

**United States House of Representatives
Committee on Natural Resources**

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**Written Testimony
On**

**H.R. _____, *Strengthening Fishing Communities and Increasing Flexibility
in Fisheries Management Act***

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Chairman Hastings and members of the Committee on Natural Resources:

Thank you for your invitation to participate in today's hearing on the discussion draft developed by the Committee, H.R. ____ *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act ("Reauthorization Discussion Draft")*, for purposes of considering potential reauthorization amendments to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.

My name is Peter Shelley and I am a vice president and senior counsel with the Conservation Law Foundation, Inc., on whose behalf I am testifying today. I have worked on a range of marine conservation issues during my professional career and have been in charge of fisheries management efforts at CLF since 1989. I represent CLF on the Marine Fish Conservation Network, based in Washington, D.C., an umbrella network comprised of fishermen, conservationists, scientists and private citizens. I have also been an avid recreational freshwater and marine fisherman my entire life.

My testimony today is based on my direct, personal experiences with fisheries management in New England over the past 25 years, particularly with the management of the iconic and historic groundfish fishery in New England. This fishery includes such economically and ecologically important fish as Atlantic cod, haddock, a number of flounder species, Acadian redfish, and others, a number of which have supported the New England fishery since the 1600s.

Almost 40 years after Congress adopted the first comprehensive fishery management law to stop overfishing and produce optimum yield in the Nation's fisheries, this fishery and its dependent fishing communities continue to struggle with the economic and social instability produced by decades of chronic overfishing and mismanagement. The unfortunate and totally avoidable state of this historic fishery is reflected directly in the recent disaster funding that Congress directed toward New England in the FY2014 Omnibus Appropriations.

I will focus my testimony today on two aspects of the reauthorization discussion draft because of their potential direct and negative impacts on these troubled groundfish fisheries in New England: first, the proposed provisions to provide additional so-called “flexibility” and delays in the management responses to overfished fish populations, and second, the proposed provisions to allow fishery management councils to ignore the catch advice of their respective science and statistical committees.¹

From our perspective and the experience in New England, Chairman Hastings, the reauthorization discussion draft proposes re-opening the regulatory door to management approaches that have repeatedly failed in New England, that have put fisheries managers in impossible positions where short term economic perspectives were allowed to outweigh and prejudice long term economic and social goals, and that have cost New England coastal communities jobs and economic opportunity. CLF strongly believes that it is important to New England’s fishing future that Congress acts in bipartisan ways that build on the success of the 2006 MSA reauthorization and avoid drastic revisions that would diminish the accountability and science-based management prescriptions that have finally started to produce healthier fish populations and more successful fishing businesses in New England.

The federal fisheries in New England that are currently still in trouble are not failing because the Magnuson-Stevens Act is too rigid, but rather because the law prior to 2006 was too flexible; the law failed to hold managers accountable for their results and allowed them to ignore science-based fishing limits. These were fundamental structural flaws in Magnuson-Stevens before 2006. I have studied many fisheries during my career, both in the United States and abroad. Without exception, the successful fisheries are founded on good science, accountability for results, healthy fish and shellfish populations, and an execution of long-term and sustainable economic strategies by fishery managers.

Congress fixed those flaws in Magnuson-Stevens in 2006 and must continue its bipartisan support for a strong and effective Magnuson-Stevens Act. In our view and notwithstanding the Committee’s best intentions, many of the provisions of the Reauthorization Discussion Draft re-introduce failed management approaches, approaches that have been documented in New England to hurt, not help, fishing communities and fishermen.²

¹ These measures are found in Sections 3 and 4 of the Reauthorization Discussion Draft. CLF is also very troubled by the Section 6 provisions related to the Endangered Species Act, the National Environmental Policy Act, The National Marine Sanctuaries Act, and the Antiquities Act and believes that Section 6 is fundamentally flawed and would be destructive federal policy if enacted. We will provide separate comments on those measures as the reauthorization process evolves.

² Among the factors that kept fish populations from rebuilding despite fishing rates being set at low levels identified in the NRC Report entitled *Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States*, (NRC 2013) were: “ineffective input controls [gear restrictions, closed areas and the like] and lack of accountability measures, difficulties of reducing fishing mortality of species caught as bycatch in other fisheries, or errors in the estimates of stock size that led to catch limits that were too high.” *Id.* at 6. The 2006 Magnuson-Stevens Act amendments were designed to address many of those documented problems.

At the same time, we believe strongly that there are some critical and time-sensitive changes to the Magnuson-Stevens Act that are appropriate for reauthorization debate that are not in the Reauthorization Discussion Draft and need to be. Among the strongest recommendations to come from the recent National Research Council report entitled *Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States* were the recommendations to advance the application of ecosystem-based fisheries management (EBFM) principles to U.S. fisheries. EBFM principles are the bridge between the limitations and challenges of single-species management that the NRC report identifies and the dynamic and adaptive requirements of fisheries management in the modern era that the NRC report points to. While we would share the report's view that EBFM is "still only conceptually defined,"³ it is the direction that fisheries management science is headed and could supply robust management responses to many of the concerns raised in other testimony to this Committee.

CLF believes that any reauthorization of the Magnuson-Stevens Reauthorization Act should recognize this growing body of science and include measures designed to force the consideration and implementation of ecosystem-based fisheries management (EBFM) approaches including, in particular, an expanded approach to spatial controls and habitat-based approaches to achieve healthy and diverse fish populations, special protection of forage fish populations, and continued progress in bycatch reduction. The importance of this EBFM focus is heightened by the ecological instability and changes that are already being observed and felt in New England from sea temperature rises, increased ocean acidification, and changes in plankton bloom timing and abundance.

With that as introduction, I would now like to turn to what a discussion of what I would call the three myths about New England groundfishermen that I sometimes hear circulating around Washington in discussions about fisheries and the Magnuson-Stevens Act.

The Three Myths About The New England Groundfishery

New England's groundfish fishery has suffered ups and downs since the 1600s. It has been in sustained trouble since the mid-1980s and cod, haddock and yellowtail flounder were officially declared to be overfished in a management plan as long ago as 1990. Cod, coastal haddock, and yellowtail flounder are *still* overfished, 24 years later. This fact has costs hundreds of fishing captains, crew and boat owners who were highly dependent on these species their livelihoods. But the notion that the *current* provisions of the Magnuson-Stevens Act are somehow behind this problem is false.

The **first myth** is that the rigidity of the Magnuson-Stevens Act has devastated New England's groundfish boats. There *is* a fisheries crisis in New England in the groundfish fishery but only with respect to a number of the once plentiful fish species in that fishery that have been wantonly and chronically overfished and mismanaged for decades under prior "flexible"

³ NRC Report, *supra*, page 180.

management rules. The truth is that most of our fisheries are healthy and sustainably managed under the current Magnuson-Stevens Act provisions.

From 1996 when the Sustainable Fisheries Act went into effect through 2011,⁴ gross boat revenues for all fish and shellfish landed in New England grew from \$779 million to over \$1.4 billion (2010 dollars). Massachusetts' fishermen increased their gross revenues from \$316 million to \$531 million (2010 dollars). Groundfish permit holders in New England have increased their gross revenues from \$226 million to \$550 million, primarily by diversifying their catch to alternative, more abundant and better-managed fish species. There are also positive signs in the groundfish fishery for many groundfish stocks and a number of quotas increased last year. With continued rebuilding achieved by effectively lowering fishing mortality below levels recommended by the scientists, these groundfish stocks should recover and support new opportunities to grow and diversify fisheries in New England.

These are some of the first promising economic signs seen in the New England groundfishery in decades and they are the largely the result of the steps that Congress took in 2006 to force fisheries managers to prevent overfishing, to rebuild overfished stocks quickly, and to use science-based quota setting. Fishermen and fishing communities across New England paid a terrible price because those same actions were not taken earlier when the law allowed more "flexibility" in setting harvest levels and when fisheries science had become highly politicized and a focus of council debate. For fishermen who face economic challenges in a depleted fishery, short-term economic returns are almost always the most important objective. For a healthy fishery, a focus on short-term economic returns is almost always the wrong basis for fisheries management.

The new provisions in the Magnuson-Stevens Act 2006 revisions are beginning to work, and are working well for many New England fishermen, particularly those fishermen who have decided for a variety of reasons to stop fishing on the depleted groundfish species and who now target more abundant and better-managed stocks. Increased "flexibility" to extend overfishing in Magnuson-Stevens Act is not necessary for these fishermen; indeed, it will put their currently successful fisheries at increased risk of future failure. There are few areas of human endeavor where the law of unintended consequences operates with such enthusiasm as fisheries management and CLF believes that many of the provisions of the Reauthorization Discussion Draft will have the exact opposite result of the one they are intended to achieve.

The point of this testimony is not to suggest that individual groundfishermen have not suffered significant economic or social harms over the past several decades or to be insensitive to that fact. As indicated above, the persistent management failures to set catch levels on cod and haddock and other groundfish at appropriate levels in the 1990s virtually guaranteed that a

⁴ These are the latest NMFS economic data to which CLF has access. We are currently updating those numbers to include 2012, which data are now available to CLF.

number of the groundfish populations would fail to rebuild and, indeed, would likely plummet even further.

Fishermen who did not anticipate this reality and continued to stay focused on harvesting some of the most heavily targeted species like cod and yellowtail flounder saw their opportunities disappear in the first decade of this century along with the fish. There is nothing that relaxing the Magnuson-Stevens Act might do to provide a different future for these fishermen; the fish simply aren't there. But if there is to be a future cod fishery, then the answer in New England—as it was in Atlantic Canada—is to close the fishery and protect the large spawning female cod in order to give this fish every chance possible, not to create a legislative loopholes to allow any more overfishing of a fully depleted stock.

The **second myth** is that the problems with depleted stocks like Atlantic cod have nothing to do with fishing effort, or that fishing levels have nothing to do with stock abundance. According to this myth, fishermen in New England are in compliance with their catch limits and Atlantic cod are still depleted and not rebuilding so the fishermen are not to blame.

The myth is false because it suggests the catch levels in New England have always been within their biological limits. It is true that the fishing industry is not to blame for these damagingly high catch limits because they don't set the fishing levels, although they have always pushed hard through the council system and through political channels for the highest levels the managers would give them. Even though the MSA was revised in 2006, New England's groundfish fishery did not institute hard catch limits until May 2010. Moreover, in the last two years, the groundfish fleet hasn't even caught most of the fish it was been authorized to catch because they can't find the fish anymore. Through the mid-2000's, though, the industry often caught more fish than the quota—sometimes even several multiples of the quota. Only the 2006 amendments to the Magnuson-Stevens Act forced the catch levels to be treated as hard limits, not aspirations. Aspirational limits were not kind to fishermen; they put many, many New England fishermen out of work.

More importantly, based on the NMFS stock status reports, groundfish stocks continue to be overfished and experiencing overfishing to the current day.⁵ I will use the two stocks of Atlantic cod to document this fact. Gulf of Maine Cod is reported as overfished in 15 out of the last 17 years⁶ and Georges Bank cod was overfished for 13 out of the last 17 years. Overfishing was happening with Gulf of Maine cod 13 out of the 14 years reported to Congress through 2013, and 12 out of 14 years with Georges Bank cod. Atlantic cod are depleted as a direct result of overfishing.

⁵ 2013 Status of U.S. Fisheries (NMFS) Table A at 4-6 (www.nmfs.noaa.gov/sfa/statusoffisheries/2013/fourth/Q4_2013_Stock_Status_Tables.pdf)

⁶ Moreover, the two years when Gulf of Maine cod were not considered to be overfished was the result of science error in the assessment; they were determined later to be overfished in fact both years.

The illogic of this persistent overfishing of Atlantic cod—fishermen fishing within their quotas while overfishing persists—introduces the **third myth**, the myth that the Magnuson-Stevens Act imposes rigid, unrealistic rebuilding schedules that arbitrarily require rebuilding to a fixed biomass by a fixed time. The truth is that while the law sets a ten-year time limit as the default maximum rebuilding period, that limit is hardly rigid and neither the managers nor the fish obey it.

The current requirement is that overfished stocks of fish should be rebuilt in a time “as short as possible,” 16 U.S.C.A. § 1854(e)(4), and, in any event, within 10 years of being declared to be overfished “except where the biology of the stock of fish, other environmental conditions, or management measures under international agreement in which the United States participates dictate otherwise.” 16 U.S.C.A. § 1854(e)(4)(ii). The language of the law already allows exemptions to that ten-year period if exemptions are justified by considerations that are independent of current fishing effort.

Many of New England’s groundfish have rebuilding plans that are based on terms exceeding ten years. As noted above, Georges Bank cod has been formally determined to be overfished since 1990 and still has twelve years left in their projected rebuilding program. If that timeline is not met for any possible number of reasons, the rebuilding framework will be extended based on a control rule adopted by NMFS and the New England Fishery Management Council. Numerous stocks of federal managed fish have rebuilding requirements that exceed 10 years and, in some regions, we understand that the majority of a council’s stocks exceed the 10 years under existing law.

Rebuilding catch limits that are prescribed for an overfished stock are hardly even prescriptive; they don’t have to have produce any higher than a 50% probability of succeeding in accomplishing the projected rebuilding within the stipulated time period. Thus, the current law that some would characterize as requiring rigid rebuilding regimes allows the rebuilding probability for the stocks in the worst trouble, the stocks in a rebuilding program, to have the same odds as a coin toss. And if circumstances change during that rebuilding that are identified in the periodic stock assessments, that rebuilding framework itself can be and is revisited by managers.

In New England, with only one or two exceptions that I can remember over the past two decades, managers have always opted to take the highest risk rebuilding strategy to protect short-term economic objectives, that is, the longest time allowed for rebuilding at the highest level of catch. These levels often end up being too high in retrospect, which is why fisherman can point to their compliance with fishing quotas in New England—as with the Atlantic cod example above—while scientists continue to conclude after each new stock assessment that overfishing is still taking place. There was a built-in 50% chance that the quota levels in the rebuilding program would be too high to begin with, that overfishing would occur under that harvest cap in the first place. And it has with fish like Atlantic cod. The current law already allows fishery

managers to take risks with their fundamental inventories that private business managers would consider reckless.

Congress Got It Right: Successful Fisheries Require Accountability, Science-based Quotas, and Healthy Fish Populations.

In 2006, Congress passed the Magnuson-Stevens Fishery Conservation and Reauthorization Act of 2006, Pub. L. 109-479, 120 Stat. 3575 (2007) with strong bipartisan support. Mindful of the situation in New England and in other troubled fisheries around the nation and after receiving extensive testimony and material, Congress used this reauthorization to make some significant changes to the Magnuson-Stevens Act to fix critical structural problems in the law that were thwarting the recovery of important fisheries. Specifically, the reauthorization prohibited overfishing during the rebuilding period of a fish stock; it imposed accountability measures on the managers in the form of requiring annual catch limits; and it required accountability management measures if a fishery exceeded its annual catch limit. The 2006 reauthorization also emphasized the importance of science-based fishery management plans in U.S. fisheries, requiring, for example, that all fishery management councils have a standing committee of science experts to advise the council on setting fishery specifications and having the authority to set maximum harvest rates that a fishery could not exceed. These are reasonable and well-grounded requirements that are used by all successful fisheries in industrialized nations around the world.

The 2006 reauthorization addressed an explicit Congressional conclusion with respect to the nation's fisheries law that had come at a high price: the historic flexibility, discretion, and latitude associated with many—but not all—of fishery management plans being developed by the regional councils was doing harm to the Nation's interests by delaying the achievement of optimum yield on a continuing basis for the Nation's fisheries. In too many fisheries, overfishing had become a way of life; it had become institutionalized in the system. Nowhere were the economic, social, and ecological costs of this delay in stopping overfishing more apparent and more devastating than in New England's groundfish fishery. Those were important and necessary legislative changes. Nothing has changed to support departing from the current provisions of the law.

While a set of 2006 amendments may seem like ancient history in Washington, D.C. in 2014, it is important to recognize that the positive productivity changes in fish populations and economic benefits associated with these new management requirements are only now beginning to be observed around the country. The New England Council's first groundfish plan under the 2006-reauthorized Magnuson-Stevens Act did not take effect until May 1, 2010, less than four years ago. At the time the new provisions took effect, economic analysts indicated that the potential economic losses associated with this fishery management plan (known as Amendment 16) in the first year could be on the order of 15.2%, or \$15 million, as a result of the scientific recommendation of cutting back groundfish landings by over 47,000 metric tons of fish. The new

accountability and science-based quota setting provisions in New England did not, in fact, produce those dire predictions in New England's groundfish fleet.

In fishing year 2010, when large quota cutbacks to stop overfishing and rebuild cod stocks were finally required, gross groundfish revenues stayed relatively flat with a decline of only \$0.209 million or – 0.002%, while the gross total revenues earned by those same groundfish boats (including the revenues from the other species they landed) grew \$28.110 million, or a 10.6% increase over 2009 (2010 dollars).⁷ In the 2011 fishing year, groundfish revenues increased \$5.272 million, +6.3%, over 2009 groundfish revenues and total gross revenues increased \$58.554 million, a 22% increase over 2009 revenues (2010 dollars). In the 2012 fishing year, when even further heavy groundfish quota cuts were required, total groundfish revenues declined \$16.134 million from 2009 groundfish revenues but total revenues remained \$28.750 million above 2009 levels (2010 dollars).⁸

Total gross revenues to groundfish boats in 2012 were roughly twice the average gross revenues to the groundfish fleet averaged over the 2005-2007 fishing years (nominal dollars).⁹ The New England groundfish fleet has demonstrated on the water that it can accommodate full accountability to science-based quotas while growing the value of the fleet's landings through species diversification.

The New England groundfishery as well as the other New England fisheries are performing better as a result of implementation of the 2006 amendments to the Magnuson-Stevens Act. Congress should stay the course with responsible rebuilding requirements and science-based quota setting to ensure economic opportunity for the region's fishermen.

Thank you for inviting us to testify in this hearing and for considering our testimony.

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⁷ The data in this paragraph is derived from the Murphy *et al.*, 2012 Final Report on the performance of the Northeast Multispecies (Groundfish) Fishery (May 2012-April 2013), Table A. It can be found online at www.nefmc.org/index.html.

⁸ This analysis does not include any changes in the net revenues for groundfish boats during those years and there were some increased quota leasing costs. The analysis also does not explore the distributional aspects of those increased total gross revenues, i.e. whether the council succeeded in fairly distributing this fleet's access to New England fish populations, either by boat size or by state. Much of that data, unfortunately, is not available to the public.

⁹ This analysis was derived by comparing the revenues set forth in the report identified in fn. 7 with economic analysis from Amendment 16 to the Northeast Multispecies (Groundfish) Fishery Management Plan, Table 255 on p. 691. Amendment 16 can be found online at nefmc.org/nemulti/index.html.