

Nick Wiley
Executive Director
Florida Fish and Wildlife Conservation Commission (FWC)
Testimony
“Exploring the Successes and Challenges of the Magnuson-Stevens Act”
July 19, 2017

Chairman Lamborn, Vice Chair Webster, and Ranking Member Huffman, thank you for the opportunity to testify at this important hearing “Exploring the Successes and Challenges of the Magnuson-Stevens Act.”

My name is Nick Wiley, and I serve as executive director for the Florida Fish and Wildlife Conservation Commission (FWC). FWC is the state agency responsible for managing fish and wildlife resources in the state of Florida. I also serve as president of the Association of Fish and Wildlife Agencies (AFWA), which is the professional association that represents state fish and wildlife agencies nationwide. My remarks today, however, are offered on behalf of my agency in Florida.

Recreational fishing generates an economic impact of \$8 billion to Florida’s economy and supports more than 115,000 jobs. Florida leads the nation in the number of saltwater recreational anglers. We have more world record fish catches than any other state or country. Our state is home to a thriving fishing tackle and marine manufacturing industry. Florida leads the nation in the number of registered boats, with nearly 50 percent of boat owners using their boats for fishing. Recreational boating contributes \$10 billion to our economy and supports more than 80,000 jobs.

Florida has one of the top-producing commercial fisheries in the country, which is second in the nation in terms of sales, income, and value-added impacts, and is third in the nation for the number of jobs supported by commercial fishing. The seafood industry in Florida supports more than 90,000 jobs. Sales of Florida seafood have an economic impact of more than \$1 billion.

As the state agency responsible for managing saltwater resources for their long-term well-being and the benefit of people, FWC is uniquely positioned to comment on the Magnuson-Stevens Act.

Background

As you are aware, Magnuson-Stevens was enacted in 1976 and amended in 1996 and, most recently, in 2007. The original law creating the federal fisheries management structure has largely remained in place for more than 40 years. Eight regional management councils are responsible for developing and implementing fishery management plans. Council members are nominated by governors and are appointed by the Secretary of Commerce. The regional management councils monitor fisheries and make recommendations for fishery management plans that are ultimately approved by the Secretary of Commerce with guidance from the National Marine Fisheries Service (NOAA Fisheries). These fishery management plans dictate access to, types of, and

number of fish that are available to recreational anglers, the charter fleet, and the commercial industry.

Fishery management plans have a huge impact on the economy at every step from sea to table. It is important, therefore, that all parties involved in the fisheries management plan development processes have access to the right data, use all tools available to interpret these data, and be given the flexibility to make necessary management decisions.

I recognize the purpose for this hearing is to explore the “successes and challenges” of the Magnuson-Stevens Act. This federal legislation has provided the framework for a number of successes. Many important fish stocks have been rebuilt or are well on the way to rebuilding due to the provisions of this Act and its diligent implementation. In my agency and my state, however, we always stay focused on challenges and are continually seeking ways to solve problems and improve. This is particularly true with our efforts to sustainably manage marine fishery resources for the benefit of Florida families, communities, and the millions of Americans who visit our state each year from across the Nation.

Given this, I am not inclined to look in the rear view mirror to celebrate successes or rest on laurels. In fact, I want to be very candid in my remarks today. Speaking for my agency and many of our stakeholders, we are not pleased with the current framework of Magnuson-Stevens and believe there is much room for improvement. We are facing a number of highly controversial and divisive fishery management challenges that continue to simmer. We cannot fully address these challenges in many cases because we are boxed in by the current framework of the Magnuson-Stevens Act, and we need your help to find solutions.

Magnuson-Stevens was originally designed to prevent overfishing in the commercial fishing industry and implement rebuilding plans when fish stocks are overfished. The Act has worked best when applied to the commercial sector, but not so well when applied to the recreational sector. The 2007 reauthorization of Magnuson-Stevens created numerous challenges for the management of marine fisheries resources in the Southeastern United States. The requirements to manage fisheries under strict annual catch limits, the overly prescriptive constraints for stock rebuilding plans, and general inflexibility within the current version of the law have hindered management of fish stocks in the South Atlantic and Gulf of Mexico. This inflexibility has fostered a serious erosion of public confidence, trust, and support for this fishery management system. FWC believes Magnuson-Stevens, as currently written, needs to be modified and improved to better balance today’s need for access and conservation. Changes to the law are needed to provide better utilization of and access to the nation’s public trust resources for the American public and the citizens of Florida.

Annual Catch Limits are not a Universal Solution

The requirements for annual catch limits and fishing levels required by Magnuson-Stevens are impractical for the South Atlantic and Gulf regions, which harbor the largest segment of recreational fishing in the nation. While annual catch limits, or quotas, may work well for commercial fisheries in which harvests are closely monitored, they can complicate management of recreational fisheries, such as red snapper. This is the case because the system that generates recrea-

tional harvest estimates, the Marine Recreational Information Program (MRIP), is less precise than commercial monitoring and does not generate estimates in real time. This system was not designed or equipped for tracking recreational harvest to the individual pound, but was originally intended to provide general trends in recreational harvest and effort. Recreational data is often extrapolated unrealistically, especially for species not commonly targeted by hook-and-line, such as hogfish, which are primarily speared, or for species classified as “rare events,” such as red snapper, which has had no annual season in the South Atlantic region the last few years, and before that, had a very short one.

Even though methodologies to estimate recreational harvest have improved since the last Magnuson-Stevens reauthorization, they are still insufficient to manage recreational fisheries under strict annual catch limits. Yet, bound by the requirements of Magnuson-Stevens, federal fishery managers use the recreational data collection system to justify the closing of fisheries, often with minimal advance notice. Despite fishery managers’ best efforts to constrain recreational harvest to the annual catch limit through fishing seasons and recreational bag limits, the unpredictable figures produced by the system can result in estimated harvest exceeding the annual catch limit. The penalties for doing so, including closures, reduced seasons, and reduced catch limits, frustrate private recreational anglers and prevent the charter industry from developing effective business plans. Management of the recreational sector under strict annual catch limits generates devastating socioeconomic effects and is highly unreasonable due to the insufficiency of the recreational data collection system.

In the Southeastern United States, the annual catch limit requirement further complicates fisheries management for stocks that have never been assessed or whose assessments are outdated. Accurate stock assessments are the linchpin for successful management under annual catch limits. Historically, investment in stock assessment capabilities in the Southeast has been low in comparison with other parts of the country. In 2017, only five assessments of South Atlantic or Gulf Council-managed stocks are scheduled to be completed under the SEDAR process (three for the South Atlantic and two for the Gulf). Given the large number of federally managed fish stocks, as well as the high level of participation and the economic revenues generated by fisheries in the Southeast, the funding and priorities of NOAA are woefully inadequate for this region. Although the annual catch limit is a federal requirement, the state of Florida, through FWC, produces many of the stock assessments needed to implement this system. In addition to assessments of state-managed species, FWC annually produces one or two assessments of federally managed species. Inadequate funding of the research and the capacity needed to conduct adequate stock assessments will continue to inhibit management under annual catch limits and will prevent fisheries from achieving optimal yields.

So, in summary, with regard to recreational fisheries management, particularly in the Southeast, the current monitoring system under Magnuson-Stevens is truly a square peg in a round hole causing high levels of frustration, particularly among recreational saltwater anglers. I do not fault the federal and state fishery scientists and managers who are doing their best to make this system work. We just do not have the flexibility to fully address these problems without changes to the statutory framework and more strategic funding solutions.

Magnuson-Stevens already acknowledges that it is not appropriate to manage all fisheries under annual catch limits, such as in fisheries where the species life cycle is less than a year. However, there are other fish stock characteristics that preempt the utility of annual catch limits in the United States. For example Florida's spiny lobster is one of the state's most valuable commercial fisheries with a dockside value averaging \$20 to \$24 million annually. Lobsters have a unique life cycle with a long larval stage, which means the recruits for Florida's fishery are spawned elsewhere in the Caribbean. As a result, harvest in Florida has minimal effect on future abundance of the stock. Decisions made in foreign Caribbean countries ultimately seal the fate of our fishery. Thus, an annual catch limit provides no biological benefit for Florida's spiny lobster, and Magnuson-Stevens should not require this fishery to be managed under this system.

A concrete example of how the current management system of annual catch limits has failed comes from the Gulf of Mexico recreational red snapper fishery. After a long history of overfishing, the Gulf red snapper stock is rebuilding ahead of schedule, and annual catch limits have increased. The commercial fishery has benefited through individual fishing quotas and now has access to the stock year round. In contrast, the recreational fishery has faced increasing uncertainty in recent years, with federal fishing seasons being cut shorter and shorter each year. The Magnuson-Stevens framework in this regard has created a situation where recreational fishing literally is a victim of successful stock rebuilding rather than realizing increasing access and sharing in successful rebuilding. As a result, the recreational season for Gulf red snapper diminished to just three days in 2017.

Thankfully, several of you and your colleagues recognized the seriousness of this dilemma with Gulf red snapper and worked with the United States Department of Commerce and Gulf states to allow a 39-day season in federal waters this year. To those of you who led the way on this effort, particularly Majority Whip Steve Scalise, and on behalf of recreational anglers and coastal communities across the Gulf of Mexico, I want to offer a heartfelt thank you for the relief you provided this season. But now we have to look ahead to next season and beyond to secure durable solutions for the red snapper situation in the Gulf and South Atlantic. We are earnestly and respectfully seeking your continued attention and support in this regard over the next few weeks and months.

If alternative fishery management systems can be employed in federal fisheries management, private recreational anglers and charter captains would face less uncertainty in fishing seasons while stocks, such as Gulf red snapper continue to rebuild. These innovative approaches would provide valuable socioeconomic benefit to Florida's Gulf coast fishing communities, such as Destin and Panama City, which depend on charter trips and vacationing families staying in hotels and eating in local restaurants, for much of their economy. But, we cannot get there without your help.

The Current System is Unnecessarily Inflexible

The management system established under the 2007 Magnuson-Stevens reauthorization is extremely inflexible and sometimes contrary to common sense. Under the requirements of Magnuson-Stevens, the regional management councils develop rebuilding plans for overfished stocks. The law requires rebuilding plans to end overfishing within two years and attempt to re-

build stocks within 10 years, if biologically possible. These arbitrary deadlines can be unnecessarily disruptive to fishing communities and local economies. In some cases, if longer timeframes were allowed, fisheries could be rebuilt or overfishing could be eliminated without devastating the economic livelihood of fishermen and negatively affecting fishing communities. We are simply suggesting a more balanced and measured approach that would benefit all sectors of the fishery while maintaining a path to full rebuilding of fishery stocks. This approach will achieve fishery conservation goals while restoring public confidence in and support for our collaborative fishery management system.

Inflexibility also impacts how data is used in fisheries management. Magnuson-Stevens requires fishery management plans and regulations be “based upon the best scientific information available.” This is sound in theory. However, due to inadequate funding for fisheries research in the Southeastern United States, the shortcomings of the recreational data collection system, and stock assessment models that depend upon harvest data, the “best scientific information available” is not always best. The regional management councils and their scientific advisors have recognized this. Yet, they are constrained to using fallible data when making management decisions because it is the best available.

Perhaps one of the best examples of the requirement to use the “best scientific information available” confounding sound management in the Southeast occurs in the Atlantic red snapper fishery. The Atlantic red snapper stock was first declared overfished in 2008. In response, the South Atlantic Fishery Management Council (SAFMC) took drastic measures to end overfishing and implement a rebuilding plan. This included prohibiting all harvest of red snapper in 2010, 2011, 2014, 2015, and 2016. In the last eight years, NOAA Fisheries has only allowed 17 days of recreational harvest. This creates a significant problem for assessing the Atlantic red snapper stock.

The 2016 stock assessment determined Atlantic red snapper is still overfished and undergoing overfishing. However, the magnitude of overfishing is unknown. This is because the model used to assess the red snapper stock relies on data from fishing to inform the assessment. NOAA Fisheries has determined that without a fishery, the model cannot produce results to inform management or to set annual catch limits. Although the 2016 stock assessment found the stock abundance had dramatically increased, management of the fishery must still be guided by the “best scientific information available,” which comes from the 2010 stock assessment. Consequently, there will be no fishery again this year from which to collect data to inform the next stock assessment. How can we defend this situation to the hard working people in the recreational fishing industry, the charter boats, and commercial fishermen whose livelihoods depend on sustainable access to this fishery?

The 2010 Atlantic red snapper stock assessment established annual catch limits that restrict the amount of both harvest and dead discards. Dead discards result when fishermen incidentally catch red snapper and release them but the fish does not survive. As the fishery has been closed, only dead discards have been counted against the annual catch limit. The system that generates recreational data, including dead discard, estimates has been deemed the “best scientific information available.” As stated earlier, data produced by this system is imprecise and is often extrapolated unrealistically, especially for closed fisheries. The estimated number of dead discards has increased exponentially in recent years, and for the past three years, it exceeded the annual

catch limit. NOAA Fisheries acknowledges that estimates of dead discards are flawed. Clearly, the system is broken if the estimated number of fish that die because of bureaucratic regulations exceeds the annual catch limit. These same fish could have been harvested and enjoyed by America's anglers and seafood consumers. Changes are needed to break this cycle, including the flexibility in determining when and how scientific data should be used.

There is a Path Forward

FWC is encouraged by legislation recently introduced in the United States House of Representatives that would amend Magnuson-Stevens to provide realistic solutions for continued conservation and management of marine fisheries, while also providing reasonable public access to these resources. H.R. 200 introduced by Congressman Don Young (R-AK), the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, would substantially improve fisheries management and help bring better balance for fisheries conservation and access. Specifically, those improvements are:

- Basing fish stock rebuilding timeframes on biology rather than on an arbitrary, one-size-fits-all deadline;
- Providing flexibility in ceasing a rebuilding plan when it is determined to no longer be necessary;
- Giving regional management councils the flexibility to use ecosystem changes and economic needs of fishing communities when setting annual catch limits;
- Exempting certain stocks where annual catch limits may not be appropriate, such as spiny lobster;
- Providing flexibility in the management of recreational fisheries, such as fishing mortality rate targets and alternative rebuilding strategies;
- Repealing Section 407(d) because this section is outdated and should be removed given it addresses creation of an Individual Fishing Quota (IFQ) program and catch limits for red snapper. Gulf red snapper has an IFQ program, and catch limits are now addressed elsewhere in the Magnuson Stevens Act. Removal of this section also would allow the Council to consider needed modifications to the red snapper IFQ program without always needing a referendum.
- Increasing public involvement and transparency when scientific data are developed;
- Prioritizing improvements to data collection and stock assessments, particularly in the Southeast;
- Forming a federal-state partnership program to improve data collection for recreational anglers;
- Adding a definition for "depleted" and requesting NOAA to indicate in an annual report on why a species is depleted, which might not be related to fishing;
- Requiring a referendum for South Atlantic Council LAPP programs.

While acknowledging enactment of this bill would deliver major improvements, FWC recommends additions or changes as follows to more completely address significant fishery management issues:

- **Reef Fish Stock Assessments in the Gulf:** The Gulf States Marine Fisheries Commission does not have the personnel with institutional knowledge and appropriate science and marine

fisheries management background to perform the due diligence and provide an accurate stock assessment. FWC suggests, therefore, changes that would identify a more appropriate organization to perform reef fish stock assessments and stands ready to help identify such an organization..

- **Cost recovery money from Limited Access Privilege Programs (LAPPs):** A complete accounting of the disbursements, including how much is used for program administration, law enforcement, etc., would provide a high level of transparency for the public to understand how this program operates.
- **Marine Recreational Information Program Reporting:** FWC suggests changes in the MRIP report that transparently acknowledge the limitations of MRIP for the current management system.
- **Referendum Participation:** FWC suggests limiting catch share voting to those who have landings from the particular species for which the catch share is being implemented.

In addition to H.R. 200, H.R. 2023, the Modernizing Recreational Fisheries Management Act, which was introduced by Congressmen Graves (R-LA), Green (D-TX), Webster (R-FL), and Wittman (R-VA) contains many important reforms that would bring stability, flexibility, and security to recreational fishing.

Some of those key reforms are:

- Charging National Academy of Sciences (NAS) with conducting a study on allocation for South Atlantic and Gulf of Mexico mixed-use fisheries;
- Repealing Section 407(d) of Magnuson and giving Councils the authority to use alternative fishery management measures for recreational fisheries;
- Instituting a moratorium on LAPP for mixed-use fisheries in the Gulf of Mexico and South Atlantic. FWC suggests including a sunset date, such as five years, for the moratorium;
- Basing rebuilding time frames on biology, stock status, and the needs of fishing communities;
- Giving Councils flexibility to consider changes in ecosystem and economic needs of communities when setting ACLs and removing ACL requirements for certain criteria. FWC suggests allowing the Secretary of Commerce, when determining an ACL, to consider that overfishing is not occurring or inadequate data collection system is being used.
- Including affected states in review of proposed exempted fishing permits to ensure the proposed activity is consistent with management and conservation objectives, and that social and economic impacts are minimal;
- Facilitating greater incorporation of data, analysis, stock assessments, and surveys from state agencies and non-governmental sources and following through with recommendations of the NAS for evaluation of whether MRIP use is compatible with current management;
- Creating best practices for state-administered recreational data collection programs and providing funding for improvement of state data collection programs. Within 90 days of enactment, Secretary of Commerce must enter into agreement with NAS to review if MRIP is compatible with the needs of in-season management of annual catch limits, including whether in-season management of annual catch limits is appropriate for all recreational fisheries.

This is an exciting time to be involved in fishery management. We appreciate these opportunities to address serious problems and create a better fishery management system for all parties

involved including the hard working people in the fishing industry and the millions of American families who count on us to provide sustainable access to enjoyable saltwater fishing and tasty seafood.

Mr. Chairman, thank you again for the opportunity to testify, and FWC looks forward to working with you and the members of this committee to advance legislation that strikes the important balance between access and conservation.