

Statement of Gregory P. DiDomenico Executive Director, Garden State Seafood Association

On “*Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight of the Fisheries Management Successes and Challenges*”

**Before the Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard
United States Senate**

September 12, 2017

Mr. Chairman, Ranking Member Peters, Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss our concerns and recommendations related to maintaining commercial fishing access to healthy Atlantic Ocean resources. For the record, my name is Greg DiDomenico and I serve as the Executive Director of the Garden State Seafood Association (GSSA). Our Association represents commercial fishermen, commercial fishing dock operations, shore-based seafood processors and associated seafood businesses in New Jersey. GSSA staff and its members are involved in all aspects of the fishery management process. Our members occupy advisory panel seats on management councils, participate in cooperative research and have a healthy respect for the ocean environment.

We believe there are four main threats to the domestic fishing industry that are consistent with the concerns of this Subcommittee. They are as follows: (1) the status of the implementation of the Magnuson Stevens Fishery Conservation and Management Act (MSA), specifically the 2006 Amendments which were interpreted to be overly precautionary and limit management flexibility; (2) the growing efforts of the environmental industry to curtail commercial fishing access via use of the Antiquities Act, National Marine Sanctuary designations, and marine planning created pursuant to the National Ocean Policy; (3) the chronic inability to estimate and manage recreational fishing mortality; and (4) the potential for unfair implementation of catch shares.

(1) MSA 2006 Amendments

The 2006 Amendments and their subsequent implementation fundamentally altered the way domestic fishery resources are managed. 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.

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.

While the rigid nature of annual adjustments of quotas 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. This is due primarily 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.

In 2009, and again in 2016, NOAA revised the National Standard One Guidelines (NS1G) 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. Unfortunately, National Standard Guidelines are just “guidelines” and not law.

We offer the following recommendations to this Subcommittee for consideration in this current reauthorization:

FLEXIBILITY IN REBUILDING FISH STOCKS

We support flexibility in rebuilding fish stocks and eliminating the 10-year timeframe for rebuilding overfished or depleted fisheries within a particular time period, replacing it with a biologically-based alternative.

We support rebuilding plans that can take into account environmental factors and predator/prey relationships. In addition, a rebuilding plan must be required to include a schedule to review Fishery Management Plan targets and progress, including the option to use alternative harvest control rules and F-rates that are MSA compliant.

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 1-yr (from 180 days) with an option to extend for an additional 1-yr period.

MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIRMENTS

MSA reform could provide Regional Fishery Management Councils (RFMC) with increased flexibility in setting annual catch limits (ACL). The ACL requirement would be retained in the Act but the RFMCs could consider changes in ecosystem and economic needs of the

communities when setting these limits. In light of changing environmental conditions, 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 limitation to include species with unique life history characteristics. 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 to such a degree that we cannot make accurate stock predictions for management purposes.

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 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.

We support defining “Ecosystem Component Species” as a non-target, incidentally harvested species identified by a regional council that is not depleted or likely to become depleted in the absence of management measures. This 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.

DISTINGUISHING BETWEEN OVERFISHED AND DEPLETED

We support redefining the term “overfished” from the MSA and substituting the newly defined term “depleted”. This change would allow a differentiation 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.

(2) The threat of the Antiquities Act, National Marine Sanctuary designations, and marine planning created pursuant to the National Ocean Policy

One of the most serious threats to commercial fishing and consumer access to a sustainable supply of seafood is the loss of access to traditional fishing grounds. It appears to our industry that a well-orchestrated effort is being made under the Antiquities Act, National Marine

Sanctuary Act (NMSA), Endangered Species Act (ESA), and the National Ocean Policy (NOP) to reduce fishing access in regions across the country.

What occurred during the most recent flurry of monument designations is exactly what we are concerned about.

This came in the form of a “top down” approach facilitated by the prior Administration and supported by multinational environmental organizations that did not take the input of the affected industry seriously. The result was the establishment of the **Northeast Canyon and Seamounts Marine Monument**, the first ever on the east coast. Despite the concerns raised by local and federal officials, the New England Fishery Management Council, and the fishing industry the designation closes traditional fishing areas and phases out commercial fishing from these areas that supports a fishing economy of roughly \$75 million dollars annually.

The Antiquities Act provides no basis for learned discourse, no scientific, economic, or social analysis; it is whatever the President says it is. The use of the Antiquities Act to create Marine National Monuments and manage fisheries is a true top-down, dictatorial approach which is frequently championed by big-bucks environmental groups in which the public, including the fishing community, who is directly affected has little to no voice.

Generally, we believe the preferred solution for many of these place-based conservation issues is a collaborative MSA-driven process that provides clear, justifiable science-based conservation benefits while ensuring future commercial fishing access. Our preferred option for protecting sensitive habitat areas is through the established MSA process.

An excellent example of how this process can work is the coral habitat amendment managed by the Mid-Atlantic Fishery Management Council (MAFMC) in October 2015.

The MAFMC finalized an amendment to protect coral habitat in 13 deep water canyons in the region pursuant to their MSA authority. The Council used a considerate approach that brought together many disciplines and backgrounds which yielded the best possible results for all stakeholders and for these sensitive and unique habitats. We are hopeful any future protections will be similarly and carefully vetted with the fishing industry which has the applied experience and technical capabilities to inform conservation. Without an adequate process developed through the regional management councils the result will be inadequate protections from a lack of knowledge resulting in needless burdens on the fishing industry.

Regarding the National Ocean Policy (NOP), we are concerned about its implementation and potential to impact access to natural resources and federal fishery management plans under the MSA. Though widely touted by the prior Administration and leading agency officials as merely a sharing of data to inform ocean planning that will not lead to any new regulations, the details suggest something more insidious. This uncertainty has created concerns throughout the regulated community, including the GSSA, who have written to Congress in a unified manner to bring attention to these issues.

It is unclear to our industry how the NOP can possibly achieve its stated goals of, among other things, *coastal and marine spatial planning, ecosystem-based management, regional ecosystem protection and restoration, and resiliency and adaptation to climate change and ocean acidification* -- absent the creation of new regulations to control human behavior.

We are already starting to see the emergence of a nexus to a regulatory regime with such concepts as “pre-certification” approval requirements for all federally-permitted activities which technically include an MSA-driven fishery management plans and amendments. Since these NOP regional plans are just now coming online, it is unclear to us what the practical impacts will be and what other requirements and “concepts” will be revealed in the coming months. We are concerned that once we see the true extent of NOP implementation it will be too late to address the core issues.

We offer the following recommendations:

This Subcommittee could finally clarify that the MSA is the controlling statute in regard to federal fisheries management. By using the MSA process to develop regulations instead of the National Marine Sanctuary Act, the ESA, NOP or the Antiquities Act, we will ensure that at least when it comes to fishing there will be thoughtful and thorough analysis and the opportunity for public comment.

We also request a prohibition of the establishment of a Marine National Monument anywhere in the exclusive economic zone before certain steps are taken, including getting approval from the governors of affected states. More specifically we support a prohibition of the establishment of a Marine National Monument in the EEZ of the entire United States.

We request this Subcommittee conduct formal oversight of the National Ocean Policy, including a detailed review of its impacts on all federally permitted activities (including MSA plans and amendments) as well as its funding sources.

(3) The chronic problem of estimating recreational fishing mortality

Since the 2006 Amendments to MSA our fisheries management system has struggled to complete and implement a proper accounting system for recreational catch and discards. In 2006 the National Research Council began a critical review of the Marine Recreational Information Program (MRIP) and its results were finalized in 2017. Clearly, work must continue to complete implementation of the MRIP. The significant delays in successfully implementing MRIP are in our opinion inexcusable and have resulted in serious management inefficiencies and precipitated stakeholder infighting.

The Mid Atlantic Council has also conducted a peer review of the new MRIP survey and the results are not yet available. We believe one possible outcome could prove that that estimates of recreational harvest may be 4 times higher than previously thought.

The potential impact of the new survey results on stock assessments will vary but may be severe. For example, it is possible that it may trigger overfishing designations of several stocks or result in assessments that reveal higher population size and lead to increases in acceptable biological catch levels.

Unfortunately, some of these outcomes could have a severe impact on all stakeholders. We are also concerned this process will be used to reallocate fishery resources as a potential solution.

So far, what is missing from the ongoing discussion is what happens if recreational mortality was 4 times higher over the last 10 years? Who is responsible for this? What was the impact of that higher mortality, especially for stocks currently under a rebuilding plan? Lastly, what will be the justification for any new allocations? I do not believe there should be any reward for overfishing. The obvious inequities could be forced upon the commercial fishing industry and ultimately the consumer.

We offer these recommendations:

We can support federal funds being made available to the States to transfer the responsibilities of accounting and reporting of recreational fisheries provided the programs are MSA compliant and the funding does not come from the national Saltonstall-Kennedy (S-K) Program.

We can support alternative management for recreational fisheries only if they are consistent with the current MSA requirements and clear Federal management authority and oversight is maintained.

We support Congress mandating completion and full implementation of the MRIP as soon as possible.

However, we cannot support any changes that attempt to solve the lack of recreational accountability by reallocating the resource from the commercial industry or by providing any exemptions to annual catch limits.

(4) Catch Share Programs

While we are not interested in dismantling existing catch share programs or removing the option entirely from the management system we are strongly in favor of the addition of an inclusive, transparent referendum requirement for future catch share programs being added to the MSA. Such a provision is contained in H.R. 200.

The opposition to the NOAA Catch Share Policy runs strong in the Mid-Atlantic Region. This opposition is firmly rooted in concerns over the top down approach that has seriously and negatively impacted fisheries around the country. In addition, it has become very clear to Mid-Atlantic fishermen that the process is tainted by environmental organizations who do not have the best long term interests of the U.S. commercial fishing industry in mind.

We offer these recommendations:

We request this Subcommittee considering including a referendum requirement for all future catch share programs in a manner similar to that included in H.R. 200. Specifically, that any future catch share program in the Gulf of Mexico/New England/South Atlantic/Mid Atlantic/Pacific shall have a fully-informed majority vote referendum by participating fishermen.

(5) Industry Concerns on the “Modernizing Recreational Fisheries Management Act of 2017”

I would also like to address a few issues related to S. 1520 “*The Modernizing Recreational Fisheries Management Act of 2017*” that was recently referred to the Committee. Simply put, commercial, for-hire and private anglers should each be held accountable for their impacts on our nation’s fish resources. We must resist changes to the law that could be interpreted to remove this accountability. Our commercial fishermen operate in a complex world of monitoring, reporting and are under strict limits designed to prevent overfishing and quota overages.

S.1520 contains a provision that could potentially allow the private recreational angling industry to circumvent their share of the fisheries management requirements and oversight that are applied to commercial fishing activities. This includes the use of undefined “alternative fishery management measures.” If it were made clear that these measures were required to be MSA-consistent then our concerns would be greatly reduced.

Another provision in S.1520 would permit individual states to receive federal funding and collect recreational harvest data, potentially giving individual states an inordinate amount of control over recreational harvest estimates. This may be helpful but two issues must be addressed. First, the funding for these programs would come from NOAA’s Saltonstall-Kennedy Grant Program, a program originally intended by Congress to fund commercial fisheries. Secondly, it is unclear if the collection methodology would be peer-reviewed and required to meet MSA standards.

Finally, the always-present issue of reallocation by the recreational sector is also included in S.1520. Clearly, the intent here is to create and fund an initiative that could lead to reallocation of quotas from commercial to recreational sectors in Gulf and South Atlantic regions. Not only are we strongly opposed to this provision, it is also completely unnecessary as NOAA finalized its national reallocation policy in the spring of 2017 and tasked the RFMCs to implement the policy within 3 years, or as soon as possible.

(6) Council Voting Structure in the GARFO Region

We request this Subcommittee consider the addition of a provision from H.R. 200 to specify that reciprocal voting rights be established for existing council “liaison” positions between the New England and Mid-Atlantic RFMCs. While fishermen in the Mid-Atlantic region do not wish to dismantle the long standing, MSA-established council membership, fishermen in New England have made requests to change that membership. Since the provision in H.R. 200 establishes limited reciprocal voting rights, but does not disrupt current council procedures, there is general agreement about this provision between fishermen in the two areas. This solution will facilitate enhanced coordination between the two Councils.

Thank you for this opportunity to testify today and for the Subcommittee’s interest in our marine issues in the Greater Atlantic Region.

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