



## New England Fishery Management Council

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### **Testimony of Thomas R. Hill Chairman, New England Fishery Management Council**

#### **Before the U.S. Commission on Ocean Policy July 24, 2002, Boston, MA**

I am both pleased and honored to provide comments to the members of the Ocean Commission and sincerely appreciate this opportunity to address issues that are relevant to fisheries here in New England.

The fishermen and fishing communities in this region have a long and rich history, and, despite the present turmoil, I believe they will continue to play an important role in our cultural and economic future. I would like to review some of the facts that permit me to be optimistic.

- It is widely known that New England groundfish stocks were declining precipitously prior to 1994. Today National Marine Fisheries Service (NMFS) assessments of those same stocks show biomass levels for 12 groundfish stocks, collectively, have more than doubled since then.
- Witch flounder (gray sole) on Georges Bank has been completely rebuilt to sustainable levels, while others, including the Georges Bank stocks of yellowtail flounder, haddock, and winter flounder, have shown significant improvement.
- Even stocks that require further rebuilding such as American plaice, Georges Bank cod, Gulf of Maine cod and Gulf of Maine haddock, redfish and Southern New England yellowtail flounder are improving. For some stocks, fishing effort that is still too high hampers recovery. In other cases poor recruitment (the absence of strong year classes) is the culprit.
- In 1998 scallop landings totaled 12.2 million pounds. Council management action and good recruitment have allowed landings of sea scallops to increase to 45 million pounds in 2001, while enabling the scallop biomass to continue increasing. This resource is now projected to be rebuilt by the end of this year.
- Council management actions have accounted for significant reductions in fishing effort since the mid-90s through limits on the numbers of days available to fish, the use of closed areas, trip limits and gear restrictions. The average groundfish trawler is currently allocated 88 fishing days and a full-time scallop vessel is authorized to fish for 120 days.

- Roughly 30 percent (6,600 square miles) of Georges Bank is closed within three large areas in which all bottom-tending mobile fishing gear is prohibited. In fact, the total square miles closed to trawl gear in New England is about the size of Massachusetts. On the basis of a habitat risk assessment prepared by the Council, vessels were allowed temporary access to these closed areas to harvest an abundant sea scallop resource, but only in the places determined to be the least sensitive to the impacts of dredge gear.
- Nearly 1,200 square miles of the Gulf of Maine are closed to most types of bottom tending mobile fishing gear. In addition, the near shore waters of the Gulf of Maine are closed to fishing for up to six months of the year.
- Trawl vessels in our region use the largest mesh in the world to reduce catches of juvenile fish. Roller and rockhopper gear larger than 12 inches in diameter is prohibited in some of the most sensitive habitat in the Gulf of Maine. The Council and the National Marine Fisheries Service also outlawed "streetsweeper gear" in 1998 because of potential adverse habitat impacts.
- An eight-inch twine top requirement, implemented several years ago on all scallop dredges, has reduced the bycatch of groundfish during scallop fishing. Similarly, the required use of the Nordmore grate in the Gulf of Maine northern shrimp fishery has significantly reduced the bycatch of juvenile groundfish in that region. The raised footrope trawl has allowed the Massachusetts whiting fishery to avoid taking cod as a bycatch.
- The Council also has been on the cutting edge of seeking new and better avenues to integrate management information needs with research efforts and to foster the participation of fishermen in collaborative fisheries science. By appointing Council members, fishermen and scientists to a Research Steering Committee and including conservation advocates, the Council has sought to obtain better information for management purposes and improve relationships between the fishing industry and scientists --- thereby promoting a better understanding of the scientific underpinnings of management decisions.

None of the above facts have changed very much over the last 12 months. But uncertainty, confusion, finger pointing and posturing have prevailed since the December 28, 2001 Washington D.C. U.S. District Court decision. As I am sure you are all aware, the Court ruled against the federal government for its failure to prevent overfishing and to assess and minimize bycatch in the groundfish fishery. Indeed, the Council and the National Marine Fisheries Service very frankly acknowledge they did not meet the timeframes for stock rebuilding that are required under the Sustainable Fisheries Act. While the Council has not ignored bycatch issues in the past, the issues must be addressed in a more comprehensive manner. Judge Kessler's rulings, however, have highlighted the very complex issues that are facing fishery managers in New England.

I will outline my views concerning some of these challenges and some potential solutions. Clearly change is necessary. The National Marine Fisheries Service is struggling under the burden of countless lawsuits, and extraordinary information demands, to support the decision-making process of the Councils. Disenfranchised fishermen cannot imagine how they

will eke out a living while operating under what they perceive as unfair regulations that, in turn, the Councils deem necessary to meet the requirements of the Sustainable Fisheries Act. Conservation groups feel that their concerns are not adequately addressed, and that they have few alternatives, except to seek remedies through the courts. I urge change, where necessary, but also encourage retaining many of the features of the current system.

It is my view that regional governance is an essential element if we are to achieve successful management outcomes. Stewardship, accountability, innovation and collaboration are most likely to occur using an approach that allows stakeholders at the local level to participate in decision-making. With the proper overarching framework, the National Marine Fisheries Service regional offices and science centers, in partnership with the Councils, still offer the best alternative for attaining the goals of rebuilding overfished stocks and managing for sustainability, while recognizing the importance of essential fish habitat.

**Recommendation:** I urge the Ocean Commission to maintain the regional organization of fisheries management and science. The character of our fisheries can only be maintained through local governance and the complex problems we face will be addressed most effectively by using the knowledge and information of fishermen who have chosen to participate in the process.

I believe a number of improvements in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) is necessary if we are to achieve these goals. The 10 National Standards are among the most important provisions of the Magnuson-Stevens Act. While they offer safeguards by ensuring that key issues are addressed in each fishery management plan (FMP), they also represent competing interests without prioritization. Numerous examples of these conflicts could be noted. One example is the mandate to end overfishing and to rebuild stocks. At the same time there is an expectation and requirement in the Act to take into consideration the importance of fishery resources to fishing communities and for providing sustained community participation. Avoiding or reducing significant social and economic impacts on communities dependent on access to the fishery, which is under a rebuilding program is impossible, yet that is the task before the New England Council as we struggle to rebuild our groundfish stocks.

**Recommendation:** The Council's job would be more straightforward, and the industry and public would be better served, if Congress would allow the Council to make value judgments as to which standards might be optimized in a given management action. This was the originally intended purpose of the Magnuson-Stevens Act; regional Councils making regional judgments in developing fishery management plans. For the moment, we attempt to address every standard in all our management plans and remain hopeful that we have avoided another lawsuit.

The alternative view would be to have Congress qualify or rank the 10 National Standards in order of importance. There are inherent competing interests between the varying standards, depending on the perspective one might hold. This leads to conflicting opinions as to whether the Council has properly complied with the law. This has inevitably led to lawsuits by the various parties interested in fisheries policy seeking to ensure their perspective is carried out as policy. The ranking of the standards would clarify the goals of the Act, and reduce the number of lawsuits.

An additional MSA-related concern is the interrelationship between the Magnuson-Stevens Act, the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA) --- all of which contain requirements that relate to approval of FMPs and their eventual publication as final rules.

It is my opinion that they are duplicative in intent. The timelines, procedural requirements, and comment periods of these legislative mandates have been very difficult to reconcile. They also have made it almost impossible to take multiple actions in any given year, even forestalling much-needed conservation measures. It is principally this aspect of the fishery management plan process that creates the image of a slogging bureaucracy that cannot address problems in timely manner. Because of the complex overlay of requirements, the fishery management plan process has become one that mystifies the general public and frustrates fishermen and managers alike and importantly, creates vulnerability to lawsuits on any number of levels. It is my understanding that discussions may be underway between the National Marine Fisheries Service and the Council on Environmental Quality, and perhaps others, to streamline this aspect of fisheries management.

**Recommendation:** While I fully support the concepts of meeting environmental standards, promoting transparency, and providing for full public participation, I support a more simplified process to accomplish these ends. I also speculate that only a legislative solution will fully resolve the issue.

I also support closer scrutiny of the Council appointment process. Much emphasis has understandably been placed on the issue of representation of specific fishing communities and sectors. I suggest that in addition to these concerns, careful consideration also be given to an individual's knowledge of and familiarity with his/her regional conservation and management issues and requirements. A strong Council system and Council performance is directly linked to the commitment of its members.

**Recommendation:** I urge that appointments be made on the basis of a person's knowledge of the broad range of issues that now constitutes fisheries management, in addition to safeguarding the interests of fishing ports and gear types. The fisheries management process is now very complex, and the time required to be an effective Council member is significant. Consideration should be given to providing the proper balance of the different skills required to be an effective policy maker. Another issue that may require a legislative fix is the subject of stock rebuilding periods. Currently, the Magnuson-Stevens Act stipulates that a rebuilding period must be as short as possible, but may not exceed 10 years, except in a case where the biology or other factors dictate otherwise. Under certain circumstances, this guideline is not an effective tool for when a fishery should be rebuilt.

In March 2002, the Council received a report from the Northeast Fisheries Science Center which presented a re-analysis of the biological bases used for managing the 19 stocks in the New England multispecies complex. Based on new data and improvements in methodology, many of the new reference points calculated during this review, in particular the biomass targets, were dramatically increased from current reference points. The 10-year rebuilding timeframe ends in 2009 for those stocks currently under rebuilding plans, or by agreement with the court, yet in 2002 the Council finds itself in the position of rebuilding to biomass levels that in some cases are three or four times the previous targets.

**Recommendation:** I respectfully submit, that, in the face of new and improved scientific information that Councils be allowed more flexible rebuilding timeframes in these instances. I do not believe the framers of the Magnuson-Stevens Act expected the science provided to the Council's to be so dynamic. Recognition of this reality would allow the Councils to adapt to such changing conditions as new information becomes available.

There are a number of other pressing issues and challenges we must address in this region. Matching resource availability and vessel capacity is one the Council is struggling with and plans to address in the groundfish amendment currently in development. It happens to further illustrate the National Standard disconnect I mentioned earlier.

Approximately 150,000 days-at-sea are allocated, in total, to fishermen pursuing groundfish in New England. One-third, or about 50,000 of those days are currently being used. As stocks rebuild, more of the unused days are being activated, potentially jeopardizing the hard won gains of the past several years.

**Recommendation:** I am aware that Congress is proposing a number of remedies, and would encourage those of you who are in a position to make recommendations, to urge the adoption of proper safeguards, tools and funding, as well as the flexibility to accomplish this task on a regional basis. In addition to the level of reductions in fishing mortality necessary to meet SFA standards in the next Groundfish Amendment, capacity represents the most substantive and controversial issue facing fishery managers in our region at this time.

The rest of my remarks relate to fisheries science, both directly and indirectly. It has come to the attention of the Council Chairmen that some consideration has been given to the idea of splitting the responsibilities of addressing conservation issues and allocation issues between the Secretary of Commerce and the Councils, respectively.

I concur with my fellow Chairmen that dividing two issues that are so intimately linked would be a very big misstep for all involved. The Councils are the appropriate bodies to determine the goals of management plans. Matters of science must be brought before the Council and presented in a clear and understandable manner and reviewed before the information is used for management decisions. I elaborate here to remind you that most of our Council members have no training in population dynamics, and generally must be brought up to speed when asked to comprehend the science that forms the underpinning of our management plans. There are a number of methodologies used to assess the status of marine populations. Put differently, there is no right answer but only the model that is believed to give the best information at the time the current decision is being made. Council members need to be exposed to the range of alternatives available, in order to make effective and proper decisions.

To charge a Council with developing an allocation scheme without understanding the underpinnings of their decisions, or allowing it to participate in the goal-setting process, also seems to fly in the face of the intent of the Magnuson-Stevens Act. It further divorces fishermen and the public from the science, thereby creating more suspicion and distrust. To bolster the process, I would propose that the Science Center Directors regularly participate in the Council meetings and contribute as frequently as necessary to help members arrive at decisions that are scientifically grounded. In New England, we have a very helpful representative, but he lacks the authority of the Science Director.

Almost along the same lines, I also believe that separating management of the Science Centers from the regional offices is not a productive approach. It is my understanding that this proposal is also being discussed. The Centers' mandates are broader than serving management, but nonetheless as institutions, they are an integral part of the management system. This means that coordination and communication with the regional offices and the Councils, already an imperfect system, is essential. We need a closer working relationship in this area, not further separation.

Finally, I must speak to the scientific information itself. As I mentioned earlier, I am well aware that the Northeast Fisheries Science Center is an extremely well respected institution that produces high quality information that has stood the test of peer review time and again. In fact, I am most grateful for all their efforts. However, it is very clear that the Center does not have adequate funding to meet the existing mandates of the Sustainable Fisheries Act. There are numerous examples. We have not been able to adequately calculate bycatch in most of our fisheries because of a lack of information or the funds to collect it. Lack of data has led us to designate EFH as "nearly everywhere". Information and subsequent analysis of the impact of the recreational fishery is not available. The Council has requested model development to reflect the new biological reference points for the 19 stocks in the multispecies complex, in aggregate, to allow the Council to take a more holistic approach to groundfish management issues. The Center simply does not have the resources to respond to the data needs of a complex management system. I urge you to recognize that we have much less of a problem of adequate information than one of woefully inadequate funding.

In closing, I believe the best fisheries management process will be one that promotes stewardship, streamlines the federal process, allow flexibility in managing multispecies fisheries, and adequately funds and expands the existing data collection and monitoring initiatives. I hope my comments are helpful to you, as you move forward with this very important initiative.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Tom Hill".

Thomas R. Hill  
Chairman