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HEARING:
REAUTHORIZATION OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT: OVERSIGHT OF FISHERIES MANAGEMENT SUCCESSES AND CHALLENGES

BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST GUARD
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Good afternoon, Chairman Sullivan and Members of the Subcommittee. My name is A. G. "Spud" Woodward, and I am the director of the Coastal Resources Division of the Georgia Department of Natural Resources. I have served in this position since 2009 following eight years as chief of marine fisheries management and fourteen years as a marine fisheries biologist. I am a past member of the South Atlantic Fishery Management Council (SAFMC) and currently serve as Georgia's administrative commissioner on the Atlantic States Marines Fisheries Commission. I appreciate the opportunity to provide testimony about the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and how it has affected the citizens of the State of Georgia.

While it is the largest state east of the Mississippi River, Georgia has a small coastline – 100 miles - but one rich in natural treasures. For centuries, the occupants of this area have depended on the estuaries and adjacent Atlantic Ocean for their sustenance. Today, recreational and commercial fishing are economically and socially important aspects of life along our coast generating a half billion dollars of economic impact to the region and contributing to a $2 billion tourist economy.
While the monetary value of our saltwater fishing is small compared to that of our neighbor Florida and certainly when compared to the Pacific Northwest, I think it important to consider that the true value of recreational saltwater fishing cannot be measured solely in dollars and cents. Instead, the true value must be measured in the currency of fishing stories told and retold, photographs of memorable catches, the fresh seafood meal shared with family and friends, and the excitement that comes with anticipation of a day on the water. This value arises from opportunity and access to public trust waters and resources.

Yet, when we do look at the dollars and cents for our state, they are significant. Recent statistics released by the Outdoor Industry Association indicate that 58 percent of Georgians participate in outdoor recreation each year and that Georgia residents are more likely to participate in fishing than the average American. Outdoor recreation attracts millions of visitors to our state and many come for the fishing opportunities. Ultimately, outdoor recreation accounts for $27.3 billion in consumer spending, $8.1 billion in wages and salaries, and $1.8 billion in state and local revenue. Anything that eliminates or degrades these outdoor recreational opportunities adversely affects both the economy of Georgia and the quality of life of Georgians.

The Georgia Department of Natural Resources (DNR) is the state agency responsible for managing saltwater fishing as part of its mission to promote wise and sustainable human use of living marine resources and their habitats. The citizens of Georgia through their elected officials have done an exemplary job of protecting our coastal environment from the habitat loss and degradation that has occurred in many other Southeastern states. We are proud to say that we have one third of the saltmarsh remaining along the Atlantic Coast. Thanks to this abundance of habitat and proactive conservation measures, our tidal waters provide diverse and satisfying angling opportunities. We currently manage 30 species or species groups of saltwater fishes through state law using a flexible system that allows timely decision making based on sound science and public input. While our fishers are not always happy with the decisions made by our state legislature and board of natural resources, they are more willing to accept them as valid since they understand the process and have easy access to the DNR staff who are collecting and analyzing the data and making the recommendations.

Conversely, our anglers are very frustrated with federal fishery management. Five years of a red snapper harvest moratorium and this year's unprecedented closure of federal waters to the harvest of Atlantic migratory group cobia have left those who fish the South Atlantic totally dismayed. Ditto the thousands of Georgians who fish the Gulf of Mexico for red snapper. To them, federal fishery management has become nonsensical and overly legalistic. Sometimes it seems that way to those of us who work in marine fishery management at the state level. I do not fault the employees of the regional fishery management councils and the NOAA Fisheries as they are charged with managing a multitude of species over wide geographic areas in a fishery management system that is highly prescriptive and appears to put fish ahead of people.

As the committee is well aware, previous efforts to address the unintended consequences of the 2007 revision of the MSA have been unsuccessful. Thus, regional council members and NOAA Fisheries employees remain unable to exhibit the flexibility needed to ensure management decisions properly balance fish stock health and the needs of humans. I would like to offer two specific examples of why the MSA must be amended.

South Atlantic Red Snapper

In the South Atlantic region, the red snapper is an iconic species prized by seafood lovers and targeted by anglers and commercial fishers. For many years, the species was managed through a combination of size and creel limits, and the stock was considered to be in a healthy condition. However, in 2008, an assessment conducted through the Southeastern Data Assessment and Review (SEDAR) process indicated that overfishing was occurring. Reductions in harvest were necessary to end overfishing despite evidence that the stock status was improving in the most recent years of the data series used in the assessment. Management options to reduce fishing effort and rebuild the stock while allowing some level of harvest were identified. However, those options were not available to the SAFMC because they would have resulted in continued overfishing beyond the date mandated by the requirements of the revised MSA. Recreational and commercial fishers vehemently challenged the validity of the stock status determination and the necessity of a total harvest moratorium and possible large-scale area closure of the Atlantic Ocean to all bottom fishing.

A South Atlantic red snapper stock assessment conducted in 2010 confirmed that biomass was increasing due to a strong year class entering the population. The SAFMC was able to avoid the large-scale area closures but still had to reduce harvest with draconian measures in order to comply with the MSA. From 2010 to 2016, NOAA Fisheries allowed 17 days of recreational harvest of red snapper from the South Atlantic with all harvest of red snapper prohibited in 2010, 2011, 2015, and 2016.

A 2016 assessment of South Atlantic red snapper was conducted through the SEDAR process in an effort to update the status of the stock. Council members and fishers were hopeful the assessment would reveal an improvement in stock status and fishing opportunities could be restored. The analytical model used to assess the red snapper stock relied on estimates of recreational fishing catch and effort - surveys of saltwater fishing guides and head boats and surveys of private

recreational anglers through the Marine Recreational Information Program (MRIP). Yet, there had been no legal harvest of red snapper in the South Atlantic since 2014 and minimal harvest since 2010. So, recreational fishing data available as model input was extremely sparse including the estimates of red snapper discards. Yet, these data were used. Although the assessment was impaired by acknowledged data deficiencies it was considered "the best scientific data available" leading to the conclusion that the status of the stock was unchanged – overfished and undergoing overfishing. In fact, the estimates of dead discards were considered to have exceeded the annual catch limit. Thus, NOAA Fisheries prohibited the harvest of South Atlantic red snapper again in 2017 exacerbating the already existing problem of data deficiencies and denying fishing opportunities to the citizens of Georgia for another year.

Since red snapper occur as part of a mixed-species fishery, it is impossible for anglers to avoid incidental catches especially when abundance of the species is increasing. Anglers are perplexed that despite all indications that the South Atlantic red snapper stock has rebounded they still cannot harvest a fish. Rather, they have two choices – discontinue fishing for bottom fish in habitats where red snapper occur or continue to discard an increasing number of incidentally-caught red snapper, a percentage of which will be considered as dead and counted against the annual catch limit. To their credit, an increasing number of anglers are voluntarily using descending devices to reduce the mortality of incidentally-caught red snapper. In fact, the marine industry and management are working collaboratively to increase descending device use and to insure the benefits of those devices are considered during the red snapper stock assessment process. However, these efforts will be for naught as long as we remain trapped in a situation where the SAFMC and NOAA Fisheries are bound by the rigid requirements of the MSA.

If these rigid requirements, especially timelines for ending overfishing and stock rebuilding, had not been in place in 2008, the SAFMC could have recommended a management approach to reduce fishing mortality and start the South Atlantic red snapper stock on the pathway to a more sustainable condition while still allowing some harvest. Instead, they were faced with difficult decisions that have resulted in unnecessary socio-economic costs, an increase in dead discards and associated waste of this valuable public resource, and a loss of confidence in federal fishery management. The ultimate solution to the South Atlantic red snapper conundrum is a change in the MSA to allow alternative management options for saltwater recreational fishing coupled with a realistic acceptance of the limitations of the data sources available for stock status determinations.

Atlantic Migratory Group Cobia

The cobia is a pelagic migratory species prized for its tenacity when hooked and as table fare. Found along the Atlantic Coast and throughout the Gulf of Mexico, the species is managed cooperatively by the Gulf of Mexico Fishery Management Council and SAFMC. The dividing line between the Gulf migratory group and the Atlantic migratory group is the Georgia/Florida boundary. New York is the northern boundary of the stock. In 2014, an annual catch limit of 620,000 pounds for the recreational sector was established for the Atlantic migratory group. The annual catch limit for the commercial sector is 50,000 pounds. This stock is not considered overfished or undergoing overfishing.

In recent years, MRIP recreational catch estimates for Atlantic migratory group cobia have been increasing and exceeded the annual catch limit in 2015 and 2016 by a wide margin. However, it must be stated that these catch estimates are imprecise due to the fact that cobia are encountered rarely by dockside survey clerks. For example, during the most recent 10-year period DNR creel survey clerks encountered a total of 49 cobia. Harvest estimates for the period ranged from 0 to over 250,000 pounds. Further confounding the situation is the fact that from 2011 through 2015, over 80% of the estimated recreational harvest of Atlantic migratory group cobia occurred in the state waters of North Carolina and Virginia.

In 2016, responding to concerns about cobia harvest in state waters, the Atlantic States Marine Fisheries Commission initiated development of an interstate fishery management plan for cobia pursuant to the Atlantic Coastal Fisheries Cooperative Management Act. As a proactive measure, the states of North Carolina and Virginia took measures to reduce harvest during the 2017. Yet, NOAA Fisheries made a determination that predicted levels of recreational harvest during 2017 would again exceed the annual catch limit. NOAA Fishery Bulletin 17-004, *Atlantic Cobia (Georgia to New York) Recreational Fishing Season is Closed in Federal Waters*, was issued January 25, 2017. This decision was made in full recognition of the high degree of uncertainty associated with the MRIP estimates.

Unlike the states of North Carolina and Virginia, cobia fishing in Georgia is prosecuted almost exclusively in federal waters. Cobia occur only sporadically in state waters and when caught are typically smaller than the state-law-mandated 33-inch minimum-length limit. Over the past 10

years, Georgia has accounted for 15% of the estimated Atlantic migratory group harvest by number, 13% by weight and 5% of the trips reported to have caught cobia. The federal fishery management plan for Atlantic migratory group cobia was not intended to allocate the cobia resource in favor of one state over another. However, the 2017 closure did just that in direct conflict with the language of National Standard 4 of the MSA. It is the position of DNR that closing federal waters was a de facto allocation of the annual catch limit to North Carolina and Virginia where anglers would still be able to catch and harvest cobia from their respective state waters during 2017.

It is also the position of DNR that the closure conflicted with MSA National Standard 8 by creating unnecessary negative economic impacts to the for-hire sector who rely on cobia fishing as a significant portion of their income during late spring. Furthermore, it can be argued that not allowing the harvest of cobia will increase regulatory discard mortality in conflict with National Standard 9 and would thereby "increase substantially the uncertainty concerning total fishing-related mortality." As the National Standard Guidelines suggest, increasing bycatch mortality "makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded."

DNR and the Georgia House of Representatives requested NOAA Fisheries reconsider the closure based on aforementioned information. These requests were refused, and Georgia anglers were denied an opportunity to harvest cobia without a commensurate conservation necessity or benefit. The Georgia General Assembly recognizes that fishing is a valued part of our heritage and plays an essential role in the state's economy. Fishing is so highly valued that the citizens' right to fish is protected under state law (Official Code of Georgia, Annotated 27-1-1). By closing federal waters to Georgia fishermen, the actions of NOAA Fisheries violated the rights of Georgia fishermen.

The situation with Atlantic migratory group cobia is illustrative of the fact that annual catch limits for recreational fisheries are impractical. It also illustrates how it is inappropriate to use estimated recreational catches with questionable accuracy and precision to determine compliance with annual catch limits. As this testimony is being prepared, the Atlantic States Marine Fisheries Commission has approved a draft interstate fishery management plan for cobia for public comment. As originally conceived, the intent was for this plan to compliment the federal plan. However, the commission is now requesting that NOAA Fisheries transfer management authority

for Atlantic migratory group cobia to the commission by removing it from the SAFMC Coastal Migratory Pelagics Fishery Management Plan. The commission is requesting this because it realizes that as long as Atlantic migratory group cobia are managed through the MSA as currently written and interpreted there will be the threat of a federal waters closure when recreational catch estimates exceed the annual catch limit. Given the historic variability of recreational catch estimates, this is likely to occur despite the efforts of states to control harvest. If this transfer were to happen, it would be the responsibility of the commission and not NOAA Fisheries to ensure that state regulations are such that the Atlantic migratory group is harvested at a sustainable level. This is similar to the approach taken for Atlantic-coast red drum, which was formerly managed under the MSA.

Recommendations

Despite our frustrations and those of our citizens, DNR acknowledges that we are better off with the Magnuson-Stevens Act (MSA) than without it. There are notable and measurable successes in the South Atlantic – black sea bass, red porgy, king and Spanish mackerel, and protection of long-lived and slow-growing deep-water corals. There are others where it is difficult to determine success such as the creation of marine protected areas and spawning special management zones. However, in terms of management of recreational fishing, especially red snapper and cobia, we see the MSA as a failure. It is the position of DNR that changes must be made to improve management of marine recreational fishing through the MSA. I offer some recommendations from a state perspective.

<u>Restoring Flexibility</u>

As evidenced by the examples I have presented, the 2007 MSA reauthorization has made it very difficult and in some cases impossible for the regional councils and NOAA Fisheries to apply the principle of adaptive management in managing fisheries. It has also forced them to set unrealistic goals such as ending overfishing within two years and rebuilding depleted stocks within 10 years. While it is admirable to set goals that are uniform across all federally-managed fisheries, the "one size fits all" approach to managing marine species with widely varying life cycles, habitat requirements, and vulnerability to fishing mortality cannot work when applied from the Western Pacific to the South Atlantic. Rather than set prescriptive goals, the MSA should allow the decision makers to use their best judgement to determine how best to eliminate overfishing and rebuild stocks without eliminating all opportunities for access to the fish. When created by the

original MSA, the regional councils were designed for that very purpose. However, under the current version of MSA they cannot fulfill that purpose.

Annual Catch Limits

In theory, annual catch limits are a reasonable way of preventing overfishing and rebuilding stocks that are overfished. However, we now know that using annual catch limits in recreational fisheries is not the best approach. As previously mentioned, MRIP has been improved but still lacks the temporal and spatial resolution and accuracy and precision needed for recreational quota monitoring. MRIP and its predecessor, the Marine Recreational Fisheries Statistics Survey were designed to produce high-level trend information, not data with the resolution needed to monitor harvest with state or regional specificity to the pound and day of catch. Yet, since MRIP is often considered "the best scientific information available" it is used to determine compliance with annual catch limits. We find ourselves in a situation where a fishery may be open one year and severely restricted or closed the next due to wide swings in recreational catch estimates. This is very frustrating to state resource managers and to fishers, especially the commercial and for-hire sectors who depend on predictability when making their business plans. A change in the MSA is needed so alternative management approaches are available that are better suited for managing recreational fisheries.

Stock Assessments

I think we all can agree that fishery management plans should be based upon the best scientific information available. We have a system where sophisticated stock assessments are the benchmark for "best". However, this "best" is sometimes woefully inadequate when decisions are being made that affect livelihoods and fishing communities. While great strides have been made to improve recreational catch-and-effort data collection, there are still deficiencies that cannot be mitigated by the sophisticated modeling approaches currently favored for stock status determinations in the Southeast. A three-prong approach is needed – continued improvement in recreational data collection through increased funding and methodological advances, more reliance on fishery-independent data sources, and acceptance that sophisticated modeling approaches are not a panacea.

Currently, 75 species are managed by the SAFMC, with 55 in the snapper-grouper complex. However, stock assessment capacity in the Southeast through the SEDAR process is been low

when compared to other parts of the country. In fact, there is one NOAA Fisheries Science Center to serve three regional councils in the Southeast – Gulf of Mexico, South Atlantic, and Caribbean. In 2017, only three assessments of SAFMC-managed stocks are scheduled to be completed under the SEDAR process. If we continue using a fishery management system that depends on stock assessment results as a measure of success or failure, then stock assessment capacity in the Southeast must be improved. DNR has one staff person out of the twenty working in marine fisheries management who is knowledgeable about modern fish stock assessment methods. The priority for this person is not to actually do stock assessments but rather to represent Georgia when interstate and federal fishery management stock assessments are being conducted to ensure that our data and perspectives are considered during the process.

Effecting Change

DNR is encouraged by the efforts of Congress to amend the MSA so that we can manage marine fisheries in a manner that places equal value on people and fish. We commend Congressman Don Young (R-AK) for sponsoring H.R. 200, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, which offers the following improvements which are considered priorities by DNR:

- Basing fish stock rebuilding timeframes on biology rather than on an arbitrary, one-size-fits all deadline;
- Providing flexibility in ceasing a rebuilding plan when it is determined to no longer be necessary;
- Giving regional management councils the flexibility to use ecosystem changes and economic needs of fishing communities when setting annual catch limits;
- Exempting certain stocks where annual catch limits may not be appropriate, such as spiny lobster and dolphin;
- Providing flexibility in the management of recreational fisheries, such as fishing mortality rate targets and alternative rebuilding strategies;
- Repealing Section 407(d) because this section is outdated and should be removed given it addresses creation of an Individual Fishing Quota (IFQ) program and catch limits for red snapper. Gulf red snapper has an IFQ program, and catch limits are now addressed elsewhere in the Magnuson Stevens Act. Removal of this section also would allow the Council to consider needed modifications to the red snapper IFQ program without always needing a referendum.

- Increasing public involvement and transparency when scientific data are developed;
- Prioritizing improvements to data collection and stock assessments, particularly in the Southeast;
- Forming a federal-state partnership program to improve data collection for recreational anglers; and
- Adding a definition for "depleted" and requesting NOAA to indicate why a species is depleted, which might not be related to fishing.

In addition to H.R. 200, H.R. 2023, the Modernizing Recreational Fisheries Management Act, has been introduced by Congressmen Graves (R-LA), Green (D-TX), Webster (R-FL), and Wittman (R-VA). The companion S. 1520 has been introduced by Senators Wicker (R-MS), Nelson (D-FL), Blunt (R-MO), Schatz (D-HI), Kennedy (R-LA) and Manchin (D-WV). These include the following reforms of importance to DNR:

- Repealing Section 407(d) of Magnuson and giving Councils the authority to use alternative fishery management measures for recreational fisheries;
- Instituting a moratorium on LAPP for mixed-use fisheries in the Gulf of Mexico and South Atlantic. Basing rebuilding time frames on biology, stock status, and the needs of fishing communities;
- Giving regional fishery councils the flexibility to consider changes in ecosystem and economic needs of communities when setting annual catch limits and removing annual catch limit requirements for certain criteria.
- Including affected states in review of proposed exempted fishing permits to ensure the proposed activity is consistent with management and conservation objectives, and that social and economic impacts are minimal;
- Creating best practices for state-administered recreational data collection programs and providing funding for improvement of state data collection programs;
- Facilitating greater incorporation of data, analysis, stock assessments, and surveys from state agencies and non-governmental sources and following through with recommendations of the NAS for evaluation of whether MRIP use is compatible with current management; and
- Within 90 days of enactment, Secretary of Commerce must enter into agreement with NAS to review if MRIP is compatible with the needs of in-season management of annual catch limits, including whether in-season management of annual catch limits is appropriate for all recreational fisheries.

Conclusion

Throughout my career as a manager of public trust resources, I have tried to adhere to the ethical doctrine of the medical profession, "first, do no harm". Just as physicians have discovered that, when taken literally, this is an impossible task, so I have discovered that it is impossible to manage a fishery without harm, either perceived or real, to someone. This harm may come in the form of lost wages for a commercial fisher or disappointment on a child's face when they can't keep the first fish they catch because of harvest regulations. However, like my peers, I believe that the harm is far outweighed by the ultimate benefit of sustainable fisheries and fishing opportunities in perpetuity.

DNR believes that the MSA has done more good than harm for the citizens of Georgia and the United States. However, as with all things in life we must learn from our mistakes and make changes. It is our sincere hope that these changes will better align the letter of the law with the spirit of the law and set a new course for managing the nation's fisheries through the Magnuson-Stevens Act. Mr. Chairman, thank you again for the opportunity to testify.