

**Testimony Of
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On
The Magnuson-Stevens
Fishery Conservation And Management Act**

**Before The
Senate Subcommittee On Oceans And Fisheries
Committee On Commerce, Science And Transportation**

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Madam Chair and members of the Subcommittee, thank you for the opportunity to testify today on reauthorization of the Magnuson-Stevens Act. My name is Pete Emerson. I work for the Environmental Defense Fund in Austin, Texas. We are a public interest group dedicated to protecting the environmental rights of all people to clean air and water, healthy food and flourishing ecosystems. We have more than 300,000 members worldwide, including 38,000 members living in states bordering the Gulf of Mexico.

The Environmental Defense Fund is privileged to serve on the Executive Committee of the Marine Fish Conservation Network. As you know, the Network is a coalition of more than 80 environmental groups, sport and commercial fishermen, and marine scientists working to improve our nation's fisheries laws. The Network's agenda and goals are attached to my testimony. I urge the members of this Subcommittee to consider them thoroughly.

I will use today's opportunity to provide my perspective on key fishery policy issues in the Gulf of Mexico that reauthorization might address.

The Gulf of Mexico – A Special Place

The fisheries and marine ecosystems of the Gulf of Mexico – or, “America's Sea” – are truly unique and valuable public resources. They are important to all Americans.

Gulf of Mexico mangrove forests, sea grass beds, salt marshes, and offshore reefs are home to a diverse array of marine life. Here in the United States and abroad, seafood consumers enjoy the region's abundant harvest of shrimp, crabs, oysters, and finfish. The commercial fishery in the Gulf – our second largest by volume and dockside value – lands more than 1.5 billion pounds of product

annually, worth about \$700 million. And, Gulf shrimp make up our nation's single most valuable stock. The commercial fishing industry employs more than 55,000 people as fishermen, processors, and wholesalers.

Recreational activities are enjoyed by millions of people year-round, and recreational demand in the region is growing. Three million sport fishermen catch at least 100 million fish from the Gulf each year, accounting for more than one-third of all marine recreational fishing in the U.S. Tourists from near and far spend billions of dollars on the Gulf coast to vacation, fish, and enjoy unique coral reefs, endangered sea turtles, and a wide variety of bird life.

Resource Management Problems Persist

Amidst these positive factors there are, however, significant resource problems that trouble the Gulf of Mexico. These problems make life difficult for federal and state resource managers and stakeholders alike. They may be of particular interest to the Subcommittee because they prevent our nation from realizing the greatest long-term benefit from the use and preservation of the Gulf's fisheries and other natural resources.

Six Gulf fish species – red snapper, vermilion snapper, Nassau grouper, gag grouper, jewfish, and king mackerel – are currently classified as “overfished” or “approaching an overfished condition.” Five of these are members of the region's valuable multi-species reef fish fishery, including the very popular red snapper. Preventing overfishing and successfully rebuilding this fishery is a difficult challenge.

Current fishery management regulations hurt fishermen and coastal communities economically and even increase the hazards of fishing. Bycatch waste is too high in some fisheries. A huge “dead zone” off the Louisiana and Texas coast threatens vast areas of essential fish habitat. Managers often do not have adequate fisheries and economic data to do their jobs, and there is a need for broader public participation in government planning and decision-making.

In reauthorizing the Magnuson-Stevens Act, the Congress can help the Gulf of Mexico Fishery Management Council, the National Marine Fisheries Service, and concerned citizens solve some of these problems. In particular, we need statutes that provide a full range of fishery management tools and help responsible managers develop strategies to introduce new conservation measures and reduce external threats to Gulf fisheries and ecosystems.

Putting an End to Derby Fishing

At a recent meeting of red snapper stakeholders, sponsored by the Southeast Region Administrator, commercial fishermen were nearly unanimous in calling for an end to destructive “derby” fishing; businessmen in the for-hire recreational sector and sportsmen deplored early season closings; and everyone was troubled by increased bycatch waste due to regulatory discards resulting from minimum size limits and long closed seasons. Today, the Gulf Council finds it very difficult to address

these problems, and to allocate a limited catch among competing fishermen, because it is prohibited from using an important fishery management tool.

To help managers better address these problems, the Congress may remove the prohibitions on individual fishing quotas and give the Gulf Council the flexibility needed to design a comprehensive individual transferable quota (ITQ) program for the reef fish fishery. An ITQ program would end the economically destructive red snapper derby, significantly reduce bycatch by eliminating long season closures, help prevent overfishing of healthy stocks, and speed rebuilding of overfished stocks. Carefully designed, such a program will meet the Network's conservation principles concerning the use of individual fishing quotas.

The Council will need flexibility and time to design an ITQ program that might ultimately include all reef fish species and allow for transferability of quota shares between commercial and recreational sectors.

A comprehensive ITQ program may be accompanied by fees levied on ITQ holders to cover the program's administrative, management and enforcement costs. Additional fees and Congressional appropriations may be required to provide funds for other needs in the fishery. Such needs might include retiring excess vessel capacity to ensure that it does not enter adjacent fisheries, and compensating individuals who are economically injured as a direct result of management reform. The Council will need to work closely with fishermen and other stakeholders to avoid mistakes like re-directing fishing effort and, if possible, to identify and find appropriate ways to compensate real economic damage.

The ITQ program – like all other management programs – ought to be reviewed regularly to document its conservation benefits and economic performance. Furthermore, while ITQ permit-holders may take legal action against private parties who unlawfully damage the fishery, they would not be able to claim that ITQ shares are a compensable property right and seek payment from the government if management rules change.

Adopting a comprehensive ITQ program and getting rid of derby fishing will allow fishermen to solve certain issues themselves, like deciding when to fish and reallocation of the catch between sectors. Returning control of these decisions to fishermen will lighten the burden on government regulators. With better working conditions, I believe fishermen will find it easier to work cooperatively with government regulators on planning and enforcement and with environmentalists on resource stewardship goals.

Winning Support for New Conservation Tools

Confronted with rising demands on marine resources and the reef fish fishery, new conservation tools may be necessary.

The Gulf Council is required to minimize bycatch and bycatch mortality, but rates of regulatory discards as a result of minimum size limits are high, and they are increasing. Also, mortality rates of

discarded reef fish are high, estimated to be 20 to 33 percent or even higher. In recent years, in the recreational gag grouper fishery, the number of undersized gag killed as bycatch exceeds the number of gag landed by sportsmen. And, more than 50 percent of the red snapper caught by recreational fishermen are discarded because they are undersized. This problem is exacerbated because the Gulf Council has recently adopted high red snapper minimum size limits to lengthen the recreational season, causing fishermen to catch and discard many fish in pursuit of a four-fish bag limit. In addition, juvenile red snapper are killed in shrimp trawls even though shrimpers have adopted bycatch reduction devices throughout most of the Gulf and reduced their bycatch mortality.

To help managers better address these problems, the Congress may strengthen national policies to put priority on implementing new conservation tools, such as marine reserves. A system of marine reserves – created to satisfy particular conservation objectives – would allow fishermen to avoid bycatch waste, help prevent overfishing, and enhance rebuilding of stocks. More money should be spent on developing the science needed to design effective marine reserves that boost fish production and achieve other conservation goals. NMFS and the Council should be encouraged to establish marine reserves for multi-species fisheries associated with reefs and rocky structures. Marine reserves should serve as the preferred option to manage those fisheries for which traditional management measures are not working. The Council will also need a sufficient level of funding to design, implement and enforce marine reserves.

With marine reserves in-place, minimum size limits in the reef fish fishery may be reduced or eliminated because the natural community structure of the population would be maintained inside the protected area, ensuring an ample source of recruits. In addition, shrimp trawl bycatch could be reduced by setting aside areas where large numbers of juvenile red snapper and shrimp are found together.

Marine reserves can also help managers solve other problems that are difficult to address using traditional management tools. The Gulf Council recently proposed using marine reserves (“closed fishing areas”) to prevent overfishing of gag grouper. After a year of deliberation, the Council concluded that marine reserves held the best chance of preserving the dwindling number of gag males and the remaining spawning aggregations. Also, marine reserves would provide the Gulf Council with an opportunity to be more precautionary in its management of fisheries. Marine reserves provide insurance against scientific uncertainty, management errors and extreme ecosystem fluctuations that could devastate troubled fishery populations.

The Council and NMFS should have flexibility to design and implement marine reserves that protect the reef fish complex and its natural habitat. Design and implementation options should be evaluated to ensure they are not unnecessarily biased against commercial or recreational fishing, or other uses. To help marine reserves work, it may be necessary to establish a vessel monitoring program and introduce prohibitive penalties for poaching such as suspension or loss of a fishing permit. Marine reserves, and all new fishery management tools, should be reviewed regularly and monitored to document their performance in meeting their conservation goals.

As new and innovative conservation tools become increasingly necessary to manage Gulf fisheries, the Congress may wish to urge that Council membership become more representative of the broad range of interests in the region – including fishermen, consumers, biologists, environmentalists and academics.

Reducing External Threats to the Gulf

Gulf of Mexico fisheries are also being adversely affected by non-fishing related impacts. Essential fish habitat is degraded as a result of excessive levels of nutrients entering the Gulf from farm and urban run-off into the Mississippi River. Nutrients foster algae blooms that result in depletion of oxygen in Gulf waters. Over the past several years, a “dead zone” measuring more than 6,000 square miles has been documented each summer at the mouth of the Mississippi River off the coasts of Louisiana and Texas. The dead zone damages benthic communities – an important part of the Gulf food web – and kills all marine life unable to leave the oxygen-depleted zone.

To address this problem, Congress may support federal programs to reduce nutrient run-off upstream. One such program, the USDA’s Conservation Reserve Enhancement Program, helps the federal government join forces with states to pay farmers to turn marginal farmland into buffers of trees and grasses to trap and filter sediment and other farm run-off before it pollutes nearby rivers and streams. Congress may also enhance the EFH consultation requirement, currently in the Act, by providing that federal agencies must ensure that their actions are not likely to adversely impact essential fish habitat.

Summary

Reauthorizing the Magnuson-Stevens Act provides an opportunity to address problems in the Gulf. The Congress may act to provide a full range of fishery management tools and encourage government managers to introduce new conservation measures and reduce external threats to the Gulf. Well-designed programs based on this authority would help us move closer to achieving the objectives of the Act.

The Marine Fish Conservation Network

The Marine Fish Conservation Network (Network) is a coalition of national and regional environmental organizations, commercial and recreational fishing groups, and marine science groups dedicated to conserving marine fish and promoting their long-term sustainability.

The Network's primary objective is to make conservation the number one priority of fisheries management. In furtherance of this objective, the Network has analyzed existing federal fisheries management policies to determine whether changes are needed to insure that such policies adequately promote marine fish conservation. The Magnuson-Stevens Act is the principal mechanism for conserving and managing living marine resources off our coasts, and for the reasons discussed below, the Network has determined that significant changes are necessary to improve the law's effectiveness.

The Network has prepared "A National Agenda to Protect, Restore, and Conserve Marine Fisheries," which explains the problems with current federal policies and what changes are needed to protect, restore, and conserve marine fish.

Introduction to the Issues

Marine fish are a precious natural resource of enormous ecological, economic, and social value. They are major components of ocean ecosystems, as well as an important source of food, employment, and recreation. Healthy marine fish populations contribute significantly to the national economy and enhance our quality of life, but only if used and managed wisely.

In 1976, Congress passed the Magnuson Fishery Conservation and Management Act, empowering eight regional fishery management councils and the National Marine Fisheries Service (NMFS) to serve as stewards of our living marine resources. Nearly a quarter century later, many of this country's fisheries are depleted or in decline. In response to rampant overfishing, bycatch (the incidental capture of non-target fish and other marine animals), loss of habitat, and other threats to our fisheries, Congress passed the Sustainable Fisheries Act (SFA) in 1996. This landmark legislation amended the newly renamed Magnuson-Stevens Act with strict new mandates to stop overfishing, rebuild all overfished stocks, minimize bycatch, and protect essential fish habitat.

Even with the SFA in place, overfishing continues because of, among other reasons, prolonged rebuilding periods for overfished populations. Uniformly, fishery managers have failed to effectively reduce bycatch, or to reduce the harmful effects of fishing on marine habitats. NMFS reports that approximately one out of three U.S. fisheries, where the status is known, are overfished, many of these severely. The status of approximately two-thirds of the remaining managed marine fish is unknown. These dismal statistics highlight the critical need in fishery management to get serious about rebuilding the nation's fisheries to sustainable levels. These problems should be considered in the upcoming reauthorization of the Magnuson-Stevens Act. Amendments are necessary to make conservation the number one priority of fisheries management.

Essential for Sustainable Fisheries

The Marine Fish Conservation Network believes, for the reasons discussed below, that substantial changes in the Magnuson-Stevens Act are essential to protect, restore, and conserve the nation's marine fish.

The goals of the Network are to:

- Ô Conserve Marine Ecosystems
- Ô Eliminate Overfishing of All Species
- Ô Avoid Bycatch
- Ô Protect Essential Fish Habitat
- Ô Ensure Adequate Observer Coverage and Data Collection in All Fisheries
- Ô Ensure Broad Public Representation on Regional Fishery Management Councils
- Ô Improve U.S. Management of Highly Migratory Species
- Ô Ensure New Conservation Principles for Implementing Individual Fishing Quotas are Adopted Before Lifting the Moratorium

Network Goals

Conserve Marine Ecosystems

Fishery managers and scientists recognize the need to expand traditional single-species fishery management planning to include ecosystem considerations. This includes, but is not limited to, interactions between key predator and prey species within an ecosystem, as well as the habitat needs of living marine resources and other limiting factors in the environment.

Commonly referred to as ecosystem-based management, this concept supports the precautionary approach to fishery conservation, especially when the ecosystem effects of fishing are uncertain. The precautionary approach requires managers to act to avoid likely harm before causes and effects are clearly established. We strongly believe that the key to an effective ecosystem approach is to manage fish more conservatively.

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

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

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

Eliminate Overfishing of All Species

The Magnuson-Stevens Act mandates that conservation and management measures must prevent overfishing. But in too many cases, managers still react to overfishing after it occurs and continue to interpret the law and regulations to allow overfishing. Managers are extending periods allowed for rebuilding to the maximum allowable time, 10 years, under the Magnuson-Stevens Act and, in some cases, beyond those limits. This "risk-prone" management increases the likelihood that stocks will not be rebuilt in even 10 years.

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

Contrary to Congressional intent, NMFS continues to define "conservation and management" in a way that places at least equal emphasis on preserving present profits as on conserving fish resources for the future. Some managers also use scientific uncertainty as an excuse to allow overfishing to continue in order to minimize short-term economic impacts. Consequently, the long-term sustainability and economic productivity of U.S. fish populations continues to be jeopardized.

Fishing for some species, during particularly vulnerable life stages has placed those fish at risk. Grouper and snapper, for example, have been known by fishermen for years to spawn in the same locations and at the same times. Historically, the difficulty for even the best fishermen to return each year to the same location provided some limited protection for the fish, but improved navigation technology has removed that protection. Removal of this safeguard contributes to overfishing and delays or prevents timely rebuilding of fish populations. These vulnerable fish populations need to be identified and protected.

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

- Ô prohibit overfishing of all stocks in a mixed stock fishery;
- Ô require councils to emphasize biological and ecological factors over economic factors in decision making and drafting of fishery management plans (FMPs);
- Ô require that each council provide added protection for stocks during spawning and other particularly vulnerable life stages; and
- Ô mandate the application of the precautionary approach to fisheries management by requiring that management measures include a safety margin to buffer against scientific uncertainty.

Avoid Bycatch

Bycatch is the indiscriminate catching of fish and marine life other than those a fishing vessel intends to capture. This includes fish that are not the target species, sex, size, or quality. It also includes many other fish and marine life that have no economic value but are ecologically important, such as starfish, sponges and skates. Primarily, bycatch results from fishing practices and gear that are not

selective. In addition to visible mortality, fish and other sea life are sometimes killed or injured when passing through or escaping fishing gear, and through “ghost fishing” from abandoned or lost gear.

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

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

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

- ◌ strengthen national policies to put priority on avoiding bycatch in marine fisheries;
- ◌ refine the definition of bycatch to more specifically address the root cause of this problem: non-selective fishing gear; and
- ◌ develop a more specific set of requirements to hold fishery managers accountable for implementing national bycatch avoidance standards.

Protect Essential Fish Habitat

Essential fish habitats (EFH) are those waters and substrates on which fish are dependent to reach maturity and reproduce. The SFA requires action to describe, identify, conserve, and enhance EFH. The law and regulations require councils “to prevent, mitigate, or minimize” identified adverse effects from fishing unless it is not practicable to do so. Most councils say that the fisheries under their jurisdiction do not adversely impact EFH or that they did not have enough information to take action. Unfortunately, NMFS accepted these excuses. The “to the extent practicable” language in the law’s EFH requirement is clearly being used as a loophole to avoid action, as is the familiar “lack of information” refrain.

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

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

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

Establish and Fund Mandatory Fishery Observer and Enforcement Programs

Objective observation and data collection are vital to effectively manage marine fish and fisheries. Managers’ ability to address the problems of overfishing, bycatch, and degradation of EFH can be limited by lack of accurate and reliable information on a fishing vessel’s catch, including bycatch. This information is important to meet the objectives of the Magnuson-Stevens Act by promoting sustainable fishing.

Currently, most regulations must be enforced at sea. With a small force of agents burdened with a mounting number of rules to enforce and fishers to enforce them upon, violators know the chances of being caught are slim. As a result, compliance with fishery laws is often poor.

To address these concerns, legislative changes are needed to:

- ◌ establish a mandatory fishery observer program for all federally managed fisheries;
- ◌ fund observer programs with a user fee based on value and applied to all fish landed and sold in the United States; and
- ◌ increase funding for monitoring and enforcement activities.

Reform Regional Fishery Management Councils

Although regional fishery management councils are charged with managing the nation’s marine fish for all Americans, representatives of fishing interests dominate the councils. Interests of the general public, as well as non-consumptive users of marine fish, such as

divers, are not adequately represented on the councils.

Marine fish are public resources. Decisions regarding their management should be made in the public interest, not simply the economic interest of the fishing industry. Accordingly, representatives of the public interest must sit on regional fishery management councils.

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

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

Conserve Atlantic Highly Migratory Species

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

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

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

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

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

Similarly, the ATCA should be amended to:

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

Individual Fishing Quotas

Individual fishing quotas (IFQs) grant the privilege to harvest certain amounts of fish to individuals. The SFA placed a moratorium on the submission, approval, or implementation of any FMP that creates an IFQ program until October 1, 2000.

The Marine Fish Conservation Network supports extending the moratorium on IFQs until and unless Congress addresses all of the Network’s conservation principles. Standards must be adopted that, among other things, clarify that IFQ programs:

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

Provide Adequate Funding for Fisheries Research & Conservation

The status of nearly two-thirds of the species managed under the Magnuson-Stevens Act is unknown due in large part to lack of funding for basic research. Even where general population trends are known, the data are often imprecise, which can undermine the ability of managers to respond to overfishing in a timely and effective manner. There are critical gaps in fishery catch statistics, both in terms of the amount of information collected and the adequacy of the collection systems. These gaps deny managers essential information on the current levels of commercial and recreational harvest, as well as, fish discarded and landed. These research and information shortfalls are largely the result of chronic underfunding, as is the poor state of habitat and ecosystem-based studies.

To address these problems, legislative changes are needed to:

- Ô increase funding for management-related scientific research and data collection; and
- Ô if new appropriations are not available, re-prioritize existing funds and develop new, innovative sources of funding.