

TESTIMONY OF VITO GIACALONE
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&
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BEFORE THE
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
REGARDING THE
MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT
SEPTEMBER 11, 2013
WASHINGTON, DC

Introduction:

Mr. Chairman, distinguished Members of the Committee, thank you for the opportunity to testify at this important hearing. I am Vito Giacalone. I am a third generation fisherman from Gloucester Massachusetts and I serve as the Policy Director for the Northeast Seafood Coalition (NSC).

Approximately 361 small fishing businesses and shoreside enterprises are members of the NSC. Our fishermen belong to 12 NSC-sponsored sectors which account for approximately 67% of the groundfish allocations. NSC has been a leading voice in groundfish management policy since its founding in 2002.

Problem:

The current statute does not work for the Northeast (NE) multi-species (groundfish) fishery.

The agency's narrow interpretation of the statute has made this worse; but fundamentally, the basic management strategy set forth in the statute places demands on science that far exceed its capacity in the case of NE groundfish. I believe this is due in part to the inherent and perhaps

increasing instability in the physical and biological elements of the ecosystems in which our fisheries operate.

As noted repeatedly in the recently released National Research Council's (NRC) Committee on Evaluating the Effectiveness of Stock Rebuilding Plans of the 2006 Fishery Conservation and Management Reauthorization Act:

“While the Committee attributes some of the variable or mixed performance of rebuilding plans to scientific uncertainty, this should not be interpreted as a criticism of the science. It often reflects a mismatch between policy makers' expectations for scientific precision and the inherent limits of science because of data limitations and the complex dynamics of ecosystems.”

Rapidly changing water temperatures and other aspects of the physical oceanography in our region are now driving a highly dynamic biological environment. Everything from primary plankton productivity to species distributions and interactions are affected at all trophic levels. We are seeing dramatic changes. But, we've seen them before and we've seen our stocks follow cycles that clearly have nothing to do with fishing mortality. It's a very dynamic place.

With respect to the Gulf of Maine (GOM) and Georges Bank (GB) ecosystems I am familiar with, it appears that recruitment, individual growth and the natural mortality rate play a far greater role in determining the future status of a groundfish stock than our regulation of the fishing mortality rate. These three biological parameters (over which man has no control) are highly susceptible to environmental and ecological conditions. And so it follows, the less stable environmental and ecological conditions are, the less stable recruitment, growth and natural mortality will be.

These known and highly variable conditions also affect system carrying capacity, facilitate regime shifts associated with inter-stock complex competitions within that variable carrying capacity, and in the case of our multi-species complex, intra-complex competitions. Yet, none of these realities are reflected adequately in the current single stock management strategy currently required by the Act.

The NRC report notes:

“In nature, growth, maturity, and natural mortality are influenced by interactions with other species that may be competitors, predators, or prey.”

The GB and GOM marine ecosystems are highly dynamic and perhaps less stable an environment than was contemplated in statute or reflected in the agency's interpretations and implementation.

And, with this instability comes unpredictability. In our case, we're talking profound unpredictability. Some managers and scientists like to dismiss this as mere 'uncertainty'. In truth, it's hard cold unpredictability.

But, the current statute is founded on predictability. It depends on the ability of science to predict future levels of recruitment, growth and natural mortality, and, worse, to predict exactly when those levels will occur.

And, then, it requires managers and industry to commit to plans to control fishing mortality spanning specific timeframes that are entirely disconnected from the natural conditions that actually drive these dominant population parameters.

For the NE groundfish complex I am now convinced it cannot be done.

Given the dynamics and complexity of the GOM and GB ecosystems and environment, I'm not sure why we ever thought that this management strategy might work – that we could ever predict with sufficient precision how NE groundfish populations would behave in discrete timeframes when we can predict and control so little of what matters.

So, why does the current statute appear to work relatively well in some other fisheries and not ours?

It is surely not because we have failed to develop and abide by a responsible management regime. Our fishery operates under what is considered by some as the most progressive style of fishery management including hard total allowable catches (TACs) and a catch share system implemented in 2010.

In the past decade we have not once exceeded our annual TACs but instead have substantially under-harvested the annual catch limits for most stocks.

Yet with each stock assessment the scientists report back to us retrospectively that their predictions of biomass and fishing mortality rates were indeed incorrect. Often, substantially so – suddenly discovering overfishing long after the fact.

Perhaps other fisheries operate in a physical and biological environment that is relatively more stable - or they target species that are less susceptible to environmental and ecological dynamics. If so, it would make the population dynamics of those fish stocks more predictable over time.

All I can say for sure is that for our fishery, it simply hasn't worked. And that is a problem.

Solutions:

About one year ago the Commerce Department declared a “commercial fishery failure” for our fishery – the Northeast Multispecies Fishery pursuant to the Magnuson-Stevens Act (MSA) and the Interjurisdictional Fisheries Act.

This was two years after a declaration was first requested by Massachusetts Governor Patrick (November 2010). More recently, all of the NE Governors made this request.

The disaster declaration finally came during the 2012 fishing year for which catch limits had already been drastically reduced for stocks that are the core of the economic engine that runs this fishery and our communities.

That preceded the additional and even greater reductions in this fishing year 2013 which included a 61% reduction in GB cod and a 78% reduction in GOM cod catch limits, for example.

It’s been a veritable “perfect storm” of circumstances the effect of which on our fishermen—their businesses, families and communities—has been nothing less than catastrophic.

Many fishermen are not only facing the loss of their profession and the source of their income, they are also facing the loss of their homes which have been mortgaged to support their businesses.

This scientific unpredictability and dramatic swings in perceived stock abundance have completely confounded fishery management and every aspect of our fishing industry and community. We are perilously close to losing the oldest fishery in America which was at the core of our colonial economy four centuries ago and is still at the core of our communities today.

There are—or were—both short and long term solutions.

1. Short term mitigation

What we needed when these declines began to escalate was a relatively short term bridge to mitigate their impacts and keep the fishery afloat until longer term strategies could be put into place and/or the biological situation changed.

And so, in advance of the FY 2012 season and during the time the Commerce Department was considering the fishery disaster declaration, NSC was already working on developing management strategies based on what we felt were inherent flexibilities built into the statute by Congress to enable fishery managers to mitigate the impacts of this very kind of situation.

Among the most important of these was the application of Magnuson-Stevens Act (MSA) section 304(e)(6) authority to implement interim measures on a temporary basis to reduce overfishing rather than end it immediately.

The intent was to soften the landing from such drastic swings in estimated abundance from one stock assessment to another. In fact, the 2008 stock assessment for GOM cod indicated that the stock was well above the MSST and would likely be fully rebuilt well before the final year of the rebuilding plan. Three years later, the 2011 assessment indicated the stock was nowhere near the levels previously estimated and that in fact, the new perception of stock status was determined to be far below MSST and biologically incapable of rebuilding by the rebuilding plan deadline of 2014.

Which assessment was correct? Perhaps neither, but the reality is that under the current interpretation and implementation of the Magnuson-Stevens Reauthorization Act (MSRA) the most recent assessment is considered “best available” and the management response has been catastrophic for the industry and dependent communities.

The GOM cod stock is a prime example of why the current MSA and management implementation is untenable to sustaining fish and fishing communities simultaneously. This cod stock has been managed and monitored closely for nearly two decades. The fishery has managed within the recommended TACs since the inception of the rebuilding program which was revised in 2004. In 2010 the fishery converted to a full possession, catch share program that was monitored both at sea (up to 38%) and dockside (50%) and fishing mortality rates set far below Frebuild on GOM cod because the control rule of 75% of Fmsy was nearly 30% lower than Frebuild due to the optimistic 2008 assessment. The policy in place under the National Standard 1 Guidelines directs managers to use Frebuild or 75% of Fmsy, whichever is lower.

Imagine the disruption that has occurred in the Northeast region when seemingly out of the blue, after nearly a decade of strictly adhering to catch limits and being told that the stock was about to be fully rebuilt in only the eighth year of a ten year rebuilding period, the fishery is presented with the 2011 assessment results that has prescribed 90% reductions over just the last two fishing years.

Just as no fish stock should be subjected to a 90% increase in fishing pressure simply because our most recent scientific “perception” of a stock seems to warrant such increased pressure, no fishing business or dependent fishery infrastructure should be subjected to abrupt and steep reductions in catch levels to the magnitude presented to our fishery over the years.

This volatility is inherent in the assessment methodologies given the limitations of scientific resources and knowledge we have today.

The volatility present in the scientific recommendations is typically not reflective of the actual level of change occurring in nature, yet we have nothing in place currently that allows managers the flexibility to buffer management responses, in either direction, to account for the known volatility in assessment results. We also have nothing in place that adequately buffers the severe social and economic costs of being wrong. The most profound costs of accepting assessment results that are known to be volatile and rife with uncertainties is the instability suffered by small businesses in our fishery.

In the case of GOM cod, the sudden drop off of catch advice and stark differences in the two assessments placed the vast majority of fishery participants in serious financial peril. We needed a bridge – some stability.

I should note Mr. Chairman that perhaps our primary goal above all—and maybe for us it is only a dream—is stability. For our fishing businesses to succeed, we need a stable fishery management regime. An interim measure would help provide this stability.

NSC developed and presented to the New England Fishery Management Council (Council) and NMFS leadership an analysis that indicated this interim measures authority could be applied to GOM cod in Fishing Year 2012 - the most important stock in the Gulf of Maine.

Although unprecedented in U.S. fisheries management, both the Council and NMFS accepted and approved this approach which enabled a catch that reduced overfishing but which could help avoid a collapse of the Gulf of Maine fishery.

This action provided the crucial beginnings of a bridge and stability for one year. It was a major achievement of collaboration and cooperation among the agency leadership, the Council and the industry. Being that it was an NSC initiative, we were very pleased.

After that things went downhill.

Although the statute, specifically MSA section 304(e)(3), clearly contemplates a two-year process for the Councils to prepare and implement rebuilding plans—and although a coherent, logical interpretation of MSA sections 304(e)(6) and 305(c)(3) is to provide authority for the Councils to request (and for the agency to approve) a separate, sequential interim measure for the second year of that 2 year process—the agency refused to approve the Council’s request for this authority.

It made no sense. Essentially, the agency said that it was OK to build a bridge half way across the harbor but then we had to jump to our deaths instead of finishing the bridge. This for a fishery they had just declared as a disaster.

To add insult to injury, the agency refused to provide us with their legal rationale – their interpretation of the statute – by asserting attorney client privilege as a means to avoid a serious explanation or accountability for their decision.

Given the magnitude of the consequences, we still find both their rejection of the Council’s request and the refusal to share their legal justification simply incredible.

Mr. Chairman, you specifically asked in your letter of invitation that I provide examples of “instances where the interpretation of the Act may have created undue hardship and whether changes to the Act should be considered to address these concerns”.

This is precisely one such an example. And, while it is probably too late now for the affected fishermen, it may be worth clarifying in legislation that a second, sequential interim measure can be implemented under MSA 305(c)(3) for the purpose of implementing the MSA section 304(e)(6) authority should this be needed in the future.

In addition, and perhaps more far reaching would be for Congress to expressly prohibit the agency from hiding behind attorney client privilege when disapproving a Council request for interim measures – or any other Council action for that matter. It had been our understanding that Congress had already made clear its intent for the agency to fully explain the legal basis for disapproving a Council action under the MSA (see section 304(a)(3)). Maybe this needs further clarification.

Mr. Chairman, the GOM cod situation provides a perfect example of how existing flexibility in the statute was not used by the agency to the great detriment of our industry.

However, the fact remains that our fishery disaster is the product of steeply reduced Annual Catch Limits (ACL) on a long list of stocks affecting every component of the NE fishery. Due to the stringent qualification requirements of Section 304(e), only GOM cod met the criteria to be eligible for interim measures to temporarily reduce rather than end overfishing immediately. For our fishery, GB yellowtail flounder received a 90% and four other key stocks received ACL reductions in excess of 50%. Currently, there exists no flexibility in the Act to address the severe costs of allowing management responses to mirror assessment results instantaneously.

Prudent management would be to allow managers the opportunity to smooth the volatility inherent in individual stock assessments by providing them with statutory tools that can buffer management responses in both directions. In my opinion and from my experience, this would protect fish stocks from abrupt increases in ACL that may later be found to be incorrect, while providing fishing businesses with the stability of a more sensible and controlled downward management response mechanism. In doing so, we will provide some insurance against the costs of being wrong.

If we are to succeed in managing these stocks to achieve a sustainable resource and a sustainable fishery then we will need fundamental revisions of the Act as part of a longer term strategy.

2. Long term Strategies

The fishery management community and policy makers have long expressed the need for additional tools in the tool box to give the Councils the ability to tailor their management strategies to the peculiar realities of their region and fisheries. However, with respect to a rebuilding strategy, the statute today only provides one tool in the toolbox. This sole strategy is based on trying to do whatever necessary to rebuild a stock to a pre-determined biomass within a specified timeframe.

However, a timeframe-based rebuilding strategy depends on relative stability and, thus, predictability of population parameters including recruitment, growth and natural mortality that cannot be controlled. In our fishery, none of that stability or predictability exists. As stable as other ecosystems and as predictable as other stocks may be, ours are not. While a timeframe-based rebuilding strategy has worked for many stocks across the nation, it simply has not worked for our fishery. We do not think that strategy should be eliminated from the statute as some have suggested, but we do think Congress should provide additional authority for the Council to implement alternative strategies for achieving the fundamental goals of preventing overfishing and rebuilding overfished stocks.

One such strategy is to set ACLs at or below the fishing mortality rate that will achieve MSY (F_{msy}). This strategy will, by definition, prevent overfishing and will over time on average achieve B_{msy} – a rebuilt stock. But, it will achieve that rebuilding according to the timeframe and to a biomass that reflects the prevailing ecological and environmental conditions. Man cannot dictate those conditions and so cannot reliably predict much less dictate when a stock will rebuild, particularly when there is great instability in those conditions.

In our view, section 304(e)(4) rebuilding policy should be expanded to provide the Council with such authority to implement alternative rebuilding strategies – perhaps if and when certain conditions or circumstances exist. It may not be necessary or desirable to use an F-based strategy to rebuild and prevent overfishing a stock in all cases, but it certainly maybe the only realistic alternative for some stocks and fisheries. Let’s add that tool to the toolbox.

Another alternative interpretation or desirable modification of the statute might be to allow for multi-year evaluations of ‘overfishing’ and perhaps even the ‘overfished’ threshold as those terms are defined in section 3(34) of the Act. Could a 3-year rolling average of the fishing mortality rate replace the current one-year approach for evaluating whether overfishing is occurring? Would that approach “jeopardize the capacity of a fishery to produce MSY on a continuing basis”? This may be a very important source of flexibility that already exists in the Act but for the Agency’s interpretation now set forth in the National Standard 1 Guidelines.

Similarly, is it always necessary and desirable to trigger a full-blown rebuilding plan response when a stock biomass falls below the overfished threshold in one single year? Would a multi-year evaluation of stock biomass “jeopardize” the fishery?

Such multi-year evaluations coupled with a moderated management response to stock performance would go a long way towards achieving the “holy grail” for NE groundfish— stability. These were among the concepts NSC included in its comments on the National Standard 1 Guidelines revision now under consideration by the Agency.

Further to this need for stability, there is good cause to provide the Council with the flexibility to implement alternative management strategies that are not entirely founded on traditional stock assessments. Such assessments are often based on statistical models that can provide

reliable estimates of relative abundance and a trend in the status of a stock, but can be very poor in supporting specific, point-in-time quantitative estimates of abundance and the resulting setting of catch limits. This is precisely our experience for many critical NE groundfish stocks.

Instead, authority should be provided in the statute (and/or the National Standard 1 Guidelines) to assess the performance of a stock's biomass over history in response to various catch levels to identify a so-called 'sweet spot' where catch levels can be maintained at relatively stable levels over time. In such case, conservation gains would be achieved by sacrificing catch levels associated with dramatic highs in stock abundance and thus provide a conservation 'offset' for avoiding severe reductions in catch limits when the stock biomass swings to a low level. Again, our experience with such seminal stocks as GOM cod and GB yellowtail flounder would have been much different had the Council utilized such an approach.

Summary:

Mr. Chairman, we believe there are existing flexibilities in the statute that could be taken advantage of including through the revision of the National Standard 1 Guidelines. We also believe there are other sources of flexibility that need to be incorporated into the statute through your reauthorization process. We are certainly committed to working with you, the Committee and your staff to pursue long term alternative management strategies that are consistent with and responsive to what may be the unique realities of NE groundfish stocks and ecosystem. We want to see NE groundfish management work, but we can't see how under the current statutory framework.

Having said that, our immediate reality is that all of the long term policy improvements in the world aren't going to matter much if there aren't any of us still standing when they are implemented. We are in the midst of a crisis that needs immediate attention.

And so, while I realize this is outside of the scope of this Committee's jurisdiction, I must ask all of the Members of the Committee and the full House for their support of measures such as those included in the Senate FY 2014 appropriations to provide fisheries disaster assistance funding.

To say that the future of our fishery is in your hands is an understatement. We need disaster assistance. It's the last hope for a bridge for the future of our fishery.