

Committee on Resources,

Subcommittee on Fisheries Conservation, Wildlife & Oceans

[fisheries](#) - - Rep. Wayne Gilchrest, Chairman

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Witness Statement

Testimony of Lee R. Crockett,
Executive Director,
Marine Fish Conservation Network

Good afternoon Mr. Chairman and Members of the Subcommittee, my name is Lee Crockett, I am the Executive Director of the Marine Fish Conservation Network (Network). The Network is a coalition of 102 environmental organizations, commercial and recreational fishing associations, and marine science groups dedicated to promoting the long-term sustainability of marine fisheries. Our member organizations represent nearly 5 million people. For your information, I've attached a list of Network members to my testimony. We appreciate this opportunity to present our views on reauthorization of the Magnuson-Stevens Act. As you requested, I will focus my testimony on progress and effectiveness of implementation of the 1996 Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Act and the issues that we think the Subcommittee should address during reauthorization.

I would first like to say how pleased we are that you are now the Chairman of this Subcommittee. You have been a leader in Congress on fish conservation for many years and can rightfully claim to be one of the fathers of the SFA. It was your legislation, H.R. 4404, the "Marine Fish Conservation Amendments of 1994," that formed the basis for the SFA's overfishing, bycatch, and essential fish habitat provisions. As you have a paternal claim to the conservation provisions of the SFA, so does the Network. We have advocated for changes to the Magnuson-Stevens Act to prohibit overfishing, minimize bycatch, and identify and protect essential fish habitat since 1993.

Since enactment of the SFA in 1996, members of the Network have been actively involved in its implementation at the regional fishery management council level. Our members have actively participated in the council process as members of and advisors to council committees, and as interested stakeholders through written and oral testimony. We have been working diligently over the past four years to ensure that the SFA is implemented as Congress intended. Based on our experience, the Network issued a report in January 1999, in partnership with the Center for Marine Conservation, evaluating council implementation of the SFA. The report, entitled Missing the Boat, identified major failures in the implementation of the SFA. We found that while the councils had made some progress in controlling overfishing and rebuilding overfished stocks, much more work was needed. Some councils continued to allow short-term overfishing, and many stretched rebuilding plans out to the maximum allowed by law, 10 years or beyond. These risky practices jeopardize rebuilding these overfished stocks.

We also found that the councils failed to implement the SFA's bycatch requirements. Many councils ignored this requirement either by relying on past inadequate actions, or by postponing action until some later unspecified date. The most often cited excuse for inaction was a lack of data. However, the councils uniformly did not even establish the SFA mandated bycatch reporting systems necessary to gather such data.

The councils did a better job of implementing the Act's essential fish habitat (EFH) requirements. Across the board, the councils engaged in a thorough information gathering process and identified EFH in an appropriately precautionary manner. However, nearly all of the councils failed to carry out one of the most important SFA mandates: protecting EFH from damaging fishing practices.

In response to *Missing the Boat*, the National Marine Fisheries Service (NMFS) stated that it was too early to criticize implementation of the SFA and assured the public and us that it would return inadequate SFA implementation amendments and plans to the councils for "necessary modifications."

Since then, members of the Network have been closely following NMFS' response to the fishery management councils' SFA implementation amendments. We reviewed each amendment and provided NMFS with detailed comments and recommendations on which sections should be approved or disapproved for not meeting SFA requirements. We also issued another report on NMFS' implementation of the SFA entitled *Lost at Sea*. In that report, we found that, despite its earlier assurances, NMFS failed to reject the vast majority of the inadequate SFA implementation amendments. NMFS approved three plan amendments that allowed continued short-term overfishing. It also approved 12 rebuilding plans that did not meet the requirement to rebuild overfished stocks in as short a time as possible, but instead stretched rebuilding out for 10 years. With regard to bycatch, we found that all of the 24 plan amendments submitted as of September 1999 were inadequate and should have been rejected. Unfortunately, NMFS rejected only 5 of those inadequate amendments.

With regard to EFH, only two of the existing EFH amendments contained any new measures to protect habitat from damaging fishing practices, and both affected only small areas. Aside from these minor actions, little else has been done to protect fish habitat from fishing impacts. Most councils failed to even conduct a comprehensive assessment of the effects of fishing gear on habitat or the practicability of measures to reduce those impacts. NMFS' response to those failings was to partially disapprove nine inadequate amendments, while approving 28 equally inadequate amendments.

The Network is in the process of conducting a follow-up to *Lost at Sea* to determine what the councils and NMFS have done to correct deficient plan amendments since September 1999. While this study is not complete, I would like to share some of our preliminary results with you.

In New England, the Council has not implemented the SFA overfishing definitions or the required rebuilding plans, nearly five years after the Act's passage. Many stocks continue to be managed based on pre-SFA overfishing and rebuilding targets. With regard to bycatch, the Council failed to establish a bycatch reporting methodology and continues to rely on existing reporting requirements to report bycatch - vessel trip reports and minimal at-sea observer coverage - even though it admits that both are unreliable for assessing bycatch. As to protecting EFH, NMFS fully approved the Omnibus EFH amendment. However, this approval was unwarranted as the amendments failed: (1) to assess the impacts of the eighteen predominant gears used in New England on EFH; and (2) incorrectly found that existing measures were adequate to minimize fishing impacts on EFH. Since the passage of the Omnibus EFH Amendment, many of the measures it relied on to minimize fishing effects on EFH have been weakened (groundfish closed areas) or never implemented (scallop days at sea reductions).

Similar issues arise in the Mid-Atlantic, NMFS approved most of the Council's overfishing and rebuilding plans - even though many relied on pre-SFA overfishing definitions that were risk-prone. While NMFS rejected the scup rebuilding plan, the Council has yet to develop an amendment to modify the existing plan. Most of the Mid-Atlantic Council's plan amendments to address bycatch rely on existing catch reporting

requirements. Paradoxically, the Council deferred taking action to minimize bycatch due to lack of data because of the unreliability of existing reporting methods. NMFS approved most of these plans and only rejected the scup bycatch provisions of the Summer Flounder, Scup, and Black Sea Bass management plan. The Council has yet to adopt adequate measures to reduce scup bycatch in the squid, herring, and mackerel fisheries. NMFS rejected all of the EFH amendments because they did not adequately assess the impact of fishing on EFH, or provide an adequate rationale for not taking action to minimize the effects of damaging fishing practices. The Council has yet to remedy these deficient EFH provisions.

In the South Atlantic, NMFS rejected most of the overfishing provisions of the Council's SFA amendment because they relied on pre-SFA overfishing definitions that did not comply with the new requirements of the SFA, namely that they be biomass-based. The Council has yet to implement revised overfishing definitions for most of these rejected species. With regard to bycatch, the Council continues to rely on logbooks to collect bycatch information - many of which still fail to contain necessary fields to report bycatch. While NMFS is planning to modify fishery logbooks to include bycatch reporting this year, such a measure fails to address the serious concerns about reliability, or ensure accurate bycatch reporting in the future.

The Gulf Council's comprehensive EFH amendment was only partially approved by NMFS because it did not identify EFH for all managed species and did not adequately assess the impacts of all fishing gear on EFH. The Council has yet to take any action to address the problems identified by NMFS when it partially approved the amendment. NMFS rejected the Council's bycatch reporting proposal and the provisions to minimize bycatch in all Gulf fisheries except stone crab. The Council has not submitted an amendment to address these problems, because it maintains that NMFS must provide it with the bycatch data necessary to revise the rejected amendments. Similarly, the Council has failed to revise its overfishing targets - most of which NMFS rejected - to comply with the new overfishing and rebuilding requirements of the SFA.

As of March 2001, the Caribbean Council has not submitted its comprehensive SFA amendment addressing the overfishing and bycatch provisions of the SFA. NMFS only partially approved the Council's EFH amendment, because it did not identify EFH for all managed species. The Council has yet to address this deficiency or to take action to address fishing gear impacts on EFH.

NMFS rejected the bycatch provisions of the Pacific Council's groundfish management plan. While the Council has developed a new bycatch amendment it still continues to fail to establish a standardized bycatch reporting methodology and to assess and minimize bycatch in the groundfish fishery. NMFS revoked its approval of rebuilding plans for bocaccio rockfish, lingcod, and Pacific Ocean perch. The Council is required to revise these rebuilding plans no later than January 1, 2002. NMFS approved the EFH amendment to the Pacific Coast Salmon fishery management plan (FMP) on September 27, 2000, two years after the SFA's October 1998 deadline. NMFS also approved the EFH amendment for the Groundfish plan in April 2000, even though it failed to assess or minimize the adverse effects of fishing on EFH.

In the Western Pacific, NMFS rejected the bycatch provisions of both the Bottomfish and Pelagics management plans because they failed to quantify or minimize bycatch. The Council has yet to address these problems. NMFS rejected the overfishing definitions in the Crustaceans, Bottomfish, and Precious Corals management plans. The Council has not modified any of the rejected overfishing definitions as of March 2001.

NMFS did not reject any of the SFA implementation amendments in the North Pacific. However, such approval was unwarranted, as many of the plans failed to address bycatch, protect EFH, or to prevent overfishing. The Council has focused its efforts on developing implementing rules for the American

Fisheries Act, addressing the effects of its fisheries on the endangered Steller sea lion, seabird populations, and other affected protected species, and developing a supplemental environmental impact statement for its groundfish fisheries.

Reauthorization of the Magnuson-Stevens Act

When the SFA was enacted in 1996, it was hailed as a landmark piece of conservation legislation that would significantly improve fisheries conservation. Yet more than four years after its passage, the bright promise of the SFA has not materialized. As our multiple reviews demonstrate, overfishing is allowed to continue. Rebuilding plans are too long and too risky. Bycatch is not being quantified or minimized. EFH has been identified, but too little is being done to protect it.

Some argue that our concerns could be addressed through better implementation of the Act. In theory this may be true, but in practice it is not. Our review of SFA implementation clearly demonstrates two phenomena. First, once NMFS approves an inadequate management plan amendment, the councils are not likely to change it. Second, even when NMFS has disapproved inadequate amendments, and required revision as soon as possible, the councils are slow to correct deficiencies.

However, while part of the problem can be attributed to poor implementation, the Act's legal framework also allows this to happen. In the case of overfishing, flexibility in the law has allowed NMFS to develop regulations that allow for overfishing of weak stocks in mixed stock fisheries. In the case of bycatch, flexibility in the law allows NMFS and the councils to claim that there is too little data to take action to minimize bycatch, while at the same time failing to take meaningful steps to collect that data. Flexibility in the law has allowed managers to identify EFH, but take almost no action to protect it from damaging fishing practices, the one area they have direct control over.

We believe that implementation of the SFA is not likely to improve and that managers will continue to exploit the flexibility of the Act until Congress provides much needed further legal clarification. To accomplish this, the Marine Fish Conservation Network recommends that Congress strengthen the conservation provisions of the Magnuson-Stevens Act during reauthorization. Our specific recommendations are listed below.

Recommendations for Strengthening the Magnuson-Stevens Act

Eliminate Overfishing of All Species

The Magnuson-Stevens Act mandates that conservation and management measures must prevent overfishing. But in too many cases, managers still react to overfishing after it occurs and continue to improperly interpret the law and regulations so as to continue to allow overfishing. In addition, managers are not accounting for all sources of fishing mortality or ecosystem considerations in setting catch levels. Managers are extending periods allowed for rebuilding to 10 years, and, in some cases, beyond those limits. This "risk-prone" management increases the likelihood that stocks will not be rebuilt in 10 years, or even longer.

NMFS continues to interpret the prohibition on overfishing to allow for overfishing of fish caught in association with other populations of fish that are not themselves overfished. Only when a fish species is threatened with extinction does NMFS require protection for these "mixed stock" fisheries.

This practice is seriously impeding efforts to rebuild many weak stocks in mixed stock fisheries, and has resulted in the depletion of many species to the point where they are vulnerable to extinction. In the Gulf of Mexico and the South Atlantic, a number of grouper species are in serious trouble. Four species, Nassau grouper, Warsaw grouper, speckled hind, and jewfish are on the Endangered Species Act's List of Candidate Species. In the Gulf of Mexico, 10 of 15 of the managed grouper species have been identified as being at risk of extinction by the American Fisheries Society (AFS). In New England, Atlantic halibut stocks remain severely overfished and two species of skate (barndoor and thorny skates) are at risk of extinction according to the AFS. Despite the fact that there is no allowable catch of these threatened species, they are still caught and killed by non-selective fishing practices used in mixed stock fisheries.

On the West Coast, bocaccio rockfish stocks have declined to less than 2% of their historic sizes and several organizations have petitioned for their listing on the ESA List of Candidate Species. The plight of the bocaccio is particularly troubling because a little more than a decade ago, it comprised approximately 40% of the groundfish landings on the West Coast. Unless these weak stocks in mixed stock fisheries are protected we will continue to serially deplete many important stocks.

Fishing for some species, especially during particularly vulnerable life stages, has placed those fish at risk. For example, fishermen targeting certain grouper and snapper species, focus their efforts on areas where they aggregate to spawn year after year. Although this life history characteristic makes these species vulnerable to overfishing, they received some protection in the past from fishermen's inability to locate and revisit these areas. However, technological improvements in navigation technology have removed that protection, thus contributing to overfishing and delaying or preventing timely rebuilding of these fish stocks. These vulnerable fish need to be identified and protected.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- prohibit overfishing of all stocks in a mixed stock fishery;
- require that each council provide added protection for stocks during spawning and other particularly vulnerable life stages; and
- mandate the application of the precautionary approach to fisheries management by requiring that management measures include measures to buffer against scientific uncertainty.

Avoid Bycatch

Bycatch is the indiscriminate catching of fish and marine life other than those a fishing vessel intends to capture. This includes fish that are not the target species, sex, size, or quality. It also includes many other fish and marine life that have no economic value but are ecologically important, such as starfish, sponges and skates. Primarily, bycatch results from fishing practices and gear that are not selective. In addition to visible mortality, fish and other sea life are sometimes killed or injured when passing through or escaping fishing gear, and through "ghost fishing" from abandoned or lost gear.

Environmental problems caused by bycatch include overfishing, increased scientific uncertainty regarding total fishing mortality, and potentially serious changes in the functioning of ecological communities. Economically, bycatch equates to lost future fishing opportunities as a result of mortality of commercially valuable fish.

In the SFA, Congress required action to address bycatch problems for the first time. However, as I discussed in detail above, the councils and NMFS have uniformly failed to take sufficient action to either report or avoid bycatch. They have relied upon past actions to satisfy this legal obligation, recommended insufficient action, or have not bothered to address the issue at all.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- make avoiding bycatch in marine fisheries a priority;
- tighten the definition of bycatch to require that bycatch be avoided; and
- require fishery managers to take action to reduce bycatch under strict timelines.

Protect Essential Fish Habitat

Essential fish habitats are those waters and substrates on which fish are dependent to reach maturity and reproduce. The SFA requires action to describe, identify, conserve, and enhance EFH. The law and regulations require councils "to prevent, mitigate, or minimize" identified adverse effects from fishing unless it is not practicable to do so. As I detailed above, most councils claim that, either: 1) existing measures are adequate to minimize the adverse effects of fishing on EFH under their jurisdiction; or 2) that they did not have enough information to take action. Unfortunately, NMFS accepted these excuses and approved these deficient management plans. The "to the extent practicable" language in the law's EFH requirement is clearly being used as a loophole to avoid action, as is the familiar "lack of information" refrain.

The SFA requires NMFS to provide federal agencies with recommendations on how to minimize, mitigate, or avoid adverse impacts from federally permitted activities on EFH. Compliance with these recommendations is voluntary. This consultation requirement needs to be strengthened to more fully protect EFH.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- require regional fishery management councils to prohibit certain fishing activities that may adversely affect EFH unless a council determines that the prohibition is not necessary to protect EFH;
- adopt the precautionary approach to habitat protection by prohibiting the introduction of new fishing gear or the opening of closed areas unless EFH damage is assessed and minimized; and
- enhance the EFH consultation requirement by providing that federal agencies must ensure that their actions are not likely to adversely impact EFH.

Conserve Marine Ecosystems

Fishery managers and scientists recognize the need to expand fishery management beyond traditional single-species planning to include ecosystem considerations. Commonly referred to as ecosystem-based management, such an approach includes, but is not limited to, interactions between key predator and prey species within an ecosystem, as well as the habitat needs of living marine resources and other limiting factors in the environment. This concept supports the precautionary approach to fishery conservation, especially when the ecosystem effects of fishing are uncertain. The precautionary approach requires managers to act to avoid likely harm before causes and effects are clearly established.

It is widely believed that some fishery declines and difficulties in restoring overfished populations are due, at least in part, to fishing caused disruptions of ecosystems. Under existing law, fishery managers do have limited authority to consider ecosystem interactions, including predator-prey relationships, in management plans. The principal reason ecosystem relationships are not being adequately considered is a lack of guidance regarding the information that is needed, clear direction regarding the principles and policies that should be applied, and most importantly, how such principles and policies should be integrated into fishery management decisions.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- require councils to develop a Fishery Ecosystem Plan (FEP) for each major ecosystem within their jurisdiction;
- require fishery management plans or amendments to be consistent with the appropriate FEP;
- require consideration of ecosystem impacts, including predator-prey interactions when setting catch levels; and
- appropriate sufficient new funds to assist the councils and NMFS in applying ecosystem principles to fisheries research and management under the Magnuson-Stevens Act.

Establish and Fund Mandatory Fishery Observer Programs

Objective observation and data collection are vital to effectively manage marine fish and fisheries. Managers' ability to address the problems of overfishing, bycatch, and degradation of EFH can be limited by lack of accurate and reliable information on a fishing vessel's catch and bycatch. In many fisheries there is an incomplete understanding of the total catch, i.e., landed catch and discarded bycatch. Overfished stocks cannot be rebuilt if we do not understand and control all types of mortality. Minimal, but inadequate, observer coverage exists along the Atlantic Coast, the Gulf of Mexico, and the West Coast. Catch and Bycatch data is vitally important to meeting the objectives of the Magnuson-Stevens Act by promoting sustainable fishing.

To address these concerns, legislative changes are needed to:

- establish a mandatory fishery observer program for all federally managed fisheries to collect statistically reliable catch data; and
- fund observer programs with a user fee based on value and applied to all fish landed and sold in the United States.

[MFCN1]Reform Regional Fishery Management Councils

Although regional fishery management councils are charged with managing the nation's marine fish for all Americans, representatives of fishing interests dominate the councils. Interests of the general public, as well as non-consumptive users of marine fish, such as divers, are not adequately represented on the councils.

Marine fish are public resources and must be managed in the public trust. Decisions regarding their management should be made in the public interest, not simply the economic interest of the fishing industry.

Accordingly, representatives of the public interest must sit on regional fishery management councils.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- ensure that councils are more broadly representative of the public interest as they make decisions regarding the conservation and management of public resources; and
- require governors to consult with conservation groups before nominating individuals to a council.

Conserve Atlantic Highly Migratory Species

NMFS is responsible for conserving Atlantic highly migratory species like tunas, swordfish, marlins, sailfish, and coastal and pelagic sharks. All of these species, with the exception of sharks, are also managed under multilateral agreements through the International Commission for the Conservation of Atlantic Tunas (ICCAT).

In 1990, the Magnuson-Stevens Act and Atlantic Tunas Convention Act (ATCA) were amended to preclude U.S. fishery managers from issuing regulations, which have the effect of "decreasing a quota, allocation or fishing mortality level," recommended by ICCAT. Since then, NMFS has done little more than implement ICCAT quotas and allocate them among domestic user groups. Moreover, where no ICCAT recommendations exist, no precautionary measures have been taken.

Although ICATT sets quotas, measures to implement the quotas and minimize bycatch mortality, such as area closures and gear modifications, must be implemented through domestic regulations. NMFS, however, interprets the law to prevent the U.S. from unilaterally reducing bycatch if it would affect the ability to fill the U.S. quota.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- give the U.S. greater discretion and flexibility in the conservation and management of highly migratory species; and
- repeal language that prevents or hinders the U.S. from implementing management measures that are more conservative than those recommended under international agreements.

Similarly, the ATCA should be amended to:

- remove language limiting U.S. authority to conserve highly migratory species.

Individual Fishing Quotas

Individual fishing quotas (IFQs) grant fisherman and fishing companies the privilege to catch specific amounts of fish. Congress has placed a moratorium on the submission, approval, or implementation of any plan that creates an IFQ program until October 1, 2002.

The Network supports continuing the moratorium on IFQ programs unless and until Congress adopts legislation containing standards for the design and conduct of IFQ programs to ensure that these programs enhance the conservation and management of our nation's fisheries.

Standards must be adopted that, among other things, clarify that IFQ programs:

- do not create a compensable property right;
- demonstrably provide additional and substantial conservation benefits to the fishery;
- are reviewed periodically by an independent body to determine whether the programs are meeting their conservation goals; and
- are of a set duration, not to exceed 5 years, subject to possible renewal if a program is meeting its conservation goals, provided that in any reallocation of quota shares upon a renewal, preference shall be given to those quota shareholders that are meeting or exceeding IFQ program requirements, including all conservation goals.

Keep Conservation in the Magnuson-Stevens Fishery Conservation and Management Act

Having detailed the Network's ideas for reauthorization of the Magnuson-Stevens Act, I would like to close by cautioning the Subcommittee against weakening the conservation provisions of the Act. Some in the fishing industry have argued that Congress should, among other things, amend the Act to:

- place greater emphasis on economics when developing rebuilding plans for overfished stocks;
- require mixed stock fisheries be managed as a unit;
- restrict protection of EFH to small subsets of EFH;
- establish standards for observer programs which will impede councils from establishing such programs; and
- create redundant and unnecessary scientific review requirements.

The Network feels very strongly that Congress should reject these proposals because they would significantly weaken fish conservation. Placing greater emphasis on economics over resource protection and sustainability will return us to the pre-SFA days of boom and bust fishing. If we are to have healthy, sustainable fisheries, conservation of our fish resources must come first. The simple fact is that if there are no fish, there will be no fishermen.

Nearly five years after passage of the SFA, we are just beginning to see some fish stocks begin to rebound. Georges Bank yellowtail flounder and haddock are two examples of stocks that are beginning to rebound after large closed areas were instituted in the mid-1990s. However, many other stocks have shown little improvement and some have continued to decline. The recent Department of Commerce Status of Stocks report clearly demonstrates this point. For the fourth year in a row, the number of stocks that are either overfished, experiencing overfishing, or both has increased. The number of fish stocks now in jeopardy jumped from 98 to 107 stocks, or 43% of the managed species whose status is known. Unfortunately, we know little about the status of most of the federally managed fish stocks -- 78% of the managed species are classified as unknown. The fact that nearly half of the stocks of known status are overfished does not bode well for these unknown stocks. These dismal statistics argue for strengthening, not weakening, the conservation requirements of the Magnuson-Stevens Act.

Thank you for providing the Marine Fish Conservation Network with an opportunity to present its views on reauthorization of the Magnuson-Stevens Act. I would be happy to answer any questions you or other members of the Subcommittee may have.

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