

Testimony of

**Robert G. Hayes**

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Good morning Mr. Chairman. My name is Robert Hayes, and I have worked with conservation groups for a number of years to foster federal policies that improve the conservation of our nation's public ocean resources and enhance the recreational experience of America's recreational anglers. I would like to thank you for this opportunity to speak today about the immediate need to pass H.R. 2304 sponsored by Rep. Rob Wittman and a number of members of this committee and supported by the Congressional Sportsman's Caucus and the Congressional Sportsmen's Foundation. I would like to point out that Senators Nelson and Rubio, along with others, introduced in the Senate on Monday S.1916, a bill functionally similar to H.R. 2304.

One of the groups I have worked with is the Center for Coastal Conservation, which is a coalition of America's leading advocates for marine recreational fishing and boating. It is dedicated to promoting sound conservation and use of America's marine resources. The organization includes the American Sportfishing Association, Coastal Conservation Association, International Game Fish Association, National Marine Manufacturers Association, The Billfish Foundation, as well as other institutions and individuals across the country. Along with the Congressional Sportsmen's Foundation, these organizations all endorse my testimony today. There are three issues I would like to address today: 1. The importance of marine recreational fishing to the citizens and businesses of this country; 2. The need to prevent the adoption of quotas by sector for every stock of fish under federal management; and, 3. The urgency of acting now.

### **Why Recreational fishing matters.**

In 1977, when the Magnuson-Stevens Act was originally passed, few if any in the Congress or the administration gave much thought to management of marine recreational fishing. For the most part, it was being done through size, season and bag limits by the states. The boating and fish catching technology were, by today's measure, relatively primitive. Most anglers stayed closer to shore and were less efficient. Today, both by number of anglers and the boats and gear they use, all that has changed. Saltwater anglers can easily fish off shore and, given the state of the technology, can easily locate target species. In 2006 – the last year the National Marine Fisheries Service generated national estimates of effort and participation – 24.7 million saltwater anglers took nearly 100 million recreational fishing trips (97.7 million) – almost four trips per saltwater angler each year.

Saltwater recreational anglers generated \$92.2 billion in total sales (in 2011 dollars). Of that total, anglers generated \$15.2 billion in total sales from trip expenditures that included food, lodging, fuel, bait and charter fees, among other expenses. Trip expenditures are dominated by the cost of fuel used in personal vehicles to travel to and from the fishing site or marina followed closely by the purchase of food and beverages. Additionally, those same anglers generated \$76.9 billion from expenditures on durable goods that include tackle, gear, boats, houses and vehicles used for saltwater fishing. This category of spending is dominated by boat and vehicle purchases, with boat purchases generating \$6.8 billion in economic impact and vehicle purchases generating \$5.3 billion in economic impact. The boat-building business is almost exclusively a U.S.-based industry. Both trip and durable goods expenditures support 533,813 jobs across the U.S. In terms of economic impact, Florida has

the highest numbers at \$14.2 billion in total sales supporting 130,900 jobs followed in order by Texas, California, Louisiana and North Carolina.

As a matter of comparison, in 2006 commercial fishing in the U.S. generated \$102.5 billion in total sales and supported 1.5 million jobs. This estimate includes impacts from the harvester right through to the consumer.

In addition to expenditures on trip costs and fishing equipment, anglers contribute a considerable amount to direct fisheries management at the state level. Across all states, recreational anglers contribute \$621.5 million in license purchases and \$329.8 million across just the coastal states (2010 estimates). The vast majority of this money returns directly to management and enhancement of recreational fishing. In addition to license sales, recreational anglers contribute to conservation through excise taxes on fishing equipment and fuel purchases. In 2010, these excise taxes generated \$650 million nationwide and those monies are apportioned back to the states for fishery management purposes. State fish and wildlife agencies depend heavily on these funds to operate their programs.

While the economic impact of marine recreational fishing is vast, it is still not reflected in the management process. The primary reason may simply be the very nature of the commercial and recreational sectors. The number of commercial fishermen is small relative to the number of recreational fishermen. The number of businesses that commercial fishermen buy their supplies from and sell their fish to is an even smaller number of operators. As a result, the commercial activity moves through a smaller number of hands and is a larger payday in those businesses' pockets. This makes it much easier for the commercial sector to build a cohesive base that secures the attention from the agency responsible for collecting the science affecting their sector.

Recreational fishermen spend their dollars at thousands of gas stations, grocery stores, marinas, marine dealers, mom-and-pop bait-and-tackle shops, restaurants and hotels along with everybody else buying those goods and services. The local gas station or convenience store is not likely to band together with anglers to build a base of support to represent them before NOAA Fisheries. You are not going to see truck manufacturers clamor for better data for recreational anglers even though the purchase of trucks to tow boats is the second biggest durable goods expenditure made by anglers. As a result, policymakers do not truly recognize the large economic impact of recreational fishing.

To the credit of the leadership at NOAA, Jane Lubchenco and Eric Schwaab, there has been a substantial effort to try to solve this problem. But institutionally, the problem remains and will need continued long- and short-term attention.

### **So what is the problem we can fix?**

In 2006, the Congress passed a series of amendments to the Magnuson Stevens Act. Many of these amendments were based on two basic paradigms. The first was that fisheries in federal waters off Alaska were in substantially better condition than stocks elsewhere in the United States as a result of the process used and the resulting management decisions of the

North Pacific Council. The second was a perception that although the prescription to stop overfishing and rebuild overfished stocks had been in existence for almost ten years, no Council except for the North Pacific Council had been able to achieve the objective. These two premises lead to a series of changes in the Act which required every Council to operate like the North Pacific Council and impose a series of measures to stop overfishing.

The first set of changes seems to ignore that not every Council manages commercial fisheries worth billions of dollars. Nor do they manage fisheries that on the whole have never been subject to overfishing. A North Pacific Council meeting is attended by dozens of advocates, scientists and consultants representing all of the views of the various stakeholders. The members of the Council have a wealth of information and expertise on which to rely. In addition, NOAA Fisheries provides annual stock assessments for the economically important species, and periodic assessments for the rest. Since the fisheries managed are almost exclusively commercial, there is a wealth of real-time data which allows the Council and NOAA Fisheries to make adjustments to regulations with a degree of certainty unmatched anywhere else. The difference between the data available in Alaska and in the other parts of the country is staggering. As an example, for the past few years the agency has been conducting about 40 stock assessments a year in Alaska. At the same time, it has been assessing 15 stocks a year in the Gulf of Mexico, South Atlantic and Caribbean combined and most of those assess commercial shrimp stocks. For the sport fish that anglers pursue, the agency does about six assessments per year.

The one-size-fits-all 2007 amendments undermine the discretion of Councils, which must manage to the species, fishermen and management systems available to them. Don Rumsfeld once said, "You go to war with the Army you have, not the Army you might want or wish to have at a later time." The same has to be true for fisheries management. The statute can't simply require increasingly onerous restrictions without some accommodation to the lack of science and management capability in the agency.

The second set of changes resulted in strict measures to stop overfishing. The first change was partially implemented in 2010 when Annual Catch Limits (ACLs) and accountability measures (AMs) were put in for all stocks that were overfished. In 2009, that included some 48 stocks, many of which already had measures similar to this requirement. Now, by the end of 2010, all fisheries under management by NOAA, with few exceptions, were required to have ACLs and AMs. NOAA, in the implementation of this provision, has required that the provision be put in place for every sector for all stocks regardless of the science available or the management capability in the region. This meant that in fisheries in the Gulf, South Atlantic, Caribbean and western Pacific, for which little or nothing was known other than some basics, stocks would now be managed by quotas. For recreational fishermen used to being managed by traditional tools like seasons, time and area closures, size and creel limits, this comes a quite a shock. .

Stopping overfishing is something everyone can appreciate. Managing every sector and every stock under management by quota, whether it's healthy or not, is quite another matter. I doubt anyone envisioned this result when the 2006 amendments passed the Congress. Over the past few years, it has become painfully apparent to anyone associated with marine

recreational fisheries that NOAA Fisheries does not have the data to properly manage fisheries to the requirements of these provisions. A NOAA convened workshop on Recreational Data Timeliness recently concluded:

*A general theme of the Timeliness Workshop was the need to consider adapting management to data constraints rather than adapting data to meet management needs. Improvements in recreational data quality and timeliness that can feasibly be implemented through MRIP should not be viewed alone as a panacea for management of recreational ACLs. Rather, management approaches for addressing the management uncertainty associated with data imprecision or estimation lag times must also be considered for successful management of recreational sector ACLs.*

To understand the magnitude of the problem, a description of what is being managed is helpful. The term “fish” has been interpreted to cover hundreds of species of finfish, corals, vegetation and jellyfish. Of these possibly thousands of stocks of fish, the federal government has about 528 stocks of fish and stock complexes under management. Although NOAA seems reluctant to identify how many stocks are in all the stock complexes being managed, one stock complex in the South Atlantic alone contains some 73 different stocks. In its testimony before the Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs this July, the agency referred to 500-plus managed stocks. . Assuming that all of the stocks in the stock complexes were counted, the real number is probably 800-plus. Of that, the agency only assessed 132 in 2010 and only includes some 230 in its Fish Stock Sustainability Index. Not only are the other stocks not assessed, there is no plan given present scarce resources to improve this shortfall.

Apart from major data problems associated with stock assessments, there are major problems when it comes to measuring recreational fishing effort and impacts. Such data is very difficult to collect compared to commercial fishing as methods such as on-board monitoring and dock surveys do not apply effectively to recreational fishing. Congress attempted to address this problem in the 2006 Magnuson-Stevens amendments through language that has led to the creation of the Marine Recreational Information Program (MRIP) – the recreational fishing survey system adopted by NOAA Fisheries to replace the ineffective Marine Recreational Fisheries Statistics Survey (MRFSS). The National Research Council concluded in 2007 that MRFSS data was incapable of being used for any purpose, leading Congress to direct the agency to make substantial changes to how it collected recreational fishing data. However, the data being relied on by the Councils to make all of the ACL decisions for the recreational sector is MRFSS data. . The new and improved MRIP system is only now being tested and its data was not available to any Council for its decision-making this year. As NOAA Fisheries Director Eric Schwaab told the subcommittee in July, NOAA is rerunning the data outputs using raw data from 2005 to date. What he didn’t say was that the reanalyzed raw data using the new MRIP assumptions in many cases produces different results. Whether those results change any of the previous assessments will have to wait for further analysis, but whether those results would have changed the ACLs cannot be doubted—yet none of them are being used for that purpose.

Faced with a statutory deadline requiring annual catch limits on all stocks by the end of this year, the agency and the Councils are moving to meet their obligations, regardless of the inadequacy of the data, a plan to improve it, or the resources to implement it.

The management system is using three different tools to implement this measure. The first is to simply delete the stock from federal management. The Gulf Council has adopted a plan amendment that deletes 18 stocks from the reef fish fishery. The South Atlantic Council has proposed an amendment deleting 39 stocks from management. When a stock is deleted from a Fishery Management Plan, it is removed from federal management protections. So the Council no longer has to worry about setting an ACL with inadequate data, but these particular stocks are no longer protected, for instance, from prohibitions on taking them with drift gill nets or fish traps in federal waters.

The practical effect? Management of those stocks will likely be left to the states which will perhaps manage the stocks with state landings laws. But the states neither asked for the management responsibility nor received funding to engage in management.

The second method of ACL implementation is to classify stocks as ecosystem stocks, which are not deleted from federal management, but do not require an ACL. This classification cannot be found in the Magnuson-Stevens Act, nor did most of the Councils use it as a refuge for avoiding ACLs. This logical and potentially appropriate designation for many stocks of fish was presented to Councils with overly restrictive parameters saying the regulatory exemption for a stock that was “not sold or retained.” That interpretation led to Councils simply ignoring this potential tool because they realized that recreational anglers often retain even the most minor species.

The last method adopted is the most arbitrary and was referred to by Mr. Schwaab in his July testimony this year as using a “variety of proxies” to substitute for data in making ACL decisions. This idea is fine for data-rich fisheries, but in data-poor ones the assumption is that the health of one stock is directly related to the health of another. It might happen that way or might not. . No matter how poor the data, the Councils are simply going ahead and applying it to set ACLs. Historically, Councils have created allocations by sector largely based on historical catch records. When the Councils thought the data was poor, they applied a buffer between what the annual catch might be and some lower level to ensure that the sector didn't exceed its quota. Many of these calculations are extremely conservative and result in allowable landings of just a few hundred fish in some fisheries. In the South Atlantic, the annual catch for recreational fishermen of snowy grouper is less than 300 fish. How does the agency, even with the new and improved MRIP, count that few fish? It will only take the misidentification of a couple of them in a creel survey to close the whole fishery. Yet there is no plan to educate fishermen or to improve the data system to avoid this result.

### **Why the Fisheries Science Improvement Act – H.R. 2304?**

Many groups have said MSA is working and should not be amended. They base this conclusion on the rebuilt fisheries *that have resulted almost exclusively from the 1996*

*amendments to MSA*, which required an end to overfishing and a rebuilding of stocks in a time certain. Those amendments clearly have worked. What happened in 2007 was an over-reaching of control that has deprived many of the Councils of the discretion they need to tailor measures appropriate to the science and the management capability they have, not what they would like to have. Adopting and implementing ACLs will lead to the closure of perfectly healthy fisheries, to litigation and, subsequently, to the loss of all respect for the process that required them.

Oceana has already filed suit challenging the Mid-Atlantic Council's attempt to implement the ACL and AM requirement. Oceana claims MSA requires the agency to "count, cap and control" the harvest of every stock under management. Oceana alleges that the agency failed to require the collection of statistically reliable information to enforce catch limits. Other suits are sure to follow if NOAA adopts the amendments the Councils have submitted to implement the ACL/AM requirement. These suits will challenge the deletion of stocks from the fishery management plans, the designation of ecosystem stocks, and the regulatory creation of the category. They will challenge any ACL that is not set conservatively enough to meet a "count, cap and control" standard.

Lastly, for those ACLs that make it through the litigation gauntlet, the ENGO community will challenge the agency's implementation. Federal judges may have trouble understanding complex fishery management policies, but judges have no trouble understanding numbers. When that hard ACL is exceeded (and it will be) environmental lawyers will be there to shut fisheries down, whether or not there is a positive conservation benefit.

Artificially low ACLs/AMs based on poor data, combined with current statistical survey methods of recreational harvest, create the very real possibility that a very few fish being recorded in a survey will be extrapolated to project a total harvest number exceeding the ACL. The result will be to not only shut down fishing for that stock, but in many cases will serve as the basis for shutting down the whole fishery. This is the domino effect that occurred in the South Atlantic last year when managers were within inches of shutting down all bottom fishing in thousands of square miles to recover red snapper stocks. The shutdown was averted when unprecedented pressure and protest from all quarters compelled NOAA Fisheries to conduct a second full stock assessment on red snapper, which revealed that the stock was not in need of such drastic management measures.

Many of the examples used in this testimony have related to the recreational sector, which indeed is not accustomed to being managed by quotas. However, the pain from these measures will be applied equally to all sectors. One example has already occurred in Alaska where a pot fishery for Pacific cod had been closed because the ACL for the bycatch – octopus – was caught before the quota for the directed fishery. A reasonable result, if the ACL for octopus had been anything other than a guess, but in this instance there seems to be little relationship between the health of either the Pacific cod or octopus stocks and the measure taken. .

The Oceana suit specifically addresses the bycatch in Atlantic fisheries of summer flounder claiming the lack of an ACL/AM for the bycatch is inadequate to count, cap and control the

total catch of summer flounder. The bycatch of summer flounder is accounted for in the assessment, but it is not subject to a hard bycatch number.

Another example being discussed is the bycatch of the shrimp fishery. As everyone knows, there is a large bycatch of a multiple stocks of finfish in the shrimp fishery. ACLs for annual stocks like shrimp do not require an ACL, but under the Oceana view of the world every stock in the shrimp bycatch requires an ACL specifically for the shrimp fishery. Since no one has any idea what the bycatch ACLs for the shrimp fishery ought to be other than the existing one for red snapper, they will be developed just like the rest of ACLs, as conservatively as possible.

The scenario painted above is not fictional. The only reason there have not been more suits filed is because NOAA hasn't approved all of the ACL/AM amendments yet.

When Congress reauthorized the Magnuson-Stevens Act in 2006, none of us knew that NOAA Fisheries was so data-poor. NOAA Fisheries has not received substantial increases to manage either the science or the implementation of a system like the one Oceana envisions. Imagine that there are some 800 stocks under management and that each of the stocks has only two sectors catching them. Now add all of those stocks that are also caught in fisheries other than the one being managed directly. NOAA would be required to manage more than 2,000 quotas annually and take regulatory measures for each one. No one in the recreational community believes the agency has the data, appropriations or management to accomplish that.

The Wittman bill gives NOAA the ability to manage the species that matter the most to commercial and recreational fishermen, monitor and collect data on the rest, and continue to provide for comprehensive management of the oceans' resources. .

The bill removes the authority to issue ACLs/AMs for any stock of fish that does not have a survey or assessment within the last five years. It continues the authorization of ACLs/AMs for all stocks that are overfished or overfishing is occurring and, as a precautionary measure, authorizes ACLs/AMs for any stock in danger of being overfished.

The bill gives the Councils greater discretion to avoid removing fish species from management and leave them in the jurisdiction of the agency by allowing the agency to put certain stocks of fish into an "ecosystem" category. FSIA authorizes the category and broadens the eligibility for stocks of fish that can be placed in it.

Finally, the Fishery Science Improvement Act gives NOAA Fisheries three years to go back and work with the Councils to figure out how to implement science-based measures that are appropriate for each region and its fish.

The Wittman bill – already co-sponsored by 34 of his colleagues – is very concise, simple and targeted. The implementation of the 2006 Magnuson Stevens Act Amendment has gone to a level never imagined by recreational fishermen. In addition to seasons, bag and size limits, they are about to get quotas on every fish they catch in the ocean based on a mountain

of bad data. Without Congressional action, arbitrary decisions affecting millions of anglers and commercial fishermen and thousands of businesses will continue to be made.

HR 2304 needs to be passed as soon as possible---the time bomb is ticking.

Mr. Chairman, that concludes my testimony, and I would be happy to take questions.

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*About our organizations...*

The *Center for Coastal Conservation* (Center) is a coalition of the leading advocates for marine recreational fishing and boating. It is dedicated to promoting sound conservation and use of ocean resources by affecting public policy through the political process.

The *American Sportfishing Association* (ASA) is the sportfishing industry's trade association, committed to looking out for the interests of the entire sportfishing community. The association invests in long-term ventures to ensure the industry will remain strong and prosperous as well as safeguard and promote the enduring economic and conservation values of sportfishing in America. ASA also represents the interests of America's 60 million anglers who generate over \$45 billion in retail sales with a \$125 billion impact on the nation's economy creating employment for over one million people.

The *Coastal Conservation Association* (CCA) is a national recreational fishing membership organization of some 100,000 members and is organized to do business in 17 States on the Atlantic, Gulf of Mexico and Pacific Coasts. It has been actively involved in the majority of the nation's marine resource debates since its inception in 1977. Its membership is composed of recreational fishermen who fish for every important marine recreational fish available in the EEZ. CCA brings not only an educated perspective on how to fish, but a conservation ethic which recognizes the value of recreational fishing as a pastime and obligation to take care of the resource and use it to the best benefit to the nation.

The *Congressional Sportsmen's Foundation* (CSF) is the most respected and trusted organization in the political arena promoting, protecting and advancing the rights of hunters and anglers. CSF is the leader in providing access and a voice for sportsmen with elected officials, land and wildlife management agencies, non-governmental organizations (NGOs), and sportsmen allied industry groups across the nation. CSF is a 501(c)(3) non-profit governed by a Board of Directors composed of leaders of the top conservation and outdoor industry organizations in the nation.

The *International Game Fish Association* (IGFA), is a 70-year-old world renowned not-for-profit organization committed to the conservation of game fish and the promotion of responsible, ethical angling practices through science, education, rule making and record keeping. IGFA accomplishes its mission by enlisting the voice of over 300 official IGFA representatives in nearly 100 countries, and more than 15,000 angler-members around the globe.

The *National Marine Manufacturers Association* (NMMA), the nation's leading marine industry trade association, represents nearly 1,600 boat builders, engine manufacturers, and marine accessory manufacturers who collectively produce more than 80 percent of all recreational marine products made in the United States. The U.S. recreational marine industry contributes more than \$30 billion in new retail sales and 300,000 jobs to the economy each year.

*The Billfish Foundation (TBF)* is dedicated to conserving and enhancing billfish populations around the world. The non-profit organization is an effective advocate for international change, synthesizing science and policy into fishery management solutions. By coordinating efforts and speaking with one voice, TBF is able to work for solutions that are good for billfish and not punitive to recreational anglers.