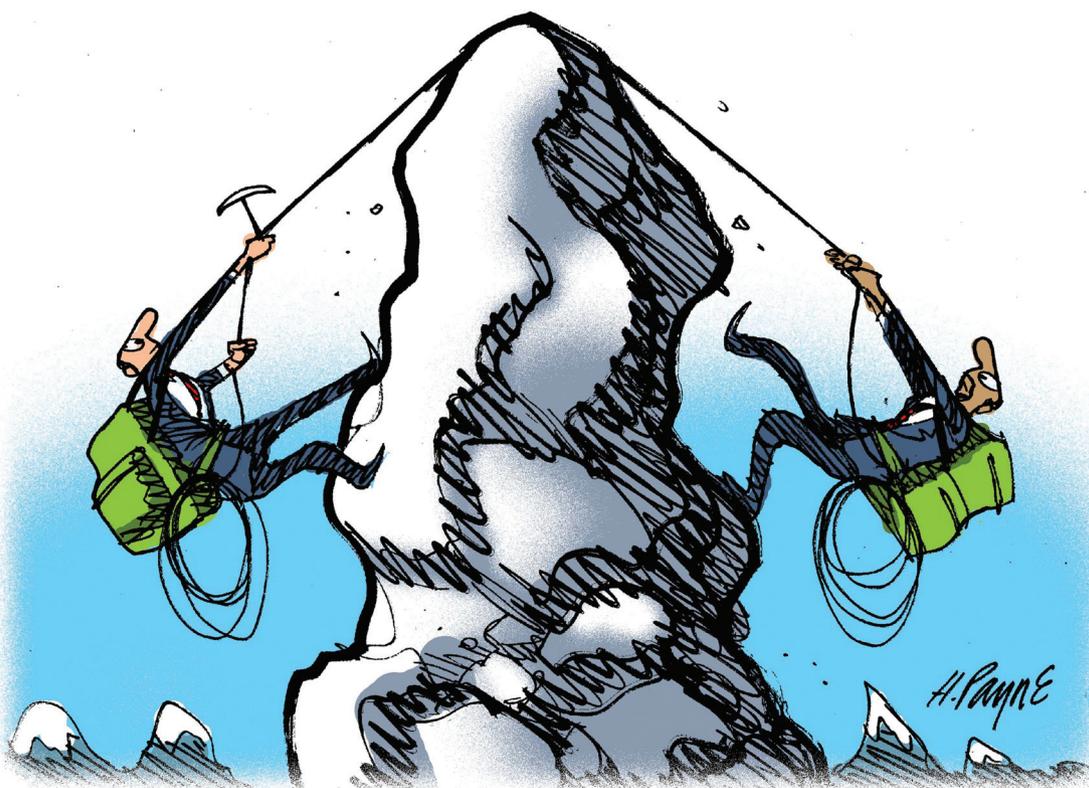


The Environmental FORUM[®]

Advancing Environmental Protection Through Analysis • Opinion • Debate



Meeting in the Middle: The Rio+20 Conference

The Office

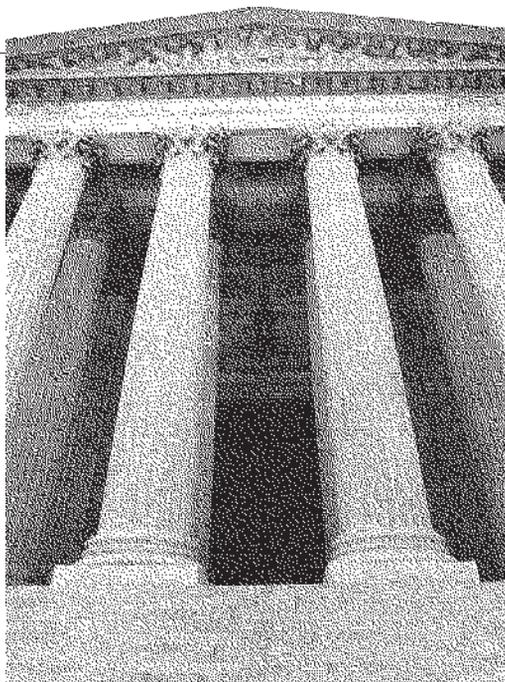
*Slowly Seeking
Sustainability*

The Oceans

*A Debate About U.S.
Maritime Policy*

The Courts

*Did a District Judge
Make a Mistake?*



THE FORUM

Even As Fishers and Regulators Celebrate a Management Milestone, Calls for Reform of the Law

Recently, the *New York Times* forecast a “milestone in fisheries management” — by May, the National Oceanic and Atmospheric Administration will have set catch limits under the 2006 Magnuson-Stevens Fishery Conservation and Management Act amendments for all covered species, which the newspaper heralded as a triumph and a model for bipartisan cooperation in achieving environmental improvement. Some are calling it the most important environmental law since the 1990 amendments to the Clean Air Act. (The original law was passed in 1976 and it was reauthorized once before, in 1996.) A heralded achievement, but even now — five years before reauthorization is required — efforts are underway in Congress to weaken the law. A rally in

Washington, D.C., in March brought together commercial and sportfishing interests under the banner of “United We Fish” to expand allowable catches under the catchwords of “Fix Magnuson Now.” But there is also legislation in the House, introduced by Edward J. Markey (D.-Massachusetts), that would heighten the role of science in setting catch limits, which might mean more restrictions for anglers and the seafood industry as regulators work to rebuild fish stocks.

Before there is action on Capitol Hill, we would like to honor the catch-limits milestone by asking, “Is the 2006 law succeeding in restoring fish stocks? Are adjustments needed to ensure robust stocks and sustainable commercial and recreational fisheries in the future?”



Michael Hirshfield

*Senior Vice President,
North America*
OCEANA

*“Two cheers for the
2006 amendments.
The last thing we
should do now is to
undo them.”*



Mike Leonard

Ocean Resource Policy Director
AMERICAN SPORTFISHING
ASSOCIATION

*“Improvements have
come with sacrifices
by recreational
and commercial
fishermen.”*



Jane Lubchenco

Administrator
NATIONAL OCEANIC
AND ATMOSPHERIC
ADMINISTRATION

*“Setting science-
based limits has
moved us closer
to attaining the
highest benefit
from these great
resources.”*



Edward J. Markey

*Ranking Member, Resources
Committee*
U.S. HOUSE OF
REPRESENTATIVES

*“Rigorous science
is essential for
rebuilding fisheries.
We know improved
data facilitates
better management
decisions.”*

Two Cheers for the 2006 Amendments

MICHAEL HIRSHFIELD

The United States is fortunate to have a law designed to keep abundant fish populations in the ocean. All ocean lovers, including commercial and recreational fishermen, should celebrate the passage of the 2006 amendments to that law. If they are carried out fully, we will definitely see increased fish populations in future years. Our fishery management system is one of the best in the world, certainly compared to places like Europe. But before we pat ourselves on the back too much, we need to take a clear-eyed look at what the amendments did — and didn't — do, as well as the way the National Marine Fisheries Service is implementing the law. Some problem areas are indicated below by italics.

The amendments only addressed part of the problem. Fisheries management comes down to three principles: First, don't kill more fish than can be replenished. Second, don't kill too many other animals. And third, don't wreck the places fish need to live. The 2006 amendments really only dealt with the first.

The amendments came 10 years too late for some species. Conservationists thought the 1996 amendments required an end to overfishing. We were wrong. Unfortunately, for some species, the additional decade meant ten more years of declining populations. For long-lived, slow-growing species like Atlantic halibut, some sharks, and Pacific rockfish, the extra overfishing means their populations won't rebuild for decades — if ever.

Too many species are "off the books." Several hundred species of fish caught by fishermen are not included in fishery management plans,

so managers don't consider them subject to the accountability requirements of the 2006 amendments. Managers have even removed species from plans to avoid the obligation. Species subject to international management are exempt from the requirements, even if overfished, like Atlantic bluefin tuna.

Too many species may fail to rebuild. Many rebuilding plans are designed with little better than a 50 percent chance of success — meaning they are nearly as likely to fail. Even an 80 percent chance of success means 20 of 100 such plans will fail. We may not always have all the science we would like, but it needs to be taken seriously, with the tie going to the fish. We need more safety margin, not less.

The bare minimum is the target. "Not overfished" and "preventing overfishing" are weak standards of success, leaving too many populations at risk. Fish stocks will face increased threats from a changing climate. We need to hedge our bets with larger fish populations, not the bare minimum.

Non-target species aren't managed well. Managers are treating too many species as if they aren't subject to the requirements that hold fishermen accountable for their catches. The successful Atlantic scallop fishery catches many species of fish, some overfished, yet is accountable for only one. In Alaska, there's no limit to how many giant grenadiers can be caught, even though the discarded catch is larger than New England's entire groundfish catch.

Almost all fish are still treated as if they were cod. The law requires catch limits to account for the role of the species in the food web, not just what it can produce for us. Small fish like sardines that are prey for other species should have lower catch limits than species like cod. They rarely do, which risks spectacular collapses.

Endangered sea turtles are arguably treated less carefully than cod. Over-

fished species like cod get rebuilding timetables with real deadlines. If fishermen catch too many cod, they will have to pay back with reduced catches in the future. Endangered sea turtles have no serious rebuilding plans; with few exceptions, if fishermen catch too many sea turtles, their limits are simply raised.

Too much of the ocean is still unprotected from destructive fishing gear. Although we may never know for sure, some species may never rebuild because we've destroyed their young's hiding places. It's time to shift away from fishing gear such as bottom trawls that destroy the seafloor and kill too many non-target species.

So two cheers for the 2006 amendments. The last thing we should do now is to undo them. Yes, the United States has one of the best systems in the world. But if a fish or sea turtle dies needlessly in our Exclusive Economic Zone, it doesn't make it better if more die needlessly in the European Union. Congress still needs to finish the job started in 1976. In 2006, the National Marine Fisheries Service said it had all the authority it needed to take the steps indicated above. Congress needs to make them use it, and tell them "this time we mean it."

Michael Hirshfield is Senior Vice President, North America, and Chief Scientist of Oceana.

A Long Row for Proper Fisheries Management

MIKE LEONARD

As a result of decades of inattention and increasing commercial and recreational fishing pressure, many marine fish stocks declined significantly during the 20th century, prompting extensive reforms in 1996 and 2006 to the Magnuson-Stevens Fishery Conservation and Management Act, which governs federal saltwater fisheries management. New measures to end overfishing and rebuild overfished stocks have, in general, made significant strides. For example, according to the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries), the percentage of federally managed stocks experiencing overfishing declined from 38 percent in 2000 to 20 percent in 2010.

However, these improvements have not come without considerable sacrifices made by recreational and commercial fishermen. Restrictions should only be imposed when sound scientific data indicate the need because informed and appropriate fisheries management decisions should only take place based on a solid foundation of science. The 2006 Magnuson-Stevens reauthorization did not sufficiently take into account just how far behind NOAA Fisheries was, and still is, on collecting the data to lay this foundation.

Many provisions of the law are predicated on NOAA Fisheries having up-to-date and quality scientific data on the saltwater fisheries they are entrusted with managing. NOAA Fisheries presently has 528 stocks of fish or complexes of stocks under its management, but at the end of 2011, had updated stock assessment data on only 121. In 2006,

the National Research Council called the Marine Recreational Fishing Statistics Survey, the angler harvest data collection system on which NOAA bases many fisheries management decisions, "fatally flawed."

The 2006 Magnuson-Stevens reauthorization required Regional Fishery Management Councils to put in place Annual Catch Limits, or ACLs, for every fishery by December 31, 2011. NOAA interpreted this requirement to apply to every fish stock under its management, leaving councils with the conundrum of either deleting stocks from federal management or applying highly restrictive ACLs based on very poor data — or in some cases, non-existent data. The one-size-fits-all nature of this requirement undermines the councils and has resulted in hundreds of new, arbitrary, and precautionary catch limits.

For example, Mahi Mahi is a popular fish sought by both commercial and recreational fishermen. Sustainably harvested, Mahi shows no indication of overfishing. However, NOAA Fisheries lacks a current scientific stock assessment on the fishery. Nonetheless, the agency established an ACL on the Mahi fishery based on a guess. Is it too high to ensure sustainability? Is it too low to allow responsible harvest? No one knows for sure because the data are just not there. However, the economic consequences of limited fishing for Mahi could be devastating to anglers and the industry.

The overall lack of quality scientific data, combined with the strict legal requirements in the Magnuson-Stevens Act, has resulted in numerous management decisions that have taken anglers off the water, hurt fishing-dependent businesses, and degraded the public's trust of NOAA Fisheries, with more likely to come. Recreational anglers are willing to make sacrifices for the betterment of the resource, as long as they know decisions are based on sound scientific information. But many

of the sacrifices being imposed on the recreational fishing community are instead based on guesswork, the precautionary principle, and fear of lawsuits. This is not fisheries management; it's crisis management.

Legislation currently being considered in Congress, the Fishery Science Improvement Act, provides a concise fix to the Magnuson-Stevens Act by lifting the requirement to implement ACLs on stocks for which there is inadequate data and no evidence of overfishing. Congress should move swiftly to pass this legislation in order to fix this current fisheries management crisis while keeping the Magnuson-Stevens Act's strong conservation tenets intact.

While NOAA has reached out to the recreational fishing community to try and strengthen the relationship, seeking workable solutions to improve the fisheries management system, it will take a lot of time, hard work, and resources to set this ship on the right course. Until we build our management system to a level where all decisions are made on a solid foundation of science, it is vitally important that this system not be constrained by arbitrary and economically harmful legal requirements. Good businesses are successful by sticking with what works while recognizing and adapting to what does not. We should expect the same from our federal marine fisheries management system.

Mike Leonard is Ocean Resource Policy Director at the American Sportfishing Association.

New Tools Helping Fish Populations to Rebuild

JANE LUBCHENCO

When Congress reauthorized the Magnuson-Stevens Act in late 2006, the United States entered a new era in fisheries management. Setting science-based limits on how much fish could sustainably be caught every year has moved us closer to attaining the highest benefit from these great natural resources, which belong to all Americans. Accountability measures — which ensure that if more is taken than the limit, the next year's catch will be correspondingly lower — are equally important for maintaining momentum in rebuilding fish populations. These two new tools, combined with continued investment in science and diplomatic efforts to level the playing field internationally for our fishermen, give us hope for a bright future.

Fisheries management in the United States has come a long way in a short time. Thirty-six years ago, after decades of overfishing, the U.S. Congress recognized that fisheries were not inexhaustible, and passed the Magnuson-Stevens Act. Reversing the trajectory took time, experience, and stronger measures; good intentions were not enough. By the early 1980s, some of our nation's most iconic fish stocks were in trouble, and by the late 1980s and early 1990s, some had collapsed. Since 2000, however, 27 fish populations have been rebuilt, and we see fewer and fewer populations fished too intensely or driven to depleted levels. Annual Catch Limits and accountability measures have helped accelerate this rebuilding. Our fish populations are moving in the right direction, though challenges remain.

Recreational and commercial fishermen, and the communities and businesses they support, have borne much of the pain in the rebuilding process. Pulling out of a downward spiral has not been easy, but it will be worth it. NOAA's economists estimate that rebuilt stocks could support 500,000 more jobs, increase the revenue fishermen see at the docks by over 50 percent, and add an additional \$31 billion in sales impacts. The U.S. fishing industry offers jobs that cannot be outsourced, and a healthy fishing economy in the U.S. with fully rebuilt stocks can start to address the \$10 billion trade deficit we carry from importing about 86 percent of our seafood.

U.S. fishermen follow some of the highest safety and environmental standards in the world, and deserve to be rewarded for the high-quality and sustainably harvested fish they bring to the market and for the recreational experiences they provide. One of NOAA's new emphases is leveling the playing field for U.S. fishermen by addressing pirate fishing (illegal, unregulated, and unreported fishing) in U.S. and international waters. Working with other like-minded maritime nations, we seek to ensure that the rules are enforced and that fishermen who abide by the rules are not penalized in the marketplace.

Because science is truly the foundation of sustainable management, NOAA continues to invest in fisheries science. Next year's budget request includes increases for stock assessments and continued investments in cooperative research with fishermen. Our science and understanding are improved by working with fishermen, who have invaluable experience, and by the extensive peer review process involving scientists from academic institutions, industry, and coastal states.

The changing nature of oceans and fish populations — especially with climate change and ocean acidification — means we won't

ever have perfect information or full certainty. Nonetheless, we must continue to meet our mandates to use the best available information to manage fisheries sustainably.

A unique and important innovation that makes the United States a leader in transparent and participatory management is the fishery Regional Management Council process, which involves industry and other local interests directly in developing local management strategies. The eight councils are made up of a cross-section of people concerned with managing fisheries: fishermen, scientists, and those with environmental interests. Regional councils make choices about how to manage their fisheries while following the requirements of the Magnuson-Stevens Act, including Annual Catch Limits. We encourage the councils to consider innovative ways of managing fisheries to provide increased stability, profits, efficiency, and opportunity for fishermen, and we work with them to ensure continued progress in rebuilding stocks while protecting fishing jobs today.

Congress understood that fully rebuilt stocks offer the best and most sustainable economic opportunities, and has tasked NOAA with executing that mandate. Debate is a healthy part of an open society, and we welcome new ideas about how best to achieve sustainable fish populations and a sustainable fishing industry.

Short-term economic pressures can challenge our ability to accomplish our shared long-term goal. Building a better future takes courage, trust, discipline, and time. The United States should be proud of what it has accomplished so far in rebuilding our fisheries, and must continue to move forward.

Jane Lubchenco, Ph.D., is Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration.

Need to Fund Better Science to Guide Actions

EDWARD J. MARKEY

From Cape Cod to the Florida Keys to the Kenai Peninsula of Alaska, fishing is an integral part of America's ocean communities.

Healthy fisheries support healthy coastal economies.

Unfortunately, the fishing industry hit rough waters in the 1990s, battling a perfect storm of depleted stocks, pollution, and warming seas. However, amendments to the Magnuson-Stevens Fishery Conservation and Management Act in 1996 and in 2006 steered our fisheries toward more sustainable practices. This bipartisan law has contributed to American prosperity by rebuilding many U.S. fisheries. In 2010, U.S. fishermen brought 8.2 billion pounds of seafood ashore, valued at \$4.5 billion. Science-based management of the oceans' bounty by the Regional Management Councils supported this success.

The goal of the law is to rebuild depleted fish populations. Is it succeeding? Yes. Since 1997, the act has rebuilt 40 fish stocks and set countless other stocks on a path to recovery. Once rebuilt, fish stocks become more valuable than ever. For example, Atlantic sea scallop populations were fully rebuilt by 2001. Atlantic sea scallops are now the second most valuable fishery in the country and the most valuable scallop fishery in the world.

Overall, Americans stand to gain a tremendous amount from rebuilding our fisheries. A 2009 study by the Pew Environment Group found that rebuilding Mid-Atlantic summer flounder, black sea bass, bluefish, and butterfish by 2007 would have generated an additional \$570 million in direct economic benefits.

The National Marine Fisheries Service estimates that rebuilding America's ocean fish populations will provide an additional \$31 billion in annual sales and create 500,000 new American jobs.

Rigorous science is essential for rebuilding fisheries. We know improved data collection facilitates better management decisions. As Congress moves into negotiations over the Fiscal Year 2013 federal budget, it is imperative we include robust funding for fisheries science.

Critics of the law assert that we should suspend catch limits and accountability measures for those fish stocks where data are lacking. This is not a proposal that would create sustainable fisheries. The best plan of action is to increase data collection so that fisheries management can reflect the actual status of the fishery. H.R. 4208, the Fisheries Investment and Regulatory Relief Act, recently introduced in the House of Representatives, will ensure that money collected from tariffs on imported fish and fish products will fund programs that benefit American fishermen, including stock assessments.

Importantly, Magnuson-Stevens has considerable flexibility built into it. The law allows for 10 years to rebuild fish populations — a time limit that is not arbitrary. According to recent estimates, the majority of fish need five years to rebuild. Ten-year time frames allow flexibility to implement fish stock rebuilding plans. The law also allows rebuilding plans to exceed the 10-year mark when necessary. In fact, more than half the existing plans already exceed 10 years. Six species have rebuilding time lines in excess of 50 years.

Clearly, time lines can be extended under the current law, but only in cases where extensions are justified. That's how it should be. Meaningful deadlines are necessary to ensure that species recover at a pace that will benefit fisheries and the fishermen and their communities that depend on them. Fish

stocks that are below a sustainable population level pose a key challenge to fishermen. Fish stocks that are rebuilding can be unpredictable, making it difficult for fishermen to know how many fish will be available the following year. We need swift action to get our stocks to a place where the population is steady, supporting healthy ecosystems and sustainable fisheries.

Implementing the Magnuson-Stevens Act has put us in the encouraging place we are today. In its current form, the law brings us closer to providing Americans with the considerable economic and ecological benefits that come with healthy fisheries. We should not delay this process.

In Samuel Taylor Coleridge's "Rime of the Ancient Mariner," an albatross leads the Ancient Mariner out of desolate seas. The Magnuson-Stevens Act has the same potential to guide us to the end of overfishing. We should not repeat the Mariner's mistake and harm what is leading Americans to more secure fisheries.

Edward J. Markey (D-Massachusetts) serves as ranking member of the House Resources Committee.