



*Managing the needs of our customers through our commitment to sustainable fisheries*

Statement of Testimony  
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Cape May, New Jersey  
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Before the House Natural Resources Committee's Subcommittee on Water, Power  
and Oceans on  
**"Exploring the Successes and Challenges of the Magnuson-Stevens Act"  
(MSA)**

Chairman Lamborn, Ranking Member Huffman, Vice Chairman Webster and distinguished Members of the Subcommittee, thank you for the opportunity to speak with you today on the need for reauthorization of the MSA in this Congress, and in strong support of H.R. 200. I want to thank Congressman Young for sponsoring this bill and for leading efforts to maintain productive and sustainable U.S. fisheries. We also want to thank Secretary Ross for his important focus on achieving optimum yield (OY) from each United States fishery while preventing overfishing, which this bill will help to facilitate across the country and within the GARFO region.

Many of us have been involved in previous reauthorizations which used to occur with some regularity and with broad national and regional agreement. Although that has clearly not been the case over the last decade or so, our recreational and commercial fishing opportunities will be needlessly limited, from both an ecosystem and community resilience perspective, if reforms cannot be advanced this year.

My comments today are on behalf of my employer, Lund's Fisheries, in Cape May, New Jersey but I want to give credit to Mr. Greg DiDomenico, Executive Director of the Garden State Seafood Association, for his assistance with this testimony and for emphasizing the need to immediately reauthorize this fundamental Federal fisheries law to the benefit of our coastal communities and U.S. seafood consumers.

In addition to my comments being coordinated with Mr. DiDomenico, I have also referred to the 2014 Mid-Atlantic Fishery Management Council's (MAFMC) comments on an earlier version of this bill, written while I was privileged to serve as a Council member. Today, the MAFMC is undergoing at least the third rewrite of its risk policy around setting science-based Allowable Biological Catch control rules (ABCs), which points out the need to continually attempt to apply flexibility in balancing resource and community sustainability under the rigid standards of the

Act as currently written. I also referred to the Council Coordinating Committee's June 2017 working paper on reauthorizing the Act, which is still in development. My thanks go to the New England Council for making this paper available at their Portland meeting last month.

Lund's Fisheries, Inc. is a primary producer of fresh and frozen seafood and high-quality bait products for recreational and commercial fishermen in several US fisheries. We purchase, process and distribute nearly 30,000 metric tons of fresh and frozen fish annually. We have about 30 fishing vessels delivering a variety of products to our facility year round.

The majority of these vessels call Cape May their home port. Several are company-owned and we also work with independent vessels landing from Rhode Island, New York, Virginia, and North Carolina. Our east coast fishing grounds extend from the Gulf of Maine, south through Cape Hatteras, NC. The significant number of species we handle are managed by two federal councils and an interstate commission.

The 2006 Amendments and their subsequent implementation fundamentally altered the way domestic fishery resources are managed here. The core concept was to separate fish politics from science. Those new provisions focused on ending overfishing immediately, developing accountability in both recreational and commercial fisheries, rebuilding stocks as quickly as possible, and reducing fishing capacity through defining limited access programs -- all in the context of a more intensive reliance on science in the decision-making process.

When the Act was last reauthorized in 2006, we supported the science-based focus of the amendments and the adoption of hard catch limits. We already had a hard catch limit in the herring fishery that long ago and believe today that this has led to a sustainable coastwide Atlantic herring resource and fishery.

Since that time we have learned that improvements in this process can and should be made. Adaptive fisheries management would have us gather performance data and learn from the unintended consequences that are bound to occur and have occurred in managing the dynamic ocean environment that New Jersey's recreational and commercial fishing industries and communities rely upon for food, jobs and recreation. H.R. 200 provides us with that opportunity.

Since 2006, the U.S. seafood industry has lost access to robust fishery resources from the application of overly-precautious interpretations of the Act by attempting to rein in a changing marine environment on an annual basis or within a decadal timeframe. The result has been that a founding principle of the Act has been eroded to the extent where we have lost our collective ability to "achieve optimum yield on a continuing basis" in our region. Each fishing sector benefits from better science and the resulting predictability that it brings about, for employees and customers. We appreciate the fact that this bill will take us in this direction in the coming

years, utilizing a collaborative approach in developing better science by which better management decisions can be made.

It has turned out that, while the rigid nature of the time-certain, annual adjustments approach may have reduced or eliminated overfishing of some directed fisheries, an outcome that we certainly support, in many cases it has also led to significant underfishing of other stocks due to the domestic seafood industry being subjected to a seemingly repetitive, precautionary application of risk averse management culminating with significant, unpredictable quota reductions stemming from wildly fluctuating estimates of scientific uncertainty. This bill will help to minimize that uncertainty in the future and result in more U.S. jobs from the sea.

In 2009, and again in 2016, 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. Many of these recommendations we strongly support, such as the application of a mixed stock exception to the Act's annual ACL requirement in certain cases and the authorization for Optimum Yield (OY) to be expressed qualitatively in data poor situations. We urge the Subcommittee to use this bill to provide a statutory basis for these specific allowances in order to enhance flexibility in our region.

For the 2006 reauthorization to work there is a heavy reliance on high quality scientific information. Unfortunately, this is information that in most regions we simply do not have. The juxtaposition of insufficient data on many stocks with considerations of scientific uncertainty in the quota setting process has resulted in robust precautionary buffers and yields below MSY (Maximum Sustainable Yield) at the expense of the industry and our Nation.

The following points justify the idea that additional reform is necessary to address the unintended consequences from the 2006 amendments. These include but are not limited to: (1) the Natural Resources Committee considered no less than eight bills focusing on MSA reform in 2011; (2) the Committee has convened 6 hearings with testimony from almost 100 witnesses in the 113<sup>th</sup> Congress; (3) NOAA has recently published another re-examination of NSG1 advice around realizing OY, predictability and stability (4) in 2013 the GAO concluded that the 10-year rebuilding requirement was arbitrary and the mixed-stock exemption should be revisited; (5) many of the recommendations from the 2013 "Managing Our Nations Fisheries III" and from the Regional Fishery Management Councils (RFMCs) strongly support carefully targeted reform; (6) we are plagued by the Act's requirement to have all stocks, including minor ones, at MSY in the same time and in the same space, which is severely limiting ecosystem-based fishery management options at the Council level; and (7) we are not meeting our primary objective to maximize harvest to provide the greatest benefit to the Nation.

Our comments follow the outline of H.R. 200 and will emphasize reasonable improvements we encourage the Subcommittee and the House to support in reauthorizing the Act as soon as possible. We are not commenting on sections of the bill related directly to Gulf of Mexico or Pacific-specific provisions or provisions related primarily to recreational fishing.

#### **SEC. 4. FLEXIBILITY IN REBUILDING FISH STOCKS.**

We support flexibility in rebuilding fish stocks as part of a path to sustainable fisheries and fishing communities and support the elements of this section including eliminating the 10-year timeframe for rebuilding overfished or depleted fisheries within a particular time period, replacing it with a biologically-based foundation.

This section is intended to allow rebuilding plans to take into account environmental factors and predator/prey relationships, which we strongly support. It is our understanding that the conservative fishing mortality rates in the region already allow some 80 per cent of an available fishery resource to remain in the water each year and there is little public understanding of this fact. In addition, a rebuilding plan would include a schedule to review FMP targets and progress including the option to use alternative harvest control rules and F-rates, which should help in giving the SSCs and Councils additional flexibility in setting ABCs and ACLs (Annual Catch Limits).

We also support clarifying that a rebuilding plan may be terminated if it is determined the stock status determination was incorrect and the allowance that an emergency rule/interim measure period may be increased to one year (from 180 days) with an option to extend for an additional one year period.

#### **SEC. 5. MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIREMENTS.**

This section provides Councils with increased flexibility in setting ACLs. The ACL requirement is retained in the Act but the RFMCs could consider changes in ecosystem and economic needs of the communities when setting limits. In light of changing environmental conditions, and the role of the environment in fisheries recruitment, these additions make scientific and common sense.

We strongly support expanding limitations to ACL requirements for 'special fisheries' by expanding the existing 12 month life history definition. We believe butterfish, for example, should fit this proposed ACL exemption as a species that exhibits a short life history, an extremely high natural mortality rate, and highly uncertain, variable survey indices. This combination of factors has resulted in an exceedingly variable catch level over time, so that it is not possible to accurately determine the condition of the stock or avoid a 'choke species' outcome with negative effects on fishing for other short-lived species like squid.

The Act currently provides an exemption from the ACL control rules for stocks managed under international agreements but does not address species that are truly trans-boundary in nature where there is only an informal agreement (or no agreement) in place. We support the bill's expansion of these extra-territorial considerations.

For example, in the case of Atlantic mackerel, scientific evidence has indicated the stock distribution is shifting into Canadian waters. Unfortunately, the U.S. has no formal trans-boundary sharing agreement and Canada takes what they can harvest before a U.S. ACL can be specified. In this instance, unilateral U.S. management actions pursuant to MSA do not affect rebuilding or end overfishing but disadvantage our fishermen and weaken the U.S. negotiating position. Due to the lack of a trans-boundary ACL exemption, rigid interpretation of MSA requirements, and applications of layers of scientific uncertainty, the U.S. mackerel fishery has been severely restricted and it has been (and will remain) difficult to rebuild quota levels under the existing MSA limitations.

We also support this section redefining “Ecosystem Component Species” as a non-targeted incidentally harvested species or those species identified by a regional council that is not depleted or likely to become depleted in the absence of management measures. These changes will provide additional flexibility in allocating directed fishery resources by the RFMCs when minor incidental catches are involved. We also support the clarification that ACLs can be established for up to three years, which codifies NOAA’s related NS1 guideline recommendations, as we understand the issue.

#### **SEC. 6. DISTINGUISHING BETWEEN OVERFISHED AND DEPLETED.**

This section correctly defines “overfishing” and removes the term “overfished” from the Act, substituting the newly defined term “depleted”, which we strongly support. This is an important element of this bill as this term more accurately characterizes population shifts based on environmental and non-fishing anthropogenic impacts instead of characterizing stock impacts as being based solely on fishing mortality effects. This section also requires changes to the annual Status of Stocks report submitted by the Secretary to distinguish between stocks that are depleted or approaching that condition due to fishing and those meeting that definition as a result of other factors. The Secretary must also state for each identified fishery whether they are the target of directed fishing. We support the separation and clarification of the two terms and the requirement to differentiate sources of mortality when projecting stock status and setting ACLs.

#### **SEC. 7. TRANSPARENCY AND PUBLIC PROCESS.**

We support requiring each scientific and statistical committee (SSC) to expand the transparency of their ABC-setting process. Specifically, within the GARFO region (NEFMC & MAFMC) meetings of the SSCs, FMATs (fishery management action teams) and PDTs (plan development teams) are unevenly webcasted or unevenly provide call-in opportunities to facilitate public participation, although this has improved in recent years. With the tremendously complex and geographically-broad management system that we must participate in, expanding these requirements will allow for broader participation in the process than is currently the case. We also support this section’s focus on the development of fishery impact statements to specifically analyze proposed impacts of management measures on the human environment. The process

will benefit from required, regular reviews of the collective impacts of fishery regulations on our coastal communities and economies.

**SEC. 8. LIMITATION ON FUTURE CATCH SHARE PROGRAMS.**

We support a referendum vote for all future catch share programs implemented in the Mid-Atlantic region and we support the establishment of a fully-informed majority vote referendum by fishermen with landings in 3 of 5 recent years (with allowances for hardship considerations).

**SEC. 9. REPORT ON FEE.**

We support this sensible provision, providing additional transparency in the collection of fees to fund administrative aspects of specific fishery management programs including limited access privilege programs.

**SEC. 10. COOPERATIVE RESEARCH AND MANAGEMENT PROGRAM.**

We appreciate the focus on regional fishery management research needs and the focus on using industry platforms in support of auxiliary stock assessment surveys. We also appreciate the focus on the need for more accurate and timely catch reporting through the use of electronic reporting systems, which all of our vessels are engaged in at this time as part of the Study Fleet concept supported by the Northeast Fisheries Science Center's cooperative research program. Although we are also participating in a pilot electronic monitoring program in the region's Atlantic herring and Atlantic mackerel fisheries, we believe that monitoring the nation's fisheries should continue to be a fundamental government function in our region, with the benefit to the nation accruing through our industry's development of the Nation's fishery resources. Requiring industry to fund these programs in the future will diminish both industry and community resilience since profit margins are small in this global business.

**SEC. 11. COUNCIL JURISDICTION FOR OVERLAPPING FISHERIES.**

We support the addition of reciprocal voting rights to established council "liaison" positions between the New England and Mid-Atlantic RFMCs. While fishermen in the Mid-Atlantic do not wish to dismantle established council membership, fishermen in New England made the request to change that membership. Since this provision establishes a limited reciprocal voting right and does not disrupt current council procedures and membership, there is general agreement about this provision between fishermen in the two areas. This solution will facilitate enhanced coordination between the two Councils and deserves the Subcommittee's support.

**SEC. 14. ENSURING CONSISTENT MANAGEMENT FOR FISHERIES THROUGHOUT THEIR RANGE.**

We strongly support this section's intent to ensure consistent fisheries management under competing federal statutes, including the Marine Sanctuaries Act, the Antiquities Act and the

Endangered Species Act -- with the MSA being the controlling statute. We were extremely disappointed by the prior Administration's establishment of shore side boundaries and commercial fishing restrictions as part of the Northeast Canyons and Seamounts National Marine Monument designation. These restrictions were unnecessary, from a resource conservation perspective, and differed significantly from the ongoing efforts of the NEFMC to protect deep-sea coral in the canyon regions. The restrictions are also in opposition to the recent successful efforts of the MAFMC to balance fishing opportunities in and around the canyons with preservation of the vast majority of hard corals found on the canyon walls and in the abyss surrounding the distant seamounts.

Regarding Marine Sanctuaries, many stakeholders who fish in and around these areas believe there are definitely conflicting jurisdictions between the National Marine Sanctuary Act and the MSA when it comes to fishing regulations. We share these concerns relative to the Stellwagen Sanctuary's policy goals which are often at odds with those of the NEFMC and we are equally concerned about the proposal to establish a Hudson Canyon marine sanctuary in the midst of important fishing grounds in the Mid-Atlantic region.

We believe the specific problem appears in Section 304(a)(5) of NMSA (16 U.S.C. 1434) whereby the Councils are afforded 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 conflict between NOAA/NMFS and NOAA/National Ocean Service (NOS) as we understand the issues involved.

#### **SEC. 18. ESTIMATION OF COST OF RECOVERY FROM FISHERY RESOURCE DISASTER.**

We support requiring the Secretary to rapidly identify fishery disaster costs, in order to facilitate appropriate compensation to those affected.

#### **SEC. 19. DEADLINE FOR ACTION ON REQUEST BY GOVERNOR FOR DETERMINATION REGARDING FISHERY RESOURCE DISASTER.**

We also support requiring timely decisions by the Secretary in these circumstances.

#### **SEC. 26. REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.**

We support establishing a more formal and detailed review on the operations and impacts of limited access privilege programs, involving collaboration with the RFMCs and the Secretary's office.

## **SEC. 27. HEALTHY FISHERIES THROUGH BETTER SCIENCE**

While we strongly support the linkage between healthy fisheries and improved scientific information we are not in support of separating recreational fisheries science from that used to manage commercial fisheries, as section (2) would appear to do. Also, we are not in support of identifying information from a wide variety of sources, particularly that originating from certain non-government sources, as necessarily equivalent to the best scientific information available.

At the same time, we wish to emphasize the need for continued and enhanced Agency support for collaborative fisheries research involving the Science Centers, industry and academic partners. Not only will enhancing this collaboration lead to reducing uncertainties around assessing fish stock status in the future but it will also lead to broader support for quota outcomes if recreational and commercial industry partners are engaged in developing the best available scientific information being used in the fishery management process.

Finally, we want to emphasize the need for Congress and the Agency to apply more resources towards assessment science and focus on improving the assessment process through more frequent and timely benchmark assessments and updates. In this context we were particularly disappointed to see that none of the \$13.8 million allocated to the 2017 Coastal Resilience grant program will be used to support enhanced fishery stock assessment initiatives in the GARFO region.

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In closing, we would like to sincerely thank the Subcommittee for holding this hearing today and for your intention to seriously consider important MSA reform during this session of Congress. It is likely that my comments today do not fully take into account the variety of issues addressed in H.R. 200 or fully grasp the Subcommittee's intent in all aspects of the bill. In recognition of this fact, I look forward to working with the Members of this Subcommittee and your staff to further refine the provisions of the Strengthening Fishing Communities and Flexibility in Fisheries Management Act and support its passage this year.

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