

Subcommittee on Water, Power and Oceans  
Doug Lamborn, Chairman  
Hearing Memorandum

July 17, 2017

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff, Subcommittee on Water, Power and Oceans (x5-8331)

Hearing: Oversight Hearing on “*Exploring the Successes and Challenges of the Magnuson-Stevens Act.*”

---

**On Wednesday, July 19, 2017, at 2:00 p.m. in 1324 Longworth House Office Building**, the Water, Power and Oceans Subcommittee will hold an oversight hearing on “*Exploring the Successes and Challenges of the Magnuson-Stevens Act.*”

**Policy Overview:**

- Recreational and commercial fishing industries are significant drivers of the U.S. economy. Together, the U.S. seafood industry and the recreational fishing industry generate **\$208 billion** in sales impacts and contribute \$97 billion to the U.S. gross domestic product.<sup>1</sup> Additionally, these industries support upwards of 1.6 million U.S. jobs.<sup>2</sup>
- Unfortunately, in recent years, access for commercial and recreational fishing has eroded due to poor science, overbearing regulations, and abuse of Marine Protected Areas – such as Marine National Monuments and Marine Sanctuaries – that often prohibit various fishing activities.
- According to the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS), nearly 90 percent of federally managed fisheries fall below their annual catch limits,<sup>3</sup> meaning that our commercial and recreational fishermen are not being allowed to harvest at maximum sustainable levels.
- This hearing will begin to explore issues facing a number of federally managed recreational and commercial fisheries and identify possible solutions, including potential areas to update the federal fisheries framework via reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.

---

<sup>1</sup> [U.S. Department of Commerce: \*Fisheries Economics of the United States 2015\*. May 2017](#)

<sup>2</sup> [Id. at 1](#)

<sup>3</sup> [http://www.nmfs.noaa.gov/sfa/laws\\_policies/msa/](http://www.nmfs.noaa.gov/sfa/laws_policies/msa/)

**Invited Witnesses (listed in alphabetical order):**

*Mr. Jeff Kaelin*

Government Relations  
Lund's Fisheries, Inc.  
Cape May, New Jersey

*Mr. Sean Martin*

President  
Hawaii Longline Association  
Honolulu, Hawaii

*Mr. Nick Wiley*

Executive Director  
Florida Fish and Wildlife Conservation Commission  
Tallahassee, Florida

*Mr. Charles Witek*

Recreational Angler and Outdoor Writer  
West Babylon, New York

**Background:**

*Overview of the Magnuson-Stevens Act*

The Magnuson-Stevens Fishery and Conservation Management Act, commonly referred to as the "Magnuson-Stevens Act," or "MSA," was first enacted in 1976<sup>4</sup> and since then, has been the primary law governing fisheries resources and fishing activities in federal waters. The Secretary of Commerce, working through the National Oceanic and Atmospheric Administration (NOAA), enforces the MSA.

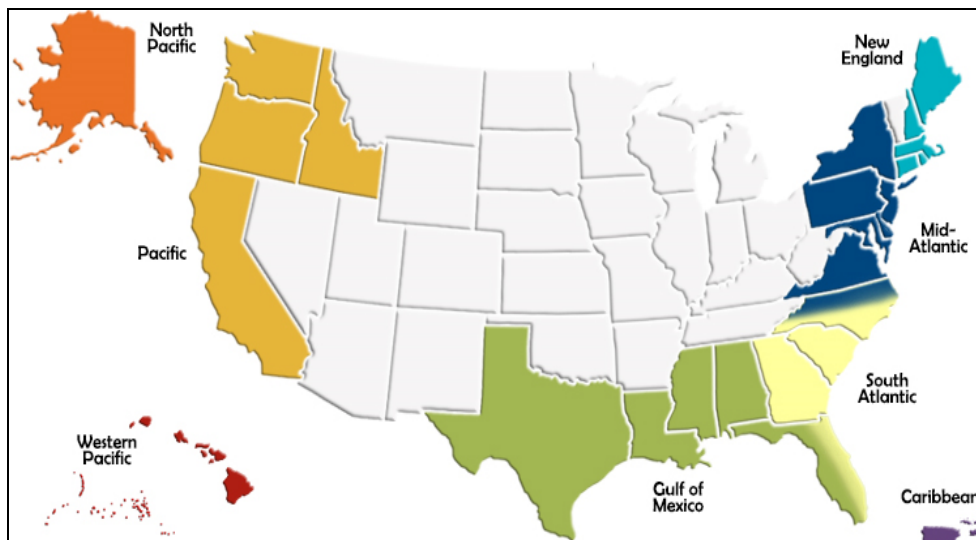
There are three primary purposes of the Act: 1) to manage and conserve the Nation's fishery resources; 2) to work to develop and implement international cooperation on fishery conservation; and 3) to promote fishery production to maintain an optimum yield from each fishery. Optimum yield is maximum level of fish that can be taken from a fishery while allowing it to maintain a healthy population.<sup>5</sup> This calculation includes ecological, social, and economic factors in determining what the optimum yield for each fishery may be. The principle of

---

<sup>4</sup> [Public Law 94-265, April 13, 1976](#)

<sup>5</sup> [National Marine Fisheries Service: National Standard Guideline 1 \(50 C.F.R. 600.310\)](#)

optimum yield requires the councils to achieve a balance among users and between science and economics by allocating resources among various and often competing users.<sup>6</sup>



*Image 1: The eight Fishery Management Councils established by MSA*  
*Source: NOAA Fisheries*

As seen in Image 1, the original MSA created eight regional Fishery Management Councils (Councils) charged with implementing the above purposes of MSA, in coordination with NOAA.<sup>7</sup> These Councils are made up of: a state representative from the state agency with the responsibility for marine fisheries management for each affected state; representatives of NOAA and other appropriate Federal agencies (the regional director of the Fish and Wildlife Service for the region, the commandant of the Coast Guard for the region, the executive director of the Marine Fisheries Commission for the region, and a representative of the State Department serve as non-voting members of each Council); and individuals from the commercial and recreational fishing industry or individuals with other fishery expertise.<sup>8</sup> These private individuals are nominated by the Governors of the affected states and are appointed by the Secretary of Commerce. Governors submit a roster of three names for each open seat and the Secretary is required to choose from these lists.

The Councils are charged with implementing the Act, in coordination with NOAA's National Marine Fisheries Service (NMFS), and in accordance with 10 National Standards<sup>9</sup> which are included in the Act and are the guiding principles for the conservation and management of the domestic fishery resources. National Standard 1 requires that conservation and management measures prevent overfishing while achieving the optimum yield from each

---

<sup>6</sup> [Id at 5](#)

<sup>7</sup> [16 U.S.C. 1852](#)

<sup>8</sup> [Id at 7](#)

<sup>9</sup> [National Marine Fisheries Service: National Standards Guidelines \(50 C.F.R. 600.310 et seq.\)](#)

fishery.<sup>10</sup> This requires a balancing act between conservation of the Nation’s fishery resources and providing the optimum yield for the domestic fishing industry. In addition, National Standard 2 of the Act requires Councils to establish conservation and management measures based on “the best scientific information available”.<sup>11</sup>

To meet these National Standards, Councils prepare a fishery management plan (FMP) for each fishery under their jurisdiction.<sup>12</sup> FMPs are often developed for more than one stock of fish, such as the Gulf of Mexico reef fish management plan. These FMPs require scientific assessments of the fishery resources and then the issuance of allocations of catch for the domestic fishing fleet - often requiring separate allocations between different sectors of the fishing industry (commercial, recreational, and charter sectors).<sup>13</sup> Once the FMP has been approved by the respective Council, it is sent to the Secretary of Commerce for approval. Once approved, the FMP is codified by regulation issued by the Secretary.

### *Magnuson-Stevens Act Reauthorization History*

There have been two major overhauls of MSA since the law was originally enacted. In 1996, the Sustainable Fisheries Act (P.L. 104–297)<sup>14</sup> was enacted. This was the first major reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. It included three major new provisions designed to maintain a healthy fishery resource. These provisions dealt with: 1) minimizing bycatch;<sup>15</sup> 2) identifying and protecting essential fish habitat;<sup>16</sup> and 3) identifying overfished fisheries and with a requirement that they be rebuilt within a specific timeframe.<sup>17</sup>

This last provision required that rebuilding plans be put in place for all overfished fisheries and that these rebuilding plans, with some limited exceptions, needed to rebuild the fishery within ten years.<sup>18</sup> Concern has been raised by the fishing industry about the harmful economic effects on fishery dependent communities as a result of the short rebuilding timeframes. According to Bonnie Brady, Executive Director of the Long Island Commercial Fishing Association: [n]othing has destroyed our local New York fish economies more than the unintended consequences of a rigid, ten-year timeline for rebuilding a fishery...<sup>19</sup> Congressman Don Young (R-AK) has introduced H.R. 200, the *Strengthening Fishing Communities and*

---

<sup>10</sup> [National Marine Fisheries Service: National Standard Guideline 1 \(50 C.F.R. 600.310\)](#)

<sup>11</sup> [National Marine Fisheries Service: National Standard Guideline 2 \(50 C.F.R. 600.315\)](#)

<sup>12</sup> [16 U.S.C. 1853](#)

<sup>13</sup> [Id at 12](#)

<sup>14</sup> [Public Law 104-297, October 11, 1996](#)

<sup>15</sup> [Id at 14, Section 106](#)

<sup>16</sup> [Id at 14, Section 110](#)

<sup>17</sup> [Id at 14, Section 109](#)

<sup>18</sup> [Id at 14, Section 109](#)

<sup>19</sup> [Official Testimony Submitted by Bonnie Brady, Executive Director of the Long Island Commercial Fishing Association, to the House Committee on Natural Resources, December 7, 2015, pg 3](#)

*Increasing Flexibility in Fisheries Management Act*, to address this issue by affording flexibility in the rebuilding timeframes that would allow Councils to take economic factors such as the effects of the fishing restrictions on the fishing communities into account while still rebuilding the fishery.<sup>20</sup>

The second major reauthorization of MSA was The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (P.L. 109-479),<sup>21</sup> which was signed into law on January 12, 2007. The main provisions of this reauthorization included: 1) a requirement that a council may not set harvest levels above the level recommended by the council's Scientific and Statistical Committee (SSC);<sup>22</sup> 2) a requirement that each fishery management plan have a mechanism for setting an Annual Catch Limit (ACL) at a level to ensure overfishing is not taking place;<sup>23</sup> 3) a requirement that the fishery management plans also have measures for ensuring accountability (Accountability Measures or AMs);<sup>24</sup> and 4) new guidelines for the development of Limited Access Privilege Programs (LAPPs).<sup>25</sup> The 2006 amendments also required NOAA to establish a program to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey no later than January 1, 2009.<sup>26</sup>

Last Congress, in an effort to address some of the issues with MSA and the previous reauthorizations of the Act, the House passed H.R. 1335, the *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act* (Rep. Don Young, R-AK).<sup>27</sup> Specifically, H.R. 1335 increased transparency in the development of fishery science and the management decisions,<sup>28</sup> empowered regional management bodies by giving them flexibility under federal law to tailor management plans to regional needs,<sup>29</sup> increased state and local data use in federal fisheries management decisions,<sup>30</sup> and ensured consistency in federal fishery management by clarifying that the Magnuson-Stevens Act should govern federal fisheries even in areas such as marine sanctuaries and monuments.<sup>31</sup> Unfortunately, H.R. 1335 never received legislative action by the U.S. Senate prior to the end of the 114<sup>th</sup> Congress.

---

<sup>20</sup> [H.R. 200, the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, introduced by Congressman Don Young, 115<sup>th</sup> Congress, Section 4](#)

<sup>21</sup> [Public Law 109-479, January 12, 2007](#)

<sup>22</sup> [Id at 21, Section 103](#)

<sup>23</sup> [Id at 21, Section 103](#)

<sup>24</sup> [Id at 21, Section 104](#)

<sup>25</sup> [Id at 21, Section 106](#)

<sup>26</sup> [Id at 21, Section 201](#)

<sup>27</sup> <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=398439>

<sup>28</sup> [H.R. 1335, introduced by Congressman Don Young on March 4, 2015, 114<sup>th</sup> Congress, Sec. 7](#)

<sup>29</sup> [Id at 28, Sec. 5](#)

<sup>30</sup> [Id at 28, Sec. 10](#)

<sup>31</sup> [Id at 28, Sec. 15](#)

There are a number of bills that have been introduced in the 115<sup>th</sup> Congress to reform federal fisheries management of commercial and recreational fisheries. Most notably are Congressman Don Young's (R-AK) MSA reauthorization bill, H.R. 200, the *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act*,<sup>32</sup> and Congressman Garret Graves' (R-LA) H.R. 2023, the *Modernization Recreational Fisheries Management Act of 2017*.<sup>33</sup> While H.R. 2023 makes targeted reforms to MSA to address numerous struggles that recreational fisheries across the U.S. have faced with federal fisheries management, the bill is largely born from issues faced in recent years by the red snapper fishery in the Gulf of Mexico (Gulf). Despite increased numbers of the stock biomass, the federal season for recreational anglers in the Gulf has dropped from 194 days in 2007<sup>34</sup> to just three days in 2017.<sup>35</sup> Some have contributed the decrease in federal days for recreational anglers to poor science being used to justify the seasons and a lack of an accurate, workable recreational data collection and analysis system at NOAA.<sup>36</sup> To address the historically short 2017 Gulf red snapper recreational federal season, each of the five Gulf States teamed up with the Secretary of Commerce to come to an agreement to prematurely shut down state red snapper seasons in return for an extended season in federal waters.<sup>37</sup> In return for shorter recreational red snapper seasons in state waters, the federal water season for recreational anglers in the Gulf was extended to 39 days.<sup>38</sup>

Ultimately, this hearing will explore a number of regional successes and challenges – including red snapper and others in the Gulf – associated with federal fisheries management under the Magnuson-Stevens Act. Stakeholders from various regions will testify to specific management challenges they have faced and highlight reforms that could be made to the underlying act to afford regional fishery managers and the Secretary of Commerce the flexibility they need to tailor management plans to the unique circumstances of different fisheries – both commercial and recreational – in different regions across the U.S.

---

<sup>32</sup> [H.R. 200, introduced by Congressman Don Young on February 10, 2017, 115<sup>th</sup> Congress](#)

<sup>33</sup> [H.R. 2023, introduced by Congressman Garret Graves on April 6, 2017, 115<sup>th</sup> Congress](#)

<sup>34</sup> [National Oceanic and Atmospheric Administration: 2017 Gulf of Mexico Red Snapper Recreational Season Length Estimates, May 2, 2017, pg 6](#)

<sup>35</sup> [Id at 34, pg 2](#)

<sup>36</sup> [Official Testimony Submitted by Bob Zales, President of the National Association of Charterboat Operators, to the Committee on Natural Resources, October 22, 2015](#)

<sup>37</sup> [Department of Commerce press release, June 14, 2017](#)

<sup>38</sup> [Id at 38](#)