

Committee on Resources, Subcommittee on Fisheries Conservation, Wildlife & Oceans

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

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Witness Statement

**TESTIMONY OF
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NATIONAL MARINE FISHERIES SERVICE

**U.S. DEPARTMENT OF COMMERCE
ON**

**REAUTHORIZATION OF THE
MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT
BEFORE MEMBERS OF THE
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
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Mr. Chairman and Members of the Subcommittee, thank you for inviting me to this hearing on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I am William T. Hogarth, the Acting Assistant Administrator for Fisheries in the National Oceanic and Atmospheric Administration/Department of Commerce. In your invitation of March 19, 2001, you indicated this initial hearing would focus on three items: (1) progress in implementing the 1996 Sustainable Fisheries Act (SFA) amendments;

(2) reports mandated by the SFA; and, (3) some issues that our stakeholders have suggested be reviewed during the reauthorization process.

THE 1996 SFA AMENDMENTS: NEW DIRECTIONS IN U.S. FISHERIES POLICY

The Sustainable Fisheries Act (SFA) redirected U.S. fisheries policy in many important areas, but particularly away from promoting growth in the harvesting sector, toward conservation and sustainability of fisheries. NMFS and the regional fishery management councils have worked hard the last four years to implement those changes. Since 1996, NMFS has:

- o established new overfishing definitions and thresholds, and developed detailed guidelines for implementation of national standard 1, as well as for the new national standards, in particular national standards 8 and 9 on impacts on communities and by-catch issues;
- o placed much more emphasis on producing sound and fair regulatory economic and social impact assessments (some in response to Magnuson-Stevens Act mandates, and others pursuant to different laws);
- o identified and described essential fish habitat (EFH) in all 40 existing fishery management plans;
- o continued to promote and implement some form of limited entry in practically all federally managed fisheries; and

o played an active role in the preparation of a number of reports (some of them annually while others just once) that help us monitor progress in meeting SFA goals and consider all the implications of complex and contentious policy issues.

I would like to describe in more detail our efforts to respond to three key provisions of the SFA that are critically significant in addressing long-term conservation goals: (1) overfishing, (2) bycatch, and (3) essential fish habitat. All three deal, directly or indirectly, with the management of fishing operations, and all of them place a priority on resource conservation. I use the word "conservation" in the broad sense to include conservation, protection, and/or rebuilding of directly targeted fish stocks, of fish and other marine life that is taken incidentally in fishing operations, and of the marine habitat that is vital to targeted stocks, protected species, and to all living marine resources.

- **Overfishing**

The future health of the nation's fisheries is anything but bleak, as some might have us believe. Although there is much work still to do, we have made great strides in establishing the framework to meet conservation mandates under the Magnuson-Stevens Act, and in implementing new management programs to ensure fisheries at sustainable levels in the future. The foundation for progress is now in place with the publication of revised guidelines for conservation and the establishment of updated overfishing definitions for virtually all federally managed fisheries. Where differences have occurred regarding overfishing criteria and their measurement, we have worked with the Councils and others to overcome those differences and move ahead with new management programs.

We have seen tangible improvements in many stocks. Our annual report to Congress on the Status of Fisheries in the United States provides a snapshot of how the nation's marine fisheries are faring and progress we have made in their management. We now have 75 approved rebuilding plans, of which 45 have been implemented in just the last three years. According to the latest report, the number of stocks with acceptable harvest rates and those that are not overfished both increased appreciably in the last year. In fact, nine stocks have been removed from the "overfished" list, and we expect many more will be similarly reclassified in the coming years. Rebuilding efforts will continue for many of these stocks until they reach maximum sustainable levels. Examples of federally managed fisheries that have exhibited substantial resource recovery are Northeast scallops and haddock, and King mackerel in the Southeast.

As I mentioned earlier, although progress has been made, we have much more work to do. While the number of stocks that are not overfished increased last year, the number of stocks that were found to be overfished increased significantly also. This may, at first, appear contradictory. However, most of the increase was not because of a sudden decline in those stocks, but resulted either from new overfishing definitions or new stock abundance data becoming available. As this data becomes available, the total number of stocks for which determinations can be made changes. For example, there were an additional 37 stocks found to be overfished in 2000. However, 32 of those were reclassified from unknown/undefined to overfished because new overfishing definitions or biological information became available. Increases in the number of overfished stocks are to be expected as we continue to transition to the higher standards of the SFA.

Before leaving this topic, I would point out that rebuilding overfished stocks is just one part of the management equation. The law requires us to consider the plight of the fishing industry and dependent communities as we make management decisions. With the additional funding that Congress has provided, we have expanded our efforts to collect necessary economic and social information, and have significantly improved our impact analyses. We have also revised our guidance in this area, and are working closely with Council and NMFS staffs to implement that guidance. During the current fiscal year, we will hold at least six workshops around the country to discuss the new guidance and help apply the guidance to regional issues. With the continued support of Congress, we hope in the near future to have comprehensive

databases, as well as analytical models and other techniques, to enable us to complete more thorough impact analyses for decision makers.

- **Bycatch Issues**

The SFA added national standard 9, which stipulates that conservation and management measures shall minimize, to the extent practicable, bycatch and mortality associated with bycatch. Incidental harvests of finfish remain a major concern in the Gulf of Mexico shrimp trawl fishery where measures to combat this problem pre-dated the SFA. In recent years, bycatch has become a national issue that affects many gear types, principally trawls and longlines, in a growing number of federally managed fisheries.

We believe that NMFS and the Councils are making meaningful progress in dealing with bycatch, although the problem is highly specific to individual fisheries and gear types and, therefore, resists uniform solutions. In the Gulf of Mexico shrimp trawl fishery, regulations requiring the use of Bycatch Reduction Devices (BRDs) have been implemented progressively, with the result that bycatch levels of finfish, in particular red snapper, are declining. Regulations addressing bycatch problems have been instituted in many other federally managed fisheries.

The agency has continued to support gear research that focuses on this problem. One example is NMFS-supported research on technical means to reduce seabird mortality in longline fisheries. This work has been applied domestically and in the 1999 FAO-sponsored International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries.

Also of critical concern is the bycatch problem in a number of federally managed fisheries involving incidental takings of protected species. In these situations, several laws may apply. Issues related to some seabirds fall under the Endangered Species Act and those related to turtles and marine mammals often are addressed by both the ESA and the Marine Mammal Protection Act (MMPA). In some cases, other laws such as the Migratory Bird Act apply. Examples abound, but the best known are sea turtles in the shrimp trawl and many finfish fisheries; seabirds in long-line fisheries; and, marine mammals in some commercial fisheries using various gear.

- **Essential Fish Habitat**

The provisions addressing EFH in the 1996 SFA created new responsibilities for NMFS and the Councils. Section 303 (a) (7) requires that each fishery management plan describe and identify EFH and minimize to the extent practicable the adverse effects of fishing on EFH. In addition, the SFA requires that we identify other actions to encourage the conservation and enhancement of EFH for federally managed fisheries. The SFA also assigned to the Secretary of Commerce the roles of consulting and coordinating with other Federal agencies with respect to actions that may adversely affect EFH. NMFS has heard both praise and concern from our constituents over the increased emphasis we are placing on habitat conservation to implement the EFH provisions of the SFA. We are making progress and are expanding research on identifying, protecting and understanding EFH which is hampered by the limited available information about the habitat requirements of managed fish species.

The EFH provisions of the SFA provided important new tools for NMFS and the Councils to manage sustainable fisheries. By law, we now must ensure that our fishery management decisions consider the potential effects of fishing on the habitats needed by commercially and recreationally important species of fish for their basic life functions. Likewise, we must ensure that our recommendations to Federal and state agencies regarding non-fishing activities are focused on measures needed to conserve the habitats that support managed fisheries.

Three major issues have emerged regarding implementation of these EFH provisions. First, a number of parties have asked why the EFH designations appear to be so expansive. It is true that EFH designations

encompass most of the coastal waters and EEZ. However, it is important to realize that a map of all currently identified EFH in U.S. waters comprises the aggregate of separate EFH designations for more than 700 managed species, each with 2 to 4 distinct life stages and seasonal differences in habitat requirements, and many with EFH designated as only bottom habitats or only surface waters. For individual species or life stages, EFH is generally a subset (often 50 to 70 percent) of the total available habitat. The specificity of EFH designations depends on the amount of information available. Much more scientific information is necessary to identify the type and quantity of habitats necessary to achieve a desired level of fish production, or even to specify which habitats contribute most to the growth, reproduction, and survival of the target species. NMFS is continuing to work with the Councils, scientific and research communities to revise and refine EFH designations as additional information becomes available.

Second, some environmental and fishing groups have said that NMFS and the Councils have not done enough to minimize the adverse impacts of fishing on EFH. Unfortunately, there is limited information to demonstrate a direct link between physical habitat disturbance from fishing gear and decreases in productivity, survival, or recruitment of managed fish species. Where sufficient information is available, NMFS and the Councils are incorporating measures into our management decisions to minimize the effects of fishing on EFH. In addition, NMFS is working in partnership with other agencies and institutions to conduct new research to improve our understanding of the effects of fishing on bottom habitats. NMFS and the Councils are also preparing new environmental impact statements for most of our FMPs to evaluate in detail the effects of fishing on EFH and a range of measures that could be taken to minimize adverse effects. NMFS also is organizing a symposium on the effects of fishing activities on benthic habitats, tentatively scheduled for early 2002.

Third, a coalition of non-fishing industries has expressed concern about the process for consultations between NMFS and other Federal agencies whose actions may adversely affect EFH. The EFH consultations and commenting provisions of the Magnuson-Stevens Act are the only existing mandate that requires Federal agencies to address specifically how proposed actions might affect the habitats needed by federally managed fish species. To streamline the efforts and enhance efficiency, NMFS has strongly urged Federal agencies to wrap EFH consultations into existing environmental review procedures under other laws, and most consultations are being handled with that approach. Federal agencies are assessing the impacts of their actions on important fish habitats, and their decisions are responding to NMFS recommendations on how to avoid or minimize those impacts. NMFS considers this process a significant opportunity to provide scientific advice to other agencies and improve the management of sustainable fisheries.

REPORTS MANDATED BY THE SFA

Associated with these strengthened and new Magnuson-Stevens Act conservation objectives are many reporting requirements. There are two kinds of reports on which I would like to comment. First, there are annual reports that NMFS is required to prepare, for example, the annual reports to Congress on the Status of Fisheries of the United States, which we have now issued four times. The second type of report is typically a one-time study with broad policy implications. Examples include reports prepared by the National Research Council (NRC) on individual fishing quotas and the community development quota program in western Alaska, and a report coordinated by the Atlantic State Marine Fisheries Commission on the government's role in controlling harvesting capacity. We have completed and carefully considered all the reports and studies that were mandated by the SFA. The reports are all unique in that they deal with specific issues for different programmatic ends, but they have in common that they have served highly useful purposes and provided us substantial direction toward more sustainable fisheries.

The agency has completed other SFA-mandated reports that have helped shape and direct some critical scientific missions. The Fishery Research Plan has assisted in guiding and prioritizing our fisheries science programs, and the Fishery Ecosystem Management Study supported NMFS efforts to do the science

required for this more comprehensive and holistic approach to management. Another report prepared by the NRC, Sustaining Marine Fisheries, examined a wide range of management systems, evaluating their potential contribution to sustainable fisheries. Increasingly, these studies advocate a broad view of how to deal with fisheries management issues. In addition, the agency has successfully completed reports on (1) bycatch and incidental harvest research, (2) peer-reviewed red snapper research and management, (3) stock-specific identification of salmon in ocean fisheries, and (4) harvest capacity reduction in New England fisheries.

Some one-time reports, such as the NRC studies of rights-based management systems, have enabled us to examine complex issues like individual fishing quotas (IFQs), through the eyes of outside experts and our commercial, recreational, and environmental constituencies. Still other reports, like the Federal Investment Study on the governmental role in the expansion and contraction of fish harvesting capacity, were valuable mainly because they concentrated on the implications and effects of government programs.

Finally, I think these mandated reports have helped us identify more clearly the scientific and technical issues that need additional study and further deliberation. An obvious example is rights-based management systems, which many agree involve sensitive issues. With the completion of the NRC report on IFQs, Sharing the Fish, NMFS and the Councils have a much better understanding of the economic and social issues that will have to be addressed as we develop a national policy on rights-based management systems. NMFS will continue its review of these and other management systems as it works toward sustainable fishing in all Federally managed fish stocks.

MAGNUSON-STEVENSON ACT REAUTHORIZATION

The SFA formally reauthorized the Act through 1999. The Administration will be developing its position on Magnuson-Stevens Act reauthorization. Accordingly, we have established an internal process, including a designated working group, for soliciting inputs from the NMFS headquarters and field offices and from the eight Councils. Because of Native American interests in certain fisheries and their roles and responsibilities as co-managers of associated resources, our process for soliciting input will also include potentially affected tribal governments. As we move through the reauthorization process, NMFS will provide specific comments on these issues. The issues surrounding reauthorization of the Magnuson-Stevens Act are vitally important to those who are engaged in the fisheries.

We have heard from many of our constituents and the Councils regarding their concerns. Based on those discussions and our management experiences, the following is a list of issues that may be considered during the reauthorization process.

- **Overfishing Definitions and Thresholds: National Standard 1 and Section 304 (e)**

A fundamental benchmark in the 1996 SFA is the provision that mandates elimination of overfishing in federally managed fisheries. NMFS has devoted substantial time and effort since 1996 to create overfishing definitions and thresholds that conform with the Magnuson-Stevens Act mandates and can be applied to many different types of federally managed fisheries.

We believe that we succeeded substantially in meeting this charge with the issuance in May 1998 of guidelines for implementing national standards, including national standard 1, which deals with the prevention of overfishing. We have worked and continue to work closely with all the Councils to help them implement these guidelines in their work on FMPs.

During this process, we received questions from fishermen, environmentalists and all our constituencies on new definitions and thresholds and our annual report on the status of stocks that applies these standards to about 900 distinct fisheries. Some are concerned about a perceived lack of flexibility in developing these definitions and associated management measures. Others feel that in moving from recruitment- to maximum

sustainable yield-based definitions, we have effectively raised the conservation standard too high, unnecessarily depriving commercial and recreational users of fishing privileges.

- **Individual Fishing Quotas: Section 303 (d)**

The SFA established a four-year moratorium (to October 1, 2000) on submission of new IFQs and mandated reports on IFQs and CDQs, which were completed in 1998. These reports, conducted by the National Research Council (NRC), concluded that existing IFQs and CDQs generate conservation and economic benefits, including mitigation of overcapacity, but that many fishing industry constituencies have concerns about their implications, in particular for small fishermen and fishing communities. The NRC report on IFQs, Sharing the Fish, recommended that IFQs be made available as one tool among others that the Councils could use if desired, and that the Congress and NMFS should develop policies on several related issues, such as consolidation and transferability of quota shares. Late last year, Congress extended the IFQ moratorium to October 1, 2002, but, in the interim, authorized two Councils to study and prepare for them. We will continue to work with the Councils, Congress and our constituents to make these tools available in a manner that is appropriate for the regions and stocks under consideration.

- **Fishing Capacity Reduction Program: Section 312 (b-e)**

Government programs that "buy out" and thereby reduce overcapacity are another means of achieving a fundamental goal of the Magnuson-Stevens Act. Most of these buyouts have been funded with public resources, but another variety would include private sector participation through the payment by industry of fees to pay off the loans required to fund the buyouts. Such public and private buyout partnerships were provided for in the 1996 SFA Section 312 (b-e) provisions that detail the rules for the Fishing Capacity Reduction Program. However, efforts to implement these provisions have revealed concerns that those requirements may be too complicated and time-consuming, particularly with respect to changes in the relevant fishery management plans and the mandatory regulatory assessments.

- **Disaster Relief: Section 312 (a)**

The resource downturns that are evident in so many of our federally managed fisheries have caused hardships for many fishermen and their respective fishing communities. One SFA program that addresses this need and can also support conservation is fisheries disaster relief. Federal payments to fishing communities and industry groups have been made increasingly frequently under Section 312 (a), the SFA provisions that deal with Fisheries Disaster Relief. The program is much broader and more flexible than most, and some of our constituencies have raised questions about the criteria or standards that govern the designation of a "commercial fishery failure" and a "fishery resource disaster," the use to which disaster relief funds are put, and the Federal and State governmental process for approving activities funded under Section 312 (a).

- **Central Registry System for Limited Access Permits: Section 305 (h)**

The SFA in Section 305 (h) calls for the creation of a central registry system for limited access permits, the so-called lien registry. This provision continues to be the subject of discussions among stakeholders and is being reviewed pending resolution of various issues associated with implementation of the registry.

- **Seabirds and the Management of Bycatch**

The ESA is the primary statutory authority for addressing the incidental catch of seabirds in fisheries that may potentially take an endangered seabird species. Although the Magnuson-Stevens Act provides NMFS with authority to implement measures to reduce seabird incidental takes, the Act does not specifically require the implementation of measures to reduce incidental catches of seabirds, since seabirds are not currently defined as bycatch. It should be noted, too, that the United States has agreed in 1999 to a United

Nations Food and Agriculture Organization (FAO)-sponsored international plan of action to reduce seabird mortality in longline fisheries, and committed to develop a national plan to implement the FAO agreement.

- **Timeliness of the Management Review Process**

In simplifying and tightening up the approval process for fishery management plans and amendments in 1996, the SFA created two distinct processes: the review process for plans and amendments, and the review and implementation process for regulations implementing those plans and amendments. This new system has resulted in timing discrepancies. On occasion, the Secretary has had to make an approval decision on a plan or amendment without having the benefit of public comment on the proposed regulations. Concerns have also been raised about the Secretary's inability to return an inadequate plan immediately to the Council, so that it can make changes and have the plan approved in a timely fashion.

CONCLUSION

Mr. Chairman, this concludes my testimony. Again, I want to thank you for the opportunity to testify today and discuss the implementation and reauthorization of the Magnuson-Stevens Act. The Administration looks forward to working with you and other Members on the Committee on this and other fisheries-related issues in the 107th Congress. I am prepared to respond to any questions you and other Members of the Committee may have.

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