

C. M. Cunningham Jr., Chair, NEFMC,
Testimony for
The Senate Commerce Committee’s Subcommittee on Oceans,
Atmosphere, Fisheries, and Coast Guard
on the progress made and the ongoing challenges faced during the transition to
sustainable fisheries management in New England, as well any legislative changes to
Magnuson-Stevens Act for Congress to consider”

On behalf of the New England Fishery Management Council, I am both pleased and honored to respond to your invitation and hope that I can be helpful to you in your deliberations concerning the Magnuson- Stevens Act, as well as those members of the fishing community who are here today.

Before I begin, I would like to offer a few details about my background. I have served for nine years on the Council, five years as its Vice Chair and two years as Chair. I am currently the Council’s Chair – but only for a few more weeks as I have reached my term limit. My year of service on the Council has been at times fascinating, at times frustrating – but always rewarding. Prior to my appointment to the Council, I was the owner, Publisher, and Editor-in-Chief of Salt Water Sportsman, the world’s largest sport fishing magazine, with approximately four million readers. I am privileged to have made a living by working with and for our valuable marine resources.

With 18 voting New England Fishery Council members, there are often divergent opinions about the problems we face and their solutions. As a result, my comments may not represent the opinion of any individual member or the official position of the Council, but I will try to convey the sense of the Council as a body. I will talk about both our progress in the transition to sustainable management and a few suggested changes to the Magnuson-Stevens Act (M-S Act).

Progress Made in the Transition to Sustainable Management in New England

In New England, we have had mixed success in the transition to sustainable fisheries. The past few years have seen impressive changes in our management system. We successfully implemented Annual Catch Limits and Accountability Measures for all of our fisheries as mandated by the 2007 amendments to the Magnuson-Stevens Act. We completely revised the management of the iconic New England groundfish fishery in 2010, shifting most of the fishery from an input management regime to an output or catch share system. The scallop fishery's rotational management system is maturing into an efficient program that consistently leads to robust industry revenues while preventing overfishing. Also, we are completing a multi-year effort to redesign our approach to minimize the adverse effects of fishing on essential fish habitat.

The impacts of these changes, however, have not been positive in all cases. The target stocks in the Atlantic sea scallop, monkfish, red crab, redfish, whiting, Atlantic herring, and dogfish fisheries are being fished at sustainable levels. These fisheries are manageable and sustainable and management is focused on improving the net benefits they produce for the nation. Within the skate and Northeast Multispecies fisheries, however, there are numerous stocks that are still overfished

and/or subject to overfishing. Partly due to environmental regime shifts, our extensive efforts to end overfishing on cod and several flounder stocks have been frustrated at every step of the way. Even though quotas are set according to the advice of our Scientific and Statistical Committee and actual catches have recently been below the quotas. This has led to an erosion of trust in both the scientific advice and the management system. More importantly, the reduced quotas have led to a dramatic reduction in the active groundfish fishing fleet, with fewer than 400 active boats remaining, compared to nearly 1,200 in 2001. Our groundfish fishermen and fishing communities have been negatively impacted by the decline in landings and revenues. The Council has been largely stymied in our efforts to find ways to mitigate the low quotas that are in effect this year. After nearly twenty years of increasingly restrictive management measures, many groundfish fishermen feel that the promise of future benefits from stock rebuilding is an empty one.

As I mentioned, the Council has complied with the requirement to adopt Annual Catch Limits and Accountability Measures in all our fisheries. The one problem Councils have all seen is that this management system dramatically increases the demand for stock assessment advice. It is our belief that sufficient resources are not being provided to the National Marine Fisheries Service to meet these demands. In our region, there is a need for periodic updates for about 60 different stocks and yet the Northeast Fisheries Science Center is only capable of providing annual updates for about ten to twelve stocks. As a result assessments of an individual stock are often separated by four or five years. With fast growing species, this means some quotas are set to catch “paper fish” – fish that have never actually been seen in an assessment, but are the result of assumptions about future stock growth. This is a recipe for disaster and contributes to our difficulty in rebuilding groundfish.

It is not just the workload of scientists that has increased in recent years. Because of the increased complexity of both fisheries and other statutes, the preparation and review of management actions by the Council and National Marine Fisheries Service staff is taking more time and resources than in the past. As a result the system threatens to become bogged down and unable to respond to our rapidly changing conditions. Only with enhanced support will the system be able to meet the demands imposed by the current statutory framework.

MSA Changes to Consider

As one would hope with a law that has been in effect for 37 years, we do not believe wholesale revisions are necessary. We believe that the Council system, while not without its warts, is successful at providing an open, transparent venue for the debate on using fishery resources. Nevertheless, we do believe there are several important issues that need to be addressed.

First, given our experience with the rebuilding of groundfish stocks, it is probably not surprising that we believe that the current emphasis on a fixed rebuilding time period is misdirected. This approach assumes a level of stock assessment certainty that does not exist. We have little ability to predict, and no ability to control, the environmental changes that are key drivers in rebuilding progress. We think management should focus on ending overfishing and not arbitrary rebuilding time frames.

Obviously, we fully support the focus on the requirement to end overfishing. Our only suggestion to improve this part of the statute would be to create a narrowly-defined exception to the

requirement to end overfishing immediately when there is a dramatic change in the perception of stock status. This is the result of our recent experience with a cod stock, where two successive assessments presented a dramatically different view of stock size that was not due to fishing activity. A more flexible approach would allow a management reaction that would be responsive to the National Standard 8 requirement to consider the needs of fishing communities. As I noted, however, this should be a narrow exception and not provide a loophole to overfish indefinitely.

With one of the stricter management frameworks in the world, we believe that our industry should not be required to buy a third-party certification to demonstrate that our fishery products are sustainable. There are several competing seafood certification programs that confuse buyers, and the standards of these programs can differ. This situation could be simplified if the M-S Act were modified to authorize a National Marine Fisheries Service certificate of sustainability. Such a program would provide our industry with the ability to promote and sell seafood products in the world market.

In addition to these main points, there are also a few other issues that deserve attention:

- The relative importance of National Standard 1 (the requirement to end overfishing) and National Standard 8 (consideration of impacts to fishing communities) continues to be troublesome. Courts have interpreted National Standard 1 to take precedence; it would be helpful to clarify if this is indeed the intent of Congress.
- There is increasing interest in ecosystem approaches to fishery management, but some provisions of the statute limit the ability to pursue such approaches. A more explicit recognition of this concept would help us pursue this rapidly-developing approach.

- The overlap between the National Environmental Policy Act and the M-S Act has not, in my opinion, been adequately addressed in spite of Congressional direction to do so. While NMFS has published updated guidance that the Councils have reluctantly acceded to, we do not agree that this addresses the fundamental problem nor were the Councils adequately consulted in its development.
- In some cases the data confidentiality provisions of the statute hamper the ability of managers and the public to understand the effects of management decisions. This is a public resource, and the Council members need access to the basic data that will tell them the effect of their actions.

Summary

The NEFMC has expended substantial effort to meet the requirements set forth in the 2007 reauthorization of the Magnuson–Stevens Act by implementing Annual Catch Limits and Accountability Measures for all of the managed species under its jurisdiction. This effort has demonstrated that the current capacity of the National Marine Fisheries Service to provide scientific support cannot meet the requirement for continuously updated stock assessments. Environmental regime shift has also dramatically increased the need for updated science. Without enhanced scientific support, the management process is likely to fail. It is said there are three important things to success in the real estate business, location, location, location. There are the three things that will enhance the fisheries management process, science, science, and science.

The M-S Act does not need to be dismantled and resurrected. Addressing a short list of issues would make a substantial impact on the Act's effectiveness:

- The focus should be on ending overfishing. That is the one aspect that Councils can control effectively.
- Address the existing regulatory impediments in the Act that will adversely impact the shift to ecosystem based fishery management.
- Better define the priority of competing National Standards.
- Support the industry with a national sustainability certification program.

The Magnuson-Stevens Act is working. The improvement in the nationwide tally of stocks no longer experiencing overfishing and not overfished is evidence of its success. The system works and simply needs some ongoing modifications, which will likely be the case in another six years.

Thank you again for asking me to participate on behalf of the New England Fishery Management Council.