

Testimony

of

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Implementation of the Magnuson-Stevens Fishery Conservation and Management Act  
Subcommittee on Insular Affairs, Oceans and Wildlife  
U.S. House of Representatives

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Madam Chairwoman and Members of the Committee, my name is Herbert Moore and I am an attorney practicing law with Gallagher, Briody & Butler in Princeton, New Jersey. I am counsel to the Recreational Fishing Alliance (“RFA”) where I served on the staff as in-house counsel and Director of Government Affairs from 2002 through 2005. The RFA is a national 501(c)(4) non-profit political action organization whose mission is to safeguard the rights of saltwater anglers, protect marine industry jobs, and ensure the long-term sustainability of our Nation's marine fisheries. The RFA represents individual recreational fishermen, sportfishing boat manufacturers, party and charter boat owners and operators, bait and tackle businesses, marina operators and other businesses dependent on recreational fishing.

I appreciate the opportunity to appear before you today to discuss the implementation of the Magnuson Stevens Fishery Conservation and Management Act (“MSA”) as it applies to the recreational fishing community and industry, primarily from a Mid-Atlantic perspective.

The RFA operates under the premise that recreational fishing is good for the Nation. It is a traditional activity which brings families and friends together, enhances the quality of life for millions of Americans, provides tremendous economic benefits for the country in terms of jobs and tax revenues, and has a low impact on our marine resources. In fact, NOAA estimates the total recreational saltwater economic value exceeds \$30 billion annually.

Recreational fishermen were among our Nation’s first conservationists and continue to be at the forefront of pushing for appropriate marine conservation measures because our businesses and our quality of life depend on healthy marine fisheries. Those who experience all that saltwater fishing has to offer often develop a sense of responsibility and desire to pass on the experience to younger generations and want to do their part to ensure that there are healthy resources for future generations to enjoy.

Unfortunately, many in the recreational fishing public have come to view our federal government as the enemy - having experienced decades of larger and larger minimum size limits, shorter seasons and smaller bag limits in fisheries that we know are healthy; seeing the National Marine Fisheries Service (“NMFS”) and the Councils continue to try and manage the recreational

fishing sector with poor recreational fishing data year after year; living with the results of NMFS and the Councils attempting to meet arbitrary rebuilding timelines; and, never seeing any kind of long term commitment from NMFS to enhance recreational fishing opportunities. We believe NMFS needs a complete overhaul in how it views recreational fishing and we believe this Congress can help in this process by a) enforcing the mandates in Sec. 401(g) of the MSA to improve recreational fishing data; b) by passing Congressman Pallone's H.R. 1584 – the Flexibility in Rebuilding American Fisheries Act of 2009 and c) building provisions into MSA that better recognize the social and economic importance of recreational fishing.

MSA requires NMFS to balance its obligations to conserve fisheries resources with the potential adverse impacts its actions may have on fishermen and fishing communities. The current management approach often falls short of this goal. All too often, conservation measures are implemented without full consideration of their impact on recreational fishermen and recreational fishing businesses. The result of which are regulations that deny access for recreational anglers to rebuilding fisheries and force fishing related businesses to permanently close their doors as fishing activity plummets. The RFA believes greater recognition of the human dimension in marine conservation is needed. Once a tackle shop closes its doors or a head boat operator is regulated out of business or a marina operator sells to a developer, those jobs are gone forever and our coastal communities are worse off because of it.

MSA has proven to be successful in rebuilding many depressed stocks. In 1997, one year after the passage of the Sustainable Fisheries Act, 86 stocks were identified as overfished. In 2008, only 46 stocks were identified as overfished representing a 46% reduction in the number of overfished stocks. On average, 3.6 stocks per year are removed from the overfished category. There is no denying that this represents good progress. Where MSA needs improvement is ensuring that fishermen and fishing communities are able to enjoy the benefits of rebuilding fisheries.

All too often, current fisheries management focuses predominately on the resource above all else and does not provide a balance of conservation and access so that we can enjoy the “optimum yield” of the resource as mandated under the MSA. As defined in MSA, optimum yield means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities. It is apparent to the RFA that we are not achieving optimum yield in many healthy fisheries. RFA believes that conservation, access and a viable marine industry can coexist and must be the goal of federal fisheries management. H.R. 1584 can help us get there.

Unfortunately, there are amendments to MSA made during the most recent reauthorization in 2007, that when implemented, may reduce anglers access to healthy fisheries even further. Some of those amendments contained in the latest reauthorization include annual catch limits and accountability measures. The purpose of these amendments may have been directed toward ending overfishing and rebuilding fish stocks but looking at the history of the U.S. fisheries management and referring to the number of stocks rebuilt since 1996, it is difficult to claim that the existing statutory framework was in need of improvement specifically on rebuilding and ending overfishing. In this regard, annual catch limits and accountability measures are unnecessary in most fisheries because positive and measureable progress is already being made. Our additional concerns about the implementation of the MSA are detailed below.

**I) NMFS failed to meet the Congressional mandate to improve the quality and accuracy of the data used to manage recreational fisheries by January 1, 2009**

The primary recreational data collection system is the Marine Recreational Fisheries Statistics Survey (MRFSS) which has been in place and operated by NMFS since 1981. Recent amendments to MSA, §401(g), mandate essential improvements to MRFSS consistent with recommendations offered by members of the recreational fishing community and the findings of the National Research Council. RFA supported having these improvements implemented in order to address significant deficiencies in the MRFSS program that were having a deleterious effect on the recreational fishing community. Unfortunately, NMFS has not met its mandates under §401(g). Section §401(g)(3) is being promulgated by NMFS through a new program called the Marine Recreational Information Program (MRIP) which is slated to begin operation in 2011. MRIP, a MRFSS based survey with the one improvement of a known sampling frame, is not expected to be useable by fisheries managers for a minimum of 3 years due to calibration with MRFSS. No action has been taken to date to fully implement Section § 401 (g)(C). Furthermore, RFA can identify only 5 of the 18 NRC recommendations as being fully or partially implemented since the release of their findings back in 2006. In short, RFA is not pleased with the selective implementation of MSA mandates and the lack of commitment on behalf of NMFS to make meaningful improvements to recreational data collection programs. As mentioned above, the recreational fishing sector is a \$30 billion dollar industry and its management must be based on the best information.

The use of poor information is not only a concern with the assessment and monitoring of important recreational fisheries but also with the evaluation, or lack of evaluation, of socioeconomic impacts on recreational fishing businesses in response to regulatory changes. In most cases, a suite of regulatory options is put before a regional management council with accompanying analysis of the associated conservation impact of each. What is often absent, is detailed economic and participation analysis to indicate the social response to each option. MSA clearly states in Sec. 301 (a)(8)(B) minimize adverse economic impacts of such communities and yet, dismal, if any, effort is put into determining what the actual impacts on the community will be when taking action.

NOAA has routinely refused to use industry data from recreational fishing business for comparative purposes to the MRFSS and MRFSS-based surveys. Industry data in terms of receipts, fares, fuel sales, and slip rentals is currently used by other federal agencies and yet, NOAA will not use this information to compare fishing activity or participation. The one provision contained in 2007 MSA reauthorization, Sec. 401(g)(3)(iv), to establish a comparative of recreational fishing effort and catch to weather, has yet to be given consideration.

We believe NMFS' failure to meet these Congressional mandates is evidence of an institutional bias that exists within the agency against the recreational fishing sector. We respectfully urge the Members of this Subcommittee to hold NMFS' 'feet to the fire' and ensure compliance with Sec. 401(g) of MSA.

The RFA would like to see a consistent implementation plan for MSA measures in the recreational sector. As it stands, NMFS has postponed many of the MSA measures that directly deal

with recreational data collection improvements but continues to move forward with provisions that deal with accountability measures (AM) and annual catch limits (ACL). RFA does not support this haphazard implementation approach. MRFSS in its current structure, is unsuitable to effectively administer AM and ACL in the recreational sector. Until sufficient improvements are made and a reasonable calibration period has passed, RFA does not support moving forward with AM and ACL in the recreational sector.

## **II) Monitoring needs to ensure accountability.**

Recreational fisheries are inherently different than commercial fisheries and these differences must be better recognized in management under MSA. In commercial fisheries, nearly every pound of fish landed can be accurately monitored through vessel trip reports and dealer reports. These numbers can be verified with port sampling and at sea observer records as well. This is not so in the recreational sector. The predominate management measures used in the recreational sector aim to limit the number of fishing days, the minimum size of the fish landed (in some fisheries a maximum size limit is also used), and the number of fish landed per day. Recreational anglers are not required, nor would it be practical, to weigh their landings and submit those weights to management agencies. To monitor the recreational harvests at the same level done so with the commercial harvest is monitored would require a profound commitment of funds and resources. Such oversight of anglers is unnecessary and would be unwelcome by the recreational fishing public.

RFA believes that at this time, accountability, which is analogous with punishment, will have negative socioeconomic impacts on the recreational fishing community. As we have seen, particularly with stocks that have approached a rebuilt state and availability to recreational anglers has increased, the recreational sector can have high compliance rates and yet still exceed the harvest target. RFA contends this is not the fault of the recreational anglers and can often be linked with two possible causes; inaccurate monitoring or flawed regulations. Inaccurate monitoring primarily is the result of the MRFSS and flawed regulations can be characterized by ones that increase the mean weight of fish landed or dramatically increase mortality associated with discarding. These two problems have plagued many important recreational fisheries and will not be solved with accountability so long as fault is inappropriately placed on anglers

## **III) H.R. 1584 - Flexibility in Rebuilding American Fisheries Act of 2009**

The marine environment is too vast, complex and unpredictable to be bound by arbitrary rebuilding periods. It is time for the law to recognize this complexity and the uncertainty of fisheries science by building more flexibility into the MSA so that we can get closer to achieving optimum yield from our fisheries. We believe H.R. 1584 introduced by Congressman Pallone would provide some of this much-needed flexibility.

There has been some confusion about what this legislation, if passed, would do in terms of existing conservation goals and objectives contained in MSA. Much of this confusion has been spread by groups with an anti-fishing agenda. Their opposition is based on two arguments: that the bill would allow open ended rebuilding and would allow for a rollback in conservation. A review of H.R. 1584 finds that neither of the arguments is valid. Paragraph 8 of the bill restricts any extension of a

rebuilding timeframe to the criteria listed in sections A through C and therefore rebuilding cannot be open ended. Furthermore, the bill specifically requires that a stock can only be considered for a rebuilding extension when it is on a positive rebuilding trend. With this requirement in place, a rollback in conservation is not possible. We respectfully urge the Members of this Subcommittee to beware of opposition to this bill that is driven more by emotion aligned with the animal rights, anti-fishing agenda than sound, science-based resource management policy.

We support the intent of H.R. 1584 to distribute rebuilding efforts over a slightly longer timeframe, if necessary, while ensuring long term conservation and recreational fishing opportunities. Such an approach is more consistent with the ecosystem based management approach that recognizes that the marine environment is dynamic and that productivity of fish stocks is variable. It is not difficult to determine how H.R. 1584 could be effectively implemented in U.S. fisheries management because the case of summer flounder provides an example where the rebuilding timeframe was recently extended and the stock continued rebuilding and conservation goals are still expected to be met.

Of all the species of finfish along the Mid-Atlantic coast, none is more valuable to the recreational fishing sector than summer flounder. The recreational summer flounder fishing sector includes individual anglers, party and charter boat businesses, boat builders, fishing tackle manufacturers, bait and tackle retailers, marinas, and many other businesses in fishing communities from North Carolina to Massachusetts. In 2006, the recreational summer flounder fishery contributed in excess of \$3.5 billion to the economies of the Mid Atlantic. The recreational fishing infrastructure in the Mid-Atlantic has become greatly dependent upon anglers being engaged in the summer flounder fishery.

Placed under a 10-year rebuilding plan in 1990, the stock was successfully rebuilt to historic high levels of abundance by 2006. With 4 years left to meet the rebuilding objective, it was determined that while the stock was predicted to continue to rebuild, it would not do so quickly enough to meet the arbitrary deadline. The consequence was that the summer flounder quotas in 2007 and subsequent years through 2010, needed to be set at extremely low levels. This was expected to have profound negative impacts on the recreational fishing community which ironically would occur at historically high levels of abundance of summer flounder. Noting this flaw of the arbitrary ten year rebuilding requirements in MSA, Congress provided a 3-year rebuilding extension for summer flounder. The result was that quota reductions were not as severe and the social and economic impacts on the recreational community were somewhat reduced. From a conservation standpoint, it is important to note that in 2007 and 2008, summer flounder spawning stock biomass continued to be at a historic high, recruitment was above the 20-year mean in 2008, fishing mortality decreased for both years, overfishing did not occur and the stock did not become overfished. In fact, none of the environmental industry's arguments regarding extensions to rebuilding timeframes were validated in this practical example with the summer flounder fishery. RFA contends rebuilding at a more science based and rationale pace provided through H.R. 1584 is more responsible management approach than the current arbitrary time constraints mandated through MSA.

MSA governs all federally managed fish stocks, and the challenges associated with its rebuilding and provisions to end overfishing are not limited to summer flounder. In the Gulf of Mexico and South Atlantic regions these provisions are poised to have significant implications for

fisheries such as red snapper. The recent red snapper stock assessment establishes the spawning potential ratio (SPR) at seven times larger than the last assessment (2000). Similar to summer flounder, the red snapper population is at historic high levels of abundance. However, as a result of the recent overfishing requirements, an interim rule was established that reduced the TAC from 9.12 million pounds to 6.5 million pounds for 2007 to 5 million pounds in 2008. NOAA, in an attempt to comply with MSA section 304(e)(3), closed the Gulf of Mexico red snapper fishery on August 15 and is considering a 180 day closure in the South Atlantic in an effort to reduce fishing mortality by 88% in one year. The reality is that such a dramatic reduction can only be made with tremendous negative impacts on the fishing community. These closures come during months that are critically important months for recreational anglers and the for-hire fleet. Similar to summer flounder, recreational anglers in the South Atlantic and Gulf are denied access to an otherwise healthy fishery. A bill has been introduced, H.R. 3307 which would postpone interim rules until an extensive population study can be conducted on the red snapper population. RFA is supporting the passage of this bill because it would afford NMFS and the regional councils additional time to gather more information on the status of red snapper before taking such severe action.

#### **IV) Conclusion**

In conclusion, MSA has proven successful in rebuilding many depleted fish stocks in a relatively short period of time. However, many of the rebuilding requirements incorporated during the 1996 Sustainable Fisheries Act reauthorization impose arbitrary rebuilding timelines and demand unrealistic assumptions about the marine environment. These provisions are having negative socioeconomic impacts on the recreational fishing public and the industry that depends on recreational fishing. The most recent reauthorization added even more arbitrary provisions particularly with regards to ending overfishing, that will exclude recreational anglers even when stocks are at high levels of abundance. We believe H.R. 1584 would provide some much-needed flexibility in the MSA.

Recreational fishing is good for the Nation. It brings families and friends together, enhances the quality of life for millions of Americans, and thus generates tremendous economic activity - while having a low impact on our marine resources. It is time for NMFS to recognize this. NMFS meeting the Congressional mandate in Sec. 401(g) to improve the quality and accuracy of the data used to manage recreational fisheries would be a good start.

Thank you Madam Chairwoman for the opportunity to provide comments on the implementation of MSA. We look forward to working with you and members of this Subcommittee who have expressed interest in this important issue. From the individual saltwater angler to the many small businesses that comprise the marine, boat, and tackle industry, our members are hopeful that Congress will take the right steps to ensure we have viable fishing communities in the future. I believe that we can develop language that will promote healthy fisheries, allow fishermen to access robust fish stocks and at the same time achieve long-term conservation goals.