H.R. 594, H.R. 1013, H.R. 1646, H.R. 2304, H.R. 2610, H.R. 2753, H.R. 2772 AND H.R. 3061

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

Thursday, December 1, 2011

Serial No. 112-86

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
or
Committee address: http://naturalresources.house.gov

U.S. GOVERNMENT PRINTING OFFICE

71-541 PDF WASHINGTON : 2012

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LEGISLATIVE HEARING ON H.R. 594, TO PROMOTE JOBS CREATION, PROMOTE SUSTAINABLE FISHERIES AND FISHING COMMUNITIES, REVITALIZE WATERFRONTS, AND FOR OTHER PURPOSES. "COASTAL JOBS CREATION ACT OF 2011"; H.R. 1013, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT TO PROVIDE THE NEW ENGLAND FISHERY MANAGEMENT COUNCIL ADDITIONAL RESOURCES TO ADDRESS RESEARCH AND MONITORING PRIORITIES ESTABLISHED BY THE COUNCIL. "STRENGTHEN FISHERIES MANAGEMENT IN NEW ENGLAND ACT OF 2011"; H.R. 1646, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT TO PRESERVE JOBS AND COASTAL COMMUNITIES THROUGH TRANSPARENCY AND ACCOUNTABILITY IN FISHERY MANAGEMENT, AND FOR OTHER PURPOSES. "AMERICAN ANGLER PRESERVATION ACT"; H.R. 2304, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT OF 2006 TO PROVIDE THE NECESSARY SCIENTIFIC INFORMATION TO PROPERLY IMPLEMENT ANNUAL CATCH LIMITS, AND FOR OTHER PURPOSES. "FISHERY SCIENCE IMPROVEMENT ACT OF 2011"; H.R. 2610, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT TO REFORM PROCEDURES FOR THE PAYMENT OF FUNDS FROM THE ASSET FORFEITURE FUND, AND FOR OTHER PURPOSES. "ASSET FORFEITURE FUND REFORM AND DISTRIBUTION ACT OF 2011"; H.R. 2753, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT TO PROVIDE INTERNET ACCESS TO REGIONAL FISHERY MANAGEMENT COUNCIL MEETINGS AND MEETING RECORDS, AND FOR OTHER PURPOSES. "FISHERY MANAGEMENT TRANSPARENCY AND ACCOUNTABILITY ACT"; H.R. 2772, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT TO PERMIT ELIGIBLE FISHERMEN TO APPROVE CERTAIN LIMITED ACCESS PRIVILEGE PROGRAMS, AND FOR OTHER PURPOSES. "SAVING FISHING JOBS ACT OF 2011"; AND H.R. 3061, TO AMEND THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT TO EXTEND THE AUTHORIZED TIME PERIOD FOR REBUILDING OF CERTAIN OVERFISHED FISHERIES, AND FOR OTHER PURPOSES. "FLEXIBILITY AND ACCESS IN REBUILDING AMERICAN FISHERIES ACT OF 2011."

Thursday,, December 1, 2011
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:02 a.m. in Room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Duncan of Tennessee, Wittman, McClintock, Thompson, Duncan of South Carolina, Labrador, Southerland, Runyan, Markey, Kildee, Napolitano, Holt, Grijalva, Bordallo, Sablan, Garamendi, and Hanabusa.

The CHAIRMAN. The Committee will come to order. Before we begin, I ask unanimous consent that the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs be discharged from further consideration of H.R. 594, Coastal Jobs Protection Act of 2011, and H.R. 1013, Strengthen Fisheries Management in New England Act of 2011. Without objection, so ordered.

The Committee on Natural Resources is meeting today to hear testimony on eight bills that amend the Magnuson-Stevens Fishery

Conservation and Management Act. Under Committee Rule 4[f], opening statements are limited to the Chairman and Ranking Member of the Committee. However, I ask unanimous consent that any Members that wish to have an opening statement to appear in the record submit that statement before the close of business today. Without objection, so ordered.

I will now recognize myself for five minutes.

STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

The CHAIRMAN. In 2010, U.S. commercial fishermen landed over eight billion pounds of fish valued at $4.5 billion. In addition, approximately 10 million recreational fishermen made more than 71 million recreational trips. Clearly, the economic activity created by the nation's fisheries resources is significant, especially for coastal communities.

As Members know, the Magnuson-Stevens Fishery Conservation and Management Act is a primary statute governing fishing activities in Federal waters. At the end of 2006, Congress passed a major reauthorization of the Act. The reauthorization, which was signed into law in 2007, placed a new emphasis on science, with the expectation that all eight Regional Fishery Management Councils would have the same high level of scientific information that the North Pacific Council has enjoyed for years.

Unfortunately, we have learned that several regions of the country do not have frequent stock surveys or stock assessments, and with the current budget climate, that is unlikely to change. In July of this year, the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs held a hearing on fisheries science and whether there was sufficient scientific information available for fishery managers to make informed decisions. One concern raised during the hearing was that in cases where there was limited data available, the agency and fishery management councils were being overly cautionary in their decisions, which is resulting in artificially low harvest levels.

The new requirement for setting annual catch levels and accountability measures was partially based on the availability of better, more time-sensitive recreational harvest data. A new recreational data collection program was supposed to have been finished two years ago and would have provided better information for establishing science-based harvest levels. But without it, the agencies and councils are forced to use more precaution when setting recreational harvest levels. This is resulting in fishery closures and uncertainty for businesses that rely on fishing opportunities. That was not the result that Congress expected or intended.

Under the Magnuson-Stevens Act, there has always been a balance between conservation and the full utilization of our nation's fishery resources. The trend toward more precaution in setting harvest levels has altered this balance and is resulting in lost economic opportunities and jobs. While the intention of the 2006 amendments was to base harvest levels on science, the intent was not to create a new avenue for litigation.

Unfortunately, the requirement that all fishery management plans contain measures for setting annual catch limits is now being

cited as the basis for new lawsuits. The result is that the agency is becoming even more precautionary. At a time when jobs are precious and the economies of many of our coastal communities are fragile, restricting fishing opportunities through multiple levels of bureaucratic precaution is not what Congress intended.

One of the bills before us today deals with the issue of catch shares. As we have seen on the West Coast, catch shares can work when they are developed by the industry and are developed from the bottom up. However, they are not likely to work when they are developed from the top and forced onto the participants of the fishery. Whether right or wrong, the perception is that the agency is pushing catch shares and the agency is determining how they will be established.

Today's hearing will focus on eight bills that address specific concerns with the Magnuson-Stevens Act. Some of the bills are a reaction to regional concerns while others address national concerns. I hope today's witnesses will help this Committee identify where the Act can be amended to resolve the major problems without sacrificing the concept of basing harvest levels on sound science.

[The prepared statement of Mr. Hastings follows:]

Statement of The Honorable Doc Hastings, Chairman, Committee on Natural Resources

In 2010, U.S. commercial fishermen landed over 8 billion pounds of fish valued at $4.5 billion. In addition, approximately 10 million recreational fishermen made more than 71 million recreational fishing trips. Clearly, the economic activity created by the Nation's fishery resources is significant, especially for coastal communities.

As Members know, the Magnuson-Stevens Fishery Conservation and Management Act is the primary statute governing fishing activities in Federal waters. At the end of 2006, Congress passed a major reauthorization of the Act. That reauthorization, which was signed into law in 2007, placed a new emphasis on science with the expectation that all of the eight regional fishery management councils would have the same high level of scientific information that the North Pacific Council has enjoyed for years. Unfortunately, we have learned that several regions of the country do not have frequent stock surveys or stock assessments and, with the current budget climate, that is unlikely to change.

In July of this year, the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs held a hearing on fisheries science and whether there was sufficient scientific information available for fishery managers to make informed decisions. One concern raised during the hearing was that in cases where there is limited data available, the agency and fishery management councils were being overly cautionary in their decisions, which is resulting in artificially low harvest levels.

The new requirement for setting annual catch levels and accountability measures was partially based on the availability of better, more time-sensitive recreational harvest data. A new recreational data collection program was supposed to have been finished two years ago and would have provided better information for establishing science-based harvest levels. But without it, the agency and councils are forced to use more precaution when setting recreational harvest levels. This is resulting in fishery closures and uncertainty for businesses that rely on fishing opportunities. That was not the result Congress expected or intended.

Under the Magnuson-Stevens Act, there has always been a balance between conservation and the full utilization of our Nation's fishery resources. The trend toward more precaution in setting harvest levels has altered this balance and is resulting in lost economic opportunity and lost jobs.

While the intention of the 2006 amendments was to base harvest levels on science, the intent was not to create a new avenue for litigation. Unfortunately, the requirement that all fishery management plans contain measures for setting annual catch limits is now being cited as the basis for new lawsuits. The result is that the agency is becoming even more precautionary. At a time when jobs are precious and the economies of many of our coastal communities are fragile, restricting fishing op-

portunities through multiple levels of bureaucratic precaution is not what Congress intended.

One of the bills before us today deals with the issue of catch shares. As we have seen on the West Coast, catch shares can work when they are developed by the industry and are developed from the bottom up. However, they are not likely to work when they are developed from the top and forced onto the participants in the fishery. Whether right or wrong, the perception is that the agency is pushing catch shares and the agency is determining how they will be established.

Today's hearing will focus on eight bills that address specific concerns with the Magnuson-Stevens Act. Some of the bills are a reaction to regional concerns while others address national concerns. I hope today's witnesses will help this Committee identify where the Act could be amended to resolve the major problems that are currently facing fishermen and fishing communities without sacrificing the concept of basing harvest levels on sound science.

The CHAIRMAN. With that, I yield back my time and am pleased to recognize the gentleman from Massachusetts, the Ranking Member, Mr. Markey.

STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman, very much. From Cape Cod to the Florida Keys to the Kenai Peninsula, fishing is an integral part of America's coastal communities. Healthy fisheries support healthy coastal economies. Unfortunately, the fishing industry hit rough waters in the 1990s, battling a perfect storm of depleted fish stocks, pollution and warming seas.

However, amendments to the Magnuson-Stevens Fishery Conservation and Management Act in 1996 and in 2006 steered our fisheries toward more sustainable practices. In 2010, the United States brought 8.2 billion pounds of seafood ashore valued at $4.5 billion. Science-based management of the ocean's bounty by regional stakeholders supported this success.

Our nation has some of the most diverse and productive coastal waters in the world, including the nation's most valuable port, which is in New Bedford, Massachusetts, represented by Congressman Barney Frank. Since 1976, the Magnuson-Stevens Act—and, by the way, as that bill emerged from this Committee, it was called the Studds-Young bill after Congressman Gerry Studds and Congressman Don Young. They felt that their names should have been on that bill, not just Magnuson and Stevens, and that is an accurate reflection of the work that was done out of this Committee.

That law sought to preserve this abundance for American fishermen by requiring fishery managers to end overfishing. The Act also recognized the importance of regional decisionmaking by creating Regional Fishery Management Councils. These stakeholder-governed councils are responsible for deciding how many fish can be caught and by whom. In 1996, with many of our fisheries depleted, Congress established a 10-year target to restore depleted populations to healthy levels. Chronic overfishing continued, so in 2006 Congress reauthorized the Act to ensure that fishing limits are in place for all stocks by the end of 2011.

Now we have reached a historical moment where NOAA scientists and Regional Fishery Management Councils have plotted a course to end overfishing. So far, 23 stocks have been rebuilt and most others are reaching healthy levels. Rebuilding all fish stocks

could increase the value of commercial fisheries by over 50 percent, increasing their total value to over $6 billion annually. By early next year, we will have in place the tools needed to end overfishing for all stocks. Sustainable fish stocks provide the certainty and stability that our fishing communities need.

I am concerned that some of the bills we will examine today will either legislate fisheries management decisions best left to the regional councils or legislate flexibility that already exists in the current law. For example, 56 percent of fish stocks already have extended rebuilding timelines due to existing flexibility in the law.

Just as technology brought us the ability to catch more fish, science-based decisionmaking will help ensure fish for future generations of fishermen. Unfortunately, just as we are asking NOAA to do more and better stock assessments, the majority want to cut NOAA's funding to preserve existing funding for other programs, so we want to make sure that we have a proper balance.

The appropriation bill passed last month reduced the funding levels for NOAA's National Marine Fisheries Service down to 2005 levels. We know improved data collection and stock assessment allow NOAA to make better and timelier fishery management decisions, and we must supply them with the resources to do their job.

My colleagues from Massachusetts, Barney Frank and Bill Keating, have put forward two bills that would direct additional money to fishery assessments, and I support that. Mr. Pallone's Coastal Jobs Creation Act directs Federal investment into coastal communities. These bills deserve the support of this Committee and swift action on the House Floor.

In evaluating the bills before us today, we should consider whether each bill supports strong science in fisheries management and respects the regional expertise that the local councils bring in making decisions. In Samuel Taylor Coleridge's Rime of the Ancient Mariner, an albatross leads the ancient mariner out of desolate seas. The Magnuson-Stevens Act has the same potential to guide us to the end of overfishing. We should not repeat the mariner's mistake and harm what is leading America's fisheries into safer seas.

I thank you, Mr. Chairman. I yield back the balance of my time.

[The prepared statement of Mr. Markey follows:]

Statement of The Honorable Edward J. Markey, Ranking Member, Committee on Natural Resources

Thank you, Mr. Chairman.

From Cape Cod to the Florida Keys to the Kenai [KEEN-eye] Peninsula, fishing is an integral part of America's coastal communities. Healthy fisheries support healthy coastal economies.

Unfortunately, the fishing industry hit rough waters in the 1990s, battling a perfect storm of depleted fish stocks, pollution, and warming seas. However, amendments to the Magnuson-Stevens Fishery Conservation and Management Act in 1996 and in 2006 steered our fisheries toward more sustainable practices. In 2010, the United States brought 8.2 billion pounds of seafood ashore, valued at $4.5 billion. Science-based management of the oceans' bounty by regional stakeholders supported this success.

Our nation has some of the most diverse and productive coastal waters in the world. Since 1976, the Magnuson-Stevens Act has sought to preserve this abundance for American fishermen by requiring fishery managers to end overfishing. The Act also recognized the importance of regional decision-making by creating Regional Fishery Management Councils. These stakeholder-governed Councils are responsible for deciding how many fish can be caught and by whom. In 1996, with many of our

fisheries depleted, Congress established a ten-year target to restore depleted populations to healthy levels. Chronic overfishing continued, so in 2006, Congress reauthorized the Act to ensure that fishing limits are in place for all stocks by the end of 2011.

Now we have reached a historical moment where NOAA scientists and Regional Fishery Management Councils have plotted a course to end overfishing. So far, twenty-three stocks have been rebuilt and most others are reaching healthy levels. Rebuilding all fish stocks could increase the value of commercial fisheries by over 50 percent, increasing their total value to over $6 billion annually. By early next year, we will have in place the tools needed to end overfishing for all stocks. Sustainable fish stocks provide the certainty and stability that our fishing communities need.

I am concerned that some of the bills we will examine today will either legislate fisheries management decisions best left to the regional councils or legislate flexibility that already exists in the current law. For example, fifty-six percent of fish stocks already have extended rebuilding timelines due to existing flexibility in the law.

Just as technology brought us the ability to catch more fish, science-based decision-making will help ensure fish for future generations of fishermen. Unfortunately, just as we are asking NOAA to do more and better stock assessments, Republicans want to cut NOAA's funding to preserve tax breaks for millionaires and billionaires. For the Republican Majority, it's not about setting lobster traps on Georges Bank, it's about the caviar set on Wall Street.

The appropriation bill passed last month reduced the funding levels for NOAA's National Marine Fisheries Service down to 2005 levels. We know improved data collection and stock assessments allow NOAA to make better and timelier fishery management decisions and we must supply them with the resources to do their job. My colleagues from Massachusetts have put forward two bills that would direct additional money to fishery assessments. Mr. Pallone's Coastal Jobs Creation Act directs federal investment into coastal communities. These bills deserve the support of this committee and swift action on the House floor.

In evaluating the bills before us today, we should consider whether each bill supports strong science in fisheries management and respects the regional expertise that makes Councils the appropriate place for making decisions. In Samuel Taylor Coleridge's "Rime of the Ancient Mariner", an albatross leads the Ancient Mariner out of desolate seas. The Magnuson-Stevens Act has the same potential to guide us to the end of overfishing. We should not repeat the Mariner's mistake and harm what is leading America's fisheries into safer seas.

The CHAIRMAN. I thank the gentleman for his opening statement.

Our first panel today are the sponsors of the bills that we will be hearing today. They include Congressman Barney Frank, who has been in the news lately, and I suspect part of that is because we announced he is going to appear as a witness on this Committee today. I am sure that is part of it. Congressman Frank Pallone, Congressman Walter Jones, Congressman Rob Wittman, Congressman John Runyan, and Congressman Bill Keating is to be here, and he will be seated when he comes in later.

So, at this time, I recognize—by the way, you all know the rules here. When the green light is on you have four minutes, the yellow light means you have one minute, and the red light means that your five minutes have expired. Your full statement will appear in its entirety in the record, so I ask you to summarize. And with that, I will recognize the gentleman from Massachusetts, Mr. Frank.

STATEMENT OF HON. BARNEY FRANK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. FRANK. Thank you, Mr. Chairman. I appreciate your reference. I got here and noticed I didn't have any table. I guess things move quickly around here when you say what you are doing.

The CHAIRMAN. You are experiencing it already. I am glad we are the first to show that.

Mr. FRANK. I hope when I get to my office that my desk is still inside, but we will see.

But I appreciate the hearing. I appreciate my colleague from Massachusetts playing the role that he is doing and his cosponsorship of our bill. I have one piece of legislation of which I am a prime sponsor, but it is a very bipartisan bill, and if you look at it, it has sponsorship from Maine down through North Carolina we have had, I am very pleased to say, with regard to the East Coast.

I noted, Mr. Chairman—let me acknowledge—there are some differences between West and East Coast in this, and we have had different experiences, and I want to be very careful so that we legislate taking full advantage of those differences. I can say that in the areas that we have been talking we have had pretty good agreement, bipartisan, from Maine down to Florida. There has been in general a lot of East Coast agreement on this.

The first bill embodies a very important principle. It is H.R. 2610. Essentially we do not want law enforcement agencies to have an incentive as they enforce the law that comes from the fact that they benefit from the money that they collect in the process of law enforcement. I would note, for example, that I am a great advocate for more money for the Securities and Exchange Commission and for tougher enforcement, but I do not want the Securities and Exchange Commission to be the beneficiary of fines that it imposes. That is just a mistake.

One of the things that I worked on that I was very proud of with our former colleagues, and some of us served with him, Henry Hyde. When Henry and I were on the Judiciary Committee together we cosponsored legislation dealing with asset forfeiture because we thought it was a mistake to give law enforcement authority the ability to seize people's property, frankly, promiscuously. You lend somebody your car and that person had drugs and you could lose your car without any knowledge of it. But the law enforcement agency engaging in the confiscation got to spend the money, and I thought that was a mistake. I was glad to work with Henry Hyde to try to change that.

With regard to fishing, that is what we say here, that in this legislation that is before you the Asset Forfeiture Fund money would not any longer go to the agency that did the asset forfeitures. For the existing pool, we would do an 80/20 split. Eighty percent could be used for research. That money is already in the pot, so there is no fear of incentivizing future activity.

But for the future this in itself does not in any way hinder the ability of the law enforcement agency, in this case NOAA or the Coast Guard, to do what it needs to do in terms of asset forfeiture, but it sends the money to the states and it basically sends it to the state that is most closely involved in the transaction.

I would think that was a principle we would all very much want, namely, that we want to fund law enforcement by independent judgments about what we can afford, but we do not want any incentives to the law enforcement agency. That doesn't mean that they are corrupt or they are anything. It means they are human.

Just as we do this with ourselves with ethical rules, you don't want to have temptation in people's way.

Having said that, there was also language in here about the rotation of ALJs [administrative law judges], but NOAA, and I am pleased, and the National Marine Fisheries Service, has complied with the request of many of us. They are no longer using their own ALJs, the Coast Guard ALJs, so that the enforcement agency is not the one that is then adjudicating it. They are using other ALJs, and I appreciate they are doing that.

The last point I want to mention though, Mr. Chairman, and my colleague from Massachusetts, who has been very supportive in all this, did mention the question of flexibility. There is in the law a requirement in general that there be a 10-year rebuilding period. I have asked Dr. Lubchenco. I have asked all number of fishing experts. No one says that there is any validity to that other than the fact that it is in the law. Yes, we need a standard, but I do not think any harm comes from saying that in exigent circumstances if you are moving toward an appropriate level of punishment that there should not be an ability to waive for a couple of years.

And let me say this Committee was very helpful. Last year I cosponsored bipartisan legislation with Senator Snowe a bill that amended the law regarding the Canadian boundary area because the Canadians were not bound by a strict 10-year requirement. We were. We now are on a par with the Canadians in that area that involves the New England states. I have asked, and there have been no problems. In other words, they have the ability to not abide by the 10 years.

Yes, they should be under that mandate to get there and there ought to be a good reason, but again I support in Mr. Pallone's language the legislation saying 10 years is not an absolute hard and fast rule. It is the goal. But if you are making progress, if there are some other circumstances, you will be allowed to go two or three years, especially since one of the things in the Magnuson Act that was done by this Committee that doesn't get enough attention is the economic standard. There is a standard in there that says take economics into account. A rigid 10-year, no exception rule undermines our ability to give full attention to that economic standard. I thank you.

The CHAIRMAN. I thank the gentleman for——

Mr. FRANK. By the way, I would say one other thing I guess if I could have a unanimous 10 seconds.

My colleague mentioned that it should have been called the Studds-Young bill. Actually I think we missed a chance to enhance the appeal of this Congress by calling it the Young-Studds bill.

[Laughter.]

Mr. FRANK. That I think would have made Congress look better.

The CHAIRMAN. Without objection, that will be stricken from the record. Going out in style.

Mr. FRANK. Don Young told me to say that.

The CHAIRMAN. Going out in style. Do you want to follow that, Mr. Pallone? You are going to have to. You are recognized for five minutes.

Mr. PALLONE. I don't want to follow him. I just want to make sure I don't push him further away from the table here. That is all.

The CHAIRMAN. You are recognized for five minutes.

STATEMENT OF HON. FRANK PALLONE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you. I am glad that I have the opportunity, Mr. Chairman and Mr. Markey, to discuss my two bills, H.R. 594, the Coastal Jobs Creation Act, and H.R. 3061, the Flexibility and Access in Rebuilding American Fisheries Act. Both will help fishermen get back on the water and spur job creation and economic activity in our coastal communities.

When Magnuson-Stevens was reauthorized in 2006 and became law, fishermen were told that rebuilding stocks on a 10-year timeline, although painful in the short term, would provide them with higher quotas and more fish to catch.

By the way, in response to Congressman Frank, as far as I know the 10 years was just something that, not being critical of it, but was just made up essentially. It sounded good, and there wasn't any real scientific basis for it. But at the time I made the argument that we could rebuild fisheries without adhering to a completely arbitrary deadline that would hurt a fisherman's ability to put bread on the table.

In the 110th Congress and 111th, I introduced the Flexibility Act, which would have given the Secretary of Commerce the authority to extend these rebuilding timelines beyond the 10 years when science and biology of a fish stock told us we can rebuild fisheries without bankrupting businesses like tackle shops, party boats, commercial fishermen.

Yet new problems with fisheries management had become unfortunately clear, and as a result, I reintroduced my flexibility bill to create flexibility in the rebuilding timelines, but I also added a number of critical additions to address new problems, and that is what I want to talk about today, Mr. Chairman, what are the new problems that I am trying to address in this new bill.

First is the issue of transparency in the scientific process. Fishermen were promised access to rebuilt and healthy stocks and are instead seeing reduced catch levels and in-season closures of economically vital fisheries, so my bill increases transparency in the management process by requiring a published report for all the public to see and analyze that explains exactly what info is being used and if the unavailability of information is being used to lower fishing quotas.

The bill would further allow the Secretary to step in and override overly burdensome restrictions in a fishery that has been rebuilt not subject to overfishing or approaching overfishing and when the science simply can't support such restrictions in light of the social and economic impacts. So that is the transparency provision.

The second is better information for managing recreational fisheries. New restrictions established in the 2006 Magnuson reauthorization that were intended to put in place with improved science and data programs are being implemented, but the new data collection programs designed to get the better science and data are still just getting off the ground.

So my bill requires fisheries managers to get going on using the improved data collection method. It also requires the National Re-

search Council to issue a report on improvements that need to be made with fishing data collection and surveying so we can understand what exactly is happening.

And then the third thing relates to economic and social impacts. Requirements in current law to consider the social and economic impacts are given nothing more than lip service in my opinion, and so my bill requires that a social and economic impact statement be prepared on an annual basis and in conjunction with the Fishing Industry Advisory Committee so we are sure that the councils are using real-world experience and advice.

The Secretary would then be required to take action to mitigate any adverse impacts identified and submit to Congress a report describing the efforts taken and provide recommendations on how to improve Federal fisheries to promote economic vitality in fishing communities. So those are the three additions to the flexibility bill that some of you have seen now for a couple years.

And then the last thing I wanted to mention, you also have under consideration today the Coastal Jobs Creation Act, which I appreciate you bringing up. It creates a coastal jobs grant program that ensures that funds go to programs and projects that help fishermen, the fishing industry and coastal community businesses. It makes certain that the Federal Government works with fishermen to ensure they are part of the process and receive the support they need I think in hard economic times.

So the bill invests in revitalizing our waterfronts, improving the science, removing and cleaning up marine debris, funding restoration projects and developing new technologies. And I think some might say this is a stimulus bill for coastal communities. You can call it that if you like, but I think that we need to do more to make sure that we are actually helping rebuild and grow these coastal communities, and we can assist them in a number of ways through grants under this program.

So, Mr. Chairman, I just want to thank you for holding this hearing today on my bills and the other ones that are being considered. In some ways, each of the bills is variations on some of the things that I propose, but I would also ask that we schedule a vote so that we can move my two bills and the others forward because I really think that we are running out of time if we are really going to address some of these problems. They need to be addressed now.

And so I appreciate your having the hearing, and as a member of the Committee I hope that we can move forward and actually mark up these bills. Thank you.

[The prepared statement of Mr. Pallone follows:]

Statement of The Honorable Frank Pallone, Jr., a Representative in Congress from the State of New Jersey, on H.R. 594, The Coastal Jobs Creation Act, and H.R. 3061, the Flexibility and Access in Rebuilding American Fisheries Act

I want to thank Chairman Hastings and Ranking Member Markey for holding today's hearing. As the committee is aware recreational and commercial fishing represent the economic and cultural foundations of communities all across the United States. While the markets on Wall Street have gone up and down and manufacturing has drastically changed, recreational and commercial fishing have remained a truly American industry that we can depend on.

Whether it is the local charter boat captain, the commercial fishing cooperative, the dedicated angler or the local business owner, they know the importance that

fishing has for our economy. That is why it is important to have today's discussion and hear from real stakeholders about how they are affected by overly burdensome fisheries management.

I am glad to have the opportunity for the committee to discuss my bills: H.R. 594, the Coastal Jobs Creation Act and H.R. 3061, the Flexibility and Access in Rebuilding American Fisheries Act. Both of these bills will help fishermen get back on the water and spur job creation and economic activity in our communities.

When the Magnuson Stevens Reauthorization Act of 2006 became law fishermen were told that rebuilding stocks on a 10-year timeline, although painful in the short-term, would provide them with higher quotas and more fish to catch. At the time, I made the argument that we could rebuild fisheries without adhering to a completely arbitrary deadline that would hurt a fisherman's ability to put bread on the table. In the 110th Congress and 111th Congress, I introduced the Flexibility in Rebuilding American Fisheries Act which would have given the Secretary of Commerce the authority to extend these rebuilding timelines beyond 10 years when the science and biology of a fish stock told us we can rebuild fisheries without bankrupting businesses like tackle shops, party boats, and commercial fishermen.

Yet, new problems with fisheries management have become unfortunately clear. As a result, I have reintroduced my legislation to create flexibility in the rebuilding timelines and added a number of critical additions to address these new problems.

Transparency in the scientific process

Fishermen were promised access to rebuilt and healthy stocks and are instead seeing reduced catch levels and in season closures of economically vital fisheries. My bill, the Flexibility and Access in Rebuilding American Fisheries Act of 2011, increases transparency in the management process by requiring a published report, for all the public to see and analyze, that explains exactly what information is being used and if the unavailability of information is being used to lower fishing quotas. My bill will further allow the Secretary of Commerce to step in and override overly burdensome restrictions in a fishery that has been rebuilt, not subject to overfishing or approaching overfishing and when the science simply cannot support such restrictions in light of the social and economic impacts.

Better information for managing recreational fishing

New restrictions established in the 2006 Reauthorization of the Magnuson Act that were intended to be put in place with improved science and data programs are being implemented while the new data collection programs designed to get the better science and data are still just getting off the ground.

My bill requires fisheries managers to get going on using the improved data collection method. It also requires the National Research Council to issue a report on improvements that need to be made with recreational fishing data collection and surveying so we can understand what is actually happening with fishing in any given year and ensure that we aren't needlessly closing healthy fisheries.

Economic and Social Impacts

Requirements in current law to consider the social and economic impacts on coastal communities are given nothing more than lip service while individuals and families feel the real impacts of burdensome restrictions that are just not necessary for maintaining healthy fisheries.

My bill requires that a social and economic impact statement be prepared on an annual basis and in conjunction with a fishing industry advisory committee so we are sure that the councils are using real world experience and advice. The Secretary would then be required to take action to mitigate any adverse impacts identified and then submit to Congress a report describing the efforts taken and provide recommendations on how to improve Federal fisheries programs to promote sustainable fisheries and economic vitality in fishing communities.

Coastal Jobs Creation Act

I am also glad to have the opportunity to discuss my bill, the Coastal Jobs Creation Act. It creates a coastal jobs grant program that will ensure funds go to the programs and projects that help fishermen, the fishing industry and coastal community businesses. The bill will also make certain that the federal government works with fishermen to ensure they are a part of the process and receive the support they deserve during these hard economic times. The bill invests in revitalizing our working waterfronts, improving the science we use to manage fisheries, removing and cleaning up marine debris, funding restoration projects that protect marine resources and developing new technologies. We can do all this while using the work of fishermen, whether by deploying them as observers for monitoring, assisting in

cooperative research or providing their idle fishing vessels for rebuilding working waterfronts or coral reefs.

Conclusion

I would just like to point out again that recreational and commercial fishing is something the United States can depend on. The fishermen I know are some of the most dedicated conservationists you find out there. Their livelihoods depend on it. In 2009, the commercial fishing industry supported approximately 1,029,542 jobs and $116 billion in sales. In the same year, recreational fishing activities supported over 327,000 jobs and recreational fishing trips and equipment sales totaled $50 billion. These numbers should not be taken lightly and I ask that after the committee considers the testimony from today that H.R. 594 and H.R. 3061 be scheduled for a vote so we can support these jobs.

The CHAIRMAN. I thank the gentleman for his statement, and it is certainly the Chair's intention to address the Magnuson-Stevens Act and this is all part of that.

I am now very pleased to recognize a classmate of mine, a former member of this Committee, the gentleman from North Carolina, Mr. Jones.

STATEMENT OF HON. WALTER JONES, A REPRESENTATIVE IN CONGRESS FROM NORTH CAROLINA

Mr. JONES. Mr. Chairman, thank you, and I thank the Ranking Member and the Committee members for giving us this chance to talk about very important issues.

Mr. Chairman, the district that I represent is the 3rd District of North Carolina, and many of my fishermen are very concerned about the problems that seem to exist because of the way the fisheries are managed. Many of these problems are caused by the law which governs Federal fisheries management known as the Magnuson-Stevens Act. I introduced one of these bills under consideration today and cosponsored several others that are designed to correct many of these flaws.

Congress talks a whole lot about jobs, and we do need jobs in this country. That is exactly what I think these bills are all about. Fishermen in this country are hurting badly. They cannot afford to wait years for relief. They need help now. I strongly urge the Committee to move these bills as soon as possible, and I was pleased to hear you, Mr. Chairman, say that that will happen.

My bill, H.R. 2753, the Fisheries Management Transparency and Accountability Act, would bring sunlight to the proceedings of Federal fisheries managers. The bill would require the Federal Regional Fishery Management Councils and the Science and Statistical Committees to broadcast their meetings live over the Internet. It would also require the councils to make transcripts and video/audio recordings of these meetings freely available to the public through their websites for three years after the meetings.

I was alerted to this need for this legislation after hearing from eastern North Carolina fishermen who wanted to follow the council's proceedings but could not due to time and expense involved with attending in person. Neither could these fishermen go back and review past council meetings because the council did not make recordings of council meetings available over the Internet.

Under the Magnuson Act, the regional councils and the SSCs have the power to determine the economic livelihood of fishermen

and their communities. Given the importance of council and SSC decisions, fishermen ought to be able to easily monitor their proceedings, but times are tough and the fishermen don't have the money or the time to travel to council meetings for days at a time several times a year. This bill would fix that problem.

Mr. Chairman, I hope that this Committee will look at all of these bills and see the value to our fishermen because, as each one has said before me—Mr. Frank, Mr. Pallone—and I am sure those after me today, our fishermen need help from Washington, D.C., and I think each one of us brings a little something good to help our fishermen.

So, with that, Mr. Chairman, I want to thank you for allowing me to speak, and I want to say to Mr. Frank that it has been a privilege and a pleasure to serve with you, sir. You are going to be missed, and I can tell you truthfully there will never be anyone to replace you that has the wit that you have. God bless you, sir.

I yield back my time.

[The prepared statement of Mr. Jones follows:]

Statement of The Honorable Walter B. Jones, a Representative in Congress from the State of North Carolina

Mr. Chairman, thank you for holding this important hearing. Every fisherman I talk to believes there are major problems with the way our fisheries are managed. Many of those problems are caused by the law which governs federal fisheries management: the Magnuson-Stevens Act. I introduced one of the bills under consideration today, and cosponsored several others, that are designed to correct many of these flaws. We talk a lot about jobs; well that's exactly what these bills are all about. Fishermen in this country are hurting badly. They can't afford to wait years for relief; they need it now. I strongly urge the Committee to move these bills as soon as possible.

My bill—H.R. 2753, The Fishery Management Transparency and Accountability Act, would bring sunlight to the proceedings of federal fisheries managers. The bill would require the federal Regional Fishery Management Councils and the Science and Statistical Committees (SSC) to broadcast their meetings live over the Internet. It would also require the Councils to make transcripts and video/audio recordings of these meetings freely available to the public through their websites for three years after the meetings.

I was alerted to the need for this legislation after hearing from fishermen in my district who wanted to follow the Council's proceedings but could not do so due to the time and expense involved with attending in person. Nor could these fishermen go back and review past Council meetings, because the Council did not make recordings of Council meetings available over the internet.

Under the Magnuson Act, the Regional Councils and SSCs have the power to determine the economic livelihoods of fishermen and their communities. Given the importance of Council and SSC decisions, fishermen ought to be able to easily monitor their proceedings. But times are tough and fishermen don't have the money or the time to travel to council meetings for days at a time several times a year. This bill would fix that problem.

Mr. Chairman, this bill is a common sense measure to add sunlight to the fisheries management process, and I urge the Committee to support it.

The CHAIRMAN. I thank the gentleman for his testimony, and now I am pleased to recognize a member of the Committee, the gentleman from Virginia, Mr. Wittman.

STATEMENT OF HON. ROB WITTMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. WITTMAN. Thank you, Chairman Hastings, Ranking Member Markey. I appreciate you taking the opportunity to schedule this important hearing on amendments to the Magnuson-Stevens Fish-

ery Conservation and Management Act. As we all know, conserving our natural resources for generations to come is a top priority not only for myself but I know for members of this Committee and others.

I grew up around the Chesapeake Bay, which we all know is a national treasure and one that depends on the health of our ecosystem and the resources that are within it. The Bay is also an economic engine which is critical to local jobs and communities similar to those in other coastal regions around this great country. Preserving these resources requires attention to detail, to science, resource allocation and management.

Today I am here to address the need for the House to pass H.R. 2304, the Fishery Science Improvement Act, and I am proud to author this legislation which seeks to ensure that the management of saltwater fisheries is based on sound science. H.R. 2304 addresses a timely issue that must be addressed before the end of this year to prevent uninformed fishery management decisions that would impose undue catch limits to the detriment of recreational and commercial fishermen.

I want to thank the 34 bipartisan cosponsors of H.R. 2304, many of whom are members of the Natural Resources Committee. This legislation is supported by the Congressional Sportsmen Caucus, along with a broad coalition of industry and conservation organizations. Additionally, this week Senators Bill Nelson and Marco Rubio introduced companion legislation in the Senate.

When the Magnuson-Stevens Act was reauthorized in 2006, Congress assumed that ending overfishing and requiring strict annual catch limits, known as ACLs, would result in better long-term health and vitality for our nation's marine resources. Congress assumed that improvements in data collection and scientific assessments would result in healthier resources and even more recreational fishing to help fuel this nation's economy.

However, since 2006, the collection of fisheries data has not kept up with the pace of requirements of Magnuson. The lack of adequate data has caused problems with several major fisheries around the country, including black sea bass, amberjack and South Atlantic red snapper fisheries. For the past five years or so, it appears that the National Oceanic and Atmospheric Administration has not collected adequate data to implement the requirements in Magnuson. Because of the lack of data and a rapidly approaching deadline, they are being forced to move ahead without the necessary science.

The agency faces a December 31, 2011, deadline to put annual catch limits in place for all 521 fish stocks and stock complexes under Federal management, most of which have never been scientifically assessed. Despite the significant lack of scientific data, NOAA is likely to impose strict limits on fish about which they have little or no information. These limits will also be applied to fish that are very clearly highly abundant. Because of the lack of data, NOAA Fisheries is forced to guess and to make assumptions about the status of many fish stocks. That was certainly not the intent of Magnuson-Stevens.

The Fishery Science Improvement Act has three key provisions. First, if the agency hasn't done a stock assessment in the past five

years and there is no indication that overfishing is occurring, there is no requirement to set an annual catch limit.

Second, to avoid removing the fish species from management and leave them in the jurisdiction of the agency, our bill allows the agency to put certain fish into an ecosystem category. This classification is already informally in use by the agency but without specific parameters. This bill statutorily authorizes the category and broadens the eligibility for stocks of fish that can be placed in the category.

Finally, the Fishery Science Improvement Act gives NOAA Fisheries three years to go back and work with regional councils to figure out how to implement science-based overfishing measures that are appropriate for each region and each species of fish.

This bill is very concise, simple and targeted. We have a very significant and specific problem with how NOAA is implementing Magnuson-Stevens. Congress must act accordingly. Without congressional action, arbitrary decisions affecting millions of anglers and thousands of businesses will continue to be made. I urge my colleagues to support sound science and resource management by supporting H.R. 2304, the Fishery Science Improvement Act. Mr. Chairman, with that, I yield back.

[The prepared statement of Mr. Wittman follows:]

Statement of The Honorable Robert J. Wittman, a Representative in Congress from the State of Virginia

Mr. Chairman,

Thank you for scheduling this important hearing on amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

Conserving our natural resources for generations to come is a priority for me and many of the folks here with us today. I grew up around the Chesapeake Bay, a national treasure, and one that depends upon the health of our ecosystem and the resources in it. Critical to local jobs and communities, the Bay is also an economic engine, as so many of our natural resources are.

Preserving these resources requires attention to detail—to science, resource allocation, and management.

Today I am here to address the need for the House to pass H.R. 2304, the Fishery Science Improvement Act. I am proud to author this legislation which seeks to ensure that the management of saltwater fisheries is based on sound science.

H.R. 2304 addresses a timely issue that must be addressed before the end of this year, to prevent uninformed fishery management decisions that would impose undue catch limits to the detriment of recreational and commercial fishermen.

My thanks to the 34 bipartisan cosponsors of H.R. 2304, many of whom are members of the Natural Resources Committee. This legislation is supported by the Congressional Sportsmen's Caucus, along with a broad coalition of industry and conservation organizations. Additionally, this week Senator Bill Nelson and Senator Marco Rubio introduced companion legislation.

When the Magnuson-Stevens Act was reauthorized in 2006, Congress assumed that ending overfishing and requiring strict Annual Catch Limits—known as ACLs—would result in better long-term health and vitality for the nation's marine resources.

Congress assumed that improvements in data collection and scientific assessments would result in healthier resources and even more recreational fishing to help fuel the nation's economy. However, since 2006 the collection of fisheries data has not kept pace with the requirements of Magnuson. The lack of adequate data has caused problems with several major fisheries around the country including black sea bass, amberjack and south Atlantic red snapper fisheries.

For the past five years or so, it appears the National Oceanic and Atmospheric Administration (NOAA) has not collected adequate data to implement the requirements in Magnuson. Because of the lack of data and a rapidly approaching deadline they are being forced to move ahead without the necessary science.

The agency faces a December 31, 2011 deadline to put annual catch limits in place for all 528 fish stocks and stock complexes under federal management—most of which have never been scientifically assessed.

Despite the significant lack of scientific data, NOAA is likely to impose strict limits on fish about which they have little to no information. These limits will also be applied to fish that are, very clearly, highly abundant.

Because of the lack of data NOAA Fisheries is forced to guess and make assumptions about the status of many fish stocks. This is not the intent of Magnuson-Stevens.

The Fishery Science Improvement Act has three key provisions:

1. First, if the agency hasn't done a stock assessment in the last five years and there is no indication that overfishing is occurring, there is no requirement to set an Annual Catch Limit.
2. Second, to avoid removing the fish species from management and leave them in the jurisdiction of the agency, our bill allows the agency to put certain fish into an "ecosystem" category. This classification is already informally in use by the agency but without specific parameters. This bill statutorily authorizes the category and broadens the eligibility for stocks of fish that can be placed in the category.
3. Finally, the Fishery Science Improvement Act gives NOAA Fisheries three years to go back and work with the regional councils to figure out how to implement science-based overfishing measures that are appropriate for each region and its fish.

This bill is very concise, simple and targeted.

We have a very significant and specific problem with how NOAA is implementing the Magnuson Stevens Act. Congress must act accordingly.

Without Congressional action, arbitrary decisions affecting millions of anglers and thousands of businesses will continue to be made.

I urge my colleagues to support sound science and resource management, by supporting H.R. 2304, the Fishery Science Improvement Act.

The CHAIRMAN. I thank the gentleman, and he yielded back one second. That is very good.

I am now pleased to recognize another member of the Committee and a new Member of Congress, the gentleman from New Jersey, Mr. Runyan.

STATEMENT OF HON. JON RUNYAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. RUNYAN. Thank you, Chairman Hastings and Ranking Member Markey, for holding this legislative hearing today.

Federal fisheries management reform is an issue that is very important to those coastal communities throughout the country, including those in my home state of New Jersey. The commercial and recreational fishing industries are vitally important to our nation's struggling economy. In 2009, the recreational commercial fishing industry employed 46,400 people and represented a total added value to the economy of over $2.8 trillion. The goal of my two bills is to keep these 46,400 men and women working, and both of these bills are jobs bills.

Poor, outdated science, overly cautious decisionmaking and top down flawed fishery management plans have all conspired to drive many of our struggling fishermen out of business and have damaged our coastal economies. Since the last reauthorization of Magnuson-Stevens in 2006, we have lost the delicate balance between a sustainable, healthy fishery industry and conservation. These goals can and must be achieved without one goal overriding the other.

H.R. 1464, the American Angler Preservation Act, has a number of provisions that seek to restore this balance, and these provisions

include the outside peer reviews of certain recommendations that increase or decrease the annual catch limit quotas by 20 percent or more. This will ensure that drastic reductions in catch share are significantly accurate, requiring all these recommendations to be risk neutral. Too often in the past recommendations have included built-in caution that reduced the total allowable catch.

Requiring the Secretary of Commerce to rule on fishery disasters within 60 days, this will help to provide disaster relief to a fishing community in a timely fashion and prevent the Secretary from ignoring those struggling due to government regulation.

Requiring Science and Statistical Committee five-year research priorities to be presented to Congress, which will provide greater transparency and allow Congress to more thoroughly perform its oversight role and also, like many other of my colleagues, adding flexibility to our 10-year rebuilding plans, preventing the Secretary of Commerce from closing a fishery without accurate science and extending the Gulf of New England catch share referendums to the rest of the eastern seaboard.

H.R. 2772, the Saving Fishing Jobs Act of 2011, seeks to tackle the issue of catch shares on the Atlantic and in the Gulf Coast. These programs have been a favorite of NOAA Administrator Jane Lubchenco as she has chosen to force them upon the Atlantic and Gulf fishermen, even going as far as calling catch share programs by a different name to avoid a referendum vote as required by law in New England.

Ms. Lubchenco has previously stated a goal of seeking, and I quote, "a stable fraction of the fishing fleet eliminated." Catch shares programs are the means to her end goal of putting fishermen out of business. Catch share programs have become increasingly popular due to the fact that they have been proven to consolidate the fishing fleet and put small fishermen out of business.

The nonpartisan consumer watchdog, Food and Water Watch, has noted that if more catch share programs are implemented, and I quote, "many traditional fishermen will be forced out of work, economies of their communities will crumble, there will be an increased risk of harm to our oceans, and consumers will probably end up with lower quality seafood." The Food and Water Watch also found in 2010 that after the New England catch share program was implemented the number of boats in the water went from 500 to 253, costing thousands of fishermen their jobs.

Mr. Chairman, I would like to submit for the record a letter of support from the Food and Water Watch for H.R. 2772 and a letter of support from the Garden Seafood Association on both of these bills.

The CHAIRMAN. Without objection, both will be included in the record.

Mr. RUNYAN. Thank you.

Mr. RUNYAN. H.R. 2772 is simple. It extends the referendum vote on catch share programs throughout the entire Atlantic Coast and Gulf and closes down a new catch share program if it puts 15 percent or more of the fishermen out of business.

It does not eliminate the option to implement a new catch share program and applies only to preexisting programs. It is meant to encourage those designing the programs to consider jobs. This is a

common sense bill, and it will save jobs that government regulators at NOAA are on a mission to destroy.

At a time of 9 percent unemployment, we need to consider every jobs bill we can. My two bills will save jobs, and I urge the Committee to fully consider each of them. I thank you for allowing me to testify today, and I yield back the balance of my time.

[The prepared statement of Mr. Runyan follows:]

Statement of The Honorable Jon Runyan, a Representative in Congress from the State of New Jersey, on H.R. 1646 and H.R. 2772

Chairman Hastings and Ranking Member Markey thank you for holding this legislative hearing today. Federal fisheries management reform is an issue that is very important to those in coastal communities throughout the country, including those in my home state of New Jersey.

The commercial and recreational fishing industries are vitally important to our nation's struggling economy. In 2009 New Jersey's recreational and commercial fishing industries employed 46,400 people and represented a total added value to the economy of over $2.8 trillion dollars. The goal of my two bills is to keep these 46,400 men and women working. These are both jobs bills.

Poor outdated science, overly cautious decision making, and top down flawed fishery management plans have all conspired to drive many of our struggling fishermen out of business and have damaged our coastal economies. Since the last re-authorization of Magnuson-Stevens in 2006 we have lost the delicate balance between a sustainable healthy fishing industry and conservation. These goals can and must be achieved without one goal overriding the other.

H.R. 1646, The American Angler Preservation Act, has a number of provisions that seek to restore this balance. These provisions include:

- Outside peer reviews of certain recommendations that increase or decrease annual catch limit quotas by 20% or more. This will ensure that drastic reductions in catch are scientifically accurate.
- Requiring all of these recommendations to be risk neutral. Too often in the past recommendations have included built in caution that has reduced the total allowable catch.
- Requiring the Secretary of Commerce to rule on fisheries disasters within 60 days. This will help to provide disaster relief to a fishing community in a timely fashion and prevent the Secretary from ignoring those struggling due to government regulation.
- Requiring Science and Statistical Committee 5 year research priorities to be presented to Congress. This will provide greater transparency and allow Congress to more thoroughly perform its oversight role.
- Adding flexibility to 10 year rebuilding plans
- Preventing the Secretary of Commerce from closing a fishery without accurate science
- Extending the Gulf and New England catch share referendums to the rest of the Eastern Seaboard

H.R. 2772, The Saving Fishing Jobs Act of 2011seeks to tackle the issue of catch shares on the Atlantic coast and in the Gulf. These programs have been a favorite of NOAA Administrator Jane Lubchenco and she has chosen to force them upon Atlantic and Gulf fishermen, even going as far as calling catch share programs by a different name to avoid a referendum vote, as required by law, in New England. Ms. Lubchenco has a previously stated goal of seeing, *"a sizable fraction of the (fishing) fleet eliminated."* Catch share programs are the means to her end goal of putting fishermen out of business.

Catch share programs have become increasingly unpopular due to the fact that they have been proven to consolidate the fishing fleet and put small fishermen out of business. The non-partisan consumer watchdog, *Food & Water Watch* has noted that if more catch share programs are implemented, ". . .*many traditional fishermen will be forced out of work, economies of their communities will crumble, there will be increased risk of harm to our oceans, and consumers will probably end up with lower-quality seafood (*http://www.foodandwaterwatch.org/fish/fair-fish)." *Food and Water Watch* also found in 2010 after a New England catch share program was implemented, the number of boats in water went from 500 to 253 costing thousands of fishermen their jobs. Mr. Chairman, I would like to submit for the record a letter of support from *Food and Water Watch* for H.R. 2772, and a letter of support from the *Garden State Seafood Association* for both bills.

H.R. 2772 is simple. It extends the referendum vote on catch share programs throughout the entire Atlantic Coast and Gulf and closes down a new catch share program if it puts 15% or more of fishermen out of business. It does not eliminate the option to implement a new catch share program and applies only to pre-existing programs. It is meant to encourage those designing the programs to consider jobs. This is a common sense jobs bill; it will save the jobs that government regulators at NOAA are on a mission to destroy.

At a time of 9% unemployment we need to consider every jobs bill we can. My two bills will save jobs and I urge the Committee to fully consider each of them. Thank you for allowing me to testify today and I yield back the remainder of my time.

The CHAIRMAN. I thank the gentleman for his testimony.

And last but certainly not least, the junior member of the Massachusetts delegation, Mr. Keating.

STATEMENT OF HON. WILLIAM KEATING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. KEATING. Thank you, Chairman Hastings and Representative Markey, Ranking Member. As a frustrated tailback, I always wanted this opportunity, an opportunity that NFL runningbacks have had for a number of years, and that is to follow my colleague, Mr. Runyan. I get my wish.

Not exactly the way I planned it, but hopefully there is a little hole I want to hit that I think we can all agree on and maybe get some yardage on, and that is one of the issues that is plaguing the fishing industry, which is so often complex issues and so often unfortunately divisive issues.

But we sit here this morning I think in full agreement of a common crisis facing fishermen from Massachusetts to North Carolina, and it is the urgent need for increased research, hard scientific data, in order to implement fair and effective fisheries management policies.

I am not here to debate the effectiveness of these policies. On the contrary, I will speak on the first bill that I introduced as a Member of Congress, and that is a bill to—I always love these things—Strengthen Fisheries Management in New England Act of 2011. But the bill is simple, and I think it really accomplishes a couple of important purposes. It reroutes funds collected through penalties imposed by NOAA, the National Oceanic and Atmospheric Administration for the improvement of national New England fisheries.

What is currently the law now is that the fines that are collected by the fishermen who have violated or allegedly violated marine resource laws be invested in NOAA's Asset Forfeiture Fund. As we have already heard in previous testimonies, NOAA and the Asset Forfeiture Fund have been subjects of a wide range of accusations and investigations into the abuse and misuse of these funds.

Just last year the Department of Commerce Inspector General found that these abuses included the use of monies in the Asset Forfeiture Fund to buy cars for Federal agents, to cover trips and conferences to exotic and distant locations and even to purchase a $300,000 luxury vessel used by government employees. It was subsequently determined that NOAA did not regularly audit these funds and couldn't disclose precisely how much of these asset forfeiture funds were spent.

I introduce this bill in order to really right these wrongs, and that is one of the benefits of the bill, and restore trust in our government with the proper oversight. But the bill directs the Secretary of Commerce to provide the New England Fisheries Management Council with the funds collected by NOAA as fines and penalties from New England's fishermen to be used directly toward improving the research and management of our region's most valuable resource.

The New England Fisheries and Management Council is charged under the Magnuson-Stevens Act to manage fisheries in the Federal waters of New England. Each year it identifies research and monitoring priorities, most of which lack adequate funding. In order to make sound management decisions, the council has to increase the capacity to address these gaps in knowledge, and the Strengthening Fisheries and Management in New England Act I believe will do this and it will allow them to make better and more informed decisions that balance the continued protection of the marine ecosystem with the need for strong, profitable fishing businesses in coastal communities.

One of the most critical parts of this is it doesn't increase Federal spending. Rather, the bill redirects existing funds. In this way, the monies will be there to support many fishing related jobs crucial for the economic health of our region, all of which depend on sound resource management.

There have been a few measures this session that have received such broad bipartisan support, and this is one of them I think that stands out. This is an area where we deal with the issue of asset forfeiture and we deal with the issue of the lack of adequate funding for science. We can do two things at the same time and protect our fishing industry in this respect.

We had a hearing in Boston just recently where it was actually the U.S. Senate Commerce Subcommittee, and we were invited in, Representative Frank, myself, Representative Tierney from Massachusetts and Senator Brown with Senator Begich and Senator Kerry, and we talked about the troubles with NOAA, and really almost all of that focused on the lack of research and science.

Here is an opportunity with no extra expenditures of money to take the inherent conflicts that are there and proven to be there with the investigations on the asset forfeiture accounts and to alleviate that conflict and then take the funds and use it somewhere where we can help our fishing industry. I really think there is no real reason not to move in that direction. It is just good common sense, and it accomplishes two important gains I think on the fishing industry.

So, with that, I would like to ask you to consider this. I think it is something that we could move ahead on in an area where there is often division, and I would like to take my last 20 seconds also to indicate my support for a bill I cosponsored with my colleague, Mr. Frank from Massachusetts, H.R. 2610.

I think these issues can be dealt with. In many respects it is unfortunate that they rest on the doorstep of Congress because they are not dealt with in other areas, but we are fortunate to have a Congress that will bear into their mindset these important issues and look at it more objectively.

So thank you very much, Mr. Chairman.

[The prepared statement of Mr. Keating follows:]

Statement of The Honorable William R. Keating, a Representative in Congress from the State of Massachusetts, on H.R. 1013, The Strengthen New England Fishery Management Act of 2011

Chairman Hastings, Ranking Member Markey, and members of the Committee, thank you for the opportunity to testify before your committee on an issue of great importance—not only to the residents of the Bay State, whom, as my colleagues from Massachusetts know all too well, rely on the fishing industry as a source of livelihood, but to all states with access to fishing stocks.

The issues currently plaguing the fishing industry are complex and divisive. Yet, here we sit this morning in full agreement that the common crisis facing fishermen from Massachusetts to North Carolina is the urgent need for increased research and hard, scientific data in order to implement fair and effective fisheries management policies.

I am not here to debate the effectiveness of these policies; on the contrary, I will speak on the first bill that I introduced as a Member of Congress: ***the Strengthen Fisheries Management in New England Act of 2011.***

My bill, **H.R. 1013**, reroutes funds collected through penalties imposed by the National Oceanic and Atmospheric Administration (NOAA) to the improvement of New England fisheries.

Current law requires that the fines collected from fishermen who have violated marine resource laws be invested in NOAA's Asset Forfeiture Fund. As we have already heard in previous testimony, NOAA and the Asset Forfeiture Fund have been the subjects of a wide range of accusations and investigations into the abuse and misuse of these funds.

Just last year the Department of Commerce's Inspector General found that these abuses included the use of monies from the Asset Forfeiture Fund to:

- buy cars for federal agents;
- to cover trip expenses to conferences in exotic and distant locations;
- and to even purchase a $300,000 luxury vessel used by government employees

It was subsequently determined that NOAA did not regularly audit the use of those funds and could not disclose precisely how the AFF monies were spent.

I introduced the ***Strengthen Fisheries Management in New England Act*** in order to right these wrongs and restore trust in our government through proper oversight.

My bill directs the Secretary of Commerce to provide the New England Fishery Management Council with the funds collected by NOAA as fines and penalties from New England's fishermen to be used directly toward improving the research and management of our region's most valuable resource.

The New England Fishery Management Council is charged under the Magnuson-Stevens Act to manage fisheries in the federal waters of New England, and each year it identifies research and monitoring priorities, most of which lack adequate funding. In order to make sound management decisions, the Council must have the increased capacity to address these knowledge gaps.

The ***Strengthen Fisheries Management in New England Act*** will undoubtedly enable the Council to make better, more informed decisions that balance the continued protection of the marine ecosystem with the need for strong, profitable fishing businesses and coastal communities.

Perhaps most critical in today's political climate: this legislation does not increase federal spending. Rather, the bill re-directs existing funds. In this way, monies will support and protect the many fishing-related jobs crucial to the economic health of our region—all of which depend on sound resource management.

As I said before, there have been few measures this session of Congress that have received such broad bipartisan support as the need to increase scientific research of stock assessments. Here you have a panel of Members from both sides of the aisle who fully support this initiative.

In addition, I am proud to be a cosponsor of the bill, H.R. 2610, introduced by my colleague and dear friend from Massachusetts, Mr. Frank, which I believe will also go a far way in protecting our fishing industry from excessive fines.

The fishing industry is a central part of Massachusetts' and New England's history, and remains a vital economic lifeline of our local communities. In recent years, our fishermen's businesses have suffered due to inadequate data collection that dictates catch quantities. We can—and we must—implement fair and effective fisheries management policies while targeting government abuse and inefficient waste.

Chairman Hastings and Ranking Member Markey, I thank you for allowing me to testify before this committee and I hope to serve as a resource to you as Congress continues to work on this important matter.

The CHAIRMAN. I thank the gentleman very much. Normally we don't ask questions of our colleagues, but I know there is a burning desire on the part of my Ranking Member to ask questions, so I will allow others if they would like to. I recognize the gentleman from Massachusetts.

Mr. MARKEY. I thank you, Mr. Chairman. And that is just to give the two gentleman from Massachusetts an opportunity just to briefly expand on what additional funding for stock assessments means in a Massachusetts context in terms of our fishing industry. What would that mean in terms of our fishing industry? Mr. Frank?

Mr. FRANK. Well, I thank my colleague for that. It really ties into a point that the Chairman made, which is we have now the agency acting expressly on the precautionary principle, that is, if they are going to err, they are going to err on the side of less catch because of the need to conserve.

What that means is that error is not neutral or not error, but imprecision is not neutral. The less precise we are, the more uncertain they are, the more they are going to go to the precautionary principle the Chairman correctly pointed out. So this is a case where the more accurate it is the better off we are. Look, if it is more accurate and it says there are less, OK.

It is also the case that one of the things I think has been proven is that fishermen aren't dummies. They have a very real knowledge of what is going on. I can think of cases, in the case of New Bedford, the City of New Bedford brings in more dollar value for catch than any other port in America. A large part of that is because of the scallop fishery.

Fifteen years ago there was a debate about the scallop fishery, and there was a bureau in NOAA, the previous Administration obviously, that said, "No, No, we have got to shut back," and the scallopers said, "No, we are telling you they are out there." The Secretary of Commerce at the time, Mr. Daley, now the Chief of Staff for the White House, listened and decided to allow the increase, and it turned out the scallopers were right. Again, these are people who are out there who have some real knowledge, though that doesn't mean they have some self-interest. They can't be given the unlimited view there. But there have been cases before where their knowledge gets taken into account.

So, yes. Just to summarize, given the fact the more imprecision there is, the less certainty NOAA has, the more they are going to be inclined to be restrictive. So better science is a good thing because it is better science, and it also will lessen the possibility of an undue restrictive regime.

Mr. MARKEY. Mr. Keating?

Mr. KEATING. Yes. Thank you, Ranking Member Markey, and thanks for giving us this time. At that same meeting they were very clear. They said that they did not have reliance and a real sense of security in their science, and yet when I asked them why they do the most conservative estimates they say that well, they

are not only imprecise, but they are going to be conservative on top of it.

We have to remember this, and you ask what it means for our state. It is often forgotten that the fishing industry is a group of small businesspeople, and they are small businesspeople. They don't know how to plan for the next year. They are not getting information in a consistent way that is dependable.

Can you imagine for a second any other small business in your communities that are working under this environment where they don't know what next year means, they don't know what is going to happen and there are regulations imposed on them that have no security or no basis in fact, and on top of that to take the most conservative estimates and say we are going to lowball those?

It would mean that small businesses that otherwise would perish have a chance to succeed again. That is what it means in our district and I think the whole coast, so that is what it means in the last analysis. It means not only jobs, but it means family businesses that have been there for generations not being wiped out because of imprecise estimates and poor science. My bill goes through the point of saying, you know what? It is a hard thing to appropriate new monies now in this Congress. There are monies available. Let us use those monies to help the science.

Mr. MARKEY. I thank the gentleman.

Mr. HOLT. Would the gentleman yield?

Mr. MARKEY. I would be glad to yield to the gentleman.

Mr. HOLT. On that point, there are several million dollars I guess is the balance. How far will that go in the science? How expensive is this science?

Mr. KEATING. Well, I am not going to sit here and say this is going to solve the problem of adequately funding all the science. It is certainly going to enhance it, and it will also do away with the conflict issue at the same time. So we would like to be able to fund everything as fully as possible, but there are lag times in these scientific reports too, again getting back to the point I just made, that from year to year they don't know what they are facing.

But this will go I think a significant way in providing some more additional funding at a time that this Congress is having a hard time getting any additional funding and do it in a way that will accomplish another benefit.

Mr. FRANK. Could I just add one point, and I think this is already in the authority of the councils. We want to make clear on the way the precautionary principle works in a nonneutral fashion. Under the way NOAA has been working and the council has been working, if there is an underestimate, if it turns out too many fish were caught, in the next year all of that excess is deducted from the catch, but if there is an underestimate, only 10 percent is allowed. I mean, it is a one-way street.

If too many fish are caught, all the excess is deducted, but if it turns out the amount of the catch was under what was allowed, in some places they only get 10 percent of that. It ought to be even. That is an example. Again, the better information we have the less we are going to see that kind of unfairness.

The CHAIRMAN. I will recognize myself just briefly. I will say that the idea that has been expressed here in the response especially

from the two gentlemen from Massachusetts has been more flexibility and I will put in more local control. I think you will find that that will be well accepted on our side of the aisle on how we approach this. In fact, I alluded to that in my opening statement, so I am very pleased to hear that.

And to the notion of certainty that Mr. Keating talked about, I just can't pass up saying that to expand the argument to a larger level like our national Tax Code, there certainly needs to be some certainty in the Tax Code for the small businesses that create the jobs in our country to have some certainty in the long run for that.

So, to the extent that we can agree on that, I hope that in the longer run, even though this Committee doesn't have jurisdiction on tax policy, that we could possibly agree on that because I think that would be a big, big step to get America back to work too.

So, with that, are there any other questions? Mr. Southerland? Mr. Southerland from Florida first.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. Mr. Frank, I know that in your opening comments you talked about removing the possibility of fines being laid and then that department being able to receive the benefit of that. It kind of puts the fox over the henhouse.

Mr. Keating, I just want to make sure I have clarification because it sounds like, and if I am wrong please correct me, it sounds like what you are alluding to in your proposal is exactly what Mr. Frank was trying to prevent, so I want to make sure for just clarification purposes that you are not in opposition, because it sounds like in your explanation that you were.

Mr. KEATING. Well, if I could, I think the common ground between the two would be that the enforcement of those fines has not been level, and the oversight that is necessary and the reason perhaps why it has been so criticized is it just hasn't been even, and that is the message we are getting back from so many people in the fishing industry.

You know, I guess one area to even it out is not to fine at all. I think the more probable outcome will be there will be some deterrence because of that, but it should be done evenly and not excessively and not done—we heard stories where people just gave up because the legal expense of defending against those fines was more burdensome than the fines themselves. So I guess the common ground between the two parts of the testimony is the system needs greater change in oversight as well, and I guess for my part I wouldn't say eliminate every fine, but certainly eliminate the way you are doing it now.

Mr. SOUTHERLAND. Well, I don't think any of us are saying we need to eliminate fines when there are violations. I think that what Mr. Frank——

Mr. FRANK. Can I just say I appreciate that. It is a very important point. I agree, and you correctly stated what I think. You don't want the incentive, but it is also true that it can be a valuable resource. That is why the legislation that I put forward that is cosponsored by a number of people here, and bipartisan, makes the money available for research but at the state level. Every state that is a fishing state has its own entity that does research.

So I think that is a way to get the best of both worlds. You don't allow the agency that is allowed to make the decision that results in the money get any way to spend the money, but you do say that it goes to research and it goes to the states, and that is what that legislation does.

Mr. SOUTHERLAND. OK. All right. Thank you. I yield back.

The CHAIRMAN. The gentleman yields back. Mr. Kildee?

Mr. KILDEE. I just want to especially welcome Jon Runyan to the table. Jon's roots are in my district. He went to high school there, went to church there, and I am glad you live in New Jersey now rather than my district right now.

[Laughter.]

Mr. KILDEE. You are a very effective congressman.

Mr. FRANK. And he had the benefit of you being in Congress when he went to high school I think.

[Laughter.]

Mr. KILDEE. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. If there are no further questions of the panel, I want to thank all of you for your testimony. If there is any followup from any of our Members, certainly we would like a quick response if that should happen. With that, I will dismiss the panel.

While they are being dismissed, if the next panel can prepare to come forward? We have Mr. Rick Marks, who is a principal in Hoffman Silver Gilman & Blasco; Mr. Bob Zales, President of the National Association of Charterboat Operators; Mr. Chris Oliver, Executive Director of the North Pacific Fishery Management Council; Mr. Mike Colby, Double Hook Charter Boat from Clearwater, Florida; Mr. Peter Shelley, Senior Counsel, Conservation Law Foundation; and Mr. Robert G. Hayes, a recreational fishing representative.

I want to thank all of you for being here. Your full statement that you have submitted to the Committee will be part of the record, and I would like you to summarize your statement within the five-minute timeframe. The timing lights in front of you start with a green light, meaning you have a full five minutes. When the yellow light comes on it means you have one minute, and when the red light comes on that means that your time has expired, and I would certainly ask you to try to keep your comments within the constraint of time.

So, with that, I am very pleased to welcome our first witness, Mr. Rick Marks, who is a principal of Hoffman Silver Gilman & Blasco. Mr. Marks, you are recognized for five minutes.

STATEMENT OF RICK MARKS, PRINCIPAL, HOFFMAN SILVER GILMAN & BLASCO

Mr. MARKS. Thank you, Chairman Hastings, Ranking Member Markey and members of the Committee. It is an honor.

The 2006 amendments fundamentally altered our fish policy. We essentially applied the Alaska model to the rest of the country, a good idea provided the high quality science in the Alaska region also applied. Well, we all know that it doesn't. Instead, we ended up with a rigid implementation model resulting in precautionary

buffers and lower yields at the expense of our industry and our nation.

Mr. Chairman, we should not be allowed to fish with no regulation, but we can't fish with too much either, and I believe we need to develop a comprehensive package to rebalance our policy and have that ready to move at the earliest appropriate time. There are eight bills before this body, and they provide fertile ground for moving forward.

Mr. Frank and Mr. Keating are to be commended for their efforts to achieve AFF reform and to provide science for fisheries research. I recommend combining 1013 with the more comprehensive 2610, noting that even a small amount of additional fishery science can literally save a fishery. Just ask any monkfish fisherman from Wiscasset, Maine, to Wanchese, North Carolina.

In this era of transparency and scientific integrity, it is a shame that we even need 2753, but Congressman Walter Jones is right to offer it and I support his legislation. Mr. Runyan's 1646 contains elements of SSC oversight, rebuilding flexibility, disaster reform and clarification of what information is necessary before closing fisheries, all useful considerations.

1646 and 2772 have the catch share issue well surrounded. These programs are not conservation plans. They are a type of social engineering, and the Federal Government should not be determining who can and cannot work in this country, nor should we permit the system to be tainted by elitist NGO's suckling at the trust fund teats. If we require an industry petition and a referendum as prerequisites to catch share plans, we will produce an organic bottom up process, which is exactly as it should be.

Mr. Wittman's 2304 is a valuable asset in that it targets a fundamental flaw in the current system, the disconnect between scientific capability and rigid control rules. In my opinion, this bill takes us to a critical point, and that is a recognition that we have very different stocks—core stocks, minor stocks, mixed stocks, ecosystem stocks, choke stocks—and that we should consider managing them differently and commensurate with the data quality and our capabilities, in other words, managing within our limitations.

I understand 2304 is popular with the Sportsmen's Caucus, but the legislation still does not address the other pressing issues that other members of this Committee have with their charter and commercial constituencies. As an advocate for the commercial seafood industry, Mr. Chairman, I pledge to you and to Mr. Wittman to work with you to make that bill inclusive and part of a comprehensive reform package.

There are useful provisions in 3061 as well, including stock rebuilding, SSC oversight and, similar to 2304, the concept of limiting ACL requirements in data poor situations. I thank Congressmen Pallone and Jones for the provision that requires the Secretary to identify when his FMPs are having substantial economic impacts and to help try and mitigate those. Anytime that we can remind the Secretary and NOAA that this is Department of Commerce and not EPA, we need to do so.

In closing, Mr. Chairman, and in the spirit of the holiday shopping season, I brought a list of items that aren't included in these

bills but perhaps you could consider in your Committee: a clear mixed stock exemption that allows a single ACL to be set for groups of stocks that are commonly found in association with each other; statutory exemptions for transboundary stocks and for stocks whose biological characteristics prevent us from being able to implement the control rules in a reasonable manner. I am talking about Atlantic mackerel, butterfish, and Gulf of Mexico spiny lobster.

Provide effective streamlining of NEPA and Magnuson review requirements; implement a transparent national framework to objectively prioritize fisheries research, stock assessments and cooperative research in each region annually for five-year periods; allow the option for catch shares to be inclusive of shore-based processors in high-volume fisheries such as Alaska groundfish, Atlantic mackerel and pelagic squids where there is a heavy reliance on processing investment.

And finally, include a clarifying provision that the regional management councils have authority for managing fishery resources in national marine sanctuaries and national marine monuments. I thank all of you for having me as your guest today.

[The prepared statement of Mr. Marks follows:]

Statement of Rick E. Marks, Hoffman, Silver, Gilman & Blasco, Arlington, Virginia

Chairman Hastings, Ranking Member Markey and distinguished Members of the Committee, I appreciate the opportunity to speak with you about reforming the Magnuson-Stevens Fishery Conservation and Management Act of 2006 (MSA). I am Rick Marks, a principal at Hoffman, Silver, Gilman & Blasco P.C. ("HSGB") of Arlington, VA. Our fisheries clients operate in many regions around the nation. Prior to joining HSGB, I was appointed by the Secretary of Commerce to serve on the Mid-Atlantic Fishery Management Council and worked as a marine fish biologist for the State of North Carolina. I worked for NOAA as a Fishery Reporting Specialist and a Benthic Field Technician. I hold a Masters Degree in Marine Environmental Science with emphasis in Coastal Fish Ecology and a Bachelor of Science Degree in Biology. I have authored scientific papers in peer-reviewed journals regarding various aspects of finfish ecology. I am currently working on professional certification in Environmental Conflict Resolution with the Morris K. Udall Foundation in Arizona.

Mr. Chairman, for the record my comments here today are solely my own as an advocate for the commercial seafood industry. Please note my testimony reflects issues critical to many of my clients whom operate in Alaska, Washington, Oregon, California, Florida (both coasts, and the FL Keys), New Jersey, New York and Rhode Island.

(1) Need for MSA Reform

The 2006 MSA Amendments fundamentally altered the way domestic fishery resources are managed. The new provisions focused on ending overfishing, rebuilding stocks, reducing fishing capacity, and developing limited access programs—all in the context of a more intensive reliance on fisheries science in the decision-making process. The changes created higher demands on science and management. Requirements to end overfishing added a whole new layer of requirements and tighter deadlines have created premiums for resources and increased dependence on short-term monitoring of annual catch limits and quotas. In sum, the new MSA demands are high and the federal government is struggling to meet those demands within a restrictive budgetary situation.

The fact that the Committee is considering eight bills targeting MSA reform is a clear indication serious problems precipitated from the 2006 authorization. Historically, MSA reauthorizations occur about every 10 years so the sheer number of bills introduced thus far further supports the need for comprehensive reform, sooner rather than later.

In 2009 NOAA revised the National Standard One Guidelines (NSG1) requiring the Regional Fishery Management Councils (RFMCs) to consider both scientific and

management uncertainty when setting quotas. The revisions were designed to prevent overfishing, rebuild overfished stocks, and achieve optimum yield (OY). For the 2006 reauthorization to work it requires a heavy reliance on high quality scientific information. Unfortunately, this is information that in most regions we simply do not have. Juxtaposition of insufficient data with consideration of uncertainty in the quota setting process results in larger precautionary buffers and lower yields at the expense of the industry and our nation. In addition, proliferation of unpopular catch share programs has fanned the flames of reform.

NOAA currently manages 528 stocks of fish. Of this total, roughly 114 are considered adequately assessed by the agency. Most of the 114 assessments (approx. 80) occur regularly on economically important stocks in Alaska and New England. In other regions, the assessment periodicity is reportedly far less, accounting for approximately 15 per year in the Gulf of Mexico, South Atlantic and Caribbean combined (Angers 2011). Thus, a large majority of fish stocks are data poor or not adequately assessed at all with the result being uncertainty trumping opportunity for additional fishery yields.

Congress clearly intended for science-based decision-making to be the order of the day. In theory, I agree with this premise but in reality, our fishing industry is paying dearly for the lack of adequate science. We built an implementation model that exceeds our scientific capabilities. We need this Committee to consider comprehensive MSA reform at the earliest possible time to effectively rebalance our management system.

(2) Comments on Current MSA Legislative Reform Efforts

H.R. 594: "The Coastal Jobs Creation Act of 2011" (Rep. Pallone-NJ): This legislation would create a national grant program with a specified list of qualified activities and funding criteria. On a positive note, if funded, the legislation could provide grant opportunities to improve science-based decision-making. However, this depends on how the specific guidelines are crafted—the Secretary of Commerce is given sole responsibility to develop them within 30 days. Based on industry's recent experiences with implementation of the MSA, National Ocean Policy, Coastal and Marine Spatial Planning, National Catch Share Policy, and the most recent 2011 National Fish & Wildlife Foundation (NFWF) Bycatch Engineering Grant Program (which was disbursed solely to catch share program proponents), it is unclear which of the 13 qualified activities would be consistent with NOAA philosophy and is therefore problematic absent more detail.

H.R. 1013: "The Strengthen Fisheries Management in New England Act of 2011" (Rep. Keating-MA): The U.S. Department of Commerce Office of the Inspector General issued report No. OIG–19887 on January 12, 2010. The report detailed OIG concerns regarding, among other things, NOAA's retention of civil penalties and its Asset Forfeiture Fund (AFF). Clearly, NOAA has the statutory authority to retain such relevant proceeds. However, the OIG noted concerns about internal controls and questions about how such resources were being expended. Congressman Keating's responsiveness to the OIG report is to be commended. I agree with the basic idea of H.R. 1013; to provide a transparent separation between fines/penalties/seizures and program operations, to remove the direct incentive for excessive fines, and to use AFF monies for improving fisheries management.

I note two concerns here. First, if all the funds are shifted from the AFF then NOAA will have to fund the program from somewhere else in its continually shrinking budget. I am concerned that scientific funding may suffer in this transaction and we may end up no better in the bargain. Second, the bill is New England-centric in that it specifies improving fisheries research in the waters off New England for fisheries under the jurisdiction of the New England Fishery Management Council (NEFMC). However, it is important to note here the NEFMC has sole jurisdiction for some fisheries that extend deep into the Mid-Atlantic region (e.g. Atlantic scallops, New England groundfish, Atlantic herring) and joint jurisdiction with the Mid-Atlantic Fishery Management Council (MAFMC) for species such as Atlantic monkfish. H.R. 1013 should be combined with H.R. 2610 to develop a more comprehensive approach.

H.R. 1646: "The American Angler Preservation Act" (Rep. Runyan-NJ): H.R. 1646 is the most comprehensive MSA reform legislation before the Committee. There are a number of provisions contained in this legislation that have merit and should be considered (specifically or conceptually) for inclusion in a comprehensive MSA reform package. First, the bill endeavors to add oversight to the SSC process through a peer review trigger, risk-neutral decision making, and requiring the SSC to file research recommendations with Congress. At the October 27, 2009 hearing on the "Implementation of the Magnuson-Stevens Fishery and Conservation Management Reauthorization Act of 2006" Representative Rob Whitman (R–VA–1) ques-

tioned then NOAA/NMFS Chief Science Advisor Dr. Steve Murawski about the need for SSC oversight. Dr. Murawski replied that "None was planned but that it is a good idea" (Murawski, 2009). I too support the concept of adding SSC oversight.

H.R. 1646 contains similar provisions regarding stock rebuilding flexibility included in H.R. 3061, further indicating there are ongoing problems with this component of the MSA, at least in the Mid-Atlantic region.

Mr. Runyan's bill also reforms the Fisheries Disaster Relief provision contained in Section 312 by requiring the Secretary to make a determination within 60 days after the Secretary receives a request. I agree with this provision since Section 312 currently applies no time constraint for the Secretary to render a declaration, leaving constituents in dire economic situations with little recourse.

The Secretary closed the entire Gulf of Mexico snapper-grouper fishery to protect sea turtles for 5 consecutive months starting in May, 2009. The Governor of Florida issued a formal request to the Secretary for a fisheries disaster declaration along with 350 members of the Florida fishing industry who also submitted a letter of support. The Secretary did not respond to this situation until early 2011, nearly 18 months later, having determined that despite the hardship the industry survived the closure so no disaster declaration was necessary.

Furthermore, the Secretary is placed in the difficult position of being both the author of the regulations (that created the problem) and the decision authority on the remedy. There is also the complicating factor that disaster aid will come from the Department of Commerce budget. I believe this puts the Secretary in direct conflict and encourages delay in decision-making. To address this conflict it may be useful for the Committee to consider, in instances where the disaster is the direct result of fisheries regulations implemented by the Secretary, that the Small Business Administration (SBA) or some other relevant entity have input into the disaster determination.

H.R. 1646 contains some excellent catch share reform ideas (See also H.R. 2772 discussion below). The critical elements of Rep. Runyan's approach on catch shares that are absolutely necessary are to provide eligible fishermen with a petition and a final referendum on how they want to develop their fishery. Only in this way will the process be truly organic and industry-driven.

It is important to note here that catch share programs are not conservation tools, they are business plans and a type of social engineering. NOAA clearly recognizes this, stating in the National Catch Share Policy that "Taken together, ACLs and LAPs [limited access privilege programs] combine the positive benefits of a firm cap on fishery removals with the additional benefits of achieving important economic and social objectives. . .." (NOAA 2010). It is the social and economic relevance of a LAP that is all the more reason for the fishing industry to have an honest vote in the process.

H.R. 1646 contains a provision that requires additional discussion—the 5-year program termination unless the ongoing program is approved by a 2/3rds vote of the participants. There has been much discussion in the history of catch shares regarding the ability for the fishing industry to effectively finance the purchase (or lease) of catch share allocation. I am concerned that a firm sunset trigger might hamper financing opportunity and this issue must be thoroughly vetted before including such a provision in law.

That said, once a catch share program is implemented the law does not contemplate a clear process for removing it. Thus, a 2/3rds vote of the current participants to keep the existing program, concurrent with the plan review requirements of Section 303A(c)(G), may be the less intrusive but still effective approach to pursue with H.R. 1646.

Finally, H.R. 1646 provides a certification process for a fishery to be closed (including application to fisheries already closed under current law). In effect, the Secretary may not close a fishery that would have a direct or indirect affect on a specified number of businesses at a specified economic impact if certain scientific standards are not met. While I am not certain the certification process specified in H.R. 1646 provides the most perfect answer, there is great value in considering what information is necessary before the Secretary can completely close a fishery.

H.R. 2304: "The Fisheries Science and Improvement Act of 2011" (Rep. Wittman-VA):

I believe the basic premise of H.R. 2304 is on point but that we need to expand and refine some provisions before moving forward if we are to make this bill helpful to the entire regulated community. The basic idea of ensuring that NOAA bases management decisions on sound science is critical. The lack of credible science and subsequent use of the precautionary approach are major issues driving the need for MSA reform.

First, extending the ACL deadline to 2014 is moot since the species application requirements set forth in MSA Section 303 (as added by P.L. 109–479) specified deadlines in 2010 (for species subject to overfishing) and 2011 (for all others). The RFMCs (or the Secretary in the case of New England groundfish) have already developed ACL consistency amendments.

Regarding scientific improvements, there is great value in Rep. Whitman's concept of up-to-date stock assessments and surveys as prerequisites for ACLs. Many in the commercial, charter and sport fishing sectors believe the ACL/AM requirements are contrary to achieving OY and that quotas will be continually reduced due to scientific uncertainties to compensate for avoiding overfishing at any cost and achieving rebuilding in as short a time as possible.

The Atlantic monkfish fishery along the U.S. East Coast is an excellent example of how poor science (assessments and surveys) can negatively impact the fishing industry, especially when layered with precautionary decision-making. It also illustrates the benefits of improved science. In 1999, the NEFMC developed the initial fishery management plan for monkfish and proposed to permanently close the directed monkfish fishery, citing concerns that the stock was so small it could not sustain a directed fishery. The primary problem was that the NMFS survey vessels did not catch monkfish. Poor survey results (a.k.a. "best available science") forced managers to conclude that the stock was in trouble.

A NOAA-industry cooperative monkfish bottom trawl survey was completed in 2001. The results of this survey proved that monkfish biomass was substantially larger than the estimate generated by the federal trawl surveys. Thankfully, the monkfish fishery continues but unfortunately, the data-poor condition persists. Annual quotas were set for the first 7 years of management using unreliable survey data. Thus, available fishing days for fishermen from New Jersey to North Carolina went from 40 days a year in 2000 to a low of 12 days in 2006. The quota was reduced from a high of 21,325,318 pounds in 2005 to a low of 8,084,353 pounds in 2006—a precipitous near 40% decrease in one year due solely to a lack of reliable science and subsequent precautionary decision-making.

The approach embodied in H.R. 2304, if inclusive of "data poor" species, could provide relief from rigid ACL control rules in the absence of sufficient data. If not, fishermen will be continually subjected to precautionary decisions with no clear plan to address the lack of reliable scientific information.

H.R. 2304 also provides an exemption from the ACL requirements for "Ecosystem Stocks" (ES). Here again, I agree with the basic concept of exempting certain data poor and minor stocks from the ACL requirement but recommend some improvements to the bill before moving forward. My recommendation would be to develop broader application that closely links scientific capabilities with the ACL/AM requirements. Rather than ES we should designate stocks into "core" and "minor" components based on clear metrics including value and scientific need. ACL/AM requirements could be applied to core stocks but for minor stock components, or for stocks where status is unknown or those in a data poor condition, the ACL/AM requirement need not apply or could be made less rigorous.

H.R. 2610: "The Asset Forfeiture Fund Reform and Distribution Act of 2011" (Rep. Frank-MA): In some ways similar to H.R. 1013, Representative Frank's legislation is more comprehensive, addressing elements of reform in the wake of the OIG report on the AFF oversight, especially in the New England region but not solely in that region. Representative Frank recognizes and preserves the role of the individual States as well as the joint nature of the RFMC relationship.

Overall, I support the key provisions of H.R. 2610—reimburse any person who was treated unfairly by the federal government, provide a transparent separation between fines/penalties/seizures and program operations to remove the incentive for excessive fines, and use AFF monies for activities in direct support of sound fisheries management research where violations occurred. I note here NOAA subsequently revised the AFF Policy (*See* 76 FR 16386) but provided no funds in support of scientific activities. Also, I am concerned that with no other source of funding specified by Congress for OLE activities that funding for scientific work may be tapped which is unacceptable.

H.R. 2753: "The Fishery Management Transparency and Accountability Act" (Rep. Jones-NC): I support H.R. 2753. In this era of transparency there should be no need for such basic legislation. However, the 2006 MSA amendments and the idea to "separate politics from science", ceded an unprecedented amount of authority to the RFMC SSCs. While each council operates differently, and the range of comfort in the regulated community varies from region to region, there is no reason why we should not require RFMC, SSC and Council Coordinating Committee meetings be widely available and archived.

H.R. 2772: "The Saving Fishing Jobs Act of 2011" (Rep. Runyan-NJ): Similar to H.R. 1646, Representative Runyan's H.R. 2772 is in response to the groundswell of animosity against *implementation* of NOAA's National Catch Share policy. It is important to note here this widespread opposition is not against the policy but rather, how it is being implemented. Many in the fishing industry consider the catch share process to be a rushed, top-down process. Indeed, NOAA indicated as early as December 2009 that "32 additional programs will begin development in FY 2012" (NOAA 2009). Many fishermen also perceive the process to be tainted by Walton Foundation trust grants to NGO interests who may not have the best interests of the U.S. commercial fishing industry in mind. I agree with many of these perceptions and they exist as an industry reality.

Besides inadequate science undermining on our management system, the proliferation of catch share programs is presently one of the most problematic industry issues. Recently, 41 Members of Congress from 12 states filed letters with the House Commerce, Justice, and Science Appropriations Committee expressing concern over the expansion of new programs in New England, the Mid-Atlantic, Southeast and Gulf of Mexico. This level of concern is a strong indication there are serious problems with some of the existing programs and that the majority of fishermen in many regions do not wish to see these programs expanded into new fisheries absent a firewall in the form of a clear referendum process.

H.R. 2772 contains provisions identical to those in H.R. 1646 with two noted additions: (1) any new catch share program that results in a 15% reduction in the number of eligible fishermen is subject to termination; and (2) the 3% fee cap provision in Section 304 is replaced with a requirement for the program to cover all costs, including observer costs.

Regarding the 15% termination provision for newly created programs, I completely support Representative Runyan's efforts to protect jobs. Catch share programs are widely reported to consolidate fleet size and reduce employment. However, in the event that a catch share program is supported by eligible fishermen via a transparent and fair petition and referendum, the 15% provision should not apply.

Regarding the requirement for fiscal responsibility, this could also be a valuable consideration in a perfect world where catch share programs are completely open, market-based systems where the responsibilities of management are balanced by the privileges of economically efficient harvest. However, that is not the case as programs are constrained by such things as ownership caps, ultra-conservative control rules, strict bycatch limitations, and excessive observer coverage requirements. As long as there is heavy government constraint on these programs the 3% cap limitation should apply. In situations where the system is based on a free market economy and eligible fishermen are fully aware of the programmatic costs prior to a final referendum vote the fiscal responsibility requirement should apply.

H.R. 3061: "The Flexibility and Access in Rebuilding American Fisheries Act of 2011" (Rep. Pallone-NJ): While the RFMCs are given some flexibility to tailor their approaches to management plans the one area that remains rigid is in regard to stock rebuilding. The law still retains the requirement that rebuilding be completed in 10 years or sooner, if possible, *rather than what is practicable.* The RFMC chairmen supported adding an element of stock rebuilding flexibility during the 2006 reauthorization but their efforts were unsuccessful.

The 10-year deadline is completely arbitrary, has no basis in science, and its impacts may be worsened in data poor situations. We all agree that stocks must be rebuilt—we simply disagree on the time frame. It makes no practical sense to visit extreme hardship on coastal communities if a stock can rebuilt to the exact same level in 12, 15 or 18 years rather than in 10 years under more onerous restrictions. I believe by not including a clear flexibility provision in the MSA we missed an opportunity to inject some common sense into the management process.

H.R. 3601 requires each SSC submit an annual report detailing their scientific advice, condition of the assessment data, and recommendations for improvements. This reporting requirement will precipitate a more transparent scientific process.

Regarding suspension of the ACL requirements, H.R. 3601 allows the Secretary the option to suspend ACLs if the stock is not overfished, not approaching the overfished condition, is fully rebuilt, or if the scientific advice from the SSC is based on such a high level of uncertainty that is insufficient to ensure the fishery management plan is consistent with the components of National Standard 8 (*See* MSA Section 301(a)(8)). I agree conceptually with one core aspect of the ACL suspension issue—ACL control rules should not be set on data poor or minor stocks for which we do not have adequate information to make the necessary and timely determinations.

I also agree with the provisions in H.R. 3601 that *require* the Secretary to identify whether fishery management plans are having adverse economic impacts, for

the Secretary to take actions as necessary to attempt to mitigate those adverse impacts, and for the Secretary to report to Congress on those actions. In the end these provisions may not ease all the socioeconomic pain stemming from necessary regulations but they may minimize the impact and encourage the Secretary to think creatively outside the regulatory box.

(3) Other Relevant Reform Issues That Should Be Considered By the Committee

Mixed Stock Exemption: A clear provision should be added to the MSA to allow the RFMCs to set a single ACL for a group of fish stocks that are commonly found in association with each other, often referred to as a mixed stock assemblage. Although this provision was a clearly defined component of the NSG for years the agency never implemented the tool. Often times, the availability of individual species within a mixed stock grouping will fluctuate and may be inconsistent with the ACL provisions. This is aggravated as stocks rebuild or in data poor situations or where monitoring is not timely. This situation prevents fishermen from accessing more abundant stocks and impedes our ability to achieve OY.

Statutory Exceptions for Trans-boundary and Short-lived Species (MSA Section 303 note): The MSA currently provides an exemption from the ACL/AM control rules for stocks managed under an international agreement in which the U.S. participates and also to a fishery for a species that has a life cycle of approximately one year that is not subject to overfishing. In my opinion this provision is too narrow in scope and does not address species that are truly trans-boundary in nature but lack a formal agreement, or are species whose life history characteristics prevent NOAA from being able to apply the ACL control rules in an efficient manner.

I provide here three examples where a clear case can be made for MSA control rule exemptions—Atlantic mackerel and Gulf of Mexico Spiny Lobster and Atlantic butterfish. In the case of ***Atlantic mackerel,*** scientific evidence indicates the stock distribution is shifting into Canadian waters (Overholtz, 2011). Unfortunately, the U.S. has no formal trans-boundary sharing agreement and Canada takes what they can harvest. Unilateral U.S. management actions pursuant to MSA will not affect rebuilding or end overfishing but will disadvantage our fishermen and weaken the U.S. negotiating position.

While the U.S. opportunity to harvest mackerel was reduced by more than 80,000 metric tons (mt) since 2007 (from 115,000 mt to 34,907 mt) the Canadian government allows their fishermen to harvest most of the available quota since their fishermen are under no obligation to fish under MSA control rules. Due to the lack of a trans-boundary exemption, rigid interpretation of MSA requirements, confusion among fishery managers about whether or not the law requires the production of sustainable fishery yields or the application of layers of scientific uncertainty, the U.S. mackerel fishery (which is *not* overfished) has been severely restricted. Thus, Congressional action is necessary to require the U.S. government to implement an Atlantic mackerel resource sharing agreement with Canada and provide the Atlantic mackerel fishery with an ACL exemption.

Regarding the State of Florida's valuable ***Spiny Lobster*** (*Panulirus agrus*) fishery in the Gulf of Mexico, domestic fishermen account for a mere 6% of the total harvest. In fact, genetic evidence indicates that stock recruitment occurs entirely outside U.S. jurisdiction within the Caribbean Basin and waters of Southern Cuba, Brazil, Belize, Honduras and Columbia. In 2011, NOAA's Southeast Data Assessment Review (SEDAR) determined it was not possible to establish population benchmarks based only on the U.S. segment of the population (FKCFA 2011). There is no formal Pan-Caribbean agreement to manage this international stock. Despite the trans-boundary characteristics of this stock coupled with insufficient data available to make a stock status determination, MSA requirements force the RFMC's to set ACL/AM control rules for this species. Though the current ACL is sufficient there is real concern that scientific and management uncertainty will, over time, artificially reduce the allowable catch level. Spiny lobster should be exempt from the ACL rule.

I also agree with the statutory exemption provided for species with a short life cycle or unusual life history characteristics such as the Atlantic squids (*Loligo* and *Ilex spp.),* and warm-water species of shrimp. Allowing management flexibility for such species is appropriate and ***Atlantic butterfish*** is a perfect example. In 2004, NOAA determined that the butterfish stock was overfished and must be rebuilt in as short a time as possible but not to exceed 10 years. In 2010 NOAA determined the stock was not undergoing overfishing but could not determine if the stock was overfished. NOAA also concluded that the results of in 2004 were inaccurate and not suitable for management decisions.

Six years later, a rebuilding program is in place based on data that are insufficient to determine the condition of the stock. Given the fact that butterfish has a short lifespan (1–3 years), extremely high natural mortality rate, uncertain and variable survey indices, and an exceedingly variable catch level it is not possible to accurately determine the condition of the stock on a timely basis. These uncertainties force precautionary decision-making when setting ACLs which negatively impacts fishing activities directed at other species, in particular the *Loligo* squid fishery.

Conforming the National Environmental Policy Act and MSA: In spite of clear direction given by Congress in 2006 (Section 304(i), as added by P.L. 109–479), NMFS and the Council on Environmental Quality have yet to adequately streamline the procedures for review under the two statutes. The results are unconscionable delays in conserving and managing our fish stocks. For example, 2012 measures for Pacific groundfish are based on data from 2008 to inform a regulatory process that began in 2009 in order to comply with environmental review timelines. At its November 2011 meeting the Pacific Fishery Management Council voted to maintain status quo on almost all ACLs through 2014 in spite of data showing markedly increased abundance on key stocks, simply because the environmental review time requirements would prevent the fishery from starting on time.

Stock Assessment Prioritization and Cooperative Research: The issues related to fishery science and stock assessment needs can be addressed using a transparent approach designed to provide a framework in which Commerce, NOAA/NMFS and the RFMCs can objectively prioritize research and assessment needs as well as cooperative research (CR) requirements on an annual basis for 5-year periods. These prioritized needs can inform budgetary allocations from Congress to NOAA and the Regional Science Centers.

I recommend that each NOAA/NMFS Regional Office, in conjunction with the Regional Science Centers, be required to complete a prioritization schedule of scientific research and stock assessment needs using a hierarchical score of pre-determined scientific and fishery attributes (i.e. economic value, stock status, survey needs, core/minor stock, level of uncertainty, protected species concerns, etc.) for each upcoming 5-year period. A similar process should be used for cooperative research recommendations recognizing that CR projects are Science Center directed and should be tailored to meet the unique needs of each region. Each RFMC, in conjunction with its SSC and consistent with requirements of MSA Section 302(h)(7), should review and adjust the recommendations of the NOAA/NMFS Regional Offices based on the Council's data needs. NOAA/NMFS Headquarters staff could then finalize the recommendations and cost estimates for each region and forward on a timely basis to Congress and the Office of Management & Budget (OMB) for consideration in the budgetary allocation process.

Consideration of Shore Side Investment in Catch Share Programs: In certain high volume fisheries around the country (i.e. Atlantic mackerel & pelagic squids, Alaska and Pacific groundfish) there is a heavy reliance shore side processing capacity, investment and marketing capability. In these distinct situations catch share programs must be made inclusive to protect these elements of the infrastructure. The consolidation of fishing vessels under typical catch share program is not the only source of job loss for fishery-dependent communities. Consolidation can also occur in the processing sector. For example, there are seven groundfish processing facilities in the Gulf of Alaska (five in Kodiak, one in Sand Point, and one in King Cove). These seven facilities compete with each other for a market share in pollock, cod, rockfish, and flatfish. The companies also buy salmon, halibut, sablefish, crab, and herring from local fishermen.

The companies owning these facilities invested heavily to compete under an open access system to handle large volumes of pollock and cod. However, under a typical catch share system, consolidation in the fishing sector will likely be followed by consolidation in the processing sector. A program that does not factor in processing infrastructure may well result in shrinkage from seven facilities to two or three. This will adversely impact markets for all AK fishermen, including those engaged in salmon, halibut, sablefish, crab, and herring. Consolidation of processing capacity could hurt the local labor force in communities such as Kodiak where shore based processing workforce stands at roughly 1500 workers. Two-thirds of those jobs could be lost if a new catch share program triggers consolidation within the processing community.

Fisheries Management Responsibility in National Marine Sanctuaries: I continue to believe there are competing management jurisdictions between the National Marine Sanctuary Act (*See* NMSA 16 U.S.C. 1434) and the MSA (*See* MSA 16 U.S.C. 1852) when it comes to fishing regulations in sanctuaries. The specific problem appears in Section 304(a)(5) of NMSA (16 U.S.C. 1434) whereby the Councils are af-

forded the opportunity to prepare draft regulations using the MSA as guidance only "to the extent that the standards are consistent and compatible with the goals and objectives" of the Sanctuary designation. This is the crux of the jurisdictional and philosophical inconsistency.

RFMC Chairmen adopted a unanimous position in 2006 to amend both the NMSA and the MSA to exclude fishery resources as sanctuary resources and to achieve jurisdictional clarity by vesting federal fisheries management under the MSA. The House Natural Resources Committee attempted to address this issue during the 2006 reauthorization but Members deferred to the NMSA reauthorization. I agree with the position of the RFMCs and recommend the Committee consider including a jurisdictional clarification in the MSA. This approach will ensure that fishery resources are managed consistently throughout the range and subject to the National Standards.

Create Separate Definitions for the Terms "Overfished" and "Overfishing": MSA Section 3 (*See* (34)) combines both terms into one definition. This is an inaccuracy that should be corrected. Simply stated, overfishing is an ongoing rate of removal from a fish stock that is too high and may lead to a stock becoming overfished. A stock that is determined to be overfished has already been exposed to a level of fishing mortality that jeopardizes the capacity to produce maximum sustainable yield and must be rebuilt.

Once clearly defined, a separate consideration could be developed for specific instances in which a robust, non-overfished stock is being subjected to too high an ongoing rate of removal. Rather than an immediate fishing closure, the fishing effort could be phased down over short period of time (i.e. 1–3 years) to reduce severe economic impacts but still provide adequate protection to the resource.

(4) Recommendations

Simply put—implementation of the 2006 MSA amendments exceeded our scientific capabilities with little improvement expected in the future, and the result being losses in fishery yields due to chronic application of ever-increasing uncertainty buffers. The NSG1 evolved to include precautionary decision-making leading to safety buffers that effectively prevent the U.S. fishing industry from achieving OY. Furthermore, for stocks that are not overfished or where overfishing is not occurring, or when stock assessments yield inconclusive results, we may never reach the OY benchmark. These are the core weaknesses of U.S. fisheries policy yet achieving OY is a primary objective of MSA. My recommendation is for Congress to begin substantive reauthorization discussions now with a plan to offer a comprehensive reform package at the first appropriate opportunity. The eight pieces of legislation discussed today offer an excellent start with numerous elements that can be incorporated into such a package.

Mr. Chairman, thank you and the Ranking Member and the Members of this Committee for beginning this process in earnest. I look forward to working with you and your staff to secure positive changes to our Nation's fisheries policy.

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The CHAIRMAN. I thank you very much, Mr. Marks, for your testimony and now recognize Mr. Bob Zales, President of the National Association of Charterboat Operators, recognized for five minutes.

STATEMENT OF CAPTAIN ROBERT ZALES, PRESIDENT, NATIONAL ASSOCIATION OF CHARTERBOAT OPERATORS

Mr. ZALES. Thank you, Chairman Hastings and members of the Committee. My name is Robert F. Zales, II. I am appearing today on behalf of the National Association of Charterboat Operators. I wish to thank you, Ranking Member Markey, my representative, Steve Southerland, and the other members of the Committee for your kind invitation to present testimony on the various amendments that will add flexibility to the Magnuson-Stevens Conservation and Management Act.

NACO is a nonprofit 501(c)(6) association representing charterboat owners and operators across the United States. I am also a national board member of the Recreational Fishing Alliance and serve as an officer and director of other fishing organizations. We are acutely aware of the devastating impacts of the last reauthorization of MSA to fishermen, their families, supporting businesses and fishing communities by increasing loss of jobs.

The requirements of the MSA are overly restrictive and require arbitrary rebuilding timelines based on no science. Congress mandated a new recreational data system be provided by January 2009. Your mandate was ignored by the NOAA NMFS as we still do not have the new data system today. Your mandate also required a report to be provided to you no later than January of this year by the NMFS on the progress made in achieving those goals. Have you received such a report?

All fishing is extremely important to the United States. According to the NOAA publication, Fishery Economics of the United States, for 2009 recreational saltwater fishing, commercial fishing and seafood retailers combined to produce over $231 billion in economic impacts and providing over 1,811,000 jobs.

In my small coastal community of Panama City, Florida, 15 percent of tourism dollars comes from saltwater recreational fishing. All these depend on healthy, resilient stocks and must have flexibility in management in order to survive. The bills today discussed contain language that will provide needed changes in the MSA that will help provide and produce jobs necessary to maintain our fishery heritage.

I and others have constantly stressed to Members of Congress how provisions contained in the reauthorized MSA would lead to devastating impacts to fishermen in our communities. The provisions of the MSA that continue to create harm are the arbitrary requirements to rebuild overfished species within a short period of time, establish arbitrary and nonscientific mandates to set ACLs and AMs based on fatally flawed recreational catch data, the continued use of a fatally flawed recreational data system and the unyielding power provided to the Science and Statistical Committee.

The overly restrictive requirements to rebuild overfished fisheries within a specified, short period of time based on no or flawed science has caused fishing seasons to be shorter, bag limits and quotas to be reduced, causing a loss of fishing jobs and harming communities. In the quest by NMFS and extremist environmental organizations to consider only the resource and exclude the impacts to humans, families and communities suffer.

We can fish at levels that maintain and create jobs while ensuring sustainability of our fishery resources. The Gulf of Mexico king mackerel and red snapper fisheries are clear examples of how resources can rebound and grow while fishing jobs are maintained and communities prosper.

Imposing arbitrary ACLs and AMs based on flawed data is causing further destruction of fishing fleets and reducing recreational fishing opportunities. Congress clearly understood that fishery data is a critical component to providing proper fishery management as a timeline was set in the MSA to achieve various goals.

Congress intended to have a new recreational data system in place before measures were established to prevent overfishing and setting ACLs and AMs. It is clear that the managers of NOAA ignored the mandate to establish a new recreational data system but moved forward using fatally flawed recreational data and creating regulations to prevent overfishing and establishing ACLs and AMs.

Our nation is in dire straits, and jobs are desperately needed. Why is the NOAA NMFS free to ignore the will of Congress and do as they please with no accountability to anyone while their efforts continue to eliminate fishery jobs? The proposed bills discussed today will help fishermen survive while ensuring the sustainability of our fishery resources. H.R. 2304, introduced by Representative Wittman, is a good start, but it fails to help all fishermen.

The proposed legislation contained in H.R. 3061, introduced by Representative Pallone, combined with H.R. 2304, will provide the tools necessary to ensure all fishermen are able to continue to work and provide for their families. Section 2 of H.R. 3061 meets the real need we have to be able to fish while rebuilding stocks, whether they are overfished or undergoing overfishing. In simple terms, this proposed legislation allows us to take a set of stairs to reach the top rather than being forced into an elevator. As long as the fishery is improving every year, why should we be more restricted in our ability to harvest and continue providing for our families and communities?

H.R. 1646 and 2772 provide the legislation necessary to confront the excessive push by NOAA and extremist environmental groups to implement catch shares on fishing communities. Proposed language within both provide for fishermen to decide if they want a catch share program and, if so, to control the development of such rather than have NMFS impose programs. Current catch share programs eliminate jobs, reduce access to fisheries to a lucky few, harm supporting businesses and negatively impact communities. By creating flexibility in MSA, the need for catch share programs will cease to exist.

By combining the most effective language from each bill into one, we can support moving the legislation forward. Doing so will ensure that all fishermen benefit, which will result in a unified effort of support. The United Fish Rally we held in February 2010 brought thousands of fishermen from all sectors from across the Nation together as one voice, demanding flexibility in how our fisheries are managed.

Unless all fishermen are able to benefit from any proposed legislation, any efforts to amend the MSA will fail. Thank you very much.

[The prepared statement of Mr. Zales follows:]

Statement of Capt. Robert F. Zales, Ii, President,
National Association of Charterboat Operators

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

NACO is a non-profit 501 (c) (6) association representing charter boat owners and operators across the United States including the Great Lakes. I am also a National Board Member of the Recreational Fishing Alliance and serve as an Officer and Director of several other fishing organizations. Sadly, we are acutely aware of the devastating impacts of the last reauthorization of the MSA as amended through January 12, 2007 to fishermen, their families, supporting businesses, and fishing communities by the increasing loss of JOBS. The current requirements of the MSA are overly restrictive and require arbitrary rebuilding timelines based on no science. Congress mandated a new recreational data system be provided by January 2009. Your mandate was completely ignored by the leaders of the NOAA/NMFS as we still do not have the new data system as of today. Your mandate also required a report be provided to you no later than January 2011 by the NMFS on the progress made in achieving those goals. Have you received such a report? The rigid requirements of the MSA prevent the management Councils from having any flexibility in recommending management measures that will rebuild our resources while allowing fishermen to fish. Both can and should be allowed.

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

All 8 proposed bills contain language that will require needed changes in the MSA that will help maintain and produce the JOBS necessary to maintain our fishery heritage. Congress must have clearly understood that fishery data is a most critical component to providing proper fishery management as in the reauthorized MSA a timeline to achieve various goals was set. Recreational Fishing data was to have a new program by January 2009. Measures to prevent overfishing of all fisheries overfished or undergoing overfishing were to be established as of 2010, and all other fisheries by 2011. The NOAA/NMFS is required to establish Annual Catch Limits (ACL) and Accountability Measures (AM) for all federally managed fisheries by the end of 2011. It is clear to me that Congress clearly intended to have a new recreational data system in place before measures were established to prevent overfishing and setting ACLs and AMs by the stated timelines. It is also abundantly clear that the managers of the NOAA/NMFS completely ignored the mandate to establish a new recreational data system but moved forward with using the fatally flawed recreational data in creating regulations to prevent overfishing and establishing ACLs and AMs. Our Nation is in dire straits and JOBS are desperately needed. Why is the NOAA/NMFS free to ignore the will of Congress and do as they please with no accountability to anyone while their efforts continue to eliminate fishery JOBS?

Here is a clear example of the overly restrictive requirements of the MSA. When working to establish ACLs and AMs for some fish species, the NOAA/NMFS has recommended and in some cases the Councils have followed simply removing the species from the current fishery management plans. This had to be done in order for

the NOAA/NMFS to comply with the MSA. We will now have some species without any management leaving them vulnerable to unrestricted harvest.

The NOAA/NMFS has used the provisions of the MSA that pertain to catch shares as rationale to create and establish new catch share programs along the East Coast and Gulf of Mexico. They have created a catch share policy they use to push catch share programs on fishermen. Managers of the NOAA/NMFS will tell you they do not push such programs but it is clear from the head of NOAA/NMFS on down that catch share programs will be implemented in order to reduce fleet capacity which eliminates more fishing JOBS.

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

(A) Gulf Red Snapper are considered overfished, current recreational data used is from the fatally flawed MRFSS, and there is much scientific uncertainty because the last full stock assessment was done in 2004. The SSC recently recommended an OFL of just over 9.3 Million Pounds and set an ABC of just over 7 Million Pounds. In their discussions, the members of the SSC had serious concerns about the uncertainty of the data and some stated they felt the ABC could be set closer to the OFL. Most of the members had serious concern about the data on which their recommendation was based. Many Council members also questioned the data and many of them felt the ABC could be set closer to the OFL but because of the requirements of the MSA they could not make that recommendation.

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

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

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

Council appointments are one more issue. The Councils are supposed to be an independent body of balanced experts that are to consider the best available science and other relevant factors in making recommendations for management of fisheries.

The MSA provides for the Governors of the coastal states to recommend persons to serve on their respective Councils. The NMFS RAs currently make their recommendation to the Secretary of Commerce which generally is accepted and then appointed. In many cases, if an appointed Council member does not follow the NMFS RA agenda, that member is not recommended for reappointment. In some cases a person recommended by a Governor who is known to not follow the NMFS RA agenda, that person is not recommended by the RA and thus is not appointed. The NMFS RAs should not be able to determine who should or should not sit as a Council member.

RECOMMENDATIONS

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

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

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

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

H.R. 1013 and H.R. 2610 should be combined and approved for the same reasons stated for H.R. 594 and the utilization of the funds received from that area should be used for that area. Together these two bills should help bring some accountability to the NOAA/NMFS and their law enforcement efforts. Fishermen should be respected for their concern of the resource and providing seafood for the American consumer rather than be treated as criminals.

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

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

The CHAIRMAN. Thank you very much, Mr. Zales.

Next I recognize Chris Oliver, who is Executive Director of the North Pacific Fishery Management Council. Mr. Oliver is recognized for five minutes.

STATEMENT OF CHRIS OLIVER, EXECUTIVE DIRECTOR, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Mr. OLIVER. Thank you, Mr. Chairman, and good morning to you and members of the Committee. Thank you for the opportunity to speak today.

The 2006 amendments to the Magnuson-Stevens Act 2006 reauthorization comprised a very ambitious, comprehensive and powerful set of requirements for fisheries management. Those are primarily aimed at rebuilding and conserving fisheries through the use of annual catch limits. Those amendments clearly were not without pain and cost to the fishing industry, as is evidenced by the introduction of various bills aimed at modifying those provisions.

Those 2006 amendments also put in place numerous requirements for the development of limited access privilege programs or LAPPs, and while not appropriate for all fisheries we believe they represent a critically important tool for fisheries management, and we have used them extensively in the North Pacific fisheries. We don't want catch shares rammed down our throat either, and we respect that some regions we would like to see additional requirements or constraints put on the development of those programs. We respect that, but we don't want to lose catch shares as a management option in our toolbox.

As a general comment, I believe that whatever bills pass they need to be as specific in their direction as possible. Recall that the 2006 editions, which implemented ACLs, were but a few sentences of statutory text but that the implementation of those requirements resulted in 98 pages of guidelines or regulatory text from the agency. We are still in the process of addressing those provisions and had to undergo significant amendments to our fishery management plans even though we have been successfully managing fisheries with strict annual catch limits for 30 years.

There are instances in the North Pacific where these requirements have complicated or negatively impacted our fisheries. While most have good stock assessments, as has been noted, we have some that don't. Octopus is an example. We have an ACL requirement for octopus even though it is a poorly surveyed species. There are very few survey instruments that measure it. We have had to implement closures to cod fisheries this year due to ACL requirements for octopus even though it is recognized as an abundant species.

In terms of rebuilding, we have a Pribilof Island blue king crab stock that is considered overfished even though no directed fishery has occurred on that stock for two decades. We face the prospect of curtailing certain groundfish fisheries, which take some incidental catch of the species, even though our models and analyses predict that such restrictions will not positively effect or affect the rebuilding success.

I cite these examples of recognition that the ACL and rebuilding requirements are not perfect and some adjustments will be in

order. Overall, we have good stock assessments in the North Pacific, and we have been operating under an ACL paradigm for decades. Therefore, we have not experienced the type of negative impacts overall that other regions have.

So we do understand the need for flexibility and we support that. We believe it will be imperative to consider those changes cautiously and not dilute the basic intent and benefit of ACLs and not to lose ground in our success at rebuilding overfished stocks where rebuilding is feasible. To that point, we believe that any reauthorization should include a primary focus on developing adequate stock assessments for all of our species and maintaining robust stock assessments where they already exist so that ACLs are set at the appropriate level in the first place.

Mr. Chairman, I cannot specifically cover each of the eight bills in the time allowed, so I would like to make a few key points that I believe cut across several of the provisions. A primary goal appears to be jobs creation, and that is obviously a laudable goal. We need to address the question of how to create or maintain jobs by sustaining our fisheries but do so without dismantling otherwise successful programs.

I think that the 2006 amendments recognize their SSCs as appropriate gatekeepers relative to the science of ABCs or ACLs, and we want to be cautious about encumbering the process with additional extensive outside peer review requirements. I want to also caution against arbitrary constraints on setting ACLs. The example is not allowing an ACL to go up or down by more than 20 percent. I think there is the potential there to result in an overharvest in some cases or an underharvest in some cases, depriving fishermen of income, because we do have some stocks that fluctuate that much on an annual basis.

I want to urge you to be very wary of adopting well-intended but perhaps impractical requirements for economic and community impact analysis which could preclude timely implementation of fisheries closures. There are some provisions in some of these bills that I recognize are very well-intended, but I think to a certain extent some of them are impractical in a timely manner.

With that, Mr. Chairman, I see my time is up, and I will close. I urge you to read my detailed written comments on these.

[The prepared statement of Mr. Oliver follows:]

Statement of Mr. Chris Oliver, Executive Director, North Pacific Fishery Management Council

Good morning Chairman Hastings and members of the Committee, and thank you once again for the opportunity to testify regarding potential amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). I offer a perspective from the North Pacific region, as a representative of the North Pacific Fishery Management Council. Neither the Council nor those with a stake in the North Pacific fisheries have reviewed these comments; therefore, they represent my best attempt to speak for those interests, based on my previous testimony before this Committee and on my 22 years of experience with the Council process in Alaska.

The 2006 amendments to the MSA comprised a very ambitious, comprehensive, and powerful set of new requirements for fisheries management, primarily aimed at rebuilding and conserving fisheries through the mandate of Annual Catch Limits (ACLs) and the reliance on best scientific information in that pursuit. The 2006 amendments were not without pain and costs to the fishing industry, as is evidenced by the introduction of various Bills aimed at modifying some of those provisions. The 2006 amendments to the MSA also put in place numerous requirements

for the development of Limited Access Privilege Programs (LAPPs), requirements which also apply to many of the 'catch share' programs being considered, or being developed, by Regional Fishery Management Councils around the U.S. Catch share type programs, including sector allocations, license limitation programs, and individual transferrable quotas (ITQs), while not appropriate for all fisheries, do represent a critically important tool for fisheries management, and have been used extensively in North Pacific fisheries. Catch shares in the North Pacific have been developed through an extensive, and inclusive, public process. We do not want to lose catch shares as a management option in our tool box.

As a general comment, I believe that whatever Bills do pass, they need to be as specific in their direction and intent as possible. An example of general provisions resulting in substantial revisions to North Pacific fishery management (and nationwide), is in fact the implementation of ACLs required under the 2006 MSA reauthorization. Recall that the 2006 additions to the MSA which implemented the ACL requirements were but a few sentences of statutory text (largely patterned after long-standing North Pacific practices), but that the implementation of the ACL requirements resulted in 98 pages of 'guidelines', or regulatory text, from the National Marine Fisheries Service. We are still in the process of addressing the provisions of the 2006 MSA reauthorization. In the case of the North Pacific, we had to undergo significant amendments to our Fishery Management Plans (FMPs) to comply with the letter of the ACL regulations, even though we have been successfully managing fisheries with strict annual catch limits for 30 years. The guidelines as written also require us to develop additional amendments to our FMPs to more explicitly address uncertainty in stock status, even though we have robust stock assessments for most species, and uncertainty levels are incorporated in our stock assessments and setting of ACLs. Finally, despite the lengthy and detailed guidelines which were developed, there is still debate over how to account for fish taken in research, stock assessment, and cooperative research under exempted fishing permits (EFPs).

There are certainly instances where the implementation of the ACL amendments has complicated, or even negatively impacted, some fisheries in the North Pacific. We have relatively poor information on overall Pacific octopus biomass, due to the difficulty in assessing this species, but we have enough information to establish a 'stock assessment' and are compelled to establish an ACL. This ACL is based largely on historical, incidental harvest information, life history characteristics, and stomach content analysis of Pacific cod, rather than a robust stock assessment, and has recently resulted in closures of fisheries which take octopus incidentally. This example underscores the need for robust stock surveys and assessments, which we recognize as a major component of several of the Bills under consideration. Another example worth citing, relative to rebuilding requirements, is that of Pribilof Island Blue King Crab. While we have no overfished groundfish stocks in the North Pacific, this crab stock is considered overfished and in need of a rebuilding plan, even though no directed fisheries have occurred for nearly two decades, and the species is only occasionally taken as bycatch in other fisheries. We are facing the prospect of curtailing certain groundfish fisheries, because this is the only source of mortality we can affect, even though our analyses and models indicate that the expected bycatch savings will not positively effect, or affect, rebuilding success.

I cite these examples as recognition that the ACL and rebuilding requirements are not perfect and some adjustments to these requirements may well be in order. Overall however, because we have long been operating under this general paradigm in the North Pacific, and because we have the benefit of robust stock surveys and stock assessments for most species, we have not experienced the types of negative impacts that other regions appear to be having in complying with ACLs. In that vein, while we understand the need for some flexibility in the application of ACLs and rebuilding requirements, we believe it will be imperative to consider such changes cautiously, to not dilute the basic intent and benefit of ACLs, and to not lose ground in our success at rebuilding overfished stocks where rebuilding is feasible. To that point, any reauthorization of the MSA should include a primary focus on developing adequate stock assessments for all of our fisheries, and maintaining robust stock assessments where they already exist, so that ACLs are set at the appropriate level in the first place.

H.R. 594 Coastal Jobs Creation Act of 2011

Generally, this Bill represents a potentially positive approach to cooperative research opportunities. While the laudable goal appears to be job creation in the shorter term, it also provides funding and processes which could ensure fisheries jobs in the longer term, notably by providing opportunities to enhance stock assessment information across all of our fisheries. I believe that the focus of many of the

Bills under consideration at this hearing is to alleviate job losses experienced in many of our fisheries—the key question is how to create or maintain jobs by building and sustaining our fisheries, rather than creating or saving short-term jobs by dismantling otherwise successful management programs. Another aspect of this Bill that we in the North Pacific note with interest is the ability to use provisions of this Bill to fund observer deployment. The North Pacific Groundfish Observer Program is a fundamental underpinning of our management program, and is primarily funded by the fishing industry at a cost of over $15 million per year.

There are a couple notes of caution I would like to raise in the context of this Bill. First, it will be expensive, at the proposed $80 million per year, and we caution against this funding coming at the expense to existing, on-going, mission critical activities such as NOAA's existing stock assessment activities, in the North Pacific or in other regions. Secondly, the Bill calls for the Secretary (NMFS presumably in this case) to develop guidelines (regulations presumably) within 30 days to implement this program. In my experience with development of guidelines and/or regulations, 30 days represents an impossible timeline to develop the kind of guidelines which would be required for this program. Finally, because the devil is indeed in the details, the provisions of this Bill should be made as specific as possible in order to facilitate development of the guidelines, and to minimize the potential for the guidelines to be more complex than necessary.

H.R. 1013 Strengthen Fisheries Management in New England Act of 2011

I have no comment on this Bill specifically, as it pertains explicitly to the New England region. However, if provisions of this Bill were extended beyond the New England region we would have serious concerns, due to the potentially negative impacts on NOAA's enforcement mission. Please refer to my comments on H.R. 2610 in this regard.

H.R. 1646 American Angler Preservation Act

A number of significant concerns are raised by this Bill, and I will address them section by section.

Section 2—Improving Scientific Review:

This section proposes the introduction of the term "risk neutral" with regard to scientific advice. Risk and uncertainty are implicit in any stock assessment and attendant ACL determination, and the insertion of this term could lead to further confusion, or subjectivity, in attempting to define this term.

This section constrains a Scientific and Statistical Committee (SSC) from making an ACL recommendation which is 20% smaller or larger than the previous ACL, unless that recommendation has been approved in a peer-review process conducted exclusively be non-governmental entities. This is problematic from a number of angles. First and foremost, the 2006 MSA reauthorization went to great lengths to recognize the SSC as the appropriate forum for establishing annual acceptable biological catch (ABC, or effectively, ACLs for purposes of this discussion), in fact going even further to explicitly recognize an SSC as the appropriate body for satisfying the peer review requirements of the Data Quality Act. During the 2006 reauthorization we argued vigorously against additional peer review requirements because of the scientific credibility of our Plan Team and SSC review processes in the establishment of ACLs. This provision would seem to discount the role of our SSCs, as was imbued upon them in the 2006 reauthorization.

To preclude an ACL from deviating by more than 20% is an arbitrary constraint which has the potential to either (1) result in excessive harvest rates if the science indicates that a reduction of 20% or more is warranted, or (2) result in great financial loss to fishermen and communities, and be contrary to National Standard 1 (using the best scientific information available and attaining optimum yield from the fishery), if conditions warrant an increase of greater than 20%. Some fisheries in the North Pacific are among the most well understood, best assessed stocks anywhere in the world (Pollock for example) and it is not uncommon to have changes in stock biomass and attendant ACLs which approach, or even exceed, 20%. We believe that our SSC is the appropriate 'gatekeeper' for ABC determinations and do not believe that an additional peer review process is warranted or advisable.

Further, it is not clear how the members of such a peer review would be chosen, whereas the Council process provides an effective means to vet scientific experts and ensure adequate representation of scientific perspectives on our SSCs. This proposed Bill does not define the specific qualifications for 'non-governmental entities', who would select the reviewers, and when such selection process would occur (relative to the timing of setting ACLs each year). Practically, there are a limited number of available experts who are not already engaged in the Council process, either as SSC members, industry, or environmental representatives.

Section 3 Extension of the time period for rebuilding certain overfished fisheries

I earlier cited the example of Pribilof Island Blue King Crab, a fishery which has not been subject to any fishing for nearly two decades, and for which restrictions of any fishing activities (even closing fisheries which might take this species as bycatch) are not predicted to effect, or affect rebuilding. Certain provisions of this section would provide relief for these situations, and by the example listed above, we recognize the need and desire for some flexibility in the current rebuilding strictures. However, the various provisions regarding alternative time frames to rebuild collectively generate some concern, in that they appear to relax many of the existing constraints on both the minimum and maximum time frames for rebuilding overfished stocks, which may jeopardize the ability to successfully rebuild some stocks. Relaxing the constraint on the minimum time frame to rebuild could add confusion to the calculation of the relative available range of rebuilding times, as currently the calculation of the minimum time frame to rebuild (Tmin) is based on an assumption of no fishing (i.e., the substitution of the term 'practicable' for the term 'possible'). On the other hand, relaxing some of the constraints on the maximum time frame to rebuild seems reasonable for some fishery situations. We only note that it may be difficult (and somewhat subjective in some cases) for the Secretary to make the determinations listed in the proposed Bill, and that such provisions be considered cautiously.

Section 5—Approval of Limited Access Privilege Programs

This section appears to be targeted to specific regions, which do not include the North Pacific, and we support the clarity that these provisions would not apply to the North Pacific. It is unclear whether certain 'catch share' programs, such as sector allocations, would fall under the provisions of this section, but in any case we would strongly oppose any such provisions for fisheries in the North Pacific. The 2006 amendments to the MSA provided numerous constraints on the development of LAPPs, and compelled the Councils to vigorously analyze and consider the impacts of any LAPP program before adoption. Maximum flexibility for program design, tailored to the specific aspects of each fishery, is key to successful development of LAPP or other catch share programs. Termination of LAPP programs after some arbitrary time period, particularly where transferability is allowed, will likely result in significant disruption to the fishery, its fishermen, and related communities.

Section 6—Certification Required for Fishery Closure

The overall purpose of this section is challenging to ascertain, but there are several aspects of this section that are problematic and cause great concern: 1) the definition, or lack of definition, of the term 'closure'; 2) the required determination of direct and indirect impacts on entities; 3) the aspects that would need to be certified by the Secretary to enact a fishery closure; and, 4) Secretarial review of existing closures.

1) **Definition of closure**. Closures may be defined in many ways, and in the North Pacific, there are literally hundreds of closures that NMFS effects in-season, on an annual basis. Examples include closure of a fishery due to reaching its catch limit in-season; closure of a fishery for catch of any species which has exceeded its OFL; area closures for conservation reasons; closure for reaching a catch limit of a prohibited species. Another interpretation of the term 'closure' in this section may mean not allowing a fishery to open at all in the beginning of the year, presumably due to ACL and/or rebuilding requirements. If this certification requirement is intended to pertain to anything other than the latter (not opening an annual fishery), there are significant concerns with the ability of NMFS to manage multiple fisheries, gear types, seasons, and areas simultaneously, on a timely basis, so as to avoid exceeding the allowable catch limits. Currently in the North Pacific, NMFS annually manages 'closures' for a variety of reasons including species-specific catch limits, prohibited species bycatch catch limits on target fisheries, area-closures to protect habitat, bycatch and target stocks, and in-season actions when the OFL of a single target species is reached thus requiring any fishery which catches that as bycatch to be closed. Requiring this type of certification for each of these closures would make sustainable management of the fisheries in the North Pacific entirely impossible. Regardless of the intended breadth of the term 'closure', we have significant concerns with the practical ability to determine direct and indirect affects as called for in the proposed Bill.
2) **Determination of indirect or direct effects of at least $50k on more than 25 small businesses**. The wording of this section appears to require an extremely impractical, if not impossible, mission. First it would require

someone, somehow to identify each and every small business in the U.S., or region of the U.S., that might be related to a particular fishery, a monumental task in itself. Secondly, someone would next have to conduct a full financial audit of each and every one of those businesses in order to determine whether a $50,000 affect would occur to at least 25 of them (setting aside for the moment the subjective determination and quantification of 'indirect' impacts). Such a determination by nature would be speculative (projecting whether a closure would directly or indirectly affect more than 25 businesses), would likely not provide valuable information as to the impact of the proposed closure, and could not likely be done in any timeframe that would be relevant to any proposed closure. The monetary costs of even attempting to conduct such a determination can only be speculated, but would likely be extreme.

3) **The three certification requirements for a closure**. While there is clear merit to the intent of certifying the three aspects included here, there is an inherent complication in requiring both B and C (i.e., both an updated peer review within the preceding three years AND was developed with at least models subjected to outside peer review). In the North Pacific, we have annually peer-reviewed stock assessments for all stocks; however, not every assessment has gone through an external peer-review process, nor do all stock assessments employ age-structured models (e.g., for some assessments, based on the information available, catch limits are based on estimates of mortality multiplied by survey biomass, or catch limits are recommended based upon average catch levels over a specified time frame). Only age-structured assessment models are typically the focus for external peer review due to the more complicated nature of these assessments, in contrast to more simplistic assessments (based upon either survey biomass only or average catch calculations). Changing the wording of B and C to indicate an 'or' in lieu of an 'and' would allow for the intent of the certification without unnecessary disruption for assessments that are annually peer reviewed within our current process but are not priorities for external peer review. An example of an assessment that would meet B but not C in the North Pacific is that for the Gulf of Alaska Atka Mackerel—that assessment is annually peer reviewed but, due to a lack of a reliable biomass estimates for the stock, specifications are established based upon average catch and not any form of age-structured model. Under regulations to protect the endangered Steller Sea Lion population, this directed fishery is annually closed. Because no external review (of alternative models) has been conducted on this assessment (per requirement 'C') this assessment would not qualify for the Secretarial certification, which would in turn result in the fishery being opened to directed fishing, in violation of the Endangered Species Act. Further, and to reiterate earlier comments, we do not support requirements for outside peer review in any case given the robust nature of our current scientific review process (i.e., our SSC, with optional outside peer review in specific cases, at the discretion of the Council or the Secretary).
4) **Secretarial review of existing closures**. Again recognizing the extreme hardships implied by many fishery closures, and the merit in carefully examining such closures, it is difficult to ascertain the practical effect of this section, as a retrospective exercise. Once again the definition of the term 'closure' is critical, and the intent of this section needs to be clarified. Does this mean any closure at all, or any closure for which a fishery has not subsequently been re-opened? As described in comments above, the ability to definitively measure every direct and indirect impact on small businesses and communities overall, and identify specific and potential job losses, is extremely limited and subjective. Estimations may be possible, but the specific provisions (and criteria) in this section would not appear to allow for subjective, non-definitive estimation. Crafting regulations to implement these provisions would likely be an extremely daunting task.

H.R. 2304 Fisheries Science Improvement Act of 2011

This proposed Bill appears to promote the development of better stock assessment information, and allow certain flexibility in rebuilding for stocks that are overfished. As it is written, it would not appear to affect stocks in the North Pacific; however, it may be important to clearly differentiate and define the terms 'stock survey' and 'stock assessment'. In the North Pacific, there are several species, including octopus, sharks, and squid, for which there is no specific stock survey (nor any specific, reliable survey instrument), but there is a stock assessment performed annually, based on historical catch numbers, life history parameters, stomach content analysis of

predator species, and limited biomass information. Based on this stock assessment, octopus for example has a relatively low ACL and has recently constrained fisheries which take octopus incidentally. Depending on how these terms are defined it may be possible that provisions of this proposed Bill would affect management of these species, and perhaps a few others in the North Pacific. The definition of 'ecosystem stock' is more narrow than that contained in the ACL guidelines, and it is unclear what the intent and affect of this definition would be. Finally, the provision requiring the Secretary to conduct a stock assessment for an overfished fishery appears well intended; i.e., we need better stock assessments to determine appropriate ACL levels and rebuilding schedules.

H.R. 2610 Asset Forfeiture Fund Reform and Distribution Act of 2011

As written, it appears that this Bill would change the distribution of funds collected from fines, penalties and forfeitures for violations of the MSA and any other marine resource law from Federal and State agencies to States only. Specifically, the amendment would remove the asset forfeiture fund as a source of revenue from the NOAA Office of Law Enforcement (OLE) and instead would distribute these funds solely to States for such activities as fishery research, stock assessments, data collection, at-sea and shoreside monitoring of fishing, and compensation for the costs of analyzing the economic impacts of fishery management decisions to name just a few.

Based on my understanding of how NOAA OLE functions in the North Pacific, the impacts of this proposed Bill are potentially significant. The amendment could severely hamper the investigation process of federal fishery violations and ultimately reduce the effectiveness of enforcement of MSA regulations in the North Pacific. Currently, OLE in the North Pacific region relies significantly on the asset forfeiture fund to pay for travel associated with investigating fishery violations. Unfortunately, these travel costs contribute a significant portion of the costs associated with fishery violation investigations because of the remoteness of the North Pacific communities and ports. Absent the asset forfeiture fund, travel associated with investigating fishery violations will be reduced significantly or in some cases eliminated altogether. Current procedures would be to send an OLE officer to the community or port to investigate the fishery violations. This would allow OLE officers assigned enforcement duties to focus on enforcement only. Instead, already stretched OLE officers normally assigned enforcement duties will now be tasked with conducting investigations in addition to their enforcement duties, thereby reducing the effectiveness of fishery enforcement in the North Pacific.

Case in point, the investigative actions by NOAA OLE against the 140' fishing vessel Bangun Perkasa, recently seized by the U.S. Coast Guard for use of high seas drift nets, were funded entirely from the asset forfeiture fund, so without this source of the revenue OLE could not afford to investigate these violations which could jeopardize enforcement of illegal high seas fishing in the North Pacific region.

Using some portion of the funds for stock assessment augmentation is a positive aspect of this Bill. Perhaps sponsors of this Bill would consider some portion of the Asset Forfeiture Fund being retained for use by NOAA OLE for investigative activities.

H.R. 2753 Fishery Management Transparency and Accountability Act

This Bill would require live video and audio broadcast of Council, SSC, and CCC meetings on each Council's website, and written transcripts posted within 30 days of the meeting. We endorse the point of this legislation, and making the Council process more accessible, and in fact already do most of what is being proposed (live broadcast of Council meetings, complete audio files, posting for public access). However, we oppose the specific provisions for the following reasons:

In the North Pacific, we currently live stream audio of Council meetings when possible. In more remote locations of Alaska, internet access may not be available, or broadband too limited for live broadcast based on our experience (including our most recent meeting experience!).

Thirty days may be too short of a time to get written transcripts prepared, and transcribing is a very expensive and time consuming task. The North Pacific Council and its SSC meets 5 times per year. Council meetings last for 7 days, and SSC meetings for 3 days. Full audio files of Council meetings are available to the public, in an easily searchable time/date stamped format. Transcripts would be redundant and unnecessarily expensive.

The SSC provides scientific advice, not policy advice, and written transcripts would tend to suppress the full expression of scientific opinions. As noted at the first national SSC workshop, "*Most SSCs provide scientific advice based on a summary of their deliberation. The general consensus was against the practice of using ver-*

batim transcripts. SSC deliberations are a dynamic process and statements made by SSC members could be quoted out of context under the transcript format. The transcript approach is likely to discourage open discussion especially in the current litigation environment."

Council Coordination Committee (CCC) meetings are already being broadcast, and in most cases a full audio and written transcript is developed.

H.R. 2772 Saving Fishing Jobs Act of 2011

While this Bill appears to be directed at regions other than the North Pacific, I can assert that we would adamantly oppose these kind of provisions being applied to the North Pacific region. Consistent with previous testimony before this Committee, and consistent with my earlier comments, we believe that the LAPP provisions of the 2006 MSA reauthorization provide the necessary flexibility for Councils to initiate LAPP programs, as well as the necessary constraints on that development. We do not believe the Councils' discretion in this regard should be constrained by additional petition requirements. Further, requirements to terminate such a program, particularly where transferability is allowed, will likely be very disruptive. A reduction in eligible vessels and/or fishermen is inherent in most LAPP programs, and setting an arbitrary termination criteria (for example 15% decrease in eligible fishermen) may negate the otherwise positive benefits of the program for which it was originally established. One example of the tradeoffs inherent in any LAPP program is the exchange of numerous, part-time jobs for fewer, full-time, higher paying jobs.

H.R. 3061 Flexibility and Access in Rebuilding American Fisheries Act of 2011

Section 2—Extension of Time Period for Rebuilding

This section contains provisions very similar to H.R. 1646, therefore please refer to my specific comments on that proposed Bill, with regard to rebuilding flexibility.

Section 3—Committee reports

This section would require SSCs to submit a comprehensive annual report to the Council regarding the quality of the science, aspects of uncertainty, and how the SSC used the science in its determinations. These requirements (with one notable exception) are inherent in our current SSC process and are largely already contained in the detailed minutes of our SSC meetings. The notable exception, and the one provision which should not be part of the SSCs consideration in setting ACLs is section (a)(VI), which would require the SSC to provide "a description of the social and economic impacts of the committee's recommended management measures and whether such measures are consistent with the national standards set forth in section 301(a)(8)". The 2006 MSA reauthorization explicitly empowered the SSCs with recommending acceptable biological catch levels, and left to the Council the myriad policy decisions of balancing other factors to recommend appropriate management measures. These factors are included in the biological, economic, and social impact analyses prepared for every Council recommendation, and which are required by the MSA and various other statutes. The SSC does not, and should not, make policy recommendations beyond the setting of ABC, which should be done independent of other considerations, based on the best scientific information on a particular fish stock.

Section 4—Annual catch limits

The provisions to allow Secretarial suspension of ACLs may provide beneficial flexibility in some instances, though it will likely be very difficult (and potentially subjective) to determine "a level of uncertainty that is insufficient to ensure that the FMP is inconsistent with 301(a)(8)". The ability of this section to achieve its intended results will likely be very dependent upon the specific guidelines, or regulations, to implement these provisions.

Section 6—Fishery/Annual Impact Statements

This section appears to comprise a well-intended attempt to assess, in a programmatic fashion, the overall impact of an FMP on fishermen and communities. However, most FMPs (certainly those in the North Pacific) are a culmination of numerous plan and regulatory amendments, developed cumulatively over the 35 year history of the Councils. Fishery impact statements, inclusive of economic and social impacts are developed for each of these incremental management actions, some with estimated dollar impacts and some more qualitatively, but each also attempting to estimate cumulative impacts. Making a programmatic assessment will be more challenging than simply summing the results of these various plan and regulatory amendment analyses. Periodically we compile a programmatic Supplemental Envi-

ronmental Impact Statement (an SEIS, under NEPA requirements) which assesses the cumulative impact of our groundfish FMPs, but this would be a daunting, resource-intensive undertaking on an annual basis, and does not necessarily generate a full understanding of every adverse impact of every aspect of an FMP, nor a specific dollar amount of that impact. Substantial fiscal and human resources, above and beyond those currently available to the Councils, would be required to address these provisions of H.R. 3061. Our most recent SEIS was 7,000 pages long and took over two years to compile (please see additional comments below regarding streamlining of statutes).

Subsection (k) of this section mandates the Secretary to "take such actions as may be necessary to mitigate any adverse impacts identified in the annual impact statement. . .". This appears to be a very open-ended mandate and would appear to grant the Secretary vast authorities which may be in conflict with other Council authorities under the MSA. This open-ended authority should be clarified in some manner to avoid confusion or conflict at some point in the future, and not be left to the total discretion of the Secretary through 'guidelines' or regulations.

Other Issues

As Congress considers these and other potential amendments to the MSA, we would like to reserve the ability to offer additional comments and input to that process. There are two issues I would like to highlight at this time

Reconciling MSA and NEPA

The 2006 reauthorization contained a provision intended to streamline the NEPA process as it pertains to fishery management actions promulgated under the MSA. This Congressional mandate has yet to be achieved, and any new reauthorization should attempt, once again, to reconcile the redundancy between these two Acts, and minimize the procedural inefficiencies which currently encumber the process. As I have stated in previous testimony to this Committee, we are not interested in 'exempting' the Council process from the environmental protection and conservation intent of the National Environmental Policy Act (NEPA), but believe that the process can be much better served by incorporating key provisions of NEPA within the MSA, and making the MSA the guiding Act for fisheries management in the U.S. If Congress wishes to pursue this issue further in any reauthorization process, I will of course stand ready to offer additional, detailed suggestions on this issue.

Date change to allow for State management

In the absence of an FMP, the State of Alaska's inability to act against unregistered vessels in EEZ waters could be addressed by a change to the MSA. MSA § 306(a)(3)(C) allows the State to regulate a fishing vessel that is not registered with the State and that is operating in a fishery in the EEZ off Alaska, if no FMP was in place on August 1, 1996, for the fishery in which the vessel is operating. In addition, the Secretary and the Council must find that Alaska has a legitimate interest in the conservation and management of the fishery. Modification to § 306(a)(3)(C) by removing the phrase "on August 1, 1996" could provide the State with the authority to regulate non-State registered vessels commercially fishing for salmon, or any other specified species, in the EEZ. While it is clear that the intent of Congress is to provide Alaska with the authority to regulate non-State registered vessels in the absence of an FMP and that the Secretary and Council recognize the State's legitimate interest in the fishery, the relevance of the August 1, 1996, date to this authority is not clear. We are in the process of amending our Salmon FMP in the North Pacific, which largely defers management to the State of Alaska, and this date change would allow the State of Alaska to fully regulate these fisheries, within the 3-mile line and in the EEZ, while retaining appropriate levels of Secretarial oversight.

In closing, I appreciate once again the opportunity to provide my perspectives on these important fishery management issues, look forward to answering any questions you may have, and look forward to working with you to develop amendments which appropriately address the issues before us.

The CHAIRMAN. Your full statement will be a part of the record, and I thank you very much, Mr. Oliver.

Next I recognize Mr. Mike Colby, Double Hook Charter Boat, from Clearwater, Florida. Mr. Colby?

STATEMENT OF MIKE COLBY,
DOUBLE HOOK CHARTER BOAT

Mr. COLBY. Thank you, Committee members, and thank you, Mr. Chairman and the co-chair, for the kind invitation. It is certainly an honor for me to be here and an overwhelming process I might add. I live in Clearwater, Florida. I am a 30-plus year head boat and charter operator in the Gulf of Mexico. I also have an educational and extended work experience background in the biological sciences. I am representing our 22 permit holders in the Clearwater, Florida, Commercial Marine Association.

And if I can thump my chest for just a moment, they are very happy that I am here today, and I am very proud to say that those permit holders in our association provide up to 60,000 angler trips every year in our marina. It is a great access platform for recreational anglers who don't own boats who want to fish in Federal waters. We are very proud of that number, and I am proud of our market.

As I read these bills, it became rather clear to me that it is kind of hard to say no to the Fishery Science Improvement Act. I mean, who can say no to that? I mean, everyone agrees for better science, but as I continued to read through the bills, I realized that in life things usually have the devil in the details, and certainly that always takes a seat next to many of the unintended consequences of some of the actions that we do.

But what I tried to do was I tried to formulate three commonalities or maybe overarching ideas, as I have said in my testimony, about what these bills try to do. The first one I noticed was that it argues the need for better science. Literally it pounds the table for better science, as we all have, but rather intends to circumvent and ignore the existing science that we have already.

I agree with the testimony of Julie Morris, who testified before this Committee last summer, I think, that the science we have now with the wave assessment data that comes in periodically is certainly adequate to post ACL and ABCs for these fish stocks. As a biologist myself, I have never met a perfect data set, and I probably never will, but data of any kind gives us direction. It gives us trends, and it gives us certainly, as a biologist, the need for more. As a fisherman, I want more data because that will help conserve the sustainable resource that we fish in.

I agree again completely with her assessment that we do have adequate science to set these. If we are looking for common-sense approaches to managing these fisheries, then one of the ways to do it would be to simply bypass some of maybe the unnecessary parts of the legislation, set these ACLs, set the ABCs, and then when funding is appropriate go back and set stock assessments for them, but give our biologists a starting point. Give them a starting point to work from.

The second maybe commonality that I have gathered from the bill is a disdain, certainly if not a mistrust, of share allocated fisheries, of catch share fisheries, and I can guarantee each and every one of these Committee members. I have talked with commercial operators in the Gulf from Port Aransas, Texas, to Cortez, Florida. None of them were forced into a catch share program from the top down. This was a stakeholder-driven process. It involved years of

working at the council level. It involved two separate referendums that were voted on, and the industry agreed to head in that direction.

So I understand there is great consternation about some of these programs, what they may or may not do, but I can tell you in the Gulf of Mexico I have key fishermen right now who are providing support for the Magnuson mandates, the 10 standards. They are reducing bycatch, and they are producing good, accountable fishery data that helps our fishery managers.

On the third point, obviously the overall commonality of these bills is a rush to amend Magnuson. I have discussed this with our permit holders. They understand that Magnuson is cumbersome, time-consuming and sometimes a convoluted process that they don't understand, but I have spent three years of the last part of my life at great expense to my business and to my family bringing fishermen to the table, taking them from the back of the bus to the front of the bus.

I have brought table-pounders to the table of the Gulf Regional Council. These are people that didn't trust the Federal Government. They didn't trust NOAA. They didn't trust anybody. I finally told them quit pounding the table. Don't bring problems to the table. Bring solutions to the table. I brought these guys to the table and got them working at the regional level, at the stakeholder level, with this council. I don't want to damage that relationship. It is fragile at best.

I don't want to go back to these same fishermen that I have spent years now saying quit being angry and look for solutions and tell them guys, we were going down this one road. Now I am going to take you down another road. We are going to let the individuals at 30,000 feet in Washington, D.C. override some of your stakeholder opportunities at the council level. I don't want to do that. Thank you kindly.

[The prepared statement of Mr. Colby follows:]

Statement of Michael H. Colby, President,
Clearwater Commercial Marine Association

Chairman Hastings, Ranking Member Markey, and Members of the Committee, thank you for the opportunity today to speak on these bills and on the importance of successful fisheries management in ensuring sustainability in our nation's fisheries. My name is Mike Colby and I have been a participant in the Gulf of Mexico fishery for the better part of 50 years. I spent many years part-time in the for-hire fishery while I was a contractor for the U.S. Fish & Wildlife Service and an adjunct instructor in the environmental sciences. In 1986, I received my first Merchant Mariners License and became a full-time operator in 1995.

Over the past several decades, I began to see myself not just as a participant in the fishery, but as someone who is responsible for the fishery. This was a growth in perspective that I attribute to my background in the biological sciences and a true concern for natural resources. My involvement in current fishery management issues is the direct result of my vested interest in our fishery resources.

The legislation being considered by the Committee today, calls attention to the importance of sustainable fisheries to our coastal communities and economies. NOAA, the National Marine Fisheries Service (NMFS) and regional fishery management councils have made strides over the past decade to rebuild stocks and to end overfishing and increase the number of stock assessments and status reviews. Since 2000, 21 fish stocks have been rebuilt and many more have been assessed. In 2010, NMFS reviewed more stocks than ever before, including numerous stocks in the Gulf of Mexico. For example, black grouper in the Gulf of Mexico was determined to not be undergoing overfishing nor is overfished. The Magnuson-Stevens Fishery Conservation and Management Act is working and fish populations are rebuilding.

This is good for fish, fishermen and the coastal economies that depend on a healthy resource.

However, the bills under consideration today would not improve fisheries management or fisheries science; rather they would inhibit the ability of NOAA and the fishery management councils to effectively manage our nation's fisheries. These bills contain provisions affecting numerous aspects of fisheries management from use of different management tools to disaster declarations, but there are three overarching ideas that appear in several of the bills being considered here today. These bills:

1) Challenge current fishery science without providing solutions to the underlying problem of the need for more fisheries data and management tools.
2) Contain provisions to override the fisheries management council process; a stakeholder driven process that includes representatives from all aspects of fisheries including federal and state managers.
3) Show a rush to amend the Magnuson-Stevens Fisheries Conservation and Management Act (MSA), even though the law is working and fisheries are rebuilding.

Fisheries management and science are inherently complex. As such they pose unique challenges for managers due to the complex nature of the marine environment, fishery population dynamics, the needs of fishing communities and the variety of management solutions. One example is management of near shore fisheries versus offshore fisheries in Florida. In the near shore environment, slot limits, a restriction on the minimum and maximum size a fish must be in order to retain it, are often used where waters are shallow and release mortality is low. However, in an offshore environment where fish are pulled from depths greater than 20 meters, the release mortality is higher and managers depend on other tools such as area closures and fishing season length to manage the fishery. This challenge is seen throughout all fisheries management regions, and fishery management councils must be allowed to use the tools that work best for that region.

However, regardless of region or stock or water depth, there are tools that have shown success in all regions: establishing science based annual catch limits (ACLs) and corresponding accountability measures (AMs) that ensure the catch limits are not exceeded. ACLs can prevent overfishing, rebuild fisheries and allow for long-term sustainability of the resource. Unfortunately, several of the bills being considered today, take aim at this critical tool and would create exemptions, loopholes, and otherwise delay the implementation of ACLs. Weakening of the ACL requirements under current law poses a major threat to the effective management of federal fisheries.

The legislation being considered today does contain a few provisions that would increase transparency in the fisheries management process. For example, currently each council in conjunction with its Scientific and Statistical Committee (SSC) has to submit 5 year research priorities for fisheries management to the Secretary of Commerce, Regional Science Centers and NMFS for their consideration in developing research priorities and budgets. H.R. 1646 would require this report be submitted to Congress as well. This report would provide Congress with additional insight into the funding needs for fishery management councils. Rather than amending MSA, Congress can simply request the report from NMFS. While this provision is commendable we do not need to amend the MSA to implement transparency in fisheries management.

The ten national standards and provisions to end overfishing and restore overfished populations provide the right framework to ensure success. Rather than amending the MSA, Congress should support the fishery management councils, fishing communities and NOAA by providing the resources and oversight necessary to fully implement the landmark changes Congress made to this law in 2007 that are putting us on the road to sustainable fisheries and communities. Congress should 1) allow the law to work, 2) increase funding for fisheries management, and 3) promote innovation in fisheries data collection.

Legislation:

Challenges to data collection methods and use of fisheries science in successfully managing US fisheries:

As a young wildlife and fisheries student I can remember a fishery biologist telling me that he "never saw a perfect data set". He also reminded me that all data give us direction, trends and the need for more data. While I can think of no one who would argue the need for more reliable fishery data, H.R. 1646 and 2304 seem to argue the need for better data while circumventing and ignoring the existing science and scientific process we have now.

The Marine Recreational Fisheries Statistics Survey (MRFSS)/Marine Recreational Information Program (MRIP) is relied upon to predict catch per unit effort

for the recreational angler; not an easy task given there were more than 2.3 million recreational anglers in the State of Florida in 2009. This model is commonly referred to by some fishermen as "junk science". In August 2010 the Gulf Regional Council re-opened the Gulf red snapper season for a fall fishery after the BP Deepwater Horizon disaster based on data from MRFSS. The data indicated that the recreational quota had not been caught during the regular fishing season and that additional quota could be released to the recreational sector allowing for a fall fishing season. Recreational fishing organizations praised this decision. Yet, when MRFSS showed that a fishery closure was needed in the recreational greater amberjack fishery, it was dismissed as faulty data. Interesting, that the data are decried as "junk science" when they tell us what we don't want to hear, yet applauded when they give us the outcome we want.

The bottom line is that it is what we have and rather than trying to circumvent the role of science we should be increasing funding and encouraging innovation in data collection and monitoring. The legislation before you today would not improve or advance fisheries science. It would create loopholes and exemptions and could threaten the sustainability of fisheries around the US.

H.R. 1646, The American Angler Preservation Act:

This legislation seeks to ensure that best science and practices are used in fisheries management, but this bill would increase the cost of managing fisheries and cause unnecessary delays. H.R. 1646 would require that any SSC recommendation that results in an ACL quota increase or reduction of 20% or more would trigger an automatic peer review of the SSC recommendation. The new ACL could not be implemented until the outside peer review has verified and upheld the SSC's recommendation.

This costly provision could slow down the quota setting process and could delay approved increases in quota, which would then delay increased fishing opportunities. In addition, many stock assessments already go through an extensive peer review process. Each stock assessment is first reviewed in-house by the relevant science center before it goes through the region's peer review process (STAR in the Pacific, SARC in the Northeast, SEDAR in the Southeast, WPSAR in the West Pacific, and plan teams in the North Pacific), most of which include reviewers from the Center of Independent Experts. The third and final peer review is conducted by each Council's SSC. Updates of stock assessments generally receive only in-house and SSC review intended to avoid unnecessary duplication.

Our Southeast Data Assessment Review (SEDAR) process already incorporates a data workshop, assessment workshop, and review process. The majority of SEDAR panel members are non-governmental persons from sea grant colleges, independent scientists and others. Adding another layer of review, as far as the Gulf of Mexico is concerned, would add unnecessary delays to a process that is already time consuming.

This legislation would therefore be redundant and costly, decreasing resources available for other aspects of fisheries management.

H.R. 2304, The Fisheries Science Improvement Act:

This legislation seeks to provide the necessary scientific information to properly implement annual catch limits. However, the bill would not improve fisheries science; rather it would significantly weaken critical fishery management requirements under the MSA. The proposed legislation would create significant loopholes in the current requirement that ACLs be established for federally-managed fisheries. It creates loopholes in the ACL requirement through several means:

1. The bill would delay the current 2011 deadline for the establishment of ACLs for all stocks not undergoing overfishing to 2014;
2. For all fish stocks for which a formal stock assessment was NOT conducted in the five years prior to the bill's enactment, those stocks could be permanently exempt from the ACL requirement as long as the Secretary determines that overfishing is not occurring;
3. The bill creates a new, undefined category of fisheries called "ecosystem stocks" that would also be exempt from the ACL requirement. If the Secretary classifies any fishery stock as an "ecosystem stock" that fishery no longer has to have annual catch limits as part of its management.

The bill delays the use of science-based catch limits for the vast majority of this country's fish stocks, including those with excellent, up-to-date science. Overfished stocks that are starting to recover (and thus may no longer be subject to overfishing) would also be subject to the delay, even though ACL implementation is a critical part of ensuring rebuilding momentum for many stocks. In addition, H.R. 2304 would exempt from the ACL requirement any stock that has not had a stock assess-

ment in the five years prior to the bill's enactment. Currently, this provision would apply to 64 stocks including Cobia in the South Atlantic and Red Drum in the Gulf of Mexico. Even once a stock assessment is done for such a stock, it could still not be subject to ACLs. Lastly, the bill creates a permanent loophole from the ACL requirement for stocks that the Secretary deems to be "ecosystem stocks." This term is not defined in the law, regulations, or guidance. The bill notes that such a stock specifically could encompass a stock that is harvested, retained or sold.

Numeric ACLs set at or below scientifically-recommended levels are a critical tool for preventing overfishing, maintaining the long-term health of fish stocks, and ensuring the long-term economic viability of fishing fleets. Prior to the legislative mandate for ACLs enacted through the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a consistent failure to set and enforce hard quotas led to chronic overfishing. Delaying the 2011 deadline for setting ACLs will only prolong the long-overdue transition to sound fisheries management.

Exempting fisheries that don't have stock assessments would likely doom those fisheries to chronic mismanagement, regardless of whether updated stock assessments and thorough scientific analyses are conducted in the future. And the larger threat—creating a vague and undefined category of fisheries that would be exempted from ACLs—would create an easy "out" for any fisheries in which setting ACLs would be difficult or painful, relegating those fisheries to a much lower management standard. Taken together, these loopholes in the ACL requirement, if enacted, would lead to significantly less sustainable long-term management of federal fisheries and be a major step backward for fisheries conservation.

H.R. 3601 Flexibility and Access in Rebuilding American Fisheries Act of 2011:

This legislation would allow rebuilding plans to be extended, possibly indefinitely, and slow down rebuilding and associated benefits. The MSA requires all stocks to be rebuilt in as short a time as possible not to exceed ten years. The addition of this requirement in 1996 has resulted in the rebuilding of a number of key fisheries around the country. While many have focused on the ten year deadline, the MSA includes ample flexibility in establishing appropriate rebuilding timeframes by allowing exceptions for the biology of the stock, other environmental conditions and international management measures. In fact more than half of all rebuilding plans exceed ten years, including red snapper in the Gulf of Mexico which has a thirty-one year rebuilding plan and a rebuilding deadline of 2032. When the stock is fully rebuilt catch levels are estimated to be three times greater from when rebuilding began

H.R. 3601 would allow managers to put short term economic gain above long-term economic viability and fishery sustainability, threatening fish populations and fishing communities. NOAA estimates that fully rebuilding US stocks would create 500,000 new jobs and generate and additional $31 billion in economic gain. Passage of this legislation would revert management back to pre-MSA standards, weakening the legal mandates responsible for the recovery of our nation's fisheries necessary to ensure a sustainable supply of jobs and seafood for future generation of fishermen.

The Role of the Fisheries Management Councils:

The MSA allows for a regional approach to management through the establishment of fishery management councils. These councils are comprised of stakeholders from all aspects of the fishery including commercial fishermen, recreational fishermen, fish processors, tribal representatives, state and federal fisheries managers, scientists and more. The fishery management council process is a true stakeholder process. Congress should allow the councils to work as they were intended.

H.R. 1646 the American Angler Preservation Act:

This bill would require that all rulings and decisions from the SSC be risk neutral. However, the SSCs already provide risk neutral fishing advice in the form of the over fishing limit. The control rule for acceptable biological catch (ABC) established under the current regulations by the councils determines the level of risk aversion in the SSC's ABC recommendation. MSA requires that we end overfishing and that ending and preventing overfishing require some risk aversion and accounting for uncertainty. If we use risk neutral science it would allow for a 50–50 chance, a flip of a coin, that overfishing is not occurring. Councils have the option under the current law, regulations, and guidelines of pursuing such a risky strategy, therefore this proposed amendment of the MSA is unnecessary.

H.R. 2772 The Saving Fishing Jobs Act:

This bill establishes criteria for implementation of a limited access privilege programs (LAPP) in New England, the Mid-Atlantic, the South-Atlantic and the Gulf Mexico Regions. The bill requires:

1) Fifty percent of the legible fishermen to submit a petition requesting development of the LAPP;
2) Two-thirds of eligible fishermen must approve the LAPP;
3) The Secretary shall terminate a LAPP if there is a 15% decrease in eligible fishermen within a year of the LAPP being implemented.

LAPPS are not mandatory and councils can use this tool at their discretion and tailor to local needs. *If* councils choose to implement LAPPs there are a wide variety of options to choose from and they can tailor the LAPP to the specific needs of that fishery. Currently, Gulf commercial fishermen are successfully fishing under LAPPs in the red snapper and grouper fisheries. Congress should not take tools out of the fisheries management tool box. I believe our fishermen want to investigate and deliberate this issue so they have the necessary information to make an informed decision on the usefulness of this kind of management model. Stakeholders must be allowed to work with their regional councils to this end.

Recommendations:

1. *Allow the MSA to work:* Stocks are rebuilding and populations are recovering. Gulf of Mexico red snapper is a good example of how fisheries management can work to rebuild a stock. Red snapper had been chronically overfished for years, but in 2007 new management measures were implemented. In 4 short years we are seeing progress towards rebuilding. Fishermen are seeing more snapper on the water, and science has supported recent increases in quota. Since 2008 the total allowable catch has increase from 5 million pounds to 7.185 million pounds in 2011; a 43% increase. Red grouper is another example of successful fisheries management. After red grouper were determined to be undergoing overfishing and overfished in the late 1990s, NMFS put a rebuilding plan in place containing science based catch limits and accountability measures. A subsequent 2006 SEDAR stock assessment found the population had recovered from its overfished conditions and that catches could be increased, which the Gulf Council did in 2009. An update stock assessment completed in 2009 showed that allowable catches could be further increased, and as a result the SSC recommended an increase in ABC effective in 2012.
2. *Increase funding for data collection and monitoring:* US commercial and recreational fisheries represent a multi billion dollar industry; in 2008 US fisheries contributed $163 billion in sales impacts to the economy and supported 1.9 million full and part-time jobs. Congress should invest in fish and fishermen through increasing funding for fisheries management. Increased funding would help provide additional stock assessments, an important tool in setting ACLs; improve recreational data collection and monitoring; and facilitate cooperative research.
3. *Promote innovation in fisheries data collection:* One of the key ways NMFS could improve data collection without the need for Congressional legislation is to explore the use of modern, electronic methods for collecting data from fishermen. Electronic data collection can be more timely, accurate, and cost effective compared to traditional sampling methods. Recently a pilot study conducted by the Texas A&M Corpus Christi demonstrated that data could be collected from for-hire fishermen using a mobile device, in this case an iphone, and sent directly to the NMFS. This application collected catch, discard, location, fishing effort, and economic data. Congress should support efforts to modernize our fisheries data collection by funding efforts to expand these types of programs to support region-wide implementation.

Conclusion:

Our Nation's fishery resources are an integral part of our coastal economies and cultural heritage. Healthy fisheries not only promote strong business and coastal jobs but also our way of life. Nationwide, progress is being made to end overfishing. Creating loopholes and exemptions to the Magnuson-Stevens Act will only undermine this progress and jeopardize the long term sustainability of our fisheries. We need to let Magnuson-Stevens keep working towards healthy fish populations. This combined with innovation in data collection and management that works for our country's fishing public will ensure the long-term prosperity in our coastal fishing communities. Thank you for the opportunity to share my thoughts on this important issue.

The CHAIRMAN. I thank you very much, Mr. Colby, for your testimony.

Next I will recognize Mr. Peter Shelley, Senior Counsel of the Conservation Law Foundation. Mr. Shelley, you are recognized.

STATEMENT OF PETER SHELLEY, SENIOR COUNSEL, CONSERVATION LAW FOUNDATION

Mr. SHELLEY. Thank you. My name is Peter Shelley. As a senior attorney with New England's Conservation Law Foundation, the oldest regional conservation law organization in the country, I have worked on Federal fisheries primarily in the New England region since 1989, and I am also a recreational fisherman.

Mr. Chair, next to my computer at work I have a post-it note with three numbers on it: $31 billion, which is the increased revenue we could have in fishing sales; 500,000, which is the number of new jobs we could have; and $2.2 billion, which is the increased revenue that could be going to this country's fishermen, their families and their communities, but we have to rebuild the fish stocks to get to those numbers.

Those are the results that rebuilt fisheries in this country could produce. Even if we only got to half of those numbers, I would submit that rebuilding fisheries would be an important strategic national objective. These are also the goals that Congress had when it overwhelmingly approved the Magnuson Reauthorization Act during the Bush Administration in 2006.

To get to those goals, I believe Congress needs to do three things. First, allow the current law to work and the regional councils and the agencies to implement it. It has only just begun to take effect. Second, fund the Act so it can work. I think that on the order of three times the current appropriations for the essential tasks of stock assessments, monitoring and data collection would be necessary to actually improve the science, which we all want to do. And, third, Congress could invest in our working waterfronts and coastal communities so that they will be there to benefit from a healthy restored ocean and fish resource.

From my New England experience, four of the bills before the Committee today are aligned with those actions. The other four, notwithstanding the good intentions of the sponsors, are not. The Coastal Jobs Creation Act sponsored by Representatives Pallone and Pingree is a great piece of legislation with broad public support. It will produce immediate jobs. The infrastructure and capacity investments that that bill identifies are essential to our maritime and fishery future, and they will be repaid to the Nation many times over. H.R. 594 should be supported by the Committee and moved quickly.

Representative Frank's Asset Forfeiture Fund bill and Representative Keating's Strengthen Fisheries bill also have merits. These two bills are the only ones before the Committee today that make any effort to identify funding streams for the fisheries science and data collection that is critically needed in the region. Representative Jones' transparency bill also has merit.

In my opinion, the other four major bills—1646, 2304, 2772 and 3061—would move this country farther from our common objectives. Without exception, I believe they impose new costs and man-

dates for only marginal benefits, and without new funding they create more business uncertainty and volatility. They require substantial new regulations and guidelines, they will cause more procedural delay in the management process, they seem to mandate that the councils take higher risks even though the councils might deem those inadvisable, and they eliminate one of the only market-driven and deregulatory tools in the management toolbox, the Limited Access Privilege Programs. By providing the least protection to the weakest fish populations, these four bills would increase the probabilities of future stock failures and job losses.

The New England groundfishing season just stopped in April 2001. It was the first one where a management plan that fully reflected the Reauthorization Act was in place. The results from that should be known. The net profits to the small business fleet owners that year have been reported to be increased by $10.8 million. That is a net. This is a year when the quotas were significantly decreased, the council started an entirely new management program, and the diesel prices went up 30 percent. If the New England Council had not shifted to the sector catch share program, the economic estimates are that that small business fleet would have lost $15 million.

There is a letter that I have submitted in my testimony where 109 of the traditional fishing captains in our region have said that they want to retain the current catch share program and the management regime. By my count, these folks have seen rule changes on the average of every four months from March 1994 to May 2010. They think that is enough, and I agree. They think the Magnuson Act can work, and I agree with that also.

The four bills don't address any of their concerns in the letter. Despite the heated rhetoric that is often there, it is clear to me that more New England fishermen are starting to have some hope based on the success of the sectors program. What these fishermen say they need now is regulatory stability so they can continue to grow their businesses.

In 1996, Congress created a fishery management council system that many skeptics thought would not work, but with the right controls we are now beginning to see that it can work. The system brings regional and local values and local political accountability to these complex, multifaceted fishery decisions and management actions, and risks get adjusted for local conditions and fish stocks become healthier.

I urge this Committee, in closing, to be tough on NOAA, but be fair, to trust the council system process and the agency with these tough management decisions without statutory micromanagement and to fund them so they can succeed. Thank you, and I look forward to your questions.

[The prepared statement of Mr. Shelley follows:]

Statement of Peter Shelley, Esq., Vice President, Conservation Law Foundation, Inc.

Chairman Hastings, Ranking Member Markey, and members of the Committee on Natural Resources:

Thank you for the invitation to participate in today's hearing before the Committee on Natural Resources on the various bills which amend the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.

My name is Peter Shelley and I am a vice president and senior counsel with the Conservation Law Foundation, Inc., on whose behalf I am testifying today. I have worked on a range of federal marine conservation issues during my career and have been in charge of fisheries management efforts at CLF since 1989. I am also co-chair of the Marine Fish Conservation Network, which is based in Washington, D.C., an umbrella network comprised of fishermen, conservationists, scientists and private citizens.

My testimony will be directed primarily at the way I believe that the various bills before this Committee may affect the groundfishery in New England. This fishery is just now emerging from more than twenty years of turmoil and economic instability produced by chronic overfishing and mismanaging and beginning to show signs of a positive economic future. We believe that it is important to this region that Congress act in ways that build on what now appears to be beginning to work in New England.

Summary of Testimony

The Coastal Jobs Creation Act of 2011, H.R. 594, is a critical and necessary federal investment in the future of the nation's fisheries and fishing communities. The Committee should support this legislation. The other bills before the Committee have a number of problems that range from minor to significant. Those bills that would revise current law with respect to Limited Access Privilege Programs, applicability of annual catch limits, and rebuilding timeline requirements have major problems in our opinion and would undercut a carefully-designed Congressional scheme that is beginning to show positive results around the country. Accordingly, we do not believe they would be consistent with the best long-term interests of the country and should not be supported by the Committee.

The New England Groundfish Context

I have attached a more detailed history of the New England groundfishery as Attachment 1. Suffice it to say here that that fishery has been in some form of crisis from at least 1994 to 2010. This crisis has weighed heavily on the nation as well: the Congressional Research Service has estimated that approximately $100 million in federal dollars have been poured into this fishery between 1994 and 2008. *See* Attachment 1, p. 3.

In 2006, Congress passed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Pub. L. 109–479, 120 Stat. 3575 (2007). Mindful of the situation in New England and in other troubled fisheries around the nation and after receiving extensive testimony and material, Congress used this reauthorization to make some significant changes to the Magnuson-Stevens Act. Specifically, the reauthorization prohibited overfishing during the rebuilding period of a fish stock and it imposed accountability measures on the managers in the form of requiring annual catch limits and accountability measures if it was predicted that a fishery would exceed or had exceeded its annual catch limit. 16 U.S.C.A. § 1853(a)(15).

The reauthorization also emphasized the importance of having science-based fishery management plans in U.S. fisheries, requiring, for example, that all fishery management councils have a standing committee of science experts to advise the council on setting fishery specifications and having the authority to set maximum harvest rates that a fishery could not exceed. 16 U.S.C.A. § 1852(g) & (h).

This reauthorization advanced an express Congressional conclusion with respect to the nation's fisheries: that the historic flexibility, discretion, and latitude associated with many—but not all—of the fishery management plans being developed by the regional councils was doing harm to the Nation's interests by delaying the achievement of optimum yield on a continuing bases for the Nation's fisheries. Nowhere were the economic, social, and ecological costs of this delay more apparent and more devastating than in New England with the groundfish fishery. These were important and necessary legislative changes.

The changes associated with these new management requirements are only now beginning to be observed around the country. The New England Council adopted its first groundfish plan under the reauthorized Magnuson-Stevens Act in 2009, known as Amendment 16 to the Northeast Multispecies (Groundfish) Fishery Management Plan (Amendment 16). Amendment 16 was approved for implementation by the Department of Commerce in 2010 in time for the start of the 2010–22 fishing year. In addition to introducing the new accountability measures on annual catches, Amendment 16 also imposed new science-based catch limits, which required significant cutbacks in the first year of the new plan for some species. Amendment 16 also scaled up a pilot program that it had started four years before that allowed fishermen to voluntarily form cooperative organizations, called sectors. Sector manage-

ment in Amendment 16 was specifically introduced to allow fishermen to have more of the regulatory flexibility they were seeking in terms of how and where they fished and is one form of a catch share program. In return, fishermen in the sectors agreed to limit their collective catches to a specified sector limit and to develop the capacity within their sectors to ensure compliance with those limits.

Analysts indicated that the potential economic losses associated with Amendment 16 in the first year could be on the order of 15.2%, or $15 million, as a result of the scientific recommendation of cutting back groundfish landings by over 47,000 metric tons of fish.

Recent Results under Amendment 16

New England's groundfishermen now have had a year and one-half experience under the new science-based and fully accountable groundfish management regime. The results, albeit preliminary, have been encouraging based on relatively limited data. It is clear that Amendment 16 provided New England groundfishermen with a new and valuable flexibility to organize how they fished even in the first year of a major new management approach with which most of them had had no previous experience.

The groundfish fishermen who joined sectors for the 2010 fishing year represented the small businesses that had landed roughly 98% of the groundfish during the Council's 1996–2006 qualifying period. While for some of these businesses it was a Hobson's choice between sectors and the prior management program at the beginning of the fishing season, the first year's experience seems to be largely positive. The sector program seems to have directly translated at a fleet level into increased safety, increased profitability, and reportedly lower discarding of fish at sea (reducing the waste of the previous so-called regulatory discards). Sectors produced these results notwithstanding meeting the strict limits on overfishing that were set to allow timely rebuilding of all the stocks, a dramatically new system that depended on self-management and cooperation to a large degree, and a difficult economic environment with diesel fuel prices rising some 30% during the fishing year.

The Northeast Fisheries Science Center of the National Oceanic and Atmospheric Administration (NOAA) conducted an intensive economic analysis of the first fishing year. The report is a rich source of data and identifies many areas that require additional scrutiny, including particularly the estimated loss of crew positions and revenues, but one sentence particularly captures the report's meta-conclusion of the economic performance of Amendment 16: "For the fishery as a whole in 2010, more nominal value was obtained from fewer fish landed and less fishing effort expended as compared to the previous three years." 2010 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2010—April 2011) at 31. NFSC Reference Document 11–19 October 2011. With the exception of New Hampshire, which unfortunately had a 21% decline in nominal revenues for New Hampshire-based boats, every state with a groundfish boat in the New England groundfish fishery had higher, and often significantly higher, revenues in the 2010 fishing year than they had in the prior year, notwithstanding a major cutback in quota available to the fishermen and the new strict management requirements.

Paradoxically, this assessment of the fishing industry is actually supported by the November 15, 2011 Economic Emergency Declaration Request from Governor Patrick of Massachusetts to Secretary Bryson of the Department of Commerce. Governor Patrick did a full year, intensive inquiry into the economic impacts of Amendment 16 on Massachusetts groundfishermen in an effort to support his earlier belief that there were an estimated $21 million in losses in Massachusetts associated with the implementation of Amendment 16. That report, which focused primarily on documenting the economic harm to the group of fishermen (Sector 10) who were considered to have been the most stressed by Amendment 16, concluded that the 27 businesses in that sector had 27% lower net revenues, an estimated loss from 2009 revenues of some $405,000. But the report also states that Sector 10 failed to catch or lease more than a million pounds of groundfish they were allocated during the 2010 fishing year. The Governor's analysts estimated the value of those foregone fish revenues to be a minimum $269,000, which would have reduced losses even in this sector to $105,000 in the 2010 fishing year. The report did confirm the NFSC report with respect to a loss in crew earnings in Sector 10 (estimated by the Patrick Report to be in the range of $240,000).

For the Massachusetts fleet as a whole, the Governor reported that while the nominal value for groundfish landings of Massachusetts boats dropped in fishing year 2010 by roughly $875,000, the nominal value of the landings of all species by these same boats rose by $6.89 million in that same year. The nominal value for the total landings in Massachusetts by all boats during the 2010 fishing year, regardless of homeport, rose by almost $10 million. It is acknowledged that all fisher-

men did not share equally in those benefits and some continued to leave the groundfish fishery but by most economic measures the 2010 fishing year was an unexpected success. New England fishermen produced this success while staying within the science-based limits, with full accountability. Because harvest rates were kept within bounds by this catch share program, the New England Council was able to raise catch levels on a number of the rebuilding stocks for the 2011 fishing year, which started May 1, 2011.

Perhaps the most remarkable outcome in New England from Amendment 16 happened recently when 109 boat owners in New England, representing all New England states except for Connecticut and representing the full range of fishing businesses that comprise this small business fishery, wrote an open letter to New England's Senators and Congressmen. With respect to the impacts that Amendment 16 had on some businesses, they wrote: "[w]hile some individual businesses have unfortunately experienced hardship, there was no management alternative that could have avoided this." Open Letter to New England Delegation, November 14, 2011 (attached to testimony as "Attachment 2"). The letter goes on to state that politics in the fisheries were actually putting their businesses "at risk," concluding that "our fishery needs New England's elected leaders to promote stability, profitability, and flexibility.. . .Our fishery continues to face many challenges and is still struggling to deal with some of the problems caused by the [former] days-at-sea system and inadequate management infrastructure. We ask you to please work with us. . .to address these issues and move forward."

Such a communication from most of the leaders of New England's groundfish industry is unprecedented but not wholly surprising. The regulatory environment for fishing has been unpredictably volatile for more than 17 years. There have been 11 rewrites of the basic groundfish management plan, many in response to Congressional action, and over 40 more minor adjustments in the groundfish regulations since 1994. Fishing businesses in this fishery have seen changes in the rules under which they operated, on average, once every four months from March 1994 until May 2010. That is not a business environment that is conducive to either rational economic behavior or even clear scientific, social or economic assessments of the likely future impacts of management actions. Such constant change and uncertainty creates an environment that is hostile to the fishing communities and managers alike.

The current amendment they are operating under, Amendment 16, was approved by the New England Council with a single dissent and has been in place for 17 months. These experienced and successful small fishing businesses in New England are asking their politicians to stop making changes to the laws under which they have to operate. Moreover, the goal of federal fishery management policy should be to achieve full optimum yield for all the nation's fisheries as soon as possible. The National Marine Fisheries Service has estimated that the benefits of doing so could range as high as $31 billion in fish sales and 500,000 new jobs. Any delay is costly.

It is in this context that I turn to the various bills to amend the Magnuson-Stevens Act that are before the Committee on Natural Resources. I have attempted below to thematically address the eight bills before the Committee where there is substantial overlap.

1. Coastal Jobs Creation Act of 2011 (H.R. 594)

CLF and many other marine conservation organizations and individuals strongly support this legislation and give great credit to the sponsors, Representatives Pallone and Pingree, for their dogged efforts to move this legislation during such a difficult economic period. It is perhaps the greatest political challenge of all to make investments in the face of negative economic signals but there could hardly be a better target for such leadership and vision. A federal dollar spent on any of the purposes outlined by H.R. 594 would be repaid in multiples in the near future and would immediately create new employment opportunities.

All the purposes and objectives of the bill, including in particular the emphasis on the importance of maintaining working waterfronts throughout coastal America, are critical and desperately in need of funding and support. One suggestion we would offer to both improve ultimate funding levels and secure the necessary state-level partnership in these coastal activities and purposes would be to include a state or local matching requirement. In-kind support and services should be eligible as state or local match.

2. New Limited Access Privilege Program Restrictions (Saving Fishing Jobs Act of 2011, H.R. 2722; American Angler Preservation Act, H.R. 1646)

Section 5 of H.R. 1646 and sections 2 and 3 of H.R. 2772 propose to amend the Magnuson-Stevens Act in ways that essentially preclude the development of any

limited access privilege program (LAPP) in the future in New England, the Mid-Atlantic, the South Atlantic, and the Gulf of Mexico fisheries. Currently, the general rule for initiation of a LAPP is that a fishery management council or a duly certified petition by 50% of the permit holders or permit holders representing more than 50% of the allocation in a fishery can initiate an LAPP. 16 U.S.C. § 1853a(c)(6) A special limitation applies to an individual quota system, a type of LAPP, in the Gulf of Mexico and in New England except for the Gulf of Mexico commercial red snapper fishery. *Id.* There is also a requirement in the Gulf of Mexico that the vote in multispecies fisheries has to be limited to people who have substantially participated in the fishery. *Id.* Section 1853a outlines exhaustive procedural requirements that must be followed for all LAPPs to ensure that proper consideration is taken of all relevant social and economic issues.

Under the provisions of H.R. 1646 and H.R. 2772, the barriers to implementing a LAPP are expanded geographically and substantively. No LAPP can take effect in any fishery from the Gulf of Mexico to the Gulf of Maine unless 2/3rds of the eligible fishermen in the fishery approve the plan. The language also requires the automatic termination of a LAPP unless there is a subsequent 2/3rds affirmative vote in favor of the program after 5 years (H.R. 1646, Sec. 5) and the assessment of the full costs associated with the fishery program to all LAPPs, a requirement that does not exist in any other fishery. (H.R. 2772, Sec. 4) Additionally, H.R. 2772 would automatically terminate a LAPP if there is more than a 15% drop in groundfish permits in the preceding year.

Those requirements are the legislative equivalent of a "poison pill" for any new LAPP program by giving veto power over any LAPP to the people least invested in the fishery. For example, there were 1413 permits issued in the New England groundfishery in 2007. Fifty-three percent of those permits (755) recorded no groundfish landings in 2007 and 331 of those permits had no fish landings at all in 2007. In 2010, there were 1347 groundfish permits and 67% of those permits had no groundfish landings in 2010 and fully one-third of those permits recorded no landings of fish at all in 2010. Under the provisions of H.R. 1646 and H.R. 2772, that 1/3 of permit holders who had no current interest in the fishery could block the development of a LAPP in the New England groundfishery for any reason or for no reason at all. We believe that other fisheries around the country have similar situations with respect to inactive permits in their fisheries. Killing the LAPP approach as a reasonable management option makes no sense as a matter of federal policy.

LAPPs are an important tool that some fishery management councils have used and may want to use in the future in order to achieve optimum yield in their fisheries in a manner consistent with the Act's national standards. CLF does not believe that LAPPs or other catch share approaches are the only form of fisheries management that will work in U.S. fisheries, but they are one approach that does have a positive track record in many fisheries and managers should be encouraged to consider them in appropriate circumstances.

In approaching these issues, we believe members of Congress need to keep in mind that the regional fishery management councils that would evaluate the wisdom and propriety of LAPPs or other catch share programs under the current law are among the most representative of all federal public resource allocation mechanisms in the country. The management councils are made up of either state fisheries employees or non-governmental fishery experts, all of who have been endorsed and proposed by a locally elected governor in the region. We share the legitimate concerns Congress has about protecting economic minority fishing interests from a possible "tyranny of the majority" but our concerns are placated to a large degree by both the political accountability of the council members and the already rigorous procedural requirements for approving LAPPs in the Magnuson-Stevens Act.

It would be a significant policy mistake to take LAPPs off the management table or to make their formation so unrealistic that fishery management councils won't even consider them. These two proposed amendments effectively do that. The nation will never achieve optimum yield with respect to its fisheries if Congress legislatively forecloses the use of any of a range of management tools that may be essential to reaching that outcome.

3. Extending Rebuilding Deadlines and Suspending Annual Catch Limits (Flexibility and Access in Rebuilding American Fisheries Act of 2011, H.R. 3061; American Angler Preservation Act, H.R. 1646)

Two of the bills would extend the current requirements of the Magnuson-Stevens Act with respect to rebuilding deadlines for overfished fisheries and one of the bills, H.R. 3061, would additionally authorize the suspension of the setting of annual catch limits under certain circumstances. The current requirement is that overfished

stocks of fish should be rebuilt in a time "as short as possible," 16 U.S.C.A. § 1854(e)(4), and, in any event, within 10 years of being declared to be overfished "except where the biology of the stock of fish, other environmental conditions, or management measures under international agreement in which the United States participates dictate otherwise." 16 U.S.C.A. § 1854(e)(4)(ii). One of the bills, H.R. 3061, would also change "possible" to "practical" so that rebuilding time frames become a function of the social and economic conditions in a fishery. These proposed changes to existing law are either unnecessary because they are already in practice or are harmful to the nation's interests of achieving optimum yields in its federal fisheries as quickly as possible.

First, it is important to note that there is already significant flexibility and latitude built into the existing rebuilding program requirements. In New England, for example, the Council started to rebuild Atlantic cod in 1996 and the Georges Bank cod stock is not required to be rebuilt until 2026, some thirty years. Gulf of Mexico red snapper has a 32-year rebuilding requirement and South Atlantic red snapper has a 35-year rebuilding program. Numerous stocks of federally managed fish have rebuilding requirements that exceed 10 years and, in some regions, we understand that the majority of a council's stocks exceed the 10 years under existing law. Many of the same factors that H.R. 1646 and H.R. 3061 seek to introduce are already taken into account when the rebuilding deadline is being set or re-evaluated over time.

Other provisions in these bills significantly weaken the current law with respect to rebuilding and delay achievement of optimum yield in the nation's fisheries. Considerations such as "provid[ing] for the sustained participation of fishing communities or to minimize the economic impacts" (H.R. 1646, sec. 3(1)(B) and H.R. 3061, sec. 2(1)(B)), authorizing overfishing on one stock in a complex of stocks in a multispecies fishery (*id.*), the change in the biomass rebuilding target during the rebuilding period (*id.*), or because the biomass rebuilding target exceeds the highest 25-year biomass abundance (*id.*) have one thing in common: they all weight the short-term economic costs over the long-term economic benefits and the long-term ecological benefits of rebuilding the nation's fisheries from the effects of prior mismanagement in as short a time as possible. The inherently vague nature of these considerations also introduces another element into fisheries management that has plagued New England's groundfishery for decades: business uncertainty.

The 10-year default rebuilding requirement is a policy choice that Congress made but it is a policy choice that is backed by both science and experience. Congress received testimony from population dynamics scientists that indicated many of the nation's overfished stocks could recover in less than five years without fishing. Other eminent marine scientists have estimated that 10 years is twice the amount of time that "the majority" of these fish populations would require without fishing pressures. Safina *et al.,* "U.S. Ocean Fish Recovery: Staying the Course," *Science,* vol. 309 at 707 (July 29, 2005). Economics and social considerations and extrinsic environmental circumstances have already been factored into the current rebuilding requirement and should not be used to allow further delays in rebuilding. I have attached a joint letter from numerous marine scientists that support the approach taken under current law with respect to rebuilding. (Attachment 3)

Authorizing overfishing on one stock in a multispecies complex would also work against the nation's long term economic and ecological interests. One example from New England might illustrate this point. In 1996 in New England, haddock were determined to be collapsed. Haddock was, at that time, the "weakest stock" in the groundfish fishery. Under the proposed language, haddock rebuilding would not be bound by the 10-year period and overfishing on haddock could be authorized. Fortunately, that was not the rule. Haddock was put under the same rebuilding requirements as the more abundant Atlantic cod. That may have been one of the key factors in the ability of the haddock stock to produce several exceptionally large year classes of fish, enabling haddock to now be fully rebuilt well ahead of its rebuilding schedule.

The requirement in both bills that there be "evidence that the stock of fish is on a positive rebuilding trend" is of limited significance and does not change the fundamental truth: allowing a stressed stock of fish to linger at low levels as long as there is some "positive evidence" exposes that stock to further declines, perpetuates the imbalances in the ecosystem, and creates higher risks that extrinsic factors such as environmental change will overcome that species' reproductive strength. New England's groundfish experience has demonstrated that having a robust, diverse fishery of numerous populations of fish can make all the difference.

Indeed, these bills would provide the least protection for the most threatened fish stocks in any multispecies fishery. Every time a fishery manager or Congress takes its eye off the prize—optimum yield for the *fishery* as a whole—long-term benefits

are being put at risk, if not forfeited. Moreover, in many, if not most cases, gear improvements and technology advances that emerge from the fishing industry, almost always driven by necessity, have demonstrated the ability fishermen often have to target desired stocks while substantially avoiding stocks in the greatest need for rebuilding. This language could easily remove the action-forcing incentives in current law and practice.

Turning to the bill language that would suspend or otherwise alter current annual catch limits (ACL) requirements in certain cases (H.R. 3061, sec. 4, H.R. 2304, sec. 2), we cannot support these changes. ACLs are a fundamental part of the new accountability system created by Congress in 2006 and they seem to be working well in New England. There is no need for an extension until 2014 for any of the New England Council's fisheries and the groundfishermen have already demonstrated that they are able to work within the current ACL framework.

The language of H.R. 2304 further appears to exempt fisheries permanently from the ACL requirement if there hasn't been a peer-reviewed stock survey and assessment within 5 years of the enactment of H.R. 2304. Even if the exemption was not permanent, we see no business or policy sense in linking a requirement that fishermen be accountable to their harvest limits of a public resource on a year-to-year basis and the presence or absence of a peer-reviewed stock survey and assessment. Moreover, without a recent survey or assessment, it is not clear on what basis the Secretary would make a determination that overfishing is not occurring, as specified in H.R. 2304.

This provision actually creates a perverse disincentive for a fishery management council keeping up with its surveys and assessments and removes even the most basic form of accountability at a time when funding for fisheries science may be declining below its already-inadequate levels. H.R. 3061 would further suspend annual catch limits if the Secretary determines that there is an insufficiently high level of uncertainty with respect to the scientific advice. The Secretary already has that power and an obligation to disapprove fishery management plans that are based on such data. There is no reason to focus the issue solely on annual catch limits or change existing law as H.R. 3061 proposes.

With respect to the suspension of the ACL requirements for ecosystem stocks, there is existing guidance language that addresses this issue under current law. While we recognize the issue we think H.R. 2304 is directed toward, defining and managing "ecosystem stocks" is a highly complex issue with a great deal of variation around the country. We believe that any ACL requirement for these stocks is best left for continued agency interpretation and implementation at a guidance level, rather than at a statutory level.

The provisions related to extending the rebuilding requirements and suspending the ACL requirements have two final problems. First, they each require significant additional fishery science, data collection and assessments at a time when there is not adequate funding for even basic fisheries management science, data collection and stock assessments. Second, because of the complexity and variety of the nation's fisheries, it is almost guaranteed that these few paragraphs of vague legislative text will produce volumes of interpretive regulations and guidelines. Fisheries management is already sufficiently complex; any claims for change in the system that increase that complexity should be advanced only under the most compelling circumstances. Those circumstances are not present with these two management elements.

4. Modifications to the Management of the Asset Management Fund (H.R. 2610, sec. 2; H.R. 1013, sec. 3)

The genesis of these bills was the discovery and analysis of problems and management failures with respect to the Asset Management Fund in 2010, in most cases, longstanding practices and policies that the current Administration promptly investigated and largely addressed when the issues were brought to their attention. H.R. 1013 would add a requirement that the New England Council become the beneficiary of any of these funds that related to violations within the Council's jurisdiction. The funds would be used for various specified purposes by the New England Council related to improving our regional fisheries. There are no accountability provisions. H.R. 2610 channels the same funding to the states in a region and would apply broadly across the country. A number of worthwhile activities are identified for the use of these funds by the receiving state. As with H.R. 1013, there are no specified accountability provisions to the American people on how these funds are actually used.

In New England as elsewhere in the country, additional funding for the purposes specified in these bills is critically needed, particularly in the area of improved fishery data, surveys, assessments, and monitoring. Improved funding in these areas is

directly linked to improved fisheries management, reduced volatility in the fishing industry, and increased economic yield from the fisheries. We further believe that the funding for the enforcement function of the Magnuson-Stevens Act should be separated from the funds sitting within the Department of Commerce in the Asset Management Fund.

We are interested in further discussion around these topics with the following concerns. It is not clear that it is in the nation's broad interest to re-direct these funds either to the councils or the states without further controls and accountability measures. We are also not aware of a similar approach being used in any of the other federal natural resource management regimes and think that the underlying policy objectives with respect to enforcement-related funding in all these federal resource management programs should be examined. Finally, this source of funding would be a very unstable and variable source of funding for some of the most critical management functions in federal fisheries. We are concerned that these bills could be seen as a justification for cutting current funds in those science and research programs, which are already inadequate.

With respect to the attorneys' fees provisions in H.R. 2610, CLF is not categorically opposed to this mechanism. It would seem to be better public policy, however, while still keeping with the spirit of the bill that some language be included that required a finding of bad faith prosecution by the Secretary of Commerce on the government's part with respect to the "covered person." We do not take a position on whether it is appropriate to re-direct enforcement-related funds generated from violations around the country for this more narrow regional purpose.

5. Legislating Risk Levels (H.R. 1646, sec. 2)

Section 2 of H.R. 1646 would mandate one level of risk across all federal fisheries in the nation. Identified as a "risk neutral" approach, this level of risk has been equated to the odds of a particular outcome on a coin toss: a 50% chance one will win. In the fishery case, a council would not be allowed to have any better than a 50% chance of accomplishing its fishery objectives. Further, this section would restrict any science and statistical committee from providing fishery advice that increases or decreases annual catch limits by more than 20% unless the recommendation has gone through a third party review process. In our opinion, a coin toss and a third-party review requirement are not good bases on which to manage the public's fisheries or set time-sensitive harvest levels. In New England, the SSC already produces a range of specification recommendations for the New England Council that range from risk neutral to risk adverse. The Council exercises its expertise and local knowledge in making its final policy decision about risk levels in each fishery and often on each stock of fish in that fishery. It is reviewed by the agency before approval. Most of the SSC's work in New England is based on peer-reviewed science as well. As far as we know, it is similar in most other council systems. We think it is a bad idea for Congress to legislate either particular risk levels for all the nation's fisheries (especially requiring risk neutral recommendations) or a provision that would tie the hands of an SSC (and therefore the council) with respect to its recommendations to the council to which it reports.

6. Various Provisions in the Bills that Require Additional Funding

Most of these bills introduce new, expensive administrative and management costs on both the federal agencies as well as the management councils. Without commenting on their individual merits, these include requiring live internet coverage of council meetings and recorded audio and video files (H.R. 2753), investments in critical working waterfront infrastructure and fishery management improvements (H.R. 594), annual fishery impact statements and science and statistical committee reporting requirements (H.R. 3061), funding an NRC review on best practices for the assessment of recreational fisheries data (H.R. 3061), and new closure certification programs (H.R. 1646). We do not know the source of any of this funding. To the degree Congress imposes new mandates on the agency or the councils without new sources of funds, that money will have to come from some other critical program within NOAA or NMFS. Before Congress takes any action that presents even a possibility of that result, it should carefully consider its fishery management priorities and ensure that its action is fully consistent with achieving those priorities.

Thank you for considering our testimony.

Attachment 1

Extended Testimony on the Background of the New England Groundfish Fishery To 2006

The Atlantic Ocean is one of New England's most distinguishing and defining features, its vast beauty a fundamental part of our sense of place. The ocean's natural resources have supported America's oldest commercial industry, fishing, and continue to form the base of the economy of many of New England's most iconic coastal villages. But all that the ocean provides—tourism, recreation, sustenance, and commerce—has been under threat from overfishing, industrial development, pollution, and now climate change. Excepting climate change, responding to overfishing has proved to be one of our greatest challenges. The experience we have gained through our work in that area over the past thirty years is relevant to the bills before this Committee, which seek to amend the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The oldest commercial fishery in New England is the Atlantic cod fishery, which started in the 1600's and has continued without interruption through today. Once pursued as far away from New England as the Grand Banks off Newfoundland, Canada, since 1976 the U.S. cod fishery has been limited by the U.S. Exclusive Economic Zone at 200 miles offshore and includes the Gulf of Maine, a significant portion of Georges Bank, and southern New England waters. When the Fishery Conservation and Management Act of 1976 took effect, Atlantic cod became the subject of the first comprehensive federal management activity in New England. Atlantic cod are managed in New England as part of a "groundfish" complex, that is, a group of bottom-dwelling fish including cod, haddock, various flounder species, pollock, and redfish. In total, the groundfish complex comprises thirteen species, managed as 20 separate stocks.

A combination of excessive capital investments in the New England groundfish fishery that were heavily subsidized by federal tax, grant, and loan incentives, weak management, dramatic improvements in electronic fish finding technology that replaced personal expertise as the key to finding and catching fish, and ecological subsidies flowing from allowing continued overfishing to avoid short term economic impacts came close to destroying the commercial groundfish fishery in New England for the first time in history. Total New England groundfish landings dropped 60% between 1983 and 1993. U.S. cod landings declined 55% over the same period and U.S. haddock landings dropped over 90% and haddock were declared to be collapsed as a species. Stock assessments conducted later indicate that cod and haddock may have reached their lowest abundance levels ever recorded in the 1994–1995 period.

The economic costs were devastating to New England fishing communities: an estimated $25 million (1993 dollars) was directly lost to the boats from cod, haddock, and yellowtail flounder alone from 1983 to 1993, even as new boats and fishermen were continuing to be added to the fishery. Unknown numbers of fishermen were lost from the industry: some redirected their fishing efforts to other species like American lobster, others left fishing forever. Communities in eastern Maine that had been groundfishing for generations lost all their groundfish permits as the fleet contracted toward the areas of remaining populations of groundfish, which were generally located off Massachusetts. Many of those communities still do not have any fishermen with groundfish permits and are completely dependent for their survival on lobster fishing alone.

Rebuilding a fish population has several indispensible components: overfishing has to stop, the overfished population has to regenerate to a self-sustainable level, and the unintended catch, or bycatch, of those rebuilding fish in other fisheries has to be minimized. The New England Fishery Management Council (Council), first under court order and later under its own initiative, has been working to rebuild cod, haddock, and the other since 1994. For much of that time, operating under prior versions and interpretations of the Magnuson-Stevens Act, the Council designed fishery management programs that had significant flexibility built into them. They were, at best, risk-neutral in terms of their likelihood of success in achieving the rebuilding objective, i.e. only a 50% likelihood of achieving the objective, and in many cases they allowed continued overfishing during the rebuilding period. Additionally, there was no accountability for exceeding the annual catch "target," producing even higher mortalities than the managers authorized. In some cases, like the Gulf of Maine cod stock, estimated catches were 5 and 6 times higher than authorizations.

One of the consequences of this approach was that fishermen in the region periodically faced significant "balloon payments" on the rebuilding plan, that is, significant new cuts in catch allocations based on the need to continue the progress toward rebuilding the fish. These dramatic, and often negative adjustments, to authorized

fishing levels made groundfishing highly volatile and financing for operations on the boats difficult. In retrospect, the Council's high risk management efforts failed on many levels but two failings stand out: the most important groundfish stocks were not getting rebuilt to a level that was biologically sufficient exposing them to continued risk of renewed collapse and the groundfish fishery was almost constantly in turmoil, making rational economic planning, decision making, and investing virtually impossible.

Groundfish jobs and the numbers of permitted boats in the fishery continued to drop as the fishery adjusted to the new catch levels. Twenty-three percent of the groundfish permits in the region disappearing between 2004 and 2008 with a similar decline in the number of groundfish boats that landed any groundfish. Groundfish landings from 2001 to 2007 dropped by 43% and gross revenues from groundfish fell by 37% in that period. Fortunately, some of these vessels were able to stay in fishing by diversifying onto other non-groundfish species and rising fish prices to the boat. There is little reliable data on employment losses for crew associated with these precipitous declines, although they must have been significant.

In addition to the ecological and economic costs that New England and New England fishermen paid as a result of this series of management failures, the turmoil came at a price to the nation. In August 2010, the Congressional Research Service tallied the following disaster assistance funds provided to the New England groundfish fishery:[1]

- 1994—$30 million. Assistance: fishing industry grants that included employment for fishermen (training, new business opportunities, aquaculture, marketing, and by-catch reduction), demonstration buyback program, loan program, and family assistance centers.
- 1995—$25 million. Assistance: vessel buyback, administration, and fisherman health program.
- 1999—$6.8 million. Continuation from 1994 failure with assistance that included compensation for lost fishing time and cooperative research.
- 2000—$25 million. Continuation from 1994 failure with assistance that included permit buyback and cooperative research.
- 2001—$1 million. Continuation from 1995 of the fisherman health program.
- 2008—$13.4 million. (Disaster not declared.) Assistance: funding for fishermen, fishing businesses, and a health insurance program.

The CHAIRMAN. Thank you, Mr. Shelley. I appreciate your testimony.

Next I recognize Mr Robert Hayes, the recreational fishing representative. You are recognized for five minutes.

STATEMENT OF ROBERT G. HAYES, RECREATIONAL FISHING REPRESENTATIVE

Mr. HAYES. Thank you, Mr. Chairman. I would like to talk about three things this morning. I want to talk about Mr. Wittman's bill and the need for you to pass it immediately. The second thing I would like to discuss is some of the other bills that are before you, and the last thing I would like to address is this issue of should we amend the Magnuson Act because by some tokens it is working.

Let me start with the Wittman bill. What is happening in fisheries management as a result of the 2006-2007 amendments is that we are beginning literally to do what Mr. Shelley doesn't want to do. We are micromanaging the way in which fisheries in this country are being managed. We are in a position where we may well have a quota on every sector for every stock of fish in the ocean. That is a stunning number of potential quotas. That is micromanagement at a level that no one in Congress I think envisioned when they passed this bill in 2006 and certainly no one in the recreational community has ever seen.

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[1] Commercial Fishery Disaster Assistance. Harold F. Upton, Analyst in Natural Resources Policy, Congressional Research Service, July 29, 2010

Recreational fisheries in this country are managed by bag limits, seasons and size limits, successfully managed. They are managed by states every day in ocean waters, in salt waters and in fresh waters by a simple system and it works. What we have in the Magnuson Act at the moment is a system that frankly the agency will be incapable of managing.

What 2304 does is it allows you to manage to the science you have, not on the science you wish you had. I almost think to myself in sort of a cynical way that it was adopted in this manner so that you could come up here and demand greater appropriations, greater money, greater everything else for greater science, greater science centers and more and more and more. Well, the reality in this Congress and, frankly, I think in any future Congress is that that is not going to happen.

So what we need to do is reform the statute to allow us to go backwards to a system, frankly, that worked, the 1996 amendments. Essentially the Wittman bill will allow you to do this. I would like to point out two things about that bill. The first thing is, Mr. Oliver will like this, it doesn't prevent you from putting a quota in by sector. It simply doesn't require you to do it. There is a big difference there.

Now the second thing is it does not apply to any fish, any stock of fish, that is overfished because I think everyone at this table and everyone has agreed that we need to have closer, tighter controls on overfished stocks, but overfished stocks according to Mr. Schwaab were about 48 in 2010. Forty-eight is a long way from 528 stocks and stock complexes, which may be 800 different stocks of fish. That is a long, big difference, and I think they have the capability of doing those overfished stocks.

The last thing I will say about this bill is Mr. Wittman is correct. There is a statutory deadline. It is the 1st of January or the 31st of December of this year, whichever way you want to look at it. We need to pass this bill and we need to pass it urgently, as soon as possible.

The second thing I would like to talk about—just quickly—are the other bills. No one in this room is opposed—I hope is opposed—to greater transparency, more money for fisheries research. Those things and those bills, as Mr. Shelley points out, are bills that essentially are things that can be done and should be done. I don't see that they are in any way destructive bills. They don't undermine the basic conservation ethic of this statute.

With respect to the flexibility bill that Mr. Pallone has put in, I think our position has been pretty clear on that. We have been opposed to it from the beginning because we think the agency has the flexibility to do it. It is a matter of getting them to do it, and that has always been the problem.

And last, I just want to talk about this whole idea of amending the Magnuson Act, and I think this is kind of a key thing. What I just heard from Mr. Shelley and what I heard from the Charterboat Association, what I heard from the Charterboat Association was we don't think you ought to amend the Magnuson Act. What I heard from Mr. Shelley was the endorsement of four bills that amend the Magnuson Act, including Mr. Pallone's bill.

I think when it is necessary to amend the statute you ought to, and I think those things that don't undermine the basic conservation ethic of this statute are useful for amendment. Thank you.

[The prepared statement of Mr. Hayes follows:]

Statement of Robert G. Hayes

Good morning Mr. Chairman. My name is Robert Hayes, and I have worked with conservation groups for a number of years to foster federal policies that improve the conservation of our nation's public ocean resources and enhance the recreational experience of America's recreational anglers. I would like to thank you for this opportunity to speak today about the immediate need to pass H.R. 2304 sponsored by Rep. Rob Wittman and a number of members of this committee and supported by the Congressional Sportsman's Caucus and the Congressional Sportsmen's Foundation. I would like to point out that Senators Nelson and Rubio, along with others, introduced in the Senate on Monday S.1916, a bill functionally similar to H.R. 2304.

One of the groups I have worked with is the Center for Coastal Conservation, which is a coalition of America's leading advocates for marine recreational fishing and boating. It is dedicated to promoting sound conservation and use of America's marine resources. The organization includes the American Sportfishing Association, Coastal Conservation Association, International Game Fish Association, National Marine Manufacturers Association, The Billfish Foundation, as well as other institutions and individuals across the country. Along with the Congressional Sportsmen's Foundation, these organizations all endorse my testimony today. There are three issues I would like to address today: 1. The importance of marine recreational fishing to the citizens and businesses of this country; 2. The need to prevent the adoption of quotas by sector for every stock of fish under federal management; and, 3. The urgency of acting now.

Why Recreational fishing matters.

In 1977, when the Magnuson-Stevens Act was originally passed, few if any in the Congress or the administration gave much thought to management of marine recreational fishing. For the most part, it was being done through size, season and bag limits by the states. The boating and fish catching technology were, by today's measure, relatively primitive. Most anglers stayed closer to shore and were less efficient. Today, both by number of anglers and the boats and gear they use, all that has changed. Saltwater anglers can easily fish off shore and, given the state of the technology, can easily locate target species. In 2006—the last year the National Marine Fisheries Service generated national estimates of effort and participation—24.7 million saltwater anglers took nearly 100 million recreational fishing trips (97.7 million)—almost four trips per saltwater angler each year.

Saltwater recreational anglers generated $92.2 billion in total sales (in 2011 dollars). Of that total, anglers generated $15.2 billion in total sales from trip expenditures that included food, lodging, fuel, bait and charter fees, among other expenses. Trip expenditures are dominated by the cost of fuel used in personal vehicles to travel to and from the fishing site or marina followed closely by the purchase of food and beverages. Additionally, those same anglers generated $76.9 billion from expenditures on durable goods that include tackle, gear, boats, houses and vehicles used for saltwater fishing. This category of spending is dominated by boat and vehicle purchases, with boat purchases generating $6.8 billion in economic impact and vehicle purchases generating $5.3 billion in economic impact. The boat-building business is almost exclusively a U.S.-based industry. Both trip and durable goods expenditures support 533,813 jobs across the U.S. In terms of economic impact, Florida has the highest numbers at $14.2 billion in total sales supporting 130,900 jobs followed in order by Texas, California, Louisiana and North Carolina.

As a matter of comparison, in 2006 commercial fishing in the U.S. generated $102.5 billion in total sales and supported 1.5 million jobs. This estimate includes impacts from the harvester right through to the consumer.

In addition to expenditures on trip costs and fishing equipment, anglers contribute a considerable amount to direct fisheries management at the state level. Across all states, recreational anglers contribute $621.5 million in license purchases and $329.8 million across just the coastal states (2010 estimates). The vast majority of this money returns directly to management and enhancement of recreational fishing. In addition to license sales, recreational anglers contribute to conservation through excise taxes on fishing equipment and fuel purchases. In 2010, these excise taxes generated $650 million nationwide and those monies are apportioned back to

the states for fishery management purposes. State fish and wildlife agencies depend heavily on these funds to operate their programs.

While the economic impact of marine recreational fishing is vast, it is still not reflected in the management process. The primary reason may simply be the very nature of the commercial and recreational sectors. The number of commercial fishermen is small relative to the number of recreational fishermen. The number of businesses that commercial fishermen buy their supplies from and sell their fish to is an even smaller number of operators. As a result, the commercial activity moves through a smaller number of hands and is a larger payday in those businesses' pockets. This makes it much easier for the commercial sector to build a cohesive base that secures the attention from the agency responsible for collecting the science affecting their sector.

Recreational fishermen spend their dollars at thousands of gas stations, grocery stores, marinas, marine dealers, mom-and-pop bait-and-tackle shops, restaurants and hotels along with everybody else buying those goods and services. The local gas station or convenience store is not likely to band together with anglers to build a base of support to represent them before NOAA Fisheries. You are not going to see truck manufacturers clamor for better data for recreational anglers even though the purchase of trucks to tow boats is the second biggest durable goods expenditure made by anglers. As a result, policymakers do not truly recognize the large economic impact of recreational fishing.

To the credit of the leadership at NOAA, Jane Lubchenco and Eric Schwaab, there has been a substantial effort to try to solve this problem. But institutionally, the problem remains and will need continued long- and short-term attention.

So what is the problem we can fix?

In 2006, the Congress passed a series of amendments to the Magnuson Stevens Act. Many of these amendments were based on two basic paradigms. The first was that fisheries in federal waters off Alaska were in substantially better condition than stocks elsewhere in the United States as a result of the process used and the resulting management decisions of the North Pacific Council. The second was a perception that although the prescription to stop overfishing and rebuild overfished stocks had been in existence for almost ten years, no Council except for the North Pacific Council had been able to achieve the objective. These two premises lead to a series of changes in the Act which required every Council to operate like the North Pacific Council and impose a series of measures to stop overfishing.

The first set of changes seems to ignore that not every Council manages commercial fisheries worth billions of dollars. Nor do they manage fisheries that on the whole have never been subject to overfishing. A North Pacific Council meeting is attended by dozens of advocates, scientists and consultants representing all of the views of the various stakeholders. The members of the Council have a wealth of information and expertise on which to rely. In addition, NOAA Fisheries provides annual stock assessments for the economically important species, and periodic assessments for the rest. Since the fisheries managed are almost exclusively commercial, there is a wealth of real-time data which allows the Council and NOAA Fisheries to make adjustments to regulations with a degree of certainty unmatched anywhere else. The difference between the data available in Alaska and in the other parts of the country is staggering. As an example, for the past few years the agency has been conducting about 40 stock assessments a year in Alaska. At the same time, it has been assessing 15 stocks a year in the Gulf of Mexico, South Atlantic and Caribbean combined and most of those assess commercial shrimp stocks. For the sport fish that anglers pursue, the agency does about six assessments per year.

The one-size-fits-all 2007 amendments undermine the discretion of Councils, which must manage to the species, fishermen and management systems available to them. Don Rumsfeld once said, "You go to war with the Army you have, not the Army you might want or wish to have at a later time." The same has to be true for fisheries management. The statute can't simply require increasingly onerous restrictions without some accommodation to the lack of science and management capability in the agency.

The second set of changes resulted in strict measures to stop overfishing. The first change was partially implemented in 2010 when Annual Catch Limits (ACLs) and accountability measures (AMs) were put in for all stocks that were overfished. In 2009, that included some 48 stocks, many of which already had measures similar to this requirement. Now, by the end of 2010, all fisheries under management by NOAA, with few exceptions, were requires to have ACLs and AMs. NOAA, in the implementation of this provision, has required that the provision be put in place for every sector for all stocks regardless of the science available or the management capability in the region. This meant that in fisheries in the Gulf, South Atlantic, Car-

ibbean and western Pacific, for which little or nothing was known other than some basics, stocks would now be managed by quotas. For recreational fishermen used to being managed by traditional tools like seasons, time and area closures, size and creel limits, this comes a quite a shock.

Stopping overfishing is something everyone can appreciate. Managing every sector and every stock under management by quota, whether it's healthy or not, is quite another matter. I doubt anyone envisioned this result when the 2006 amendments passed the Congress. Over the past few years, it has become painfully apparent to anyone associated with marine recreational fisheries that NOAA Fisheries does not have the data to properly manage fisheries to the requirements of these provisions. A NOAA convened workshop on Recreational Data Timeliness recently concluded:

> A general theme of the Timeliness Workshop was the need to consider adapting management to data constraints rather than adapting data to meet management needs. Improvements in recreational data quality and timeliness that can feasibly be implemented through MRIP should not be viewed alone as a panacea for management of recreational ACLs. Rather, management approaches for addressing the management uncertainty associated with data imprecision or estimation lag times must also be considered for successful management of recreational sector ACLs.

To understand the magnitude of the problem, a description of what is being managed is helpful. The term "fish" has been interpreted to cover hundreds of species of finfish, corals, vegetation and jellyfish. Of these possibly thousands of stocks of fish, the federal government has about 528 stocks of fish and stock complexes under management. Although NOAA seems reluctant to identify how many stocks are in all the stock complexes being managed, one stock complex in the South Atlantic alone contains some 73 different stocks. In its testimony before the Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs this July, the agency referred to 500-plus managed stocks. Assuming that all of the stocks in the stock complexes were counted, the real number is probably 800-plus. Of that, the agency only assessed 132 in 2010 and only includes some 230 in its Fish Stock Sustainability Index. Not only are the other stocks not assessed, there is no plan given present scarce resources to improve this shortfall.

Apart from major data problems associated with stock assessments, there are major problems when it comes to measuring recreational fishing effort and impacts. Such data is very difficult to collect compared to commercial fishing as methods such as on-board monitoring and dock surveys do not apply effectively to recreational fishing. Congress attempted to address this problem in the 2006 Magnuson-Stevens amendments through language that has led to the creation of the Marine Recreational Information Program (MRIP)—the recreational fishing survey system adopted by NOAA Fisheries to replace the ineffective Marine Recreational Fisheries Statistics Survey (MRFSS). The National Research Council concluded in 2007 that MRFSS data was incapable of being used for any purpose, leading Congress to direct the agency to make substantial changes to how it collected recreational fishing data. However, the data being relied on by the Councils to make all of the ACL decisions for the recreational sector is MRFSS data. The new and improved MRIP system is only now being tested and its data was not available to any Council for its decision-making this year. As NOAA Fisheries Director Eric Schwaab told the subcommittee in July, NOAA is rerunning the data outputs using raw data from 2005 to date. What he didn't say was that the reanalyzed raw data using the new MRIP assumptions in many cases produces different results. Whether those results change any of the previous assessments will have to wait for further analysis, but whether those results would have changed the ACLs cannot be doubted—yet none of them are being used for that purpose.

Faced with a statutory deadline requiring annual catch limits on all stocks by the end of this year, the agency and the Councils are moving to meet their obligations, regardless of the inadequacy of the data, a plan to improve it, or the resources to implement it.

The management system is using three different tools to implement this measure. The first is to simply delete the stock from federal management. The Gulf Council has adopted a plan amendment that deletes 18 stocks from the reef fish fishery The South Atlantic Council has proposed an amendment deleting 39 stocks from management. When a stock is deleted from a Fishery Management Plan, it is removed from federal management protections. So the Council no longer has to worry about setting an ACL with inadequate data, but these particular stocks are no longer protected, for instance, from prohibitions on taking them with drift gill nets or fish traps in federal waters.

The practical effect? Management of those stocks will likely be left to the states which will perhaps manage the stocks with state landings laws. But the states nei-

ther asked for the management responsibility nor received funding to engage in management.

The second method of ACL implementation is to classify stocks as ecosystem stocks, which are not deleted from federal management, but do not require an ACL. This classification cannot be found in the Magnuson-Stevens Act, nor did most of the Councils use it as a refuge for avoiding ACLs. This logical and potentially appropriate designation for many stocks of fish was presented to Councils with overly restrictive parameters saying the regulatory exemption for a stock that was "not sold or retained." That interpretation lead to Councils simply ignoring this potential tool because they realized that recreational anglers often retain even the most minor species.

The last method adopted is the most arbitrary and was referred to by Mr. Schwaab in his July testimony this year as using a "variety of proxies" to substitute for data in making ACL decisions. This idea is fine for data-rich fisheries, but in data-poor ones the assumption is that the health of one stock is directly related to the health of another. It might happen that way or might not. No matter how poor the data, the Councils are simply going ahead and applying it to set ACLs. Historically, Councils have created allocations by sector largely based on historical catch records. When the Councils thought the data was poor, they applied a buffer between what the annual catch might be and some lower level to ensure that the sector didn't exceed its quota. Many of these calculations are extremely conservative and result in allowable landings of just a few hundred fish in some fisheries. In the South Atlantic, the annual catch for recreational fishermen of snowy grouper is less than 300 fish. How does the agency, even with the new and improved MRIP, count that few fish? It will only take the misidentification of a couple of them in a creel survey to close the whole fishery. Yet there is no plan to educate fishermen or to improve the data system to avoid this result.

Why the Fisheries Science Improvement Act—H.R. 2304?

Many groups have said MSA is working and should not be amended. They base this conclusion on the rebuilt fisheries *that have resulted almost exclusively from the 1996 amendments to MSA,* which required an end to overfishing and a rebuilding of stocks in a time certain. Those amendments clearly have worked. What happened in 2007 was an over-reaching of control that has deprived many of the Councils of the discretion they need to tailor measures appropriate to the science and the management capability they have, not what they would like to have. Adopting and implementing ACLs will lead to the closure of perfectly healthy fisheries, to litigation and, subsequently, to the loss of all respect for the process that required them.

Oceana has already filed suit challenging the Mid-Atlantic Council's attempt to implement the ACL and AM requirement. Oceana claims MSA requires the agency to "count, cap and control" the harvest of every stock under management. Oceana alleges that the agency failed to require the collection of statistically reliable information to enforce catch limits. Other suits are sure to follow if NOAA adopts the amendments the Councils have submitted to implement the ACL/AM requirement. These suits will challenge the deletion of stocks from the fishery management plans, the designation of ecosystem stocks, and the regulatory creation of the category. They will challenge any ACL that is not set conservatively enough to meet a "count, cap and control" standard.

Lastly, for those ACLs that make it through the litigation gauntlet, the ENGO community will challenge the agency's implementation. Federal judges may have trouble understanding complex fishery management policies, but judges have no trouble understanding numbers. When that hard ACL is exceeded (and it will be) environmental lawyers will be there to shut fisheries down, whether or not there is a positive conservation benefit.

Artificially low ACLs/AMs based on poor data, combined with current statistical survey methods of recreational harvest, create the very real possibility that a very few fish being recorded in a survey will be extrapolated to project a total harvest number exceeding the ACL. The result will be to not only shut down fishing for that stock, but in many cases will serve as the basis for shutting down the whole fishery. This is the domino effect that occurred in the South Atlantic last year when managers were within inches of shutting down all bottom fishing in thousands of square miles to recover red snapper stocks. The shutdown was averted when unprecedented pressure and protest from all quarters compelled NOAA Fisheries to conduct a second full stock assessment on red snapper, which revealed that the stock was not in need of such drastic management measures.

Many of the examples used in this testimony have related to the recreational sector, which indeed is not accustomed to being managed by quotas. However, the pain from these measures will be applied equally to all sectors. One example has already

occurred in Alaska where a pot fishery for Pacific cod had been closed because the ACL for the bycatch—octopus—was caught before the quota for the directed fishery. A reasonable result, if the ACL for octopus had been anything other than a guess, but in this instance there seems to be little relationship between the health of either the Pacific cod or octopus stocks and the measure taken.

The Oceana suit specifically addresses the bycatch in Atlantic fisheries of summer flounder claiming the lack of an ACL/AM for the bycatch is inadequate to count, cap and control the total catch of summer flounder. The bycatch of summer flounder is accounted for in the assessment, but it is not subject to a hard bycatch number.

Another example being discussed is the bycatch of the shrimp fishery. As everyone knows, there is a large bycatch of a multiple stocks of finfish in the shrimp fishery. ACLs for annual stocks like shrimp do not require an ACL, but under the Oceana view of the world every stock in the shrimp bycatch requires an ACL specifically for the shrimp fishery. Since no one has any idea what the bycatch ACLs for the shrimp fishery ought to be other than the existing one for red snapper, they will be developed just like the rest of ACLs, as conservatively as possible.

The scenario painted above is not fictional. The only reason there have not been more suits filed is because NOAA hasn't approved all of the ACL/AM amendments yet.

When Congress reauthorized the Magnuson-Stevens Act in 2006, none of us knew that NOAA Fisheries was so data-poor. NOAA Fisheries has not received substantial increases to manage either the science or the implementation of a system like the one Oceana envisions. Imagine that there are some 800 stocks under management and that each of the stocks has only two sectors catching them. Now add all of those stocks that are also caught in fisheries other than the one being managed directly. NOAA would be required to manage more than 2,000 quotas annually and take regulatory measures for each one. No one in the recreational community believes the agency has the data, appropriations or management to accomplish that.

The Wittman bill gives NOAA the ability to manage the species that matter the most to commercial and recreational fishermen, monitor and collect data on the rest, and continue to provide for comprehensive management of the oceans' resources.

The bill removes the authority to issue ACLs/AMs for any stock of fish that does not have a survey or assessment within the last five years. It continues the authorization of ACLs/AMs for all stocks that are overfished or overfishing is occurring and, as a precautionary measure, authorizes ACLs/AMs for any stock in danger of being overfished.

The bill gives the Councils greater discretion to avoid removing fish species from management and leave them in the jurisdiction of the agency by allowing the agency to put certain stocks of fish into an "ecosystem" category. FSIA authorizes the category and broadens the eligibility for stocks of fish that can be placed in it.

Finally, the Fishery Science Improvement Act gives NOAA Fisheries three years to go back and work with the Councils to figure out how to implement science-based measures that are appropriate for each region and its fish.

The Wittman bill—already co-sponsored by 34 of his colleagues—is very concise, simple and targeted. The implementation of the 2006 Magnuson Stevens Act Amendment has gone to a level never imagined by recreational fishermen. In addition to seasons, bag and size limits, they are about to get quotas on every fish they catch in the ocean based on a mountain of bad data. Without Congressional action, arbitrary decisions affecting millions of anglers and commercial fishermen and thousands of businesses will continue to be made.

H.R. 2304 needs to be passed as soon as possible—the time bomb is ticking.

Mr. Chairman, that concludes my testimony, and I would be happy to take questions.

About our organizations. . .

The *Center for Coastal Conservation* (Center) is a coalition of the leading advocates for marine recreational fishing and boating. It is dedicated to promoting sound conservation and use of ocean resources by affecting public policy through the political process.

The *American Sportfishing Association (ASA)* is the sportfishing industry's trade association, committed to looking out for the interests of the entire sportfishing community. The association invests in long-term ventures to ensure the industry will remain strong and prosperous as well as safeguard and promote the enduring economic and conservation values of sportfishing in America. ASA also represents the interests of America's 60 million anglers who generate over $45 billion in retail sales with a $125 billion impact on the nation's economy creating employment for over one million people.

The *Coastal Conservation Association (CCA)* is a national recreational fishing membership organization of some 100,000 members and is organized to do business in 17 States on the Atlantic, Gulf of Mexico and Pacific Coasts. It has been actively involved in the majority of the nation's marine resource debates since its inception in 1977. Its membership is composed of recreational fishermen who fish for every important marine recreational fish available in the EEZ. CCA brings not only an educated perspective on how to fish, but a conservation ethic which recognizes the value of recreational fishing as a pastime and obligation to take care of the resource and use it to the best benefit to the nation.

The *Congressional Sportsmen's Foundation (CSF)* is the most respected and trusted organization in the political arena promoting, protecting and advancing the rights of hunters and anglers. CSF is the leader in providing access and a voice for sportsmen with elected officials, land and wildlife management agencies, non-governmental organizations (NGOs), and sportsmen allied industry groups across the nation. CSF is a 501(c)(3) non-profit governed by a Board of Directors composed of leaders of the top conservation and outdoor industry organizations in the nation.

The *International Game Fish Association (IGFA),* is a 70-year-old world renowned not-for-profit organization committed to the conservation of game fish and the promotion of responsible, ethical angling practices through science, education, rule making and record keeping. IGFA accomplishes its mission by enlisting the voice of over 300 official IGFA representatives in nearly 100 countries, and more than 15,000 angler-members around the globe.

The *National Marine Manufacturers Association (NMMA),* the nation's leading marine industry trade association, represents nearly 1,600 boat builders, engine manufacturers, and marine accessory manufacturers who collectively produce more than 80 percent of all recreational marine products made in the United States. The U.S. recreational marine industry contributes more than $30 billion in new retail sales and 300,000 jobs to the economy each year.

The Billfish Foundation (TBF) is dedicated to conserving and enhancing billfish populations around the world. The non-profit organization is an effective advocate for international change, synthesizing science and policy into fishery management solutions. By coordinating efforts and speaking with one voice, TBF is able to work for solutions that are good for billfish and not punitive to recreational anglers.

The CHAIRMAN. Thank you very much. I appreciate all of your testimony.

We will begin the question period. I have just a couple of questions first, Mr. Marks, for you. Some groups seem to think that we should require councils to set ACLs for every species even if they are minor species that are rarely caught. Do you believe that the Act currently requires this? And if it is unclear about that, what should our response be?

Mr. MARKS. Mr. Chairman, I believe that the Act does require that, and we are seeing ACLs set for all stocks regardless of their size. We are actually seeing ACLs set for stocks where we can make a determination whether they are overfished or overfishing is occurring, and certainly we don't have the sufficient information to do that.

So I do see that we have a problem and that at least the agency has implemented the 170 pages that you handed them to move forward and set ACLs for all of those stocks.

The CHAIRMAN. So what should our response be?

Mr. MARKS. I am sorry?

The CHAIRMAN. So what should our response be to that?

Mr. MARKS. Well, what I think we need to do, and I made one of the recommendations on my wish list, was to enable the RFMCs to be able to set single ACLs for a group of fish stocks, which would include a multispecies complex, for example, where basically you could set one level and whatever harvest comes out of that amount you wouldn't have individual ACLs, but you would have one. So

whatever suite of species Mother Nature allows you to harvest, you set that level for that group and that is what you are allowed to take.

The CHAIRMAN. Mr. Oliver, H.R. 2772, I think you alluded to this in your testimony, but just for clarification, H.R. 2772 includes a provision which would require industry to pay all costs associated with management of any new LAPP plan, and it removes the 3 percent cap. How would this affect your catch share program specifically in the North Pacific?

Mr. OLIVER. I am not certain I know the answer to that, Mr. Chairman. I didn't comment on that specific provision of the bill. I haven't done the math on that. I know our industry currently does pay a fee on some of the IFQ and LAPP programs. In some cases, that fee does not exceed the 3 percent, so in those instances, it probably wouldn't have a terribly negative effect. I suspect that in some fisheries where that fee might be higher than 3 percent, and I don't know how much higher, I guess that would be where the rubber meets the road.

But I suspect in many cases the industry would be able to absorb that up to a point depending on whether or not the fee would also be able to cover the cost of observers because we have quite an extensive, and expensive, observer program in the North Pacific.

The CHAIRMAN. If you could follow up and try to clarify that, that would be helpful to us.

Another question. While your region, the North Pacific Region, does have better scientific information, as has been alluded to by several of the witnesses, are there any species for which data is poor and that might cause you problems as a result of lower harvest levels due to that inadequate information?

Mr. OLIVER. Yes, sir. Yes, sir, there are. I did touch briefly on one example. We have some species, octopus was the example I used, which is a very difficult species to survey, though it is recognized as an abundant species, yet we have what I would probably describe as an artificially low ACL because it is not based on a robust stock assessment. It is based on historical harvest information, life history parameters and other things. Yet, as I mentioned in my earlier testimony, it shut down a rather valuable cod fishery this year because we reached that ACL. And sharks as well as squid are two other examples.

The CHAIRMAN. OK. Thank you very much. I will recognize the gentleman from the Northern Marianas, Mr. Sablan.

Mr. SABLAN. Thank you very much, Mr. Chairman, and good morning, everyone. I have a question for Mr. Shelley. Why was the 2006 amendments made to the Magnuson-Stevens Act so critical to sustaining our fisheries?

Mr. SHELLEY. I think there were three elements that were introduced by that law. First it introduced hard deadlines. Fishermen had been overrunning their quotas for decades as a result of that component, so a hard deadline affected the ability to stop at a specific number that they could statutorily do. The second provision was a requirement for annual accountability. They need to stay within their numbers, and they would be held accountable around those numbers. And then the third was the deregulation of the

small businesses that was made possible by the sector management point.

Mr. SABLAN. All right. And again, Mr. Shelley, there has been a lot of discussion about the arbitrary 10-year rebuilding requirement. Can you explain how this requirement came about, how it was decided upon?

Mr. SHELLEY. As I understand it, and I have read the record, it was a policy decision made in Congress. It was not pulled out of the air. Congress received testimony from population dynamics specialists. They talked to scientists. There was a calculation made that the majority of the U.S. commercial stocks could be actually rebuilt within five years if there was no active fishing pressure.

Congress doubled that time in order to accommodate social and economic possibilities and then provided an escape valve for those stocks of fish where the biological circumstances, the environmental conditions, the sort of things that are in some of the bills before the Committee today, where those conditions were present, the councils and the agency were free to explore a longer timeframe.

Mr. SABLAN. And finally, in your testimony, you mentioned that modifying the annual catch limit and rebuilding requirements will not only create business uncertainty, but it would also require volumes of interpretive regulations and guidelines. Why would anyone in the fishing industry support these provisions, and who are the winners and losers?

Mr. SHELLEY. I don't know. I don't know why anyone would support that. I do know from a lot of experience and a lot of observation of what has happened with earlier statutory language that the simplest phrase can be expanded into the most complex set of rules of any agency because of the complexity of the fisheries in this country. It is not that the agency is acting poorly. It is because all the fisheries are not unique, but they are very specific, and so the regulations and the guidelines have to encompass a whole panoply of possibilities.

The fishermen who are subjected to these rules then in my opinion don't understand them most of the time, are often held accountable for them and fined for rules that they don't understand and shouldn't be reasonably expected to understand, and so I think the real losers here are the small businesses that fish in America, and that is why I am opposed to changes to the law that aren't critically needed and are not surgical to a particular problem.

Mr. SABLAN. All right. Thank you. Earlier Congressman Frank mentioned about fishermen actually going out and telling you that there are fish in the ocean and that adds to the science, and I come from an island community where I have seen fishermen. They will tell you what they are going to catch today, but I have also seen fishermen who tell you the strength of their catch.

Mr. Colby, one of the things we often hear from fishermen is again how many fish they are seeing in the water compared to what the fishery science says. Can you address the discrepancy that sometimes occurs, besides catching these fish, in the science?

Mr. COLBY. Bear with me, but our anecdotal observations are great fishermen to fishermen. Many times I have saved a charter

by somebody telling me where to go fish, so I understand the usefulness in that.

In terms of red snapper, everyone from NOAA down to my next door neighbor knew red snapper was rebuilding. It wasn't surprising that we had fishermen coming back with anecdotal observations that this stock was everywhere. They were walking across red snapper. And I will tell you, if I take my fishermen's hat off for a minute and put my biologist hat on, that is a dangerous type of data or observation to use in formulating a scientific assessment for fishery management.

Recently I had a discussion with a group of fishermen from the Aylesworth Fish & Bait Company, a large wholesaler in central Florida. They indicated fishermen were coming into this bait shop telling them gag grouper we have limited out easily, couldn't have had a better trip and were complaining that there was only a 60-day compressed season, which ended in November.

Then we continued talking, and he said, "How was your red grouper fishing," mindful that red grouper is not currently under a rebuilding plan. I said, "Well, I had six trips this year with six customers of 36. We caught 72 head of legal-sized red grouper in six trips. I limited out every trip." He said, "You are lying." I said, "No, sir." "Where were you fishing?" I said, "In the 90-foot bottom about 15 miles north of where you would fish out of St. Petersburg."

Well, the Aylesworth family, we are pretty good fishermen. We took three trips into that cheese bottom, 90 to 100 foot area, and had one trip where we only caught shorts, two other trips where we caught two legal fish per trip. Now there is where anecdotal observations have a double-edged sword. It can get you into trouble, so you should be very careful in how you use that information to assess any kind of changes to a scientific fishery management plan.

Mr. WITTMAN [presiding]. Thank you, Mr. Sablan. I am going to recognize myself for five minutes as being the next in line of asking questions.

Mr. Hayes, I wanted to go to you and follow up on some of the comments that you made. You spoke about the 2006 amendments to Magnuson and the timeframe that it creates to require ACLs, annual catch limits, to be put in place for all species by December 31, 2011. Does NOAA currently have the data to make those quantifiable decisions on all 800 of the species that are included in that requirement under Magnuson-Stevens? And under that, why is it important for Congress to act in a timely manner in order to make sure that this deadline is kept in mind as far as the actions that need to be taken on these fish stocks?

Mr. HAYES. Yes. Well, when the statute was amended the agency went forward and put together a series of annual catch limit amendments to literally every fishery management plan that they had. I think there are one or two exceptions. I think shrimp is one. Those amendments are in the process of either having been approved or being approved by the National Marine Fisheries Service at this very moment. Those amendments cover 528 stocks and stock complexes.

I think it was done in probably as fast and as arbitrary a way as you could do it. They simply took a look at a fishery. My favorite

is snowy grouper. There is a snowy grouper fishery off the South Atlantic. There are good commercial landings data on that. There are almost no recreational landing data on that.

And so what they did is first they allocated it by sector and then they proceeded to take a look at the historical data and say, well, let us go kind of with the mean here. We don't know much about them, so maybe we will go a little bit below that even. They wound up I think the quota is 263 snowy grouper per year for recreational fishermen.

Now anybody who knows anything about the National Marine Fisheries Service knows that they are absolutely unequivocally incapable of counting 263 fish. That is impossible. The local county can't do it. How in the world could you expect the National Marine Fisheries Service to do it or NOAA Fisheries. Excuse me. They simply don't have the data.

And as your bill correctly points out, it deals with assessments, not with guesses, not with the best science you have available, which happens to be MRFS, which I believe the National Resource Council said was incapable of use in any purpose whatsoever. That would include this one obviously. So I know they haven't got the data, and frankly the thought that they might get it sometime in the future is just folly.

Mr. WITTMAN. Let me ask you this. You speak about the snowy grouper as an example. Can you give me your assessment of the closure of the Atlantic cod fishery or, excuse me, the Alaskan cod fishery as a highlight of the potential problems with ACL limits that are set and some of the unintended consequences?

Mr. HAYES. Sure. What we have done in fisheries these days is digitize all of this so that we have a number. Everybody understands a number. As I understand it, Mr. Oliver is obviously much more familiar with this than I am, but the Council realized that there was a bycatch of octopus in a pot fishery for cod fish, Pacific cod in the North Pacific, and so they decided to put an ACL on it.

And as I understand it, they decided a very high number, fully intending that it would not be met I think, that it would sort of be a trigger that would kind of work to look at things. It got exceeded. It got exceeded, and we closed down a Pacific cod pot fish fishery. There is no biological problem with Pacific cod, and as best anybody can tell there is no biological problem with octopus, and yet we have gone ahead and closed down a perfectly viable fishery. It is illogical.

I might give one good anecdote here, which I think is part of the problem. What this statute does today is it allows you to go through rote, mechanical application of things: ACLs, 10-year rebuilding periods, things like that. Years ago there was a guy named Dick Frank who was head of the National Marine Fisheries Service, and the first day he was there he wanted to see how in the world they had been forecasting D.C. weather. He was a D.C. guy. So he went out to the local weather guy and he said to the local weather guy how do you predict our weather every day.

The guy showed him the models and he showed him all the different scientists that were involved, and he said I always talk to the other forecasters so I have really the most comprehensive, scientific view of it that I can possibly get. And the last thing I do

before I give that weather report is I look out the window. NOAA stopped looking out the window.

Mr. WITTMAN. Thank you, Mr. Hayes. We are going to go to Mr. Pallone now for five minutes.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to start with Mr. Zales.

One of the major concerns that I hear is that although a fishery is rebuilt and not subject to overfishing, and I will use black sea bass as an example, that fishermen still don't have access to the stock because of overly precautious management measures that stem from a lack of science.

As you know, I have introduced the Flexibility Act. My bill would allow for more flexibility in rebuilding timelines and ensure that the Secretary of Commerce has the authority to step in and stop overly burdensome restrictions that are not supported by science. So I just wanted to ask if you support this approach and if you think it will help fishermen that you represent.

Mr. ZALES. Yes, sir, I do. You know, this gets into I think part of especially on the recreational side part of the data system in which Mr. Hayes and some others have mentioned. Clearly under the current data system that we have that I have played with, I have been involved in fishery management from this side of the table since 1988, and it started pretty much with king mackerel and the problems with MRFS way back then because we had a king mackerel fishery shutdown on the Gulf of Mexico two years in a row based on flawed data.

And when you get into a situation like the sea bass thing, and I am not totally familiar with it, but I believe I am familiar with it enough, it is kind of like a Spanish mackerel fishery in the Gulf of Mexico. We have a Spanish mackerel fishery in the Gulf of Mexico that has been perfectly healthy for years. Not overfished, not undergoing overfishing.

Because of the ACL requirements that have come into play now and because of the lack of data—and to give you a little more history, the State of Florida, and I think this was 10 or 12 years ago, created a net ban because Spanish mackerel were commercially caught in nets. At that point, the harvest was exceeded many years in a row, but since the net ban that fishery has just continued to grow and grow and grow and you can't put enough hooks in the water to catch the fish.

Well, the Fisheries Service in their wisdom now, because Spanish mackerel is a fish that lives about 10 years, and the fish that are there today never have seen a net. The commercial harvest is extremely low. So, in the SSC's parameter of creating the recommended OFLs and ABCs to set annual catch limits, they are using the last 10 years' average of harvest for Spanish mackerel. Well, it is about half of what it used to be years ago. So that is where they have set their catch limit.

Now where that is going to go if they continue to go down that road is that if somebody comes up with an innovative way to catch Spanish mackerel at some point in the future and you are able to get close to that point, because of the buffers and all the regulations that are there, the closer you get to it the more restricted you

get. So when you set it down low you will never be able to see it high ever again.

Mr. PALLONE. Yes.

Mr. ZALES. And that is part of our problem, and I think that is going on with your sea bass.

Mr. PALLONE. All right. Let me ask you another one. In your experience, is it possible for a fishery to be considered to be overfished but be able to be fished at levels that allow rebuilding and maintain fishery jobs?

Mr. ZALES. There is no question. Red snapper in the Gulf of Mexico is a classic example. You have heard testimony here today and information on the Act that was reauthorized in 1996. Red snapper began its rebuilding in the 1990s. The first regulations on red snapper were put into place in the late 1980s. The first recreational requirement and commercial was a minimum 12-inch size limit.

There was a buoy gear fishery on the commercial side that targeted deepwater and targeted your large order red snappers. It took a lot of those fish out of the fishery. That fishery was eliminated in the late 1980s and early 1990s. As that fishery began to rebuild, in 1996 when the Act was reauthorized a provision was put in there that said that when red snapper, the recreational quota was met, the fishery would shut down.

Well, we had closures from 1996 to 1999. In 2000, the Fisheries Service instituted a six-month season for us with red snapper with a four fish bag limit. That season went on for six years. It was a resounding success. It allowed everybody, including fishermen, the charter businesses, the supporting businesses, the anglers to be able to plan year after year because they knew when they could fish, what they could fish for and what they could catch.

Well, because of what happened in 2007, we then got into the situation to where you had to bring everything back down, so then we had reduced quotas. The season was eliminated. Now every year that we go into this red snapper fishery the only thing we know for sure certain is that red snapper will open on June 1, 2012. We don't have any clue as to whether it will be a one-day season or a 100-day season, and that is part of the problem.

You can continually rebuild because red snapper, it is like Mr. Colby said. And this is anywhere from the Keys to Brownsville, Texas. If you put a hook in the water in the Gulf of Mexico, you are going to catch a red snapper regardless of what you are trying to target.

Mr. PALLONE. Thank you. Thank you, Mr. Chairman.

Mr. WITTMAN. Thank you, Mr. Pallone. We are going to go to Mr. Duncan now for five minutes.

Mr. DUNCAN OF SOUTH CAROLINA. Thank you, Mr. Chairman, and thanks for your efforts in putting forth this piece of legislation I am a proud cosponsor of. I am glad to see we are having a hearing. What I hope is that we can expedite the passage of this before the deadline of December 31. The emphasis I want to make to this Committee, and I will make to the Chairman himself, is that we need a markup on this bill and we need it to the Floor.

I think it is imperative that we make sure that NOAA is using sound science to set these catch limits for the nation's fisheries. This summer we had testimony from a number of captains I think

it was in July, and as their testimony clearly pointed out, the computer models that are used by NOAA are not consistent with the situation that we are seeing out in the ocean and that we are seeing the results at the dock.

The models are flawed, and they are set up on a computer model. I get that, but computer models and what actually happens out in the biological ocean are two different things. The end does not result—should not result—in the means, and I think that is what Mr. Zales was saying that they are experiencing in the Gulf.

Here is what I see happening. We have seen this before, and I can point to the wolves and the depredation or what they say, the wolves depriving the elk out west. We see regs set without real data, and then the research is done after the reg is implemented. The research is done going forward and they see there is this booming fish population and they are pointing to the regulation that was set on flawed data when in actuality the fishery was very, very good.

The reg was set saying we need to limit the number of fish that are caught and then we are going to do the research afterwards and we are going to say see, we told you. This regulation was put in place and it has benefitted the fishery when actually the fishery was good all along. I have seen this time and again, and so I think we need to use real data and real science and the end should not justify the means. The sportsman in that scenario is the one who suffers because of these flaws.

And so what I would like to do is ask Mr. Hayes. I am concerned about the December 31 deadline and so we have to do something prior to the implementation of these new regs. I think there is a sense of urgency. Congress assumed a new recreational data collection system would be in place two years before the ACL requirement kicked in. In 2006, they assumed that. We haven't seen that. And so is it fair to put the ACL requirement in place before the new recreational data collection system is ready? Mr. Hayes?

Mr. HAYES. Thank you, Mr. Duncan. I should point out that the agency has done a yeoman's effort, and recreational fishermen have spent an enormous amount of time—Mr. Zales, myself and others—trying to fix the Marine Recreational Fishery Survey. The improvement is in fact an improvement, but I think it is clearly to me unfair, as you stated. But the problem I think is that it is wholly arbitrary, which is a legal standard.

And the reason I say it is wholly arbitrary is because the National Marine Fisheries Service is now rerunning all of the previous data that the decisions were made on and they are rerunning that data and what they are finding out is what a surprise. You take the raw data, you put it in a new model, you get slightly different answers. In some cases, they are big different answers.

Now I don't know what the significance of that is to an assessment because I don't have the model, but I do have a feeling that if I was a fishery management council member and I had a different number in front of me, up or down, that I might have made a little different decision. And it seems to me somewhat arbitrary for the Secretary to approve a bunch of annual catch limits based on data which I think everybody, certainly Congress, agreed was inadequate for any purpose and particularly this purpose.

Mr. DUNCAN OF SOUTH CAROLINA. Let me just ask you a followup question because, at the July hearing, testimony was heard that it was not the 2006 amendments that caused the problem with the catch limits, but it was the agency's regulations. And so we are dealing with statute and we are dealing with regulations. How should Congress address a problem that is caused by regulations and not statutory language?

Mr. HAYES. Well, I think what Mr. Wittman's bill does is it removes the mandate to put annual catch limits in place, so even if the agency were to go forward and adopt all of these measures and you passed the bill they would have no authority to put those particular annual catch limits in place. Presumably they would have to go back and delete them from the regulation.

You know, the great thing about the Constitution is it gives Congress the authority to set the parameters upon which those regulatory discretions are applied. What Mr. Wittman's bill does and your bill does is it removes that direction and thereby makes them both unnecessary and unauthorized.

Mr. DUNCAN OF SOUTH CAROLINA. I am out of time, but that is an important point for this Committee to remember. I yield back.

Mr. WITTMAN. Thank you, Mr. Duncan. I am going to go to Ms. Hanabusa now for five minutes.

Ms. HANABUSA. Thank you, Mr. Chairman. I would like to first begin with Mr. Marks.

Mr. Marks, you made an interesting statement when you said that the 2006 amendment altered the MSA, but what we did was to adopt the Alaska model without the science of Alaska. I am also curious about that statement and tied to that the fact that you believe that the Act now requires basically catch limits on every type of fish. Did I hear you correctly?

Mr. MARKS. That is correct. You did. I think we did try to apply the Alaska model because Senator Stevens was heavily engaged in the reauthorization, and Alaska has been held up as the model in the country for fisheries management.

I think the focus was to try and move the rest of the country more toward that. And as I indicated, the biggest concern with that is that the high exemplary scientific capabilities of the Alaska region did not follow to the rest of the country. We are lacking, and that means that without sufficient science the precautionary buffers that are now added to these ACL requirements are extremely large. Even if we set general proxies for stocks we don't know much about, we have to be extraprecautionary under the way the Act was interpreted.

Ms. HANABUSA. So, to then address, for example, Hawaii doesn't—I am from Hawaii. Hawaii doesn't have technically overfished stock. So, if you are going to set or under how you interpret the law, if they are going to then set "limits", then it is sort of a situation where how do they get—well, I would like to understand from you how you believe they can get to the point of setting a limit when the stock isn't overfished.

Mr. MARKS. Well, I am not arguing that they shouldn't set limits. My point is that they should set appropriate limits based on the scientific information that they have. You are lucky that you don't have any overfished stocks apparently, but they still have to set

limits on those stocks based on the information that they have at hand.

If they don't have sufficient information, they still have to set an ACL limit based on whatever information they have—it may be weak, it may be strong, but they still have to set that limit—and then fishermen have to abide by that.

Ms. HANABUSA. Do you feel that if it is not overfished that you need to set a limit?

Mr. MARKS. Do I feel if it is not overfished do we need to set a limit? I don't have a problem with setting a limit if the stock is not overfished to make sure that we don't overfish that stock. Again, it gets back to the fact that we should set an appropriate one.

Ms. HANABUSA. Why do you believe that the Alaska model has good science and other regions have not been able to duplicate that level of information? Because it seems like if you are going to set limits for Hawaii, for example, we don't have the situation overfished. I am really concerned if we don't have the Alaska science to then go and help them establish those limits.

Mr. MARKS. Mr. Oliver would love this question, but I can tell you that from the economy of scale some of the largest and most economically valuable fisheries in the country take place off the coast of Alaska. They have their own science center. They have most of the stock assessments done on a more regular basis than any other region in the country. Again, I am not arguing that they do a wonderful job up there. We need to do that everywhere else, in Hawaii and on the East Coast and in the Gulf. We just don't have the capability.

Ms. HANABUSA. And that was actually a great segue because I was going to ask Mr. Oliver. What makes it so that Alaska has this great science? Your testimony is clearly I think from someone's perspective who has the great science, and of course this doesn't bother you as much as it bothers everyone else. So can you tell me how is it that you have the great science and nobody else has?

Mr. OLIVER. Well, I don't know that I can fully answer. I think Mr. Marks hit upon it. We have our Alaska Fisheries Science Center. We have had the luxury of having that relatively well-funded. We have had a lot of ship time and regular surveys in the Bering Sea and the Gulf of Alaska. Hopefully we will be able to continue.

That was one of the points of my testimony was the need to enhance stock assessments in regions where you don't have that, but we also want to keep the robust stock assessments that we have. It is an expensive process.

We also have some fisheries that happen to be more amenable to stock assessment surveys. Pollock, for example, one of our largest fisheries, a lot of that survey information comes from hydroacoustic surveys rather than having to do alternative surveys, so some of them lend themselves better to stock assessments.

Ms. HANABUSA. Isn't it kind of ironic? I mean, usually when we set standards we don't set to the highest standard because it seems just unfair for everyone else to have to achieve to that level because what you have is a lot of equipment and a lot of centers that no one else has. But anyway, with that, I will yield back. Thank you, Mr. Chair.

Mr. WITTMAN. Thank you, Ms. Hanabusa. We are going to go to Mr. Runyan now for five minutes.

Mr. RUNYAN. Thank you, Mr. Chairman. Gentlemen, thank you for being here.

Mr. Marks, just a very quick question. My bill provided requirements for the industry generated petition and full referendum of eligible permit holders before any catch share program can be permitted. Very, very simple. How long can we wait to have this put into action? I think as we talked earlier talking about regulation and small business, I think this is a prime example of that.

Mr. MARKS. Thank you, Mr. Runyan. We appreciate your bill. To answer your question as succinctly as you asked it, we need it right now. We do not have a referendum option in the mid-Atlantic. We understand from NOAA that we are facing six new catch share programs, and we are not even sure which ones they are. We have already had one catch share program, the first one post the 2006 amendments, which was tilefish. The State of New Jersey lost its entire historic tilefish fishery.

We are now trying to fend off a monkfish catch share program, and again it doesn't appear we will have a vote in that. We need to be able to protect ourselves if we don't want a catch share program, and we do not have the luxury of a vote, so we need your petition and your vote referendum as soon as you can make it happen.

Mr. RUNYAN. Thank you for that.

Mr. Colby and Mr. Zales, based on the answer Mr. Marks just gave about the commercial industry, would you gentlemen prefer that all charter boat owners and operators have a full say in the development of catch share programs in your fisheries, or would you rather leave it up to the Secretary to make those decisions? And again, can we reasonably wait for this to happen?

Mr. COLBY. Well, Congressman, I will tell you what we have been telling our regional council for years now is any investigation or deliberation on a share allocated model that might work for for-hire operators, A, may not look anything like the commercial model that we have in the Gulf; B, could be a model that is devised on an IFQ or a day at sea or a length of time permit held or some such item that nobody knows what it will be.

I remember one of our Gulf Council representatives, Mr. Bill Teehan, who is with the designate from FWC, I think he said it well. He said this council right now is not trying to pass catch shares for the for-hire industry. We are obligated to investigate and deliberate those alternatives and models, and that is what I want our industry to do in the beginning is just come up and give us the opportunity to discuss them. Have some pilot programs.

I can guarantee you with the greatest certainty to every Committee member here that there is not a single for-hire operator that I know that is going to rubber-stamp catch shares for the for-hire industry unless it works. These guys are businessmen. They are small businessmen. They are pragmatic people. They are not going to willy nilly let somebody from the top down shove catch shares down their throat. They want to see if it works. This is what I have been telling the council, and I hope I am answering your question,

that we are not on this catch share bandwagon beating the drum, but we sure will be if we find out they work.

Mr. RUNYAN. Mr. Zales?

Mr. ZALES. And from our perspective, I can tell you that we have—and like I said earlier, I have been involved in this for over 20 years and am involved in many, many things working with the Fisheries Service. I helped design the for-hire survey, which is a better program that we have now than we had prior to 2000.

The situation with catch shares in the charter industry, there are currently 1,300, give or take, Federally permitted charter vessels on the Gulf of Mexico. There are another 1,000 or so state licensed vessels that don't have Federal permits that fish state waters. In Texas there is a nine-mile limit. On the west coast of Florida there is a nine-mile limit. The other three states have three-mile limits. There is a substantial amount of fish harvested in state waters that you don't have a Federal permit on.

We have asked over and over again for the Fisheries Service to explain to us how a catch share program is going to include those state licensed people. It is a substantial amount of jobs. It is a substantial industry for the states. And it is like Mr. Colby said. Clearly I think that if you do this you need to include every permit holder. You need to include every state licensed vessel in the process.

Even though the Fisheries Service doesn't control state licensed vessels, they do control the fish that are fished in state waters and so you have to have that. We have asked for the Fisheries Service to ask these people where do you stand on this, and they have constantly refused to do it and they are spending countless dollars and a countless amount of time trying to develop different scenarios to try to convince people to go into a catch share program.

We would rather see people say we either want it and we want to work with you to help develop it or we don't. Let us use that money and time in helping the science, and let us figure out where our stocks are because most of us feel like our stocks are stable enough at the present time that we don't need catch share programs to do this, that our stocks are resilient. They are growing. They are getting better and better every day. That is kind of where we are.

Mr. RUNYAN. Thank you very much. I think it is all about asking the question and having the stakeholders have a say in the process. Thank you, guys.

Mr. WITTMAN. Thank you, Mr. Runyan. We will go to Mr. Holt for five minutes.

Mr. HOLT. Thanks, Mr. Chairman.

Mr. Colby or others, you have talked about the need to address recreational data, data collection for recreational fishing. In the bills before us, do you see any of them that will do that, do you have other suggestions and are there any states that do a better job than others in collecting recreational data?

Mr. COLBY. Thank you, Congressman. I wanted to see some kind of laundry list of ideas and solutions for improving data. No one argues that we don't need better data, certainly not with my fishery or educational background. I have worked with data sets all my life, and I don't know why we can't seem to have an agreement

about how we bring certain components of our fishery into a data collection process.

I know we have MRIP now, and I will get back to that in just a second, but in terms of our charter-for-hire industry we are already approaching the council to the table with our data collection offers. I mean, we are going to have electronic logbooks here very shortly to look at catch and bycatch and discards for us. We already have an invitation from our Fish and Wildlife Commission in Florida to——

Mr. HOLT. So are you saying it will be good enough?

Mr. COLBY. Sir?

Mr. HOLT. Are you saying that the way we are going now will be good enough?

Mr. COLBY. No. No, sir.

Mr. HOLT. OK.

Mr. COLBY. I am trying to answer what I have seen in the bills. I wanted to see a list of ideas that would help improve the science and improve the data, but I didn't see that. What I am telling you what I think we need is more cooperation among the sectors of the fishery. Currently I am mandated to comply with data collection.

Mr. HOLT. And you don't see that in the legislation in front of us?

Mr. COLBY. No. No, I do not.

Mr. HOLT. OK. That was really my question.

Mr. COLBY. All right.

Mr. HOLT. The Science Committees, Mr. Zales, and actually I did say I was going to give other people a chance to speak about that last one. Briefly, please. My time is running out.

Mr. ZALES. Real briefly. Yes, sir.

Mr. HOLT. OK. Yes.

Mr. ZALES. In Mr. Pallone's bill there is a provision in Section 6 on the study of the recreational fisheries data that would from the way I understand it have the National Research Council again study the various methods that have been looked at to see where they are and how they are done. The last study of the NRC clearly said that the data system was fatally flawed and shouldn't be used in anything we have, so clearly that particular bill does include that provision.

Mr. HOLT. OK. Yes, Mr. Hayes?

Mr. HAYES. Just quickly, I would point out that the difficulty with this Committee addressing data frankly is it is not a substantive legislative problem. It is a money problem. The National Marine Fisheries Service or NOAA Fisheries simply doesn't have the kind of money that it takes to go ahead and collect this kind of data.

You asked is it better someplace else. The answer is absolutely. If you take a look at the North Pacific—excuse me, at the Northwest—and you look at their management of salmon and the data collection system that they have in place——

Mr. HOLT. I was asking about recreational in particular.

Mr. HAYES. It is recreational. Every recreational fisherman in the Pacific Northwest when they catch a salmon or a steelhead has to report, and that data is collected and put together. Every salmon that swims up a stream is counted. I mean, it is not magical here.

Mr. HOLT. OK.

Mr. HAYES. They simply don't have the resources to do it.

Mr. HOLT. OK. Before I get to my last question in the short time remaining, I would like to ask unanimous consent, Mr. Chair, to enter in the record a letter signed by a number of scientists to support the idea of catch limits.

Mr. WITTMAN. Without objection.

Mr. HOLT. I don't think that this is definitive, and it is clear that every aspect of catch shares is not based in science. There are matters of fairness and safety and predictability and things that aren't really scientific questions that may or may not argue for or against catch shares, but I do think it is important to have this in the record.

Mr. WITTMAN. Without objection.

[The letter offered for the record by Mr. Hayes follows:]

[NOTE: The letter submitted for the record by Mr. Hayes has been retained in the Committee's official files.]

Mr. HOLT. Well, I guess my time has about expired. I was going to ask how the Science Committees are biased, but I think we will leave that for further questioning. Thank you.

Mr. WITTMAN. Thank you, Mr. Holt.

Mr. HOLT. Or whether they are biased I should say. Thank you.

Mr. WITTMAN. Very good. Thank you, Mr. Holt. We will go to Mr. Southerland for five minutes.

Mr. SOUTHERLAND. Thank you, Mr. Chairman.

Mr. Colby, your being from Florida, I can ask you this. Are you in favor, because not everyone is familiar with this, are you in favor with the net ban?

Mr. COLBY. That previous net ban?

Mr. SOUTHERLAND. That was passed by amendment.

Mr. COLBY. That is correct. That is correct. That was a double-edged sword for me. I was in favor of it, but I thought that the way it came down it should have left some room for other participants in that fishery. It closed it down completely and then reauthorized it—correct me if I am wrong—with certain mesh sizes and whatever. But, no. Overall, yes, I was in favor of that.

Mr. SOUTHERLAND. You were in favor of the net ban?

Mr. COLBY. At that time I was, yes.

Mr. SOUTHERLAND. OK. The current net ban, you made earlier comments in your testimony that you believe that observation was a dangerous method of data collection.

Mr. COLBY. Congressman, what I said was it should be looked at carefully as an assessment tool for scientific decisionmaking. I didn't say it was dangerous in fact, excuse me, unless I did.

Mr. SOUTHERLAND. I think you did.

Mr. COLBY. All right. Well, then I stand corrected.

Mr. SOUTHERLAND. But observation, I think that is a common-sense tool that the good Lord gave us when he made us to get out of a shower or rain, as you alluded to, and look out the window I think is how you stated it.

You know, currently the two-inch net that are mandated upon people to use in Florida has a 98 percent bycatch—98 percent—whereas if they go to a three-inch, OK, something that would allow them to feed their families and put food on the table, it only has

a 2 percent bycatch. Now that is just observation. I would say that is common sense. And yet those that are continuing to push this nonsensical rule upon the citizens of Florida are unwavering. This agency that you seem to applaud, OK, is unwavering.

So I guess my problem is we can have rules that violate common sense and just plain observation, and yet government and sometimes the councils and the agencies show zero flexibility. Zero. We were actually catching juvenile fish, and that rule is wayward and that rule is crushing the fisheries. So I think you may be a little bit more trusting of some of the ability of government agencies to look out for the well-being of hard-working men and women. Am I fair there, because you said that you are in favor of the net ban.

Mr. COLBY. Well, Congressman, I have a cynical side to myself as well. I don't believe that everything that a state or Federal agency does for me may or may not be good for me. Your analogy is interesting, but I can't argue to it one way or the other.

Mr. SOUTHERLAND. My analogy is more than interesting, sir.

Mr. COLBY. Yes.

Mr. SOUTHERLAND. Based on God-given observation, my analogy is factual. You know, you claimed earlier also that we have very good science, and I certainly wrote that down when you said that, because all of us seem to agree that we need more science, better science, but you said that we had very good science and you alluded to another person that spoke on the panel and you talked about that testimony.

I find it interesting that you have a guaranteed ownership in a natural resource. Doesn't your opinion seem self-serving when the average citizen, the private angler, is scrambling, trying to attempt to enjoy an access, a God-given right, to a natural resource that you own?

Mr. COLBY. Are you asking me a question?

Mr. SOUTHERLAND. Yes. Isn't it somewhat self-serving when the private citizen doesn't enjoy that God-given right and you own a share of the natural resource?

Mr. COLBY. Well, as part of the vehicle for many of those private citizens to access the resource maybe I am selfish in that regard. I enjoy giving access for anglers who don't own boats who can't fish in Federal waters that access to that very same resource.

Mr. SOUTHERLAND. So you are there in place to make sure that these individuals must go through you, the gatekeeper, to enjoy their God-given access and their rights to fish?

Mr. COLBY. Well, if they have no other access to the Federal EEZ zone except through charter-for-hire operators, we are the platform in place that gives those people that opportunity.

Mr. SOUTHERLAND. Yes, but a lot of people have their own boats.

Mr. COLBY. That is correct.

Mr. SOUTHERLAND. OK. And I am in Florida. I have been there, my family, a couple hundred years. We have boats. So you having catch share ability, OK, is really worthless to me, OK? The problem is you own a natural resource that the private citizens of the country do not.

Now none of our bills do away with what you already have, but what these bills all try to do in a very bipartisan effort is to protect the God-given rights of individuals. And so when you oppose that

I take great exception to that. I have run out of time. God knows I have a lot more, but I yield back time I don't have.

Mr. WITTMAN. Thank you, Mr. Southerland. We will go now for five minutes to Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I am sorry. I was running a little late getting here.

To Mr. Oliver, in your testimony you mentioned the octopus bycatch is resulting in closures of other species. How many vessels has this closure affected, one?

Is it true that North American Fisheries Management Council is meeting next week to discuss the new octopus stock assessment and then of course the actual subsequent annual catch limit recommendation from the plan team provided by the Alaska Fishery Science Center, which will raise the octopus annual catch limit over 500 percent next year?

Is this not the case when the job was done, arguably done well, by the regional council under the current system, and isn't this preferable to amending the law wholesale for the sake of addressing specific issues or special interests? Mr. Oliver?

Mr. OLIVER. If I understand your series of questions, the first was yes, octopus did constrain a Pacific cod pot fishery this year. I think they were shut down maybe 1,000 metric tons short of their sector quota. I can't give you the exact number of vessels that were affected by that.

Mrs. NAPOLITANO. Roughly?

Mr. OLIVER. I think maybe 20, somewhere in that neighborhood. Again, I have to check that number.

Mrs. NAPOLITANO. So there was a loss of business and economy?

Mr. OLIVER. Yes, to some extent. Those boats can switch gears and continue to access that cod resource with other gear types, but not without cost, not without operational costs. So it wasn't as if they didn't have another option to at least access some of that quota.

Yes, our council is meeting next week. Every December we set our annual catch limits, as we have done for decades, for the subsequent year. I don't know the exact number. I have not reviewed the stock assessment, the octopus stock assessment for the upcoming year, so I can't answer your specific question about the percentage increase. I thought there was an increase, but I did not think it was on the order that you mentioned.

Mrs. NAPOLITANO. Well, shouldn't we wait to find out what the records will show before we try to change the law?

Mr. OLIVER. Through the Chair, I was not suggesting that the law necessarily needed to be changed. I cited our example with octopus as one example where ACLs have been constraining and constraining in a situation where you have a species that is relatively poorly assessed but understood by most everyone to be an abundant species——

Mrs. NAPOLITANO. OK.

Mr. OLIVER.—and that some of the bills in consideration could provide some relief from that situation.

Mrs. NAPOLITANO. Thank you. Mr. Colby, will there always be the uncertainty in managing fisheries, and should we simply stop managing them if there is uncertainty? When will there be enough

data such that the NMFS councils and other fishery scientists have sufficient information to do a good job?

Mr. COLBY. Well, I certainly hope it won't last too much longer. I would like to see the certainty get better. I guess what I have tried to enumerate on a previous question is that there are all kinds of sources we can use to add greater certainty to our data from the commercial operator to the for-hire operator to the recreational angler who owns a boat who participates in that Federal fishery. All three of those groups can step to the plate.

The commercial operator and the for-hire operator are doing that right now. And as I mentioned earlier, we are going to have electronic logbook reporting for our business. Hopefully that will be in the form of an iPad that is coming out of I believe the Texas A&M system.

Mrs. NAPOLITANO. My time is running low, but I can tell you that in——

Mr. COLBY. But, yes, I think the data will improve with participation among the fishery, and I think we should see that in a shorter time period than you are probably thinking.

Mrs. NAPOLITANO. Great. One of the issues in California has been for many years the salmon. There were three years where there was a total no fish declared, no fishing of any kind for salmon, and now it is rebounding. Everybody is benefitting. It is a win/win for everybody.

So there has been an example at least in my state of where being able to do this particular type of waiting for the numbers to the data and for the recovery to take effect so then there is enough for the fishermen, for the recreation fisheries, et cetera.

Mr. Colby, when the 1996 amendments to the Magnuson-Stevens Act were debated my colleague, Congressman Young, stated, and I quote, "It is crucial that the management agencies within the Federal Government be proactive in protecting fisheries rather than attempting to address overfished stocks after they are in crisis situation."

And then he continued, "The regional councils are required to take steps to address any overfished fishery and include measures for rebuilding the overfished stocks." Can you briefly tell us the importance of the stakeholder-driven regional fisheries management council process?

Mr. COLBY. Well, if you talk to our fishermen in the marina who I am representing now, this is their conduit. The council process is their platform to go and get it off their chest. I don't believe you can have a fishery management plan for any stock of fish that is fished commercially or recreationally without that being a process that goes right through council staff and our regional process. Magnuson set that up.

And I will apologize and admit that many, many years ago I was a table pounder and I didn't want to approach the table, but I see the benefit in doing that now. As I said before, it is a cumbersome, time-consuming process. It can be convoluted and it can be really frustrating, but our fishermen have learned how to work within that framework. We figured out how to do that successfully.

And I can't imagine us now having to go down several different roads with different pieces of legislation. There are a lot of good

things in some parts of it for transparency and this and that, but I really want to leave it at our level. I don't know how I can switch gears and change horses.

Mrs. NAPOLITANO. Thank you so very much. Thank you for your indulgence, Mr. Chair.

Mr. WITTMAN. Sure. Absolutely. Thank you, Mrs. Napolitano. We will go now to Mr. McClintock for five minutes.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. In discussing the salmon runs in the Northwest Pacific, my colleague from California has actually described the Pacific Decadal Oscillation, which is a natural fluctuation of cold water currents, which for the past 10 years have been favoring record salmon runs in Alaska. It has now shifted back to the Pacific Northwest. We are watching salmon runs decline in Alaska and increase dramatically in California, which is exactly the phenomenon that Mr. Duncan had discussed earlier, confusing regulations with the natural processes that occur.

Mr. Hayes, I want to thank you for some of the most sensible testimony I have heard before this Committee in the three years that I have sat on it. I think it was Cicero who said that the best laws are the simplest laws, and yet there is something in our human nature when we get a little bit of political power that just loves to devise the most intricate, complex, convoluted, micromanaging and unworkable edicts that grow farther and farther from reality every year. So I think you put your finger on exactly the problem that we are trying to address with the legislation before us.

You have discussed the Wittman bill extensively. Have you any observations on the other bills pending before us or for that matter any other reforms that you would suggest?

Mr. HAYES. I have sort of two comments. One, I think I did refer to some of the other bills by saying that the obvious enhance bills—enhance science, collect better data, transfer funds that would otherwise go to NOAA enforcement into science, all of those are obviously good things. And transparency. There is a vast need in this game at the councils to have transparency, and the more you can do to push that along the better.

Mr. MCCLINTOCK. To what extent have political appointments, political considerations on the appointments of these regional councils, subverted the science that they should be practicing?

Mr. HAYES. I think there has always been great debates, and I think I have been in most of them, about the quality of individual council members and the process that is used to appoint them. It is highly political, and it is highly political because the nominations come from the Governors and Governors are obviously partisan. There are qualifications in the bill. There are requirements both in the bill and at NOAA to balance the kinds of representation that are on those councils. I think by and large the mix that you get is the mix that you get.

Mr. MCCLINTOCK. So are we watching then science being perverted by political agendas?

Mr. HAYES. I think what we are watching is science being perverted by individual groups, which are essentially pushing an agenda. I don't think there is any doubt about that.

Mr. MCCLINTOCK. Let me ask you about the role of fish hatcheries. What role do they play in the population counts? I have part of the Klamath Valley in my district in northeastern California.

Mr. HAYES. Congratulations.

Mr. MCCLINTOCK. But the point I want to make is this. The Administration is in the process of pushing to tear down four perfectly good hydroelectric dams on the Klamath because of catastrophic declines in salmon populations on the river. We have discussed that a little bit already.

When I was first up there I said, well, that is just terrible. How many are left? Oh, just a few hundred. I said, well, why doesn't somebody build a fish hatchery? The response was, well, we have a fish hatchery at the Iron Gate Dam. It produces five million salmon smolts a year. Seventeen thousand return as fully grown adults to spawn in the Klamath. The problem is they don't let us include them in the population counts.

Mr. HAYES. Yes, I am pretty familiar with the Klamath situation. Hatcheries in the Northwest have been in existence since the 1850s. Those hatcheries have augmented salmon runs for all of that time. There is considerable question amongst most biologists today as to what a pure wild salmon is. Of course, a lot of the salmon policy that is done is done in respect to the need to ensure some genetic diversity for the Endangered Species Act.

Mr. MCCLINTOCK. Well, I would think that the larger the genetic pool the greater variety that the forces of natural selection have to work from.

Mr. HAYES. And that is what I was getting to.

Mr. MCCLINTOCK. As one biologist explained to me, the genetic difference between a hatchery fish and a wild fish is the difference between a baby born in a hospital and a baby born at home.

Mr. HAYES. I have heard that explanation, and I can tell you that we as CCA, who I am the general counsel of, the Coastal Conservation Association, we run two very large hatcheries in Texas for redfish, speckled trout, things like that. We are very big on hatcheries. We think that they are a tremendous augmentation tool. We think that the amount of science today that is applied to hatcheries is nothing like the activities of hatcheries 30, 40, 50 years ago. We created the problem in the Pacific Northwest with hatcheries. That is absolutely true, but that problem is being solved.

Mr. MCCLINTOCK. I am out of time, but just a quick yes or no answer. Should we be doing more to encourage construction of additional hatcheries for many species?

Mr. HAYES. Actually I am in favor of additional hatcheries all around the country. In fact, we are at the moment looking at some in response to the BP oil spill and looking at some to augment and immediately mitigate some of that damage that was done in the Gulf.

Mr. MCCLINTOCK. All right. Thank you.

Mr. WITTMAN. Thank you, Mr. McClintock. I want to thank our panel members for joining us today. We are going to now take a break for just a minute and ask our next panel to be seated. Thank you.

While these panel members are moving I want to thank them again for their testimony. Members of the Committee may have additional questions for the record, and I ask that you respond in writing to those as you receive them. Thank you very much.

And now we will hear from our third panel. I want to thank Mr. Eric Schwaab, who has been here with us for the duration back there listening to the questions and the deliberations here. Mr. Schwaab, I thank you for your patience and for your time today to be here to listen to the testimony and questions from the members of the Committee and the members of our panel, and I want to welcome you here and invite you to provide your opening statements within the allocated five minutes.

STATEMENT OF ERIC SCHWAAB, ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE

Mr. SCHWAAB. Thank you, Chairman Wittman, Ranking Member Napolitano and members of the Committee. Thank you for the opportunity to testify before you today. My name is Eric Schwaab, and I am the Assistant Administrator for Fisheries at NOAA.

In the Magnuson-Stevens Act, Congress established an innovative management process that combines sound science, effective management and a level, compliant playing field to achieve and maintain sustainable fisheries. Most importantly, the process relies on our system of fishery management councils to ensure local input and design of key management decisions.

Reauthorized in 2007, the Act further incorporated explicit requirements and deadlines for implementation of science-based annual catch limits and accountability measures to end overfishing and rebuild depleted stocks. The bills before the Committee today would amend the MSA in a number of ways. And while the Administration does not have formal positions on any of these bills, we are very aware of the issues they seek to address, and I am happy to have the opportunity to discuss them with you today.

At the core of many of our collective concerns today are fishing jobs. Fishing jobs, both commercial and recreational, are the lifeblood of many of our coastal communities. Fishermen and fishing industries rely not only on today's catch but also on expectations of sustainable fisheries for years to come.

Under the standards set in the MSA and together with the fishery management councils, states, tribes and fishermen, we have made great strides in ending overfishing, rebuilding stocks and building a more predictable, sustainable and profitable future for our fishermen and the people who depend on them. Today, nearing the end of the 35th anniversary year of the Magnuson-Stevens Act and after decades of chronic overfishing in many fisheries, through the hard work of fishery management councils and short-term sacrifice of fishermen we are on track to implement annual catch limits that end overfishing in all Federally managed fisheries.

Between 2000 and 2010, we ended overfishing on 36 stocks and rebuilt 23 stocks. History has shown that effective management ends overfishing and results in significant economic benefit. Rebuilding of all U.S. fish stocks would generate an additional $31 billion in sales impacts, support an additional 500,000 jobs and in-

crease dockside revenues to fishermen by $2.2 billion, a more than 50 percent increase over current annual dockside revenues.

As we end overfishing and rebuild stocks, we must also recognize the need for management systems to keep pace. We have long known that there is no one-size-fits-all approach to sustainable fisheries management. Together with fishermen and the councils, we are employing innovative and dynamic management measures across the country.

Catch share programs have been a much debated aspect of recent management efforts. Rather than continuing to rely on blunt instruments of fishery closures, restrictive seasons and other input controls, councils have used catch share systems to focus on controlling catch.

Catch share systems allow fishermen greater control over when and where they fish, reduce burdensome regulations, improve safety at sea, allow independent decisions that maximize dockside values and unleash the creativity of fishermen to better address challenging issues like bycatch reduction and in some cases restrictive catch limits on some stocks in the fishery. While catch shares have been a successful tool in many instances, we recognize that they are not appropriate for every fishery and where implemented they need to be carefully designed locally.

Recreational fisheries also carry their own management challenges. Success in recreational fisheries is measured often more by quality of time on the water than pounds landed, so we have embarked upon specific activities to better engage and act upon the unique needs and concerns of recreational anglers and the industries they support. These have included revamped methods for evaluating recreational catch and effort, targeted efforts to reduce recreational discard impacts and improved communication around regional priorities.

Several of the bills under discussion today are focused on improving fishery science. Fishery science provides information needed to define and attain sustainable and valuable fisheries, and although we would all like to know more, today we know more about our fish stocks than ever before, and it is vital that we continue to build on this foundation. As we together face a challenging budget climate, we must redouble our efforts to improve the technology, methodologies and partnerships that maximize the accuracy, precision and timeliness of our data and assessments.

Fishermen and regulators alike share the goal of healthy fisheries that can be sustained for generations. Achieving this goal depends on a dynamic cycle of best available science in forming sound management assured by effective enforcement that protects the resources, ensures effectiveness of management efforts and maintains a level playing field. We need a solid, sustained commitment to each of these three components—science, management and enforcement—to succeed.

Challenges remain, Mr. Chairman and members of the Committee, and implementing these measures has not been easy for fishermen, both recreational and commercial, the councils or the agency, but as fish populations grow and catch limits increase the benefits of sound management for the resource, the industries they support and the economy are beginning to emerge.

We are doing our best to implement Congress's 2007 mandate to ensure a sustained resource today and for future generations. We must ensure that any changes to this law don't undermine the progress we have made. Thank you again for the opportunity to testify before you today.

[The prepared statement of Mr. Schwaab follows:]

Statement of Eric Schwaab, Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

Chairman Hastings and members of the Committee, thank you for the opportunity to testify before you today. My name is Eric Schwaab and I am the Assistant Administrator for Fisheries, within the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA). NOAA's National Marine Fisheries Service (NMFS) is dedicated to the stewardship of living marine resources through science-based conservation and management. Much of this work occurs under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which sets forth standards for conservation, management and sustainable use of our Nation's fisheries resources. The Magnuson-Stevens Act also sets forth an innovative process of fishery management councils as a means to ensure local guidance of important science and management decisions.

The pieces of legislation before the Committee today would amend the Magnuson-Stevens Act in a number of ways. I will discuss the issues they seek to address in my testimony, which will focus on the process of ending overfishing, deadlines and progress in rebuilding depleted stocks, challenges of ensuring sustainable use, obtaining and using the best available science, implementing catch share systems, and particular challenges associated with recreational fisheries management. Together, these and other elements provide both great opportunity and challenge as we work together to ensure sustainable fisheries and the economic benefits they provide for current and future generations. While the Administration does not have formal positions on these bills, we have concerns with several provisions and briefly discuss our criteria for supporting proposed legislation.

Transitioning to Sustainable Fisheries under the Magnuson-Stevens Act

Since its initial passage in 1976, the Magnuson-Stevens Act has charted a groundbreaking course for sustainable fisheries. Reauthorized most recently in 2007, the Act mandates the use of science-based annual catch limits and accountability measures to end overfishing and rebuild depleted stocks. The Act also provides for use of market-based fishery management through Limited Access Privilege Programs (or catch shares), focuses on collaborative research with the fishing industry, establishes standards for bycatch reduction, addresses the need to improve the science used to inform fisheries management, and seeks to end illegal fishing and bycatch problems around the globe so that foreign fishing fleets are held to the same standards as U.S. fleets.

At the core of many of our discussions today are fishing jobs. Fishing jobs, both commercial and recreational, are the lifeblood of many coastal communities around our Nation. Fishermen and fishing industries rely not only on today's catch, but the predictability of future catches. Under the standards set in the Magnuson-Stevens Act, and together with the fisheries management councils, states, tribes and fishermen, we have made great strides in ending overfishing, rebuilding stocks and building a sustainable future for our fishing dependent communities. Thanks in large part to the strengthened Magnuson-Stevens Act and the sacrifices of fishing communities across the country, the 230 most economically important fish stocks have collectively improved steadily over the last decade. Now, during this 35th anniversary year of the original passage of that bold legislation, and after decades of chronic overfishing in many fisheries, we are on track to end overfishing in all federally managed fisheries. Between 2000 and 2010, we ended overfishing on 36 stocks and rebuilt 23 stocks.

Collectively, we have learned that ending overfishing and rebuilding depleted fisheries brings significant economic and social benefit, but doing so takes time, persistence and sacrifice. The Magnuson-Stevens Act, as reauthorized in 2007, sets strict goals and timetables for ending overfishing, requires adherence to scientific information, and values precaution when uncertainty exists.

Let me be clear: Implementation of these measures has not been quick or easy for fishermen—commercial and recreational—nor has it been easy for the agency or the councils. Nonetheless, fishermen and regulators alike share the goal of healthy

fisheries that can be sustained for generations. Without clear, science based rules, fair enforcement, and a shared commitment to sustainable management, short-term pressures can easily undermine progress toward restoring the social, economic, and environmental benefits of a healthy fishery. Challenges remain, but as populations grow and catch limits increase, the benefits for the resource, the industries it supports, and the economy are beginning to be seen.

Ending Overfishing

One of the most significant new management provisions of the 2007 Magnuson-Stevens Act reauthorization was an explicit mandate to implement annual catch limits (ACLs) and accountability measures to end and prevent overfishing in federally managed fisheries. I am happy to say that we are making very good progress towards meeting that mandate. In 2010, the fishery management councils put in place annual catch limits and accountability measures for all stocks then experiencing overfishing. I am also happy to report that we are on track to have annual catch limits in place for all managed stocks for the next fishing year. As we complete assessments for these stocks in the coming years, we will be able to confirm that overfishing has ended. Until then, we will have science-based catch limits in place designed to end overfishing.

History has shown that effective management ends overfishing and results in significant economic benefit. Rebuilding all U.S. fish stocks would generate an additional $31 billion in sales impacts, support an additional 500,000 jobs and increase dockside revenues to fishermen by $2.2 billion, *a more than 50 percent increase over current annual dockside revenues.* A prime example of the benefits of rebuilding is seen in the New England sea scallop fishery, where revenues increased five-fold as the fishery rebuilt, from $44 million in 1998 to $265 million in 2010, making New Bedford the largest port by value every year since 2000.

Many other stocks are expected to rebound as we end overfishing and execute rebuilding plans. For example, after the first year under new catch limits in the New England groundfish fishery, in 2011, improving stocks allowed catch limits for 12 of 20 stocks in the New England groundfish complex to increase, providing immediate benefit to fishermen and local fishing communities.

In addition, many of the Alaska groundfish fisheries, by far the largest in the country by volume, have long been managed under a system equivalent to annual catch limits. None of these stocks is overfished or subject to overfishing, and all are near or above the abundance levels that support the long term optimum yield from the fishery. By comparison, ACL implementation is very new for most other fisheries. Increases in catch rates in future years are yet to be realized for those fisheries just now starting to implement them.

These success stories are a product of strong leadership by the regional fishery management councils and investment by the Congress, the hard work of scientists and fishermen across the country to attain the data needed to effectively inform management decisions, and in many cases, short-term sacrifice on the part of commercial and recreational fishermen. We recognize this sacrifice and are working to provide the councils with the best scientific and economic information available upon which to base management decisions, to ensure that management actions are as precise and focused as possible.

NOAA's investment in science allows us to set ACLs that end overfishing and are as precise and focused as possible. We have made significant progress in this respect but we can continue to make improvements.

Catch Shares

Catch share programs have been a much discussed aspect of recent fishery management efforts. Catch share programs allocate harvest privileges or quotas to individuals or defined groups of fishermen, and are often implemented in fisheries where overcapitalization and overfishing are challenges that need to be addressed. Rather than employing closures, restrictive seasons, restricting days at sea or other input controls, catch share systems focus on controlling catches. By shifting focus to outputs, catch share systems allow fishermen greater control over when and where they fish, reduce burdensome regulations, allow independent decisions that maximize dockside values for fishing businesses and unleash the creativity of fishermen to better address challenging issues like bycatch reduction.

Within a framework of scientifically established annual catch limits, catch share systems give more direct control of fishing activity back to fishermen, allowing fishermen to plan their fishing seasons and be more selective about when and how they catch their allocation. Because catch share programs focus on individual accountability and fishermen are allocated a share in a fishery, fishermen gain an economic incentive to catch their allocation at the least cost, when market values are most

advantageous, and without exceeding their allocation; as a fish stock rebuilds, the holder's share increases in value.

Catch share programs have been particularly valuable for fisheries where, due to rebuilding requirements, more restrictive catch limits have been set, or where bycatch concerns have constrained fishing activity. In these cases, the increased flexibility afforded fishermen has allowed them to operate more economically.

Catch share programs, which include a variety of approaches such as Limited Access Privilege Programs, authorized by the Magnuson-Stevens Act, have operated successfully in the United States since 1990. Currently, there are 15 different catch share programs in place, stretching from Alaska to Florida.

Catch share programs can bring a wide range of social, economic, and biological benefits to a fishery and communities.

- They have been shown to eliminate dangerous "race-to-fish" or "derby" conditions and improve safety for fishermen.
- Fisheries with these programs have experienced increased landings, reductions in bycatch, improved stability and increased season length.
- These conditions encourage product innovation, reduce costs, and result in higher profits for fishermen.
- Catch share programs also improve the quality and quantity of fishery data, which leads to reduced scientific uncertainty and potential for increased catch quotas.

The security and predictability that comes with catch share programs have the potential to help us get out in front of the boom and bust cycle we deal with in many fisheries. In the long-overfished Gulf of Mexico commercial red snapper fishery, quotas were regularly exceeded and fishing derby conditions were resulting in shorter and shorter seasons. Since 2007, when an individual fishing quota program was implemented, the commercial season length has been extended from an average of 88 days before the individual fishing quotas to year-round after program implementation. In combination with other favorable factors, the share price, which reflects the long-run expectations of economic returns, has more than doubled since program implementation, increasing from $6.74 in 2007 to $16.81 in 2010. Additionally, median ex-vessel prices for red snapper in 2010 increased 25% over 2006 prices. The stability provided by catch share programs gives fishermen the opportunity for improved business planning. Knowing they will have a certain allocation each and every year allows them to make investment decisions to improve their business and increase profits.

The 2011 implementation of the West Coast Groundfish Trawl Catch Share Program was a strong and effective move to preserve the economic potential of the fishery. Preliminary results indicate a strong performance by the fishery this year. After a slow start early in the year, landings have steadily increased, to the point that both landings and revenue during June of this year were higher than 2010 and even higher than the historical average for June. Encouragingly, revenues per vessel are also up substantially. These positive economic trends for fishermen are even more remarkable because they are accompanied by a vast reduction of discarded catch. On average there was a 28 percent decrease in discards across species categories in the program between 2009 and 2011. That's an extremely positive result for fishery management and conservation.

A fisherman in Morro Bay, who fishes under the West Coast Groundfish Trawl Program, is part of an experimental program, in which he's fishing hook-and-line instead of trawling. Trawling, he used to get about $1.80 a pound for black cod. After he made the switch to hook-and-line, he's getting $5 a pound. He's not catching as many fish, but chefs are clamoring for his superior product. This strategy allows black cod populations to recover because there are not as many fish taken, yet gives fishermen a better return for their effort. He is now fishing smarter, not harder and is optimistic about his future.

However, while catch shares have been a successful tool in many instances, they are not appropriate for every fishery, and we need to remain mindful of potential drawbacks these programs can have. Improperly designed catch share programs can result in consolidation of the harvesting sector because some fishermen holding shares will decide to lease or sell their privileges to someone else. There have also been concerns about how catch share programs might affect recreational fisheries, contribute to job losses on shore, or threaten small boat communities as shares are transferred among vessels and ports. All of these concerns can be resolved by proper catch share design at the local level by fishery management councils. The NOAA Catch Share Policy, effective November 4, 2010, provides guidance and direction to the councils as they implement these programs and NMFS continues to engage with the councils and stakeholders to address issues that have been raised.

Recreational Benefits

Recreational fishermen are a large and important constituency for NOAA. Recreational fishing is an important national pastime and a significant contributor to the U.S. economy, generating $50 billion in sales impacts, contributing $23 billion to the Gross National Product, and supporting 326,000 jobs in 2010.[1] Recreational fisheries face unique challenges, as in many cases success is measured less by pounds landed and more by quality fishing opportunity and time on the water with family and friends. For this reason, new approaches are necessary to ensure a satisfying recreational fishing experience and conservation mandates. One new approach currently underway is a proactive collaboration between NMFS and the angling community to improve survival of recreationally released fish and reduce the "footprint" of recreational fisheries. Success of the NMFS–FishSmart partnership may allow for increased recreational fishing opportunity in some instances by reducing the impact of individual anglers, and therefore a given fishery as a whole. Long-term management success, however, will require the regular and active engagement of an empowered constituency working in partnership with the Agency.

To this end, NOAA embarked on a focused effort in September 2009, referred to as the Recreational Fisheries Engagement Initiative, to establish a strong and trusting partnership with the recreational fishing community. We released a national plan of action to accomplish this goal in October 2010, and have aggressively pursued its implementation. Soon, NMFS will release regional recreational fisheries action plans which will mark the first time NMFS has had both national and regional plans in place to identify and address the concerns and priorities of our recreational fishing constituents. NMFS has also undertaken numerous projects to improve data collection and estimation methodologies including:

- Implementation of the National Saltwater Angler registry to increase efficiency in developing recreational fishing effort estimates (January 2010);
- Upcoming implementation of an improved methodology to provide more accurate recreational catch estimates (early 2012);
- Upcoming implementation of new survey designs for collection of recreational catch and effort data (pilot testing in 2012; operational deployment for Atlantic and Gulf coasts January 2013);
- Development and testing of improved survey designs for the Pacific RecFIN surveys (pilot tests of improved designs currently underway in Washington and Oregon, and being designed for California pilot testing in 2012);
- Implementation of multiple pilot recreational data collection projects, such as the Gulf of Mexico For-hire Logbook, to streamline and improve data collection (pilot project completed in 2011; final project report and recommendations for implementation due in early 2012);
- Implementation of the 2011 National Angler Expenditure Survey to provide better and updated economic data on recreational fishing (March 2011); and
- A stakeholder review to identify gaps in NMFS' recreational socio-economic data and data collection systems (April 2011), an internal workshop to address data and modeling needs (July 2011) and a follow-up stakeholder workshop to discuss results of the needs assessment (early 2012).

NMFS recognizes the important role that recreational fishing plays in our economy, and we are committed to working with the recreational fishing community to ensure that we are protecting the resources they care so deeply about and that we are fostering a substantial economic driver of our coastal communities. Again, this requires a delicate balancing act between preventing overfishing and maximizing recreational fishing opportunities.

Rebuilding Deadlines

When fishery stocks are determined to be overfished, the Magnuson-Stevens Act requires that that those stocks be rebuilt as soon as possible but in no case longer than 10 years unless the biology of the stock, other environmental conditions, or international obligations dictate otherwise. Nationwide, 45 stocks are subject to a rebuilding plan with an estimated timeline to rebuild, of those stocks 56% have rebuilding timeframes longer than 10 years due to the existing flexibility in the law. For example, the rebuilding timeframe for Georges Bank cod is 22 years, Gulf of Mexico red snapper is 32 years, Pacific Cowcod is 72 years, and Atlantic dusky shark is 100–400 years. Rebuilding timelines vary based on the life history of the animal. For example, sharks are very long-lived and do not reach sexual maturity for years.

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[1] Fisheries Economics of the United States, 2009.

Our experience is that when overfishing has been ended in a rebuilding program, the stocks have rebuilt well and the rebuilding timeframes have not been a problem. However, rebuilding deadlines set by the Magnuson-Stevens Act are ultimately a policy decision. It is a matter of how long you want to wait for rebuilding (and associated economic benefits) to occur and what short term sacrifices you are willing to make to get there. Congress ultimately made a policy decision when determining the 10-year rebuilding deadlines in the Magnuson-Stevens Act but they also added flexibility to deal with certain issues as described above. I understand the concerns about the rebuilding deadlines and at the request of some Members of Congress, NOAA committed funding for a National Academy of Sciences review that will provide much needed scientific evaluation of the rebuilding timeframe. This study, which will be completed in early 2013, will evaluate current methodology relative to a spectrum of stock assessment issues, review the success of stock rebuilding plans both in the United States and abroad, and identify any systemic knowledge gaps that offer impediments to the implementation of stock rebuilding programs. The answers to these questions will help NOAA continue to provide the best scientific information available to fisheries managers to meet the mandate of sustainably managed U.S. fisheries.

Science

Without high quality fishery science, we cannot be confident that the Nation is attaining optimum yield from its fisheries, or that we're preventing overfishing and harm to ecosystems and fishing communities. Attaining optimum yield requires an investment in information about fish stocks, their fisheries and their ecosystems. The United States has a clear legislative mandate to achieve sustainable fisheries, based on a strong regulatory structure in association with the regional fishery management councils. NMFS is committed to generating the best fishery science to implement this program. We are international leaders in fishery science, at the forefront of rebuilding overfished stocks and preventing overfishing, efforts that are beginning to pay off in many coastal communities. Today, we know more about our fish stocks than ever before, and it is vital that our science not regress, as this would inevitably lead to declines in our stocks and a loss in the economic and social values they provide.

While uncertainty is inherent in all fish stock assessments, investments in increased and improved assessment data reduce uncertainty, thus allowing a larger optimum yield without increasing the chance of overfishing. This in turn allows for greater fishing opportunities and improved economic benefits. Conversely, reduced investment in assessments, including reduced support for the NOAA fleet, which provides the platforms for collecting vital fisheries-independent data, will lead to either increased uncertainty and lower catch limits or greater risk of overfishing.

From 2005 to 2010, NMFS had the data and capacity to assess an average of 95 stocks each year. With this level of assessment activity, NMFS is able to provide regular assessments for the most important stocks tracked under the Fish Stock Sustainability Index. The Index tracks progress towards ending overfishing and represents a combination of stock status, fishing rates, and our level of scientific understanding of a group of important fish stocks. Of the 500 plus federally managed stocks, 230 have been identified for inclusion in the Index, constituting over 90 percent of U.S. commercial landings. NMFS has been able to increase the number of Index stocks with adequate assessments from 119 in 2005 to 132 in 2010. The overall index score, which measures our progress, has shown a 63 percent improvement since 2000. Continued progress on the quality and frequency of stock assessments gives us more confidence in the ACLs we are implementing.

Investment in science and management results in sustainable fisheries. That is why NMFS has always focused on getting the most data, and the highest priority and quality data, by fully utilizing the funding Congress has provided. With sustained Congressional support, we can continue to make substantial progress. Conversely, reducing commitments to science, or retreating from the mandates of the Magnuson-Stevens Act, will hurt our fisheries and reduce local economic benefits.

General Views on Proposed Legislation

NOAA supports the collaborative and transparent process embodied in the regional fishery management councils, as authorized in the Magnuson-Stevens Act. Generally speaking, we would oppose legislation that limits the options available for fishermen to sustainably harvest their respective fisheries. NOAA believes that catch shares, in particular, are a viable option for many fisheries and regional fishery councils should be given the freedom to recommend this option to the Secretary for approval.

It is critical that we maintain progress towards meeting the mandate of the Magnuson-Stevens Act to end overfishing and, as necessary, rebuild stocks. ACLs are an effective tool in improving the sustainability of fisheries around the Nation, and NOAA has concerns with legislation that would create exemptions or otherwise weaken provisions regarding ACLs. Uncertainty in the stock assessments upon which ACLs are based should not be used as a basis for exempting fisheries from ACLs.

In an increasingly constrained fiscal environment, legislation should not mandate duplicative or otherwise unnecessary actions. Additional stages of review for certain types of fisheries data, or repeating data collection and stock assessment efforts when there are already sound peer reviewed processes in place are examples of actions that will divert resources to a select few fisheries at the expense of others with little additional benefit. Moreover, legislation should be cost-effective and consistent with the President's Budget. NMFS welcomes the opportunity to work closely with Congress, the regional fishery management councils, and the recreational and commercial fishing industries, to use the best available science to seek opportunities for efficiency and improved management in order to end overfishing and rebuild stocks.

Closing

The FY 2012 appropriation for NOAA provided NMFS $794.2 million for Operations, Research, and Facilities (ORF), which is $51.0 million (6.0%) below the FY 2011 Spend Plan, and $110.3 million (12%) below the FY 2010 Omnibus. In addition, significant cuts in other parts of the bill may impact funding for important activities, such as days at sea for NOAA vessels dedicated to fisheries research. These significant reductions, necessitated by the Nation's current economic situation, will amplify the challenges facing NMFS, the regional fishery management councils, and the commercial and recreational fishing industry.

NOAA will continue to work with Congress and stakeholders to ensure our highest priorities are supported as we continue the transition to sustainable fisheries during these challenging fiscal times. We will continue to invest in our efforts to provide high quality scientific information and stock assessments, innovative and timely management systems, and fair and effective enforcement programs to ensure our marine resources are effectively managed to support coastal communities and the Nation.

Thank you again for the opportunity to testify before you today. I am happy to answer any questions you may have.

Appendix: List of Fisheries-related Hearings in 2011

The following is a list of congressional hearings at which NOAA testified in 2011 that focused on issues related to fisheries management and the Magnuson-Stevens Act. The content of NOAA's testimonies for these hearings may be useful to the Committee as it continues to consider the proposed bills that are the topic of today's hearing. NOAA would be happy to provide copies of these testimonies for the record at the Committee's request.

- **March 8, 2011** –"*The Implementation of the Magnuson-Stevens Fishery Conservation and Management Act*" before the U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries and the Coast Guard
- **June 20, 2011**—"*How is NOAA Managing Funds to Protect the Domestic Fishing Industry?*" before the U.S. Senate Committee on Homeland Security and Intergovernmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security
- **July 26, 2011**—"*NOAA's Fishery Science: Is the Lack of Basic Science Costing Jobs?*" before the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs
- **October 3, 2011**—"*Hearing to Review Massachusetts Fishery Management Plans*" before the U.S. Senate Committee on Commerce, Science, and Transportation

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Mr. WITTMAN. Very good. Thank you, Mr. Schwaab. I am going to begin with a question directly.

As you know, just this past week Senators Nelson and Rubio introduced a bill similar to H.R. 2304. Can you give me the Administration's view on both H.R. 2304 and S. 1916?

Mr. SCHWAAB. Thank you, Mr. Chairman. As I mentioned, we don't have a formal position on any of these pieces of legislation at

this time. I do think it fair to say that because of the inclusion of the ecosystem component category in our National Standard 1 guidelines, which is something that we intend to continue to refine going forward regardless of whatever legislative changes might come to pass, clearly that is something that we see as an important aspect of the management process going forward.

Obviously some of the other elements of both of those bills require some detailed analysis before we can fully understand their implications, but we certainly understand some of the challenges that they are seeking to address.

Mr. WITTMAN. OK. Very good. In your prepared statement, you said that uncertainty in stock assessments upon which ACLs are based should not be used as a basis for exempting fisheries from ACLs. You have heard from our earlier panel the example of the Alaskan Pacific cod fishery and the closure that resulted there with the setting of the ACL, and I am concerned that that may be one of many examples yet to come.

Is uncertainty in stock assessments really worth shutting down well-managed, highly valuable fisheries like the Pacific Alaskan cod fishery, and do you expect to see similar closures in the future as a result of exceeded ACLs? What assurance do we have that ACLs established without sufficient data will result in closures to valuable commercial and recreational fisheries?

Mr. SCHWAAB. Thank you, Mr. Chairman. There are two parts I think at a minimum, two-part answers to that question. The first is relating to those stocks where we do have a clear and robust stock assessment. In those cases, uncertainties are factored in by the Science and Statistical Committee, and those carry forward into the establishment of limits through the fishery management council process to lead us to some reasonable expectation of either maintaining a safe fishing level or rebuilding stocks where that rebuilding process is appropriate. So I think it fully appropriate that we factor in through that scientific process uncertainties to lead to some reasonable outcome that we all seek, sustainable fisheries at healthy levels.

There are of course categories of stocks for which there is an inadequate or absent assessment. In those cases, we have used—the Science Committees have recommended and the councils have used—many different proxies for setting catch limits. In some cases, we have worked very closely with the councils to encourage them to use some additional latitude so that we don't just simply adhere, for example, to an average among 10 years of historical catch.

Mr. WITTMAN. Right. Very good. You know, as I look at how these annual catch limits are set, I know there are a number of other elements there—the overfishing limit, which corresponds to maximum sustainable yields—so I am going to kind of dive into a few fishery science terms here, and the acceptable biological catch.

You know, my concern as you look at this, you try to paint I think in fisheries management a three-dimensional picture to try to figure out what are all the aspects that affect population dynamics and affect biomass. If we only have a single dimension or in some instances no dimension of figuring out what affects these stocks, where does mortality rest, and we know that fishing is only

one realm or one dimension of mortality and then we look at fecundity, we look at spawning success among different year classes and all those different things that go in to figure out this three-dimensional picture.

If we continue to go down the road and say listen, we only have one dimension to this and we are going to go down the road of saying the only way that we can assess how to control this or how we can have some effect on mortality is through regulating the fish catch in instances where there is nothing to indicate that commercial or recreational fishing mortality is having any kind of impact, it concerns me that that is the management tool that we are going to use going down the road instead of looking at other dimensions and saying wait a minute, let us create the three-dimensional picture we need for every one of these stocks before we go and say well, we are going to manage it just in this one dimension.

I wanted to get your thoughts about how do you as an agency overcome that, or how do we get out of that particular situation?

Mr. SCHWAAB. Thank you, Mr. Chairman. So the 1996 reauthorization placed significant emphasis on essential fish habitat, and the agency has been working hard not only to deal with fishing levels but to address fishery habitat concerns. The 2006 reauthorization and agency actions have focused on broader ecosystem-based implications. So clearly there are carrying capacity issues that affect an ecosystem's ability to support a level of fishery productivity.

I think it appropriate that we work harder to factor all of those things in. I would be concerned about a premise that we need to have an all-encompassing picture before we set some appropriate catch limits. It strikes me that that could be particularly risky to many important fish stocks around the country.

Mr. WITTMAN. Very good. Thank you, Mr. Schwaab. We are going to go now to Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask Mr. Schwaab, the 2006 National Research Council Report, which Congress mandated to be used in improving recreational data collection methods in the Magnuson Act, in the 2006 reauthorization of Magnuson, found that the Marine Recreational Fishing Statistical Survey was fatally flawed, and so the 2006 reauthorization required a new system now known as the Marine Recreational Information Program to be implemented by January 1, 2009.

I wanted to ask what recreational data collection systems are regional fisheries management councils currently using to develop annual catch limits and if you would describe the status of the MRIP program and the quality of information that it is currently producing?

Mr. Schwaab, what I am hearing is that in fact we are not necessarily using the MRIP and we are still using the old flawed survey or maybe some combination of the two. I am trying to get to the bottom of it.

Mr. SCHWAAB. Yes. Thank you, Mr. Pallone. If I could say at the outset there are two different ways in which recreational data factor into the management process. One is as a component of the assessment process, and certainly recreational effort and landings are considered by the scientific teams that make assessment decisions.

And then, obviously, second is managing once a quota is set the recreational component of the fishery.

We have been working hard to implement the MRIP program. One physical manifestation of that was the creation of the National Angler Registry and then the subsequent adoption by many states of state-level licenses. That establishes a new sampling frame from which we can do the front end participation estimate, and that sampling frame will be phased in beginning in 2012.

A second component of this is a reestimation methodology that has been subject to significant input from the science community, from fishermen as well as from our state partners. That reestimation methodology is something that we are working with right now to fully implement in 2012 as well as to look retrospectively at 2004 through 2011 data.

Mr. PALLONE. Let me just interrupt because I know that the time is running out. So, in other words, you are still using the old data for the most part now and you are not going to really fully implement using the new data until 2012? Is that how I understand your response?

Mr. SCHWAAB. So we will have the reestimation methodology fully in use for 2012. The third piece of that is the revised access intercept process, which won't be implemented fully until 2013.

Mr. PALLONE. But in other words, am I correct in asserting that the old data which, as I said, was characterized as fatally flawed, the Marine Recreational Fishing Statistical Survey, is still being used for the most part today?

Mr. SCHWAAB. Through 2011, yes, sir.

Mr. PALLONE. All right. So, I mean, that January 1, 2009, didn't really mean much. You just weren't able to meet it or what?

Mr. SCHWAAB. So we have put a program in place. It is the full implementation of that program.

Mr. PALLONE. Oh, I see. So you said that you would put it in place by then, but you are not fully implementing it until 2012 or 2013?

Mr. SCHWAAB. And some of that has been the result of challenges that we have encountered along the way. Some of that, for example, has resulted from we heard from the states when we went to the new licensing framework.

Mr. PALLONE. OK. That is all right. I mean, I would like to talk to you more. Maybe we can in the future, but let me just get to my second question because I wanted to ask about the catch limits.

Do you believe that it is fair that NMFS is moving forward with forcing regional management fishery councils to implement annual catch limits while the recreational information program that was designed to ensure ACLs were developed with accurate data is yet to be fully implemented or producing the data needed to properly manage our fish stocks?

I mean, the concern obviously is they are still using this and you are essentially encouraging or forcing the regional managers to implement catch limits, but we are still using the old data.

Mr. SCHWAAB. Yes, sir, Mr. Pallone. Certainly it is suboptimal, but in most cases, the recreational catch data is only a small part of the assessment process, so there are fishery-independent sur-

veys. There are commercial, commercially reported data. There are other for-hire sources that factor into the assessment process.

Certainly, as we complete these reestimations, we will be able to look back over a number of stocks and see which ones might have been more significantly affected historically by a different marine recreational survey result.

Mr. PALLONE. The problem though, Mr. Schwaab and Mr. Chairman and my colleagues, is that they are still using this flawed data——

Mr. SCHWAAB. Yes.

Mr. PALLONE.—for most purposes, and that is a major reason why our constituents are complaining. They say these decisions are being made with what is acknowledged to be flawed data. I mean, this is why we continue to get all these expressions of concern from our constituents.

Thank you. Thank you, Mr. Schwaab.

Mr. SCHWAAB. Thank you, sir.

Mr. WITTMAN. Thank you, Mr. Pallone. A very good point. I think we all hear concerns from time to time about the validity and the robustness of the data used to make these very difficult decisions. Thank you.

We will go to Ms. Hanabusa for five minutes.

Ms. HANABUSA. Thank you, Mr. Chair.

First of all, Administrator Schwaab, I want to thank you and your staff for the time that you have afforded me. I have told you constantly and consistently that Hawaii is different and, as you know, fishing for us as recreation takes on a different meaning when you look at Hawaii fishing. It is cultural plus it is a very major economic engine.

Having said that, I was very interested in both your testimony and your written statement where you talk about the fact that for so long one size has been meant to fit all and now you are modifying that. You made a statement that it may not be appropriate for every fishery to use catch shares, and I was curious about that. Why that statement and under what circumstances do you believe that it would not be appropriate for every fishery to use catch shares?

Mr. SCHWAAB. Thank you, Congresswoman. So there has been much suggestion, including in some of the earlier testimony today, that in some fashion the agency is forcing upon the councils or the fishermen the implementation of catch share systems.

We have been very clear that we see a catch share based approach as a viable tool that should be considered for a lot of fisheries, but it is not necessarily one that a council should use in every case or one that we would advocate be used in every case. And even in those cases where they are utilized we strongly support their local design and implementation to ensure that appropriate conditions and sideboards are set to protect local economic and other social desires. That is something that we have strongly advocated throughout.

Certainly they are most readily used and most clearly effective with respect to commercial fisheries. There has been a lot of discussion about the ways in which they might affect recreational or for-hire fisheries and mixed stock fisheries, and that is something that

we also believe should be considered very carefully at the local level.

Ms. HANABUSA. I don't know who it was that was testifying. You know, when we were looking at this whole issue the question came up about the science, right, and it is all based on science, and then we see the disparity between Alaska, for example, which is I guess what we should all try to aspire to and other areas which doesn't have the resources to do that science. So how then do you put together the science, which is going to then determine the concept of how we would have a catch share, for example, or probably whether an alternative should be used to catch share when the science in and of itself is questionable in many of the areas? Have you had to deal with that?

Mr. SCHWAAB. Yes. Thank you. I agreed with the vast majority of what Mr. Oliver had to say when he spoke to the situation in Alaska versus the situation in other places. He I think alluded to and what I would focus on a little more directly is the fact that in many places, particularly in the South Atlantic, the Gulf and in Hawaii, we have fish stocks that don't lend themselves as readily to the kinds of surveys that are used in Alaska, and those present some unique challenges.

We have worked to invest over a period of years much more aggressively in some new on-the-water surveys as well as some new assessment efforts in some of those places so that we could try to bring more effectively up to speed our assessment capabilities in some of those other places, and I think we are making some headway there.

Ms. HANABUSA. One of the interesting two pieces of legislation is Mr. Frank's and Mr. Keating's, and that is regarding basically the Forfeiture Fund and in Mr. Frank's situation putting that money into the states to assist with research and science. How much of that would be helpful and, alternatively, how much of that would really help us build the science that we are all seeking to understand here?

Mr. SCHWAAB. So I would make two points, maybe three points. First of all, we certainly appreciate the sentiment around more investment needed in science, and in a corollary to that, we work very closely with our state partners to utilize their science and to work very collaboratively on management processes. Having said that, I think that the amount of money that might be available in the Asset Forfeiture Fund frankly should not be overestimated in its ability to affect that science challenge.

And then finally I would note, as I did in my testimony, that a good and effective fishery management system depends upon sound science, effective management and good compliance. And so, if we rob from the compliance end to build up the science end, it might be that we end up with a result that is not what we are all looking for.

Ms. HANABUSA. Thank you. Thank you, Mr. Chair.

Mr. WITTMAN. Sure. Thank you, Ms. Hanabusa. We are now going to go to Mrs. Napolitano for five minutes.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Mr. Schwaab, are annual catch limits an effective tool to not only end overfishing but also to prevent it?

Mr. SCHWAAB. Yes. Absolutely.

Mrs. NAPOLITANO. Well, isn't removing catch limits on a stock because it lacks a stock assessment putting the health of our fish populations at risk similar to spending money on a new car when you don't know if you have money in the bank?

Mr. SCHWAAB. Well, I think it certainly increases the risk of going in a direction with respect to the stock that you don't intend to go. You know, I think catch limits are certainly a measure of where you are with respect to prosecution of that fishery, and lacking that measure could certainly lead you astray.

Mrs. NAPOLITANO. Thank you. In your testimony, you mention that these bills are likely to create duplicative and otherwise unnecessary actions. If enacted, would these new regulatory requirements compete with and divert funds that could otherwise be used to improve fisheries?

Mr. SCHWAAB. Certainly there are some elements of some of these pieces of legislation that could potentially be duplicative or certainly perhaps not additive to the management challenges and the science challenges that we face. I think I allude to some of those in more detail in my written testimony.

Mrs. NAPOLITANO. But doesn't it bear that improving the health of our fisheries helps the fishing industry, thereby helps the economy?

Mr. SCHWAAB. Absolutely. I mean, it is our contention that not only, as I mentioned in my testimony, is there great opportunity in front of us associated with rebuilding and sustainable management of fisheries but that we are already seeing a number of those results on the water and on the docks today.

Mrs. NAPOLITANO. Would it be wise to focus on funding key fishery science and data collection programs that can provide better information and create more of this business certainty we look at and then of course ensure that we have the input from the fisheries?

Mr. SCHWAAB. There is no question that better science allows us to reduce uncertainty and then puts the councils and the fishermen in a place where they can manage closer to a sustainable fisheries line. I mean, a continuing challenge on our part is to both within available resources and using current and new methodologies to improve our output if you will of more regular assessments for a larger number of species.

Mrs. NAPOLITANO. Thank you for that. You did mention there is flexibility in the Magnuson-Stevens Act rebuilding requirements. Could you describe a little more in detail what that flexibility is?

Mr. SCHWAAB. Absolutely. Thank you, Congresswoman. Some of those flexibilities were alluded to in some earlier testimony, but the current Act sets that 10-year rebuilding timeline but provides some very significant exceptions, one of those being for where the life history of the species would dictate a longer timeline.

We have more than half of the stocks that are under rebuilding programs now that already have rebuilding timelines that exceed that 10-year level. We have also in some cases where we have seen new data emerge been in a position where we could effectively restart a rebuilding clock based on some new science that has emerged.

And then finally, and Mr. Frank mentioned this, the transboundary legislation that you enacted about a year ago, the transboundary conditions which were provided for in the current Act that were expanded with respect to some of the species that we work closely and jointly with Canada to manage.

Mrs. NAPOLITANO. Thank you. One last question has to do with the economic and social data currently being considered in NOAA stock assessments and rebuilding analysis. How much of this do you hold in doing your assessments?

Mr. SCHWAAB. Yes. The councils already undertake assessments around science and economics as a part of the decisionmaking process.

Mrs. NAPOLITANO. Yes, but how much of it do you take into account in your decisionmaking?

Mr. SCHWAAB. So they are largely taken into account when choosing among management alternatives. They aren't explicitly taken into account in actually setting catch limits, but when choosing among some of the different management options that might be available they are looked upon, and that is the domain predominantly of the councils.

Mrs. NAPOLITANO. Right. And we were discussing this briefly here with the Chairman that sometimes we have folks who have never been out in a boat, never been fishing making some of the decisions that the fishermen sometimes find a little abhorrent, and so to take information from them, translate it into helping you become more cognizant of reality out in that area to me is critical.

Mr. SCHWAAB. Absolutely. Absolutely, Congresswoman. Cooperative research is something that we place great emphasis on in a number of places around the country. The individual observation of fishermen certainly also factor in.

Mrs. NAPOLITANO. I would hope so.

Mr. SCHWAAB. But if I could perhaps borrow or build upon the analogy of Mr. Hayes' looking out the window to check the weather, it might be raining in Clearwater but sunny in Panama City, so analogies or anecdotal experiences only take us so far.

Mrs. NAPOLITANO. Thank you. Thank you, Mr. Chairman.

Mr. WITTMAN. Thank you, Mrs. Napolitano.

Mr. Schwaab, thank you so much for your testimony. I appreciate you taking the time to be with us today. Members of the Committee may have additional questions for the record, and I ask that you respond to these in writing.

If there is no further business to come before the Committee, without objection, the Committee stands in adjournment.

[Whereupon, at 1:05 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

Statement submitted for the record by Jim Clements, Member, Board of Directors, Gulf Fishermen's Association

My name is Jim Clements. I represent the Gulf Fishermen's Association. I had the opportunity to view the Committee Legislative Hearing on H.R. 594, H.R. 1013, H.R. 1646, H.R. 2304, H.R. 2610, H.R. 2753, H.R. 2772 and H.R. 3061. I am a commercial grouper and red snapper fisherman in the Gulf of Mexico. I am a participant in both the red snapper and grouper/tilefish Individual Fishing Quota (IFQ) programs, sometimes referred to as catch share programs. Some congressmen have been influenced by anti catch share activists to the point of introducing bills in the

House and Senate that would harm our Gulf programs. The Alaska and North Pacific catch share programs are not mentioned in these bills. Neither should ours in the Gulf of Mexico.

Thirteen other commercial fishermen, both large and small, as well as myself, were on the Gulf of Mexico Fisheries Management Council Advisory Panel that developed our catch share (IFQ) program. We designed our program to best fit the needs of all commercial snapper/grouper fishermen in the Gulf. The programs were voted on by the commercial fishermen. They both passed by a margin greater than 80%. Each permit holder was awarded an initial allocation equal to his catch history over a 5 year period for grouper and a 10 year period for red snapper.

The commercial IFQ programs have nothing to do with the recreational quota. It is a means to insure that the commercial sector never exceeds its quota. Caps were placed so no one entity could acquire excessive shares. Not a single permit holder was cut out of the fishery. If a fisherman, like myself, does not own enough shares, he can lease allocation sufficient to harvest the number of fish he needs. In less than 18 months after the programs began, the price of some fish have exceeded the extra cost of leasing the allocation to catch that fish. We are now able to catch less fish and earn more income. This makes the fishing industry more successful, viable and profitable. Our catch share programs have created more full time professional employment, provided year round access of fish to the public, and are helping make our marine resource more sustainable.

Now, new entrants are coming into the fishery, whereas before the IFQ programs, fishermen were leaving the fishery because they could not manage their businesses year round, and avoid closures. Before the IFQ program, there was an open derby fishery that closed when a particular species was projected to meet its quota. Any other species that was affected because of bycatch was also shut down. With the sometimes drastic cutbacks in the Annual Catch Limits of some overfished species, under an open fishery, the entire Gulf may be closed for as much as six months out of the year until the overfished stock is rebuilt.

Some fishermen who might want to abolish the IFQ program and go back to an open fishery should be careful of what they wish for, unless they want to look for a job for as much as six months while the season is closed and their boats are tied to the dock. That will be *total* unemployment for the *entire* fishing industry and other businesses that depended on it, not to mention the deprivation of fresh Gulf red snapper and grouper to the American consumer.

Our IFQ (catch share) programs not only are working; they saved our industry. The Gulf Fishermen's Association, which represents a substantial number of commercial fishermen in the Gulf, needs your help.

When the Natural Resources Committee begins its markup of the bills addressing catch shares, please do not adopt legislation that would preclude the use of future catch share programs, and certainly do not interfere with our existing red snapper and grouper/tilefish IFQ program in the Gulf of Mexico. Since their inception two years ago, participants in these programs have made substantial investments in the type of shares to prevent dead discards and keep the fish we catch so they can be sold to the public. Interfering or dismantling these programs would undermine our fishery in the Gulf, devastate our fishing communities, and destroy our jobs and livelihood.

Statement submitted for the record by Lee R. Crockett, Director of Federal Fisheries Policy, Pew Environment Group

The Pew Environment Group appreciates the opportunity to provide a statement for the Committee's hearing on a suite of bills related to ocean fisheries management under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Since the MSA was enacted 35 years ago, Congress has recognized the value of the ocean fish populations that sustain commercial and recreational fishing businesses, and the importance of ending overfishing. Most recently in 2006, Congress strengthened the MSA by requiring catch limits and accountability measures to end and prevent overfishing by 2011. Though skeptics said that this could never be done, all of the eight regional fishery management councils have put in place amendments to fishery management plans intended to end and prevent overfishing, meeting the ambitious deadlines of the Act. Thanks to Congress' efforts in 2006 and the hard work of managers and stakeholders in the regional councils, the United States now has one of the best fishery management systems in the world.

Unfortunately, some of the bills under consideration by the Committee threaten to take us back to the failed policies of the past that resulted in overfishing, de-

pleted fish populations and lost fishing jobs. Though they claim to "improve science" or "create flexibility," in reality these bills weaken the conservation requirements of the MSA for the sake of short-term interests and waste the years of hard work and sacrifice that are finally putting our nation's fisheries back on healthy footing. These bills also inject instability into the fishery management system, which is detrimental to the commercial fishing interests, charter boats, and other small businesses that depend on a stable and predictable regulatory environment.

Below I would like to address some of the general themes that emerged during the December 1, 2011 hearing about the state of fisheries management in the U.S. I will follow these observations with concerns that we have regarding specific bills under consideration and finally offer some solutions that will help keep our fisheries on the path toward long-term sustainability.

Our nation's fisheries science is world class

America has some of the best managed fisheries in the world. This is largely due to the quality of the science, investments in data collection, and our sound, science-based legal framework. Managers and scientists have information about every federally-managed fishery, incorporating a wide variety of data types and tools ranging from local historical knowledge to advanced modeling techniques. Our management system is unique in its dedication to using an extensive body of knowledge, and its commitment to basing decisions on science and the input of stakeholders.

Despite this fact, some claim that fishery management decisions in the U.S. are based on guesswork. Specifically, they assert that when managers set annual catch limits without official stock assessments, they are doing so without any scientific data. That assertion is false.

In those situations, managers rely on other scientifically valid sources of information and tools to set catch limits, including:

- *Species biological information* such as growth rates, age at maturity, how many offspring are produced, and natural mortality;
- *Population abundance information* such as historical catch data estimates and local knowledge of population history;
- *Statistical models* developed specifically to assess population health and set catch limits when fishery independent surveys are not available; and
- *Stock complex management* where like fish species are grouped, and catch limits are established for the entire complex based on species within the group that have official assessments.

This year, managers have set reasonable catch limits for stocks lacking full assessments. For instance, in the Gulf of Mexico, annual catch limits for species that don't have recent full assessments are set at around **23% above the average landings** over the past ten or so years. Such limits will keep the catch within historic levels, which will limit the risk of overfishing that could result without enforceable catch limits.

The argument that scientific uncertainty is justification for risking overfishing by undermining the catch limit requirement is unfounded and dangerous. Scientific uncertainty is an inherent part of fisheries science and fisheries management. A number of independent reviews have demonstrated that we have some of the best fisheries data in the world, and continue to improve it thanks to current law and committed funding from Congress.

We are poised to finally end sanctioned-overfishing

When Congress reauthorized the MSA, it included specific deadlines so that managers could no longer avoid taking the hard but necessary steps to end overfishing and rebuild scores of depleted fish populations decimated by years of overfishing. Thanks to the hard work of the regional fishery management councils and the National Marine Fisheries Service, we are on track to achieve these deadlines, and science-based catch limits should be in place in early 2012 for nearly all federally-managed species. This is a key milestone in our nation's fishing history, and Congress should oppose any efforts to derail this progress.

The MSA is flexible

Some argue that the MSA is inflexible and advocate for weakening the rebuilding requirement as a form of economic relief. This short-sighted argument ignores the fact that (1) the law is already flexible; (2) thanks to the rebuilding requirement, 23 fish stocks have been rebuilt since 2000 leading to increased fishing opportunities and income for fishermen; and (3) doing so would undermine the economic future of U.S. fisheries.

The MSA currently allows rebuilding plans to exceed the law's 10 year target (which is twice the time scientists calculate that a majority of fish populations require for rebuilding) to accommodate the biology of the fish species, other environmental conditions, or management measures under an international agreement. In

fact, over half of existing rebuilding plans throughout the nation already exceed ten years. [i]

Numerous rebuilding "success stories" exist around the country, including Atlantic sea scallops, the nation's most valuable fishery, and this list is expanding. For example, the National Marine Fisheries Service (NMFS) will likely declare mid-Atlantic summer flounder rebuilt this year. According to NMFS, fully rebuilding our commercially and recreationally-valuable fish populations would generate $216 billion in annual sales impacts and support 2.5 million full and part-time U.S. jobs [ii]—lasting and sustainable economic relief.

The regional fishery management council process is working

Regional decision-making, driven by stakeholders in collaboration with scientists and government managers, is the cornerstone of the MSA. Every region is different in its history, current needs, and the fisheries it manages. Legislating fixes in the hope of helping one region or one fishery is not the solution, and only threatens successes in other regions and the process as a whole.

Recently, octopus in the Bering Sea/Aleutian Islands management area became an issue for the North Pacific Fishery Management Council and was brought to the national spotlight as justification for a national fix that allows removal of ACLs from certain fisheries. However, when you look at the facts, the octopus example clearly illustrates the benefits of our regionally-based system and the existing mechanisms within the law that allow for adaptive management:

Octopus harvesting practices changed → the Council adjusted the management plan and set catch limits based on the best available science → a potential problem arose as the pacific cod fishing season progressed and limited catch in the pot sector of the fishery → the Council's Science and Statistical Committee plan team investigated and the science center completed another assessment using newly available data → the quota for next year will likely go up by over 500% based on the plan team's recommendation.

In sum, there is clear and compelling evidence around the country that the MSA is working. We agree with NMFS Director Eric Schwaab that the MSA is "charting a groundbreaking course for sustainable fisheries." We urge Congress to support the law and reject short-sighted efforts, described in more detail below, to undermine the progress we have made ending overfishing and rebuilding valuable fish populations.

- **H.R. 2304, the Fishery Science Improvement Act:** This bill would remove the annual catch limit requirement from numerous valuable stocks and risk allowing overfishing. The catch limit mandate under the 2006 MSA reauthorization has been a key component in ending overfishing; by removing it we take a huge gamble on the progress we've made towards restoring fish stocks to stable and healthy levels. Also, the bill does little to actually improve science, and will likely encourage managers to conduct less science on the specific (largely recreational) stocks impacted by the bill, as they will shift their resources to stocks (specifically commercially targeted species) where the catch limit requirement remains.
- **H.R. 1646, the American Angler Preservation Act:** This bill would mire key fishery management decisions in red tape and delay that could hamper the ability of managers to increase quotas based on new science. The bill would also create unfunded mandates and add loopholes to the law that would threaten the progress we are making restoring valuable fish stocks.
- **H.R. 3061, the Flexibility and Access in Rebuilding American Fisheries Act of 2011**: This bill includes redundant and costly new reporting requirements, adds loopholes to the law in the name of "flexibility" that ignores existing flexibility in the law and impedes efforts to rebuild depleted fish populations, and gives authority to the Secretary to suspend annual catch limits based on arbitrary conditions.

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[i] National Marine Fisheries Service (NMFS). (September 2011). 2011 Status of U.S. fisheries: Third Quarter Update. <http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm>.

[ii] These numbers are a summation of the value of fully rebuilt U.S. fisheries from two sources: Testimony of Eric Schwaab, National Oceanic and Atmospheric Administration (NOAA) Assistant Administrator for Fisheries at the U.S. Senate Committee on Commerce, Science, and Transportation held an Oceans, Atmosphere, Fisheries, and Coast Guard Subcommittee hearing on implementation of the Magnuson-Stevens Fishery Conservation and Management Act, Mar. 8, 2011, Page 3, <www.legislative.noaa.gov/Testimony/Schwaab030811.pdf> on the value of rebuilding; and the comparable commercial and recreational estimates from National Marine Fisheries Service (NMFS), 2008, "Fisheries Economics of the United States, 2006," <www.st.nmfs.noaa.gov/st5/publication/fisheries_economics_2006.html>.

Rather than support the bills described above that would revert our world class management system to the failed approaches of the past and risk overfishing, we ask you to please support the following:

- **H.R. 594, the Coastal Jobs Creation Act:** This bill would strengthen programs that create jobs for fishermen and support fishing communities, including cooperative fisheries research between fishermen and scientists; revitalization of working waterfronts; cleaning up marine debris; and other efforts that benefit fishermen and the environment. If funded, this bill could substantively address fisheries data gaps and promote economic sustainability.
- **Appropriations for fisheries research and monitoring**: In the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, Congress demonstrated its support for our nation's recreational and commercial saltwater fishing industries by investing $161 million in research and monitoring programs. We encourage Congress to continue investing in these programs in FY 2013 and beyond for the benefit of our nation's fisheries, which in 2009 alone generated $116 billion in sales and supported 1 million jobs.
- **Proposed legislation to establish long-term financial support for our nation's fish and fishermen**: Senator Kerry announced in October that he will introduce legislation that would reform the Saltonstall-Kennedy Act by redirecting existing funds derived from duties on imported fish products in the range of $50-$70 million a year to support critical fishery management and science efforts in the regions. Under this proposal, a regional grant program would be established where fishermen and other regional stakeholders would be able to identify both funding requirements and guide investment decisions to target regional on-the-water needs.

Thank you once again for providing us with the opportunity to provide input into the December 1, 2011 hearing on ocean fisheries bills.