

**TESTIMONY OF
MYRON FISCHER
OFFSHORE CHARTER CAPTAIN
PORT FOURCHON, LOUISIANA**

ON

**THE MAGNUSON-STEVENSON
FISHERY CONSERVATION AND MANAGEMENT ACT**

BEFORE THE

**SENATE SUBCOMMITTEE ON OCEANS AND FISHERIES
COMMITTEE ON COMMERCE, SCIENCE AND
TRANSPORTATION**

DECEMBER 14, 1999

**UNIVERSITY OF NEW ORLEANS CAMPUS
NEW ORLEANS, LOUISIANA**

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Madam Chair and members of the Committee, I would like to thank you for granting me this opportunity to speak on issues involving the Magnuson-Stevens Fishery Conservation and Management Act. My name is Myron Fischer. I am a full time charter captain operating out of Port Fourchon, Louisiana and have been licensed by the United States Coast Guard since 1976. At forty-eight years of age, I have been on water my entire life. I am a graduate Marine Biologist and I presently sit on the Gulf of Mexico Fisheries Management Council.

I appreciate this committee coming forward to listen to the views of those and myself that makes a living on water and witnesses our fisheries firsthand. My testimony will highlight present portions of the Magnuson-Stevens Act that need attention from your committee.

Sec. 301 (a) 98-623 (2) Conservation and management measures shall be based upon the best scientific information available. National Standard 2.

What is the best available science? Ms. Penny Dalton spoke to this committee in July and testified that we don't know the status of 64% of the species we manage. We do not even know if they are overfished, much less have sufficient knowledge necessary to plug into the intricate modeling necessary to make educated fishery decisions. When we don't have enough data to come to a logical conclusion, and when the calculated conclusion appears illogical, what are fishery managers to do? The phrase echoed is "we have to use the best available science". If the best available science is so incomplete that it would result in managing decisions that would be ludicrous, then should the science be omitted? I request your committee elaborate on the phrase "best available science" and that it be used as a guideline in the absence of genuine data rather than a rigid principle.

SEC 302 97-453, 99-659, 101-627, 102-582, 104-297 (b) VOTING MEMBERS (1)(B)
The Regional Director of NMFS...shall be the voting member.

97-453, 101-627, 104-297 Emergency actions and Interim Measures

(2) (A) the Secretary shall promulgate emergency or interim measures...by unanimous vote.

(2) (B) the secretary may promulgate emergency or interim measures.... less than unanimous vote.

As long as the Regional Director votes on issues, this portion of the Act is useless. The Regional Director ALWAYS votes against emergency or interim measures to preserve the Secretary's ability to not be mandated into carrying out the measure. I am sure the original authors did not anticipate such a ploy by ranking officials of National Marine Fisheries Services and the Commerce Department. The Regional Director takes an active role in the approval or disapproval of practically all items voted on by the various councils. The participation of these directors in the deliberation of issues and policy is essential. However, I feel that either the director's vote should be totally removed from council process or at the least, their vote on issues involving Emergency or Interim Measures withdrawn.

104-297 SEC. 403 Observers

Observers are an essential part in the gathering of solid data. Protocol is necessary to guarantee that observers carry themselves in proper conduct while aboard a vessel owned by a citizen of this country. Involved in the structure of these guidelines must be language assuring vessel owners that they bear no liability for injuries sustained by such a federal employee. With the repressed profits in today's fisheries, many fishing vessels simply sail without liability insurance. In the charter industry, some insurance carriers specify a maximum amount of persons aboard a vessel. To maximize profits, typically every seat is sold to paying clients. The addition of an observer may violate insurance requirements and void insurance for the entire trip. Even with proper insurance, a boat owner or captain may spend much of his earned income litigating an injury case with someone he did not even want aboard his vessel. Without liability guarantees, vessel owners will always shun away from observers aboard their vessel. I recommend to this committee, in order for fishermen to better receive observers, that language be installed in this section removing liability from vessel owners and operators in regards to observers or that NMFS provide liability coverage observers.

SEC. 301 (a) 104-297 Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. National Standard 9.

SEC 304 104-297 (g) Atlantic Highly Migratory Species - (2) Certain fish excluded from "Bycatch" definition. Fish harvested in a commercial fishery... that are not regulatory discards and that are tagged and released alive ...shall not be considered bycatch for the purpose of this act.

Was this language instituted by the tuna lobby to insure that any billfish tagged and released are not counted as bycatch? When a recreational angler releases a billfish, it is usually done so with utmost care. These anglers are proud of both their catch and their release tactics. Stories of towing and supporting a billfish until sufficient oxygen is back in the fish's system are common among recreational circles. The survival rate of recreationally caught billfish is stated to be high. On the other hand, data illustrates very high mortality on longline caught fish due to the methods involved with the fishery. The catch rate realized in one set aboard one longline vessel could surpass the entire annual catch of the recreational industry. Ironic, language in the initial Billfish Amendment had these recreationally released fish listed as bycatch. The authors chose to define "recreational catch and release program" (104-297) in a manner that would count all recreationally released fish, even those tagged in research programs as bycatch. Fortunately, after considerable public input the final language cleared up this matter. To avoid confusion in the interpretation of this phrase in the future, the act should spell out the definition of a "recreational catch and release program" as intended and not let various managers inject their own ideology into what Congress intended. I pray that the intent of Congress was to allow recreational anglers to target various species and practice conservation by releasing that portion of their catch that they do not choose to keep without the effects of bycatch and the ramifications of such dangling over them. Conversely, allowing billfish captured in the longline industry relief from inclusion in bycatch is total mismanagement. In addition to defining "catch and release program", I highly recommend removal of the portion of this act that permits the labeling of commercially caught billfish to not be considered bycatch.

Quota vs. Allocation

I would request the committee to use caution in making changes to future amendments. Changing the word "allocation" to "quota" has impaled serious injury to the charter and recreational industry. If the intent of Congress was to manage the recreational sector under a quota system, then the mechanism to install such a system must first be in place. The use of the outdated MRFSS data collection methods fall very short of the goal involved in quota management. As opposed to the commercial "real count" method, MRFSS data doesn't even surface until six months after collection. Using this data in real time projections is impossible. The present red snapper model uses a four-year average to calculate the fishery closure and does not incorporate weather or other social changes. It is disgraceful to mandate quota closures without first installing accurate methods of calculating harvest.

Precautionary approach

For a term that does not even reside in the Act, we certainly find ourselves burdened by this phrase. This is a phrase created by National Marine Fisheries Service in regards to their interpretation of National Standard 1. Of course managers should be precautionary, but how precautionary should their approach be? Precautionary enough to insure that a fishery will not be devastated? Precautionary as to allow participants to harvest fish and still have the fishery populations increase? Or precautionary to the point where we simply restrict all harvest until the population has reached some un-measurable arbitrary number? All these are precautionary, but at different levels. The commercial fishermen, recreational fishermen, conservationist, and

fishery managers may all have different ideas of the correct approach. If Congress intends for fishery managers to live by the phrase “precautionary approach”, then identify and define it; otherwise let’s remove it from decision-making ideals. We all want to be precautionary, but its usage precludes the social and economic needs along our coast. We all want to err on the side of caution, but Congress did not install this statement and if you feel it should be the guideline of managers, then define its limits and illustrate its usage.

Section 303, 104-297 Individual Fishing Quotas

Congress choose very wisely to place a moratorium on the issuance of Individual Fishing Quotas. While it may be very unfair to have portions of the commercial sector engaged in a derby fishery, I hope the councils can seek other remedies other than IFQ’s for this situation. The fishery in question on the Gulf Coast is the Red Snapper industry. Many state that this is one of the most mis-managed species under council jurisdiction. After sixteen amendments to the initial plan, one could speculate that analogy. To differ, the Red Snapper TAC has risen 400%, size limits have increased five times, commercial and recreational sectors are catching their respective quotas quicker, recruitment is up and the fishery is a true success story. The apparent problem is that those on water see this success quicker than the biologist and statisticians. The best available science is holding the reins back on fishermen by creating the commercial derby and recreational closures. I feel optimistic that science will catch up with the real world and the need for Individual Fishing Quotas will fade. Presently, I support the ban on IFQ’s as I feel there are many unanswered questions on this subject. As answers come forth, I may feel a need to change my prospective. Enforcement of IFQ’s is one hurdle we have to overcome. Another, in the light of possible limited entry into the charter industry, is involving IFQ’s into that sector. Unlike the commercial industry, a charter captain has to market himself and wait for the telephone to ring before he can make a trip. Open season, calm seas, and the fish biting don’t guarantee charters. Conversely, the phone ringing during closed season doesn’t help either. I am a charter captain. Could I expect you to delegate me an automatic “piece of the pie”.

Senator Snowe and Senator Breaux, I thank you again for giving me the opportunity to address this committee. I hope any guidance you may have received from my testimony will direct you into producing a better act which will allow harvest while rebuilding this country’s fisheries without being detrimental to both the fish or fishermen.

Thank you.