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Hearing On

Implementation of the Magnuson-Stevens Fishery Conservation and Management 2006 Reauthorization Act

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Testimony of

Bill Bird

P.O. Box 2809

Orlando, FL 32802-2809

Thank you Chairman Begich for this opportunity to testify before the Senate Commerce Committee on the implementation of the 2006 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Specifically, I will address how the current implementation of the changes made to the MSA in 2006 are impacting recreational fisheries in the state of Florida.

I would also like to thank Senator Nelson for his work in the last Congress on several important fisheries issues for Florida and his introduction last Congress of S. 3594, the Fishery Conservation Transition Act.

My name is Bill Bird. I am a long-time member of the Coastal Conservation Association (CCA) and the past Chairman and President of the Florida Chapter of CCA. I am a life-long recreational angler and have enjoyed fishing the beautiful inshore and offshore waters of Florida for the last 25 years.

CCA is the leading marine recreational fishing group in the United States. Formed by a small group of sport fishermen in Houston in 1977, CCA has grown to become a seventeen-state association with over 90,000 members. Our volunteer membership, which spans from Brownsville, Texas to Portland, Maine to Seattle, Washington, prides itself on passionate grassroots efforts to influence policies and laws that promote sustainable fisheries for recreational anglers. We believe that we, as recreational anglers, have proven that we are and always have been the best stewards of our fisheries.

Over the last 30 years, CCA has been active in a number of conservation issues on both the state and federal level, including all of the east and Gulf coast net bans; gamefish status for redfish; protective measures for species such as speckled trout, tarpon, striped bass, shad, marlins, swordfish and sailfish; and the reduction of wasteful bycatch through the use of technology and time and area closures. CCA has also pushed for the improvement of fishery management systems through the restructuring of state and federal regulatory bodies; the elimination of conflicts of interests by decision-makers; and the active involvement of its membership in the management process.

The passage of the 2006 reauthorization of the MSA ushered in important new provisions to end overfishing; improve data collection for recreational fisheries; and requiring for the first time necessary economic and social analyses of the impacts of fishery management decisions on all participants in each sector of the fishery. As a recreational fisherman concerned about the health and abundance of our saltwater fisheries, I view these provisions as critical to improving federal fisheries management.

However, as someone who has followed federal management of recreational fisheries in Florida for a considerable amount of time, I can tell you there is a management crisis facing many recreational fisheries with the current implementation of the 2006 Reauthorization of MSA.

Ending Overfishing

In an effort to once-and-for-all end overfishing of historically overfished stocks, the 2006 Reauthorization of MSA included a provision requiring “annual catch limits” or “ACLs” that

must not be exceeded for every federally managed fishery.[1] The Senate Report filed with the passage of the Senate MSA bill (S. 2012) provides some explanation of the rationale for including annual catch limits to end overfishing –

> *"The [Sustainable Fisheries Act] established new requirements in the Magnuson-Stevens Act designed to prevent overfishing and rebuild overfished or depleted fisheries. The SFA attempted to address overfishing by capping fish harvests at maximum sustainable yield (MSY) and requiring FMPs to include measures to rebuild overfished stocks. However, recent evaluations of stock status have shown that ten years after enactment of the SFA, overfishing is still occurring in a number of fisheries, even those fisheries under a rebuilding plan established early in the SFA implementation process."*[2] *(emphasis added)*

Annual catch limits were intended to put a ceiling on the allowable take in a fishery so as to prevent continued overfishing. As noted in the Senate Report, this was not a new concept, and in fact was the goal of the Sustainable Fisheries Act, which was the reauthorization of the MSA that Congress passed in 1996. However, 10 years later, when the Senate Commerce Committee took up the latest reauthorization of the federal fisheries law, overfishing of stocks found previously to be overfished was still occurring.

One critical factor of implementing annual catch limits, however, was the requirement to have accurate data on the status of the fisheries. Indeed, accurate data is a prerequisite for establishing a "catch limit" that can then be measured during subsequent fishery years. Without a recent and accurate stock assessment or a baseline stock assessment for a fishery, there is no way to meet the legal requirement of the 2006 Reauthorization of MSA that an annual catch limit be established and not exceeded. It is the legal equivalent of requiring drivers to not exceed the speed limit while driving cars without speedometers.

Unfortunately, species in which there is a significant recreational component have long suffered from poor data or a complete lack of data and a general lack of proper management by the National Marine Fisheries Service (NMFS). In the South Atlantic region there are several recreationally important and valuable fisheries for which no stock assessment has ever been undertaken, and many others that had an initial stock assessment and then were never assessed again to determine the current health of the stock. In spite of a lack of accurate information for many species, NMFS has nonetheless decided to close recreational fishing for some species in order to meet the requirement of annual catch limits. In the case of black sea bass, this decision was based entirely on an outdated stock assessment that previously showed the fishery to be overfished nearly 10 years ago, even though no new assessments have been made to determine if that is the situation presently. The stock is likely rebuilding as planned, because the recreational fishery, which responds to abundance, is catching more fish than the current total allowable catch. However, with the advent of annual catch limits, NMFS has chosen to close the

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[1] Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (P.L. 109-479), 16 U.S.C. 1853(a)(15); MSA § 303(a)(15).

[2] U.S. Senate. Committee on Commerce, Science, and Transportation. *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005 (to accompany S. 2012)*. (S. Rpt. 109-229), pg. 6. U.S. Government Printing Office Washington, 2006.

recreational black sea bass fishery in the entire southeast for 4 months, notwithstanding the lack of information on the current status of the stock.

Another significant problem we have faced is the potential closure of completely healthy fisheries to rebuild 1 particular stock. In 2007, the first full, modern stock assessment was completed on red snapper, an extremely popular recreational species in the South Atlantic. That stock assessment revealed that the red snapper stock was undergoing overfishing and was overfished. While few questioned that red snapper had been fished to a level below its historical abundance, none questioned that this was a result of decades of federal negligence in actually managing such an important recreational stock. However, to end overfishing of red snapper, fishery managers considered closing not only the directed red snapper fishery, but also several thousand square nautical miles of the South Atlantic to all bottom fishing to prevent any red snapper mortality as bycatch.

The most absurd and potentially punitive result of implementing annual catch limits can be found in the recommendation by the South Atlantic Fishery Management Council's Science and Statistical Committee of a generic formula designed to reduce harvest of stocks of fish that have never been assessed but are otherwise considered healthy and not showing any signs of decline. This formula would be applied to cobia, wahoo and dolphin in the South Atlantic, all species for which no stock assessment has been undertaken, with no indication that overfishing is occurring in any of them. The logical option would be to simply set the annual catch limit for these species at current harvest levels until assessments are performed. Unfortunately, fishery managers are recommending reduced catch levels for these species even though there is no indication that these species are in any trouble.

If NMFS proceeds to implement annual catch limits under such a draconian approach for data poor stocks and stocks without assessments, recreational fishing in federal waters could be indefinitely prohibited – a result I am certain that neither this committee nor the Congress ever intended to take place.

One of the goals of annual catch limits was to drive better data collection and provide greater accountability in fisheries management. Some are now concerned that NMFS intends to implement catch limits in such a restrictive manner that no new information on data poor or unassessed fisheries will be gathered, and that these fisheries will simply be closed or the allowable catch will be significantly reduced. Again, this was never the intention of this Committee, and the Senate Report explaining the need for annual catch limits to drive better data was clearly stated –

> *"The Committee intends that these annual catch limits, taken with the existing overfishing and rebuilding authorities, will ensure full compliance with the Magnuson-Stevens Act, thereby producing better data collection on the abundance of stocks and eventually providing real time catch figures—information that will help achieve greater accountability in fishery management. The intent of this provision is not only to prevent overfishing from occurring, but also to drive improvements in fishery data collection and*

> *research to develop a more precise assessment of the amount of fish that can be caught without exceeding [optimum yield].*"[3]

Improving Data Collection for Recreational Fisheries

Recognizing the need to improve information gathering on recreational fisheries, the 2006 Reauthorization of MSA provided a potentially valuable provision to establish a national program for the registration of marine recreational fishermen. The program is authorized "to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey, with a goal of achieving acceptable accuracy and utility for each individual fishery."[4] This provision was the result of a National Research Council report on the Review of Recreational Fisheries Survey Methods (2006), which determined that NMFS's recreational fisheries survey methods were fatally flawed and completely ineffective in establishing accurate recreational catch data.

The new national program for recreational data collection was required to be in place by January 1, 2009, but to date the program is still not operational. This is not only a failure by NMFS to meet the legal requirements of the 2006 Act, but it exacerbates the inability of NMFS to properly implement annual catch limits for recreational fisheries that lack timely data. In fact, this committee understood the need to implement improved data collection for recreational fisheries ***before*** the requirements of annual catch limits could be implemented, when it noted in the Senate Report explaining the national program –

> *"Improved [recreational] fishing data collection is imperative to the successful implementation of section 104(7) [annual catch limit section under S. 2012] of the Magnuson-Stevens Act."*[5] *(explanation of section number added)*

Improved data collection ***is*** imperative to the successful implementation of annual catch limits. Given the failure of NMFS to meet the legal requirement of the 2006 Reauthorization of MSA to establish a national program to improve recreational data collection, NMFS can not justify shutting down or reducing catch in recreational fisheries under annual catch limits when there is no data to support those limits. Recreational fisheries that have suffered for years from a complete lack of federal management cannot now be expected to implement arguably the most aggressive legal fishery management requirement ever established.

Considering the failure to properly meet the legal requirement to improve data via implementation of the national recreational registry program, recreational fisheries for which no stock assessment has ever been performed, and those fisheries for which no stock assessment has been performed within the last five years, should not be subject to annual catch limits below current levels.

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[3] *Id. at 7.*

[4] Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (P.L. 109-479), 16 U.S.C. 1881(g)(3)(A); MSA § 401(g)(3)(A).

[5] U.S. Senate. Committee on Commerce, Science, and Transportation. *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005 (to accompany S. 2012).* (S. Rpt. 109-229), pg. 38. U.S. Government Printing Office Washington, 2006.

Assessing the Impacts of Harvest Restrictions on Recreational Fisheries

New information and analyses are now required under the 2006 Reauthorization of the MSA. The mandatory requirements for drafting a fishery management plan were amended in four separate and distinct areas to require a description, consideration, analysis and assessment of economic impacts of harvest restrictions on each sector or participant in the fishery.[6] "Sector or participant in the fishery" are defined as "commercial, recreational, and charter fishing".[7] These four separate changes to the requirements for implementing a fishery management plan taken together "*require an assessment of the relative economic importance of the commercial, recreational, and charter fishing sectors of the fishery . . . to ensure that in allocating harvest restrictions among sectors, the economic impact of such restrictions on each sector participating in the fishery is considered."*[8]

Allocation is an ongoing and important responsibility of the MSA. It is a duty that should be performed by the Councils on a periodic basis to ensure that all sectors of the fishery are being treated fairly, and that the public's resources are being used for the best benefit to the nation. It is also the best way to accommodate the biological, economic and social changes in a fishery. The world today is not the same world that existed in 1977. Look at the population growth in only two states along the Gulf Coast over the life of the MSA. Florida has grown from about 8 million residents in 1977 to over 18 million in 2010. Texas has grown from approximately 13,000,000 to 25,000,000. Not all of the new population has gone saltwater fishing, but a substantial portion of them have. Florida is reported to have some 3,000,000 saltwater anglers, Texas another million. Those numbers do not include the many visitors that come to fish the same waters. All of these anglers are fishing the same stocks that existed in 1977.

These anglers are not fishing with the same level of efficiency as they were in 1977, either. Most of the present day fisherman use significantly better gear today than their parents did. In the '70s, offshore recreational fishing was undertaken with primitive sonar, boats with inboard engines and little knowledge of things like release mortality. Today we can go twenty miles offshore in a boat with three 350 horsepower outboards and locate a reef the size of this table. Technology has made today's angler much more efficient. It has also produced a significant industry for fishing tackle, electronics and boats. NOAA estimates that marine recreational fishing contributes some 80 billion dollars to the US economy, which includes a lot of jobs here at home. A big part of that, especially for the federal fisheries, is the sale of boats. The National Marine Manufacturers Association estimates that recreational fishing takes place on some 70% of the boats sold in the US.

The MSA has a mechanism to accommodate all of these changes---the Councils need to review and change allocations as necessary. Fishery managers and councils are inherently reluctant to do this because allocations of the use of any public resource creates winners and losers and the inevitable controversy. However, the MSA clearly points to the elements

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[6] MSFCMRA (P.L. 109-479), 16 U.S.C. 1853(a)(5),(9),(13),(14).

[7] *Id.*

[8] (S. Rpt. 109-229), pg. 21.

necessary to consider changes in allocation. It now requires economic analysis of the impact on the various sectors of changes in the fishery. It has always required an analysis of the fairness of any redistribution of the resource and the conservation impact of the measures on each sector.

My State of Florida, along with many other states, has managed such changes constructively. In many cases, States have declared gamefish status for key recreational species. In Florida there are no sale provisions for snook, tarpon and bonefish. The State has banned the use of highly destructive and non-selective gear like gill nets. It has placed size, season, and bag limits on recreational fishermen that have allowed for continued access to the fisheries but also conserved the stocks. Lastly, they have enlisted the support and cooperation of the recreational angling community to ensure acceptability and compliance. All of this has been allocative, and all of it was done to provide greater access to the public resource. NOAA recently adopted a catch share policy which includes a requirement that allocation decisions be made by the regional Councils to reflect the social, economic and conservation needs of the fishery. The Gulf Council has recently initiated just such a review for red snapper, gag and red grouper. The outcomes of these reviews must reflect the reality on the water. We can no longer close out the public because of decades old allocations based on historic catches of 20 or 30 years ago.

Thank you again for the opportunity to comment on how the current implementation of the changes made to the MSA in 2006 are impacting recreational fisheries in the state of Florida. The problems I have described are real, and the impacts are creating a damaging rift between conservation-minded anglers and the federal agencies charged with managing our fisheries. It is critical that before annual catch limits are imposed on data poor fisheries and fisheries that have had no assessments, the Congress require program funds for more stock assessments and improved data collection.

We would like to work with the Subcommittee toward that end. Mr. Chairman, that concludes my testimony, and I would be happy to take questions.