to know when to allow higher catch levels and/or to develop more selective fishing practices, where possible, to allow targeting on abundant species while avoiding those still undergoing rebuilding.

We urge the committee, therefore, not to change the existing law regarding overfishing and stock rebuilding.

***National Environmental Policy Act (NEPA) Compliance.*** PCFFA recognizes that many of the regional councils would like to do away with the NEPA requirements for fishery management plans and amendments. NEPA, however, requires a full analysis of an agency action and for a range of options to be considered. These two provisions of NEPA are very important for our fishermen and fishing communities. Considering the councils do not always act in the best interests of fish stocks, fishermen or fishing communities, we think it would be a very bad idea to do away with NEPA compliance and we strongly oppose any reauthorization language to weaken or do away with NEPA compliance by the regional councils.

***Delegating Endangered Species Act (ESA) Authority to the Regional Fishery Councils.*** PCFFA, probably more than any other commercial fishing organization in the nation, has worked extensively with the ESA, since the first salmon runs were proposed for listing in 1985. The ESA has prevented the extinction of the unique Sacramento winter-run chinook salmon, and may have prevented the extinction of subpopulations of species of other salmon runs and certainly stopped the extirpation of salmon from numerous watersheds. The ESA works when it's given a chance, particularly where there is agency resolve and there are the resources necessary – personnel and funding – to do the job.

Handing over authority for protecting and recovering ESA-listed fish to the regional councils is a bad idea. Trying to superimpose the MSA process over the needs of ESA-listed species would be disastrous. Moreover, the regional councils are already strapped under their existing workloads. They have neither the resources, nor the expertise, to carry-out ESA responsibility for protecting and recovering listed fish species. If Congress is concerned with the implementation of the ESA and its successes, then it should provide the responsible agencies the resources they need to carry out their charge and leave them alone thereafter.

***Changing the term from “Overfished” to “Depleted.”*** PCFFA, in its salmon experience, has long argued against the broad categorization of every depleted fish stock being defined as “overfished.” We support, therefore, the proposal in the draft to change the term. This would more accurately describe the condition of many salmon stocks, some of which have had no fishing on them in nearly two decades. Also considering the progress being made in ending overfishing, while looking at numerous threats now and in the future to fish stocks from non-fishing impacts, a better term than “overfishing” is needed to describe stocks that are depleted. This is not to say, however, that a change in terminology should be used to allow overfishing. A

strict adherence to the existing law to stop and prevent overfishing remains essential.

***Referendums on New Catch Share Programs.*** PCFFA supports the draft’s language to require a referendum on any new catch share program, but we cannot support an exemption from this requirement for the Pacific and North Pacific. The referendum requirement must apply to all the nation’s fisheries, not just those along the Atlantic seaboard and in the Gulf of Mexico. Fishing men and women on the West Coast also deserve a vote on their fisheries.

***Strengthening Fishing Communities.*** PCFFA was heartened by part of the title in the committee’s draft reauthorization bill. We were disappointed, however, to find little of substance in the draft that will actually strengthen fishing communities. Based on our experience, the best way now to strengthen our nation’s fishing communities is to ensure they have access over the long-term to rebuilt and abundant fish stocks and the financial resources available to carry out the science and other needs essential for sustainable fisheries.

## **The Changes Needed to the Magnuson-Stevens Act**

***Investment in Fisheries.*** In the 2006 reauthorization language was adopted creating a national fishery trust fund. In this reauthorization Congress needs to now identify a financial source or sources for such a fund and spell out how the fund would be operated and the purposes for which monies from the fund may be used. Some years ago, PCFFA crafted a discussion draft for a national fishery trust fund, including a revenue source and uses for monies deposited into the fund. If it is useful, we will provide that to the committee for the purposes of starting the discussion. Moreover, the committee may want to revisit the legislation proposed in 2012 to use Saltonsall-Kennedy Act monies to support vital fisheries science.

***Protecting Fishing Communities.*** In the 2006 reauthorization, Congress provided in the Limited Access Privilege Program (LAPPs) provisions of the act for the creation of community fishing associations (CFAs) to receive initial quota allocation and hold quota on behalf of a fishing community however that was defined. This language was extremely important, since NOAA/NMFS promoted individual fishing quotas (IFQs) and other forms of catch shares, to ensure fishing communities continued to have access to those fishery resources they traditionally relied up to support their fleets and economies. Moreover, CFAs are a means for avoiding “stranded assets” for fish processors – a common complaint when quota is issued to individual fishermen or boat owners – without the need for issuing quota to processors directly raising anti-trust concerns, among others. CFAs may prove important, as well, for protecting our fishing communities, if provisions in catch share fisheries, such as restricting quota ownership to U.S. citizens or limiting quota accumulation by a single entity, are struck down by current or future U.S. trade agreements, such as the Trans-Pacific Partnership now being negotiated.

While NOAA/NMFS and many of the council’s continue to push IFQ or catch share management, nothing has been done since that last reauthorization to fully define what constitutes a CFA or their operation. As a result, we have community groups here on the West Coast that have formed or are forming what they believe would constitute a CFA, but are left in limbo due to NOAA/NMFS and council action to put over work on CFA development. Indeed, the Pacific Council considers CFAs a “trailing action” in its implementation of its trawl

groundfish IFQ scheme. That is outrageous. What they are in essence doing is circumventing Congress by issuing all of the quota to individuals leaving nothing for CFAs. Congress needs to set forth standards for CFAs and implement a moratorium on any new IFQ or catch share programs until such time as CFA language is fully developed in regulation and CFAs are formed to accept and hold quota.

***Ecosystem Services.*** PCFFA has argued since the first reauthorization of the FCMA for consideration of habitat impacts on fish abundance and the need for habitat protection. Our organization has also recognized predator-prey relationships and the importance of forage fish considerations in fish management when it initiated in California successful legislation to ban the harvest of krill (at the base of the ocean food chain) and the catch of white sharks (an apex predator in the ocean food chain). In the succeeding reauthorizations Congress has added language for the identification and protection of essential fish habitat and development of ecosystem based fishery management plans. What we ask in this reauthorization round is that the discussion on ecosystem fishery management continue, including consideration of small pelagic fish that are an important food source for many of our nation's major commercial and recreational fish stocks.

***Addressing Non-Fishing Impacts.*** Finally, given the actions taken by other agencies that can affect the health of fish stocks managed by a regional fishery council, the councils need to do more than simply regulate fishermen, if we hope to successfully conserve many of our nation's fish stocks. The regional councils cannot sit by quietly when some other agency acts in a way that damages the very fish stocks a regional fishery council is charged with managing. To that end, PCFFA believes it important that in this reauthorization round of the MSA, Congress charge the regional councils with an affirmative duty to notify, when they become aware of, any agency whose actions or planned actions will adversely affect the health of a fish stock that council is charged with managing. Further, the regional councils should be given the duty to consult with another agency whose action is or may affect a fish stock or stocks and to recommend measures to either prevent damage to the fish or mitigate for any damage. Giving the regional councils this charge could help prevent non-fishing related damage to fish stocks in the future.

## **Conclusion**

Mr. Chairman that concludes my remarks here this morning. I'd be pleased to answer any questions you or committee members may have. Thank you again for this opportunity to testify.



# FISHERMEN'S NEWS

May 2013

*The Advocate for the Independent Fisherman*

\$3.00



## Pacific Coast Federation of Fishermen's Associations

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## Fixing Magnuson – Again

By Zeke Grader and Glen Spain

At the end of this federal fiscal year the Magnuson-Stevens Act (MSA) is set to expire. Congress is unlikely to let it, but this “sunset” date has set in motion discussions and hearings on what changes are needed in the reauthorization of the nation’s primary fishery law.

The first Congressional MSA reauthorization hearings this year began before the Fisheries, Wildlife, Oceans & Insular Affairs Subcommittee of the House Natural Resources Committee on 13 March, and a week later (16 March) by the Senate Commerce Committee’s Subcommittee on Oceans, Atmosphere, Fisheries & Coast Guard, in what has become a decadal event since passage of H.R. 200, the Fishery Conservation & Management Act, in 1976.

This month (7-9 May), in fact, a major conference is being held in DC, “Managing Our Nation’s Fisheries –Advancing Sustainability” that is expected to explore MSA reauthorization issues.

The March hearings for the upcoming reauthorization included issues dealing with stock allocation between states and shifting of stocks due to climate change, state management of stocks within 20 fathoms of shore, the cost of observer coverage and who would pay, and implementation of “catch share” programs.

Most of the clamor, however, is around “flexibility” in the MSA. The complaints are mainly from groundfish fishery representatives in New England and the West Coast and recreational groups in the Gulf of Mexico. At issue is adherence to strict catch limits (total allowable catch or “TAC”) and stock rebuilding plans, as mandated in the last reauthorization.

The original Fishery Conservation & Management Act (FCMA), now called the “Magnuson-Stevens Act (MSA)” after two of its late Senate sponsors, included language prohibiting overfishing, but it was not until the 1996 reauthorization that Congress inserted explicit language on ending overfishing. In 2006, Congress was even more explicit by requiring rebuilding plans for overfished stocks and mandating management be science-based.

The MSA had succeeded in ending foreign fishing and “Americanized” fishing within the US 200-mile fishing zone, and prevented overfishing in some fisheries such as salmon. However, it had allowed overfishing to occur in other fisheries, most notably groundfish, as a result of perverse interpretations of “optimum yield,” shoddy science and denial.

Fishermen rallies were held in DC in 2010 and 2012 protesting the law, and various bills have been introduced in the

past three years aimed at undermining the MSA’s explicit language on ending overfishing, stock rebuilding and adherence to science. None of these measures have gone anywhere, although there is a chance some of the language from these bills could be packaged up as reauthorization amendments, especially in the House.

The complaints coming from the fishing groups mentioned above is that the 2006 language is “too rigid” – both in its prohibition on overfishing and requirement for 10-year stock rebuilding plans. At the same time that language – prohibiting overfishing, stock rebuilding timelines, and science-based management – has resulted in a fair amount of success for American fisheries in the past few years with all of the nation’s federally-regulated fisheries now either at, or nearing, sustainable levels.

Moreover, the complaints about an inflexible law are by no means universal. There is, in fact, a fair degree of flexibility in the current MSA. The bigger problem seems to be with the agencies – the National Marine Fisheries Service (NMFS) and its meddling “mother,” the National Oceanic & Atmospheric Administration (NOAA) – and the regional councils.

Let’s also be clear that some of these complaints are bogus. Recreational fishing groups in the Gulf of Mexico fought



licensing and now they're incensed that they have to fish under any limits. Their typical solution has been to either take quota from the commercials or just ignore any science that sportfishing, too, can impact fish stocks.

There is a legitimate problem coming out of the Northeast, however, that is not so much about "flexibility" as it is the quality of the science upon which management must base its decisions. Inadequate funding has thwarted the extensive and frequent stock surveys needed to manage fisheries for optimum yield. And, at times, equipment or personnel have not been up to the task of accurately measuring fish populations. Science – whether it's research or on-going stock assessments – costs money. Despite its largesse elsewhere, the US has been cheap when it comes to funding fishery science, and both fish and fishermen have suffered as a result.

The problem of inadequate fishery science funding is by no means unique to the Northeast or to groundfish. This year salmon trollers and anglers along the California and Oregon coast will be constrained over concern for ESA-listed coastal fall-run chinook. Although there is anecdotal information that coastal fall numbers have increased, lack of funding has prevented NMFS from conducting spawning counts to develop current population estimates for these fish, never mind developing legally required recovery plans. Indeed, the problem could have worsened had a Senate Continuing Resolution (S. 933) rider eliminating the Pacific Coast Salmon Recovery Fund (PCSRF) passed in March. NOAA/NMFS funding cut-backs as a result of the sequester will impact fishery science as well.

The first significant fix in reauthorization, therefore, is secure funding for fisheries science. But financial support for observer programs (to avoid putting a financial squeeze on small boat operators), development and utilization of cleaner fishing gear, and even disaster relief, require funding as well. The necessity for fishery science funding has been written about extensively in this column over the past decade (see for example, "Planning and Paying for

Future Fisheries Research" FN Aug 2003, [www.pcffa.org/fn-aug03.htm](http://www.pcffa.org/fn-aug03.htm)) and this reauthorization may present an opportunity to finally act.

An overlooked provision of the 2006 MSA reauthorization is language inserted by Senators Stevens and Boxer creating a "national fisheries trust fund." The Stevens-Boxer provision established that trust fund, but identifying a substantive funding source was left for later. Later is now here.

PCFFA's recommendation of a nominal ad valorem fee on all seafood sold in the US to support the trust fund never gained traction. In the last Congressional session, the Pew Environmental Group proposed a more modest solution, which PCFFA supported, of using existing Saltonstall-Kennedy (S-K) Act funds to support federal fisheries research. Former Senators John Kerrey and Olympia Snowe introduced a Senate bill, and a companion measure was introduced in the House, but the lateness of the last session and other national issues prevented action on this legislation.

Legislation to earmark S-K monies for fishery science or to underwrite a national fishery trust fund could be introduced again in this Congress, or included in a reauthorization amendments package. There may be two problems, however. First, others are clamoring for S-K funds – for fishery disaster relief and seafood marketing, for instance. Second there is opposition from NMFS which claims it is already using up all the S-K funds – although the agency continues to refuse to give an accounting for its use of S-K.

Whether S-K monies will support better fishery science, or a seafood sale fee to underwrite a fishery trust fund is passed, or some other funding mechanism is advanced, money for better fisheries management has to be at the top of MSA fixes. Fishermen have to be emphatic with Congress on this matter and not allow minor or non-issues to distract us in this reauthorization season. It's the funding, stupid!

As mentioned, great strides have been made rebuilding the nation's fish stocks over the past decade or so. The

same cannot be said for the allocation of those fish stocks and the protection of fishing fleets and fishing communities.

Although promising greater flexibility for fishermen, increased safety, and even a conservation incentive, the individual fishing quota (IFQ) systems promoted in the Bush Administration and, now, "catch shares" under Obama (with a lot of meddling by NOAA leadership and the liberal Environmental Defense Fund) these schemes for allocating quota to individuals or sectors have proven problematic and need to be fixed or scrapped. Consolidation of quota among fewer owners and vessels, third party ownership/control of fish quota, potential loss of access of fishing communities to supporting fish stocks, and privatization of a public trust resource are all at the top of the problems with this allocation method, all needing to be addressed in this reauthorization.

In the 1996 reauthorization, Congress put in place a moratorium on new IFQ systems, charging NMFS with developing standards and guidelines for this allocation system. Instead, NMFS deliberately defied Congress, sat on its hands, and did nothing until the moratorium expired and then went back to business as usual, handing out almost totally unrestricted quota through the regional councils. Congress, in response, did nothing.

In the 2006 reauthorization, Congress inserted language in the Limited Access Privilege Programs (LAPPs) section allowing for the creation of community fishing associations (CFAs) and providing these groups with an initial allocation of quota. This language was developed as an alternative to processor quotas and intended to ensure fishing communities could protect their interest in fish stocks they relied upon from vessels holding quota moving elsewhere or simply selling their quota elsewhere.

NMFS, again, did nothing. And the councils, to date, have done nothing to facilitate formation of CFAs, such as establishing standards and guidelines. But they have continued developing catch share programs and giving out quota. Indeed, the Pacific Council has made CFAs a "trailing action." In other





words the PFMC will give away all the quota first and then, maybe, consider CFAs. CFAs will then be left scrambling for funds to buy-up quota from private owners – quota that was originally a public trust resource given out for free.

Congress cannot ignore the insubordination of NOAA/NMFS and the regional fishery councils following the 1996 and 2006 reauthorizations. In this reauthorization Congress should consider a moratorium on any IFQ/catch share programs – proposed or under development, require an independent review of programs now in place, and develop a set of standards and guidelines for IFQ/catch share programs and CFAs that NMFS and the councils will be required to follow.

Those standards and guidelines should be aimed at ensuring that: 1) the need for an IFQ/catch share program in a particular fishery is identified after all other management alternatives have been thoroughly explored; 2) there is a fair allocation of the resource, eliminating arbitrarily imposed qualifying dates and minimum landing requirements; 3) the ownership of quota/share is restricted to either (a) an individual employed

on or personally operating a vessel for which the take of the quota is to occur, or (b) a community fishing association or sector approved to hold quota on behalf of fishing men/women in a given port or locale; 4) the percentage of quota/shares held by individuals/sectors and CFAs is limited through an enforceable cap facilitating the greatest opportunity for employment and use of vessels consistent with the biological limits of the stocks, while encouraging investment and providing for reasonable middle income living standards; and 5) development of a mechanism facilitating an affordable entry for new participants in the fishery.

Such a moratorium should expire only when NOAA/NMFS and the regional councils are prepared to develop IFQ/catch share programs consistent with such standards and guidelines, and when existing programs, following review, are modified as may be necessary to comply with the new standards and guidelines, or be eliminated.

If these two fixes – funding and allocation – can be achieved in this reauthorization, then some real improvements will be made in our fisheries, at least

from the standpoint of management. There are other uncertainties on the horizon, including climate change and related ocean acidification, but at least making these first two fixes will be forward progress.

Finally, there are other fixes that should be considered including improvements to council management and doing away with the “overfishing” designation for stocks depleted by factors other than fishing (a problem already for salmon, but which could be significant in the future for other stocks as a result of climate change). But what is important is that we keep our focus on the funding and allocation fixes, and not allow ourselves to be distracted by extraneous issues. 🐟

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# FISHERMEN'S

## The Advocate for the Commercial Fisherman

# NEWS



### Pacific Coast Federation of Fishermen's Associations

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## Four Fixes for Magnuson-Stevens

By Zeke Grader, Glen Spain, Larry Collins

"NOT UNTIL THEY GET IT RIGHT," thundered the late Massachusetts Congressman Gerry Studds when asked why his name was not on the nation's principal fisheries management act. It was, after all, his House bill (HR 200) that was signed into law in 1976 as the Fishery Conservation & Management Act, now called the Magnuson-Stevens Act after its two Senate sponsors.

Congress is now working on the fourth reauthorization of this law. And they still might not get it right.

The debate over Magnuson-Stevens (MSA) raging for the past few years has been mainly whether the Act is now "too rigid" in its prohibitions on overfishing and stock rebuilding requirements. Stock collapses in the early 1990's amidst charges of overfishing led Congress in the 1996 reauthorization to insert explicit language in the Act to prohibit overfishing. But when that mandate failed to bring a turn-around in depleted fish populations, more specific and stringent stock rebuilding language was added in the 2006 reauthorization in use today.

The 10-year rebuilding plan requirement (which there is already some flexibility in meeting) has caused a great deal of consternation in New England in particular, but also along the rest of the Atlantic Seaboard and in the Gulf of

Mexico. Measures the regional fishery councils in those areas finally put in place came about late and, as a result, necessitated highly restricted fishing and many closures. Even recreational fisheries were hit with closures, often for the first time, as it became evident that their effort, too, affected stock abundance.

The economic hit from collapsing stocks and the subsequent management measures imposed (mainly after the last reauthorization) to prevent excessive fishing effort and begin stock rebuilding has been hard. That led to two national protests by commercial fishing and recreational angling groups, mainly from New England and the Gulf, calling for more "flexibility" in Magnuson-Stevens for the councils developing plans to prevent overfishing and rebuild stocks.

For most in the environmental and scientific community, however, as well as some in the commercial fishing industry – at least here on the West Coast – "flexibility" is merely code for going back to the old ways of doing things that led to depleted stocks and collapsed fisheries. Retreating from the 1996 and 2006 rebuilding measures is seen as a sure path to disaster – leading to the long-term collapse of America's oldest industry and the economic, if not actual, extinction of many stocks.

The Commerce Department (NOAA/NMFS) report issued last summer verified that there are now fewer overfished fisheries and more stocks in the process of being rebuilt (or already rebuilt), and that would seem to confirm the success of the measures mandated in the last two MSA reauthorizations.

In fairness to the regional councils and many in the fisheries, not all of the problems that led to past overfishing and stock depletion were the result of avarice or ignorance. In some instances the science (what little was available) led managers to believe that stocks were more robust than they were, subsequently leading to overfishing. On the other hand, the "best available science" has also led to more dire stock predictions than actually occurred, sometimes resulting in draconian management measures being unnecessarily imposed.

Our conclusion is that the fault is not with the MSA, but with the fishing industry, the environmental and scientific community, and the fishery councils – and ultimately Congress – for their collective failure to aggressively push for the funding needed to pay for fundamental data collection and research essential for sustainable fishery management.

Last May 2013, following the nation-



al conference in DC on managing the nation's fisheries, the Senate Commerce Committee's Fisheries Subcommittee, and the House Natural Resources Committee separately held a series of hearings on the MSA preparing for the fourth reauthorization (technically, authorization for the Act expired in 2013, although the MSA itself continues in place until the next reauthorization). The first product of the Resources Committee's hearings was a discussion draft released by its Republican majority on 19 December.

A Senate Commerce Committee draft should be forthcoming in early 2014, and either a Democrat alternative discussion draft or at least some alternative language to the House Republican version is expected, as well, from key Democrat Resources Committee members (e.g., Oregon's Peter DeFazio, California's Jared Huffman). When these are released we will have a better idea of the full range of issues and options Congress is considering.

The Republican draft contains some interesting, even innovative proposals, but some that are problematic as well, including the following:

- It retreats from the current stringent requirement of the MSA on rebuilding depleted fisheries and setting annual catch levels. On the positive side, however, it recognizes and provides for alternatives to annual quotas for managing some fisheries, where quota management (e.g., TACs) does not work (e.g., many Pacific salmon stocks).
- It does not require National Environmental Policy Act (NEPA) compliance, which is a problem. Many of the regional councils have been trying for years to get around NEPA, but NEPA is an important protection for ensuring that the councils consider a broad range of alternatives when developing management plans or amendments.
- On the plus side, it substitutes the term "depleted" for "overfished." While it is important to prevent overfishing, increasingly non-fishing activities have led to stock depletions, with Pacific salmon a prime example. Furthermore, climate change and various forms of

pollution will likely result in more fish stock depletions in the future.

- It calls for referendums on any new catch share programs. The problem is that this language does not apply to the Pacific, where fishermen also deserve the right to choose whether or not to opt for this means of allocating fish.
- It does push for development of electronic monitoring as an alternative to on-board observers. This is particularly important given the clamor for more information about catch without the necessity of an on-board observer, which can be expensive and an onerous burden on smaller fisheries and small-boat operations.

Within the next month or two we should have some other drafts to compare to the December House Republican language. In the meantime, avoiding all the clatter about "flexibility" or the councils trying to circumvent NEPA (with which arguably they don't really comply anyway), much less those who advocate doing nothing, we think that four changes are needed in this reauthorization round. They are:

### (1) Protecting Fishing Communities

Congress needs to finish what it started in the 2006 reauthorization when it authorized creation of "community fishing associations (CFAs)" to hold quota and be eligible for initial quota allocation. Congress cannot leave the details of what constitutes a CFA, or how they are formed or operated, up to NOAA/NMFS – agencies that have proven to be laggards and incompetents when it comes to community protections in fisheries.

Moreover, a moratorium on the issuance of any fishery quota is needed until such time as guidelines and standards for CFAs are established and implemented. This is essential to make sure that in any catch share program, fishing communities are in place for initial allocation of quota, to ensure their fishermen, processors and fishery-dependent businesses are protected.

Finally, Congress needs to revisit the 1996 reauthorization, and do what it had already once ordered NMFS to do – establish regulatory standards for

individual fishing quota (IFQ) systems. As you may remember, NOAA/NMFS ignored the Congressional mandate to the agency in the 1996 reauthorization to adopt such standards. When the moratorium on IFQs later expired, the agency went back to pimping IFQs, still with no standards to assure a fair allocation of quota, that only those engaged in fishing could hold quota, or putting effective caps on quota ownership in place to prevent consolidation of quota ownership/control.

### (2) "Depleted" is the Word

Use of the overly broad term "overfishing" to describe any stock that is depleted for whatever reason is an issue we have long complained of. The inadequacy of that definition was made glaringly obvious in the mid-1990's when West Coast coho, along their southern range, were listed under the Endangered Species Act (ESA). Years prior to that listing, broad fishing restrictions had been imposed on the coho catch, but after nearly a score of years of fishing restrictions those coho populations remain depressed. Clearly the cause was not overfishing.

Nor were the 2008-2009 Central Valley chinook collapses caused by overfishing, but by excessive extraction of the Delta's freshwater inflow. When diverted flows were returned pursuant to a successful PCFFA lawsuit, those stocks rebounded.

Although fishing restrictions may be needed to prevent further exacerbation of a stock depletion problem, there must be an explicit recognition – whether in a fishery plan, amendment, or regulation – when fishing is not the cause of the depletion, as well as an identification of the non-fishing cause(s) of the decline and acknowledgement that fishing restrictions alone will not rebuild such stock or stocks.

### (3) No More Silence

The regional fishery councils, together with NMFS, were charged by Congress in the 1976 MSA with conserving and managing our nation's fisheries. For the better part of forty years that charge has been viewed narrowly as simply regulating fishing and allocat-



ing fish. That is no longer good enough.

If the nation hopes to truly conserve its fish stocks and protect its fisheries, those charged with conservation and management need to be explicitly mandated to speak out on behalf of the fish where they may now lack regulatory authority over non-fishing activities affecting fisheries.

To its credit, the Pacific Fishery Management Council has occasionally, if reluctantly, spoken out on non-fishing actions affecting the health of stocks it is charged with managing. But those charged with conserving fish stocks can no longer be reluctant or occasional, nor missing in action as so many of the regional councils have been.

Explicit language is needed in the MSA mandating the regional councils and NMFS to notify any agency with regulatory authority over an activity that will impair or threaten a fish stock or stocks for which a council/NMFS has jurisdiction, identifying the nature of the threat, along with proposed measures for mitigating the threat, and requiring any agency so notified to then consult with that regional council and NMFS

on measures to eliminate or mitigate the impact of that non-fishing activity. Consultation cannot just be limited to NMFS and ESA-listed species as it is today.

This consultation requirement cannot be optional or permissive, it has to be mandatory – our fisheries will not be conserved by silence.

#### **(4) Show Us the Money**

Finally, for more than a decade PCFFA has argued for creation of a national Fishery Trust Fund to pay for fishery science as well as other fishery needs ranging from development of cleaner fishing gear, to some form of catch insurance and disaster relief funding.

In the 2006 reauthorization, Senators Ted Stevens (R-AK) and Barbara Boxer (D-CA) successfully inserted language for the creation of such a Fishery Trust Fund. Left undone, however, was identifying a specific source of revenue to support that fund.

The Pew Charitable Trust, to its credit, has taken on this issue; in 2012 then-Senators John Kerry (D-Ma) and Olympia Snowe (R-ME) introduced legislation that would have tapped the

Saltonstall-Kennedy Act fund to pay for fishery research. Introduced late, that legislation didn't move, and unfortunately there was no follow-up in 2013.

Good fishery management doesn't happen without good science, but good science has to be paid for. It's time for Congress to revisit the Fishery Trust Fund and designate a permanent revenue source to support it. Maybe then there'll be less clatter about "flexibility" and economic hardships and more about getting on with understanding fish stocks and caring for those whose fisheries are being rebuilt.

Fishermen cannot ignore this fourth reauthorization. They have to be part of the debate, if we expect to finally get the MSA right. 🐟

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