



**New England
Aquarium**

Protecting the blue planet

May 28, 2015

The Honorable Richard E. Neal
U.S. Representative, Massachusetts 1st District
Washington, DC 20515

The Honorable Niki Tsongas
U.S. Representative, Massachusetts 3rd District
Washington, DC 20515

The Honorable Katherine Clark
U.S. Representative, Massachusetts 5th District
Washington, DC 20515

The Honorable Michael E. Capuano
U.S. Representative, Massachusetts 7th District
Washington, DC 20515

The Honorable William Keating
U.S. Representative, Massachusetts 9th District
Washington, DC 20515

The Honorable James McGovern
U.S. Representative, Massachusetts 2nd District
Washington, DC 20515

The Honorable Joseph P. Kennedy III
U.S. Representative, Massachusetts 4th District
Washington, DC 20515

The Honorable Seth Moulton
U.S. Representative, Massachusetts 6th District
Washington, DC 20515

The Honorable Stephen F. Lynch
U.S. Representative, Massachusetts 8th District
Washington, DC 20515

RE: Opposition to HR 1335, the "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act"

Dear Representatives Neal, McGovern, Tsongas, Kennedy, Clark, Moulton, Capuano, Lynch and Keating:

On behalf of the New England Aquarium, we are writing to express our concerns with HR 1335, the "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act" and urge Congress make every effort to defend and strengthen the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in order to promote and conserve healthy marine ecosystems, habitats, fish populations, and the fishing communities that depend upon them.

As one of the preeminent aquariums in the United States, the New England Aquarium is a local and global leader in ocean exploration and marine conservation. In addition to our exhibit halls, which educate over a million visitors a year, the Aquarium is a leading ocean conservation organization with research scientists and experts working around the globe to ensure the protection and sustainable use of ocean resources.

The MSA has been a pivotal tool in moving U.S. fisheries towards greater sustainability. Since its enactment in 1976 and subsequent reauthorizations in 1996 and 2006, Congress has consistently updated and strengthened the MSA to improve decision-making, incorporate the best available science and advance the health and resiliency of our nations fisheries, their associated ocean ecosystems and the people and communities that rely upon them. Since 2000, 37 fish stocks have been rebuilt including among others, Atlantic sea scallops (one of the most valuable fisheries in the



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nation), South Atlantic black sea bass, mid-Atlantic summer flounder, and Pacific lingcod.¹ This has led to a 92% increase (54 percent, inflation adjusted) in commercial revenues for these stocks since the start of rebuilding plans. What's more, the National Marine Fisheries Service (NMFS) projects that fully rebuilding US fish populations will lead to a \$31 billion increase in annual sales and support for half a million new U.S. jobs.² Despite this clear progress, there is still work to be done with twenty-six commercially and recreationally important fish stocks still subject to overfishing and thirty-seven stocks still overfished.³

Progress to date is due, in large part, to the MSA's mandate to end overfishing, establish strong science-based catch limits, and rebuild overfished populations as quickly as possible. In 2006, Congress passed and President George W. Bush signed into law, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. This legislation built upon the ongoing efforts to restore America's fisheries and strengthen coastal fishing communities by mandating scientifically based annual catch limits and accountability measures to end overfishing and to rebuild overfished populations. In addition, it strengthened the 1996 measures to minimize bycatch of non-target species and minimize habitat damage in US waters. These core provisions have helped to stem population declines and rebuild fisheries so that seafood businesses, consumers and communities can reap the benefits of healthy fisheries and ocean ecosystems.

Unfortunately, HR 1335 threatens to derail this progress with efforts to "streamline" and inject greater "flexibility and discretion" into the law. History however has shown that where common pool resources are concerned, too much "flexibility and discretion" can lead to a "tragedy of the commons" undermining the long term sustainability of important public resources.⁴ Indeed, the flexibility and discretion that the MSA provided prior to the 1996 and 2006 amendments led to widespread fishery population declines. To ensure continued progress towards more sustainable, resilient and profitable US fisheries, Congress should reject any proposal that does not support strong science-based decision-making, annual catch limits, and appropriate rebuilding timeframes for overfished stocks. Specifically, we recommend that the House of Representatives vote down HR 1335 on the following grounds:

HR 1335 undermines efforts to rebuild overfished stocks by the removal or delay of critical conservation requirements. In the early 1990s, many of our nation's fisheries were in severe decline despite various recovery efforts. In response, Congress amended the MSA in 1996 to require that overfished fish stocks be rebuilt in as short of time as possible but not to exceed 10 years, with certain limited exceptions. This requirement resulted in a significant rebound in U.S. fish populations. HR 1335 would turn back the clock on this progress by:

- *Removing the requirement to rebuild within 10 years if biologically possible and removing any time limit, even for the most depleted or vulnerable populations, when "significant economic*

¹ NOAA Fisheries, "Status of Stocks 2014, Annual Report to Congress on the Status of US Fisheries," http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2014/2014_status_of_stocks_final_web.pdf

² Eric Schwaab, Assistant Administrator, National Marine Fisheries Service, "Written Statement on Eight Bills That Would Amend the Magnuson- Stevens Fishery Conservation and Management Act before the House Committee on Natural Resources," December 1, 2011, www.legislative.noaa.gov/Testimony/Schwaab120111.pdf.

³ NOAA Fisheries, "Status of Stocks 2014, Annual Report to Congress on the Status of US Fisheries," http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2014/2014_status_of_stocks_final_web.pdf

⁴ Grafton, R. Quentin, Dale Squires, and Kevin J. Fox. 2000. Private Property and Economic Efficiency: A Study of A Common-Pool Resource. *Journal of Law & Economics* 43(October): 679-713.



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harm” might result, non-fishing causes have contributed to a stock’s depletion, or simply because a council and the agency chose to use an “alternative rebuilding strategy.” The existing law already provides for considerable flexibility from the ten-year timeline, including statutory exceptions that account for the biology of the stock and associated environmental conditions and provide fishery managers with time to develop rebuilding plans. With the flexibility provided under the current law, the average time period in rebuilding plans to date is almost 20 years.⁵

- *Eliminating the mandate to prioritize rebuilding and long-term economic benefits over short-term economic gain*, including by changing the requirement to rebuild in a time period that is “as short as possible” to a time period that is “as short as practicable,” which would provide fishery managers with unfettered discretion to set any rebuilding time period.
- *Lowering the standard in the law for what constitutes a healthy or rebuilt fish population*, including by substituting the term “depleted” for “overfished” and defining “depleted” in a way that will likely require rebuilding efforts less frequently and lower rebuilding targets. This change could substantially hinder recovery for economically important stocks.

HR 1335 increases the risk of overfishing by weakening the MSA’s requirement for annual catch limits. To ensure a permanent end to overfishing, Congress in 2006 added a requirement for science-based annual catch limits (ACLs) and accountability measures, for all federally managed stocks, with limited exceptions. Since then, NMFS and the regional fishery management councils have developed and implemented ACLs for all required stocks. Consequently, the percentage of federal stocks subject to overfishing has dropped from about 20% of stocks with known overfishing status to less than 10%. HR 1335 would eliminate the requirement for ACLs and accountability measures for hundreds of fish stocks and substantially weaken their ability to prevent overfishing for the remaining ones by:

- *Providing excessively broad discretion for councils to disregard science-based prescriptions for annual catch limits that are designed to prevent overfishing, and to prioritize short-term economic interests over the biological parameters of important fish stocks and long-term economic benefits.*
- *Exempting “non-target, incidentally harvested stock of fish” from annual catch limits and accountability measures.* This exemption will encompass hundreds of stocks that are not specifically targeted but are still valued by fishermen or discarded as bycatch. It will potentially even include stocks that are overfished or subject to overfishing.
- *Limiting the authority of the fishery management councils’ scientific and statistical committees to provide fishing level recommendations that councils must not exceed in setting annual catch limits.* This would roll back a crucial provision instituted in 2006, which is intended to ensure catch levels are based on science rather than politics.

HR 1335 undermines important environmental and conservation laws, including the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Marine Sanctuaries Act (NMSA) and the Antiquities Act. The ESA, NEPA, NMSA, Antiquities Act and the MSA serve distinct but complementary purposes and are central to the ensuring the health and sustainability of marine species and ecosystems in U.S. waters. The goals and objectives as well

⁵ NRDC Report 2013. “Bringing Back the Fish: An Evaluation of U.S. Fisheries Rebuilding Under the Magnuson-Stevens Fisheries Conservation and Management Act”



as the analyses and public process undertaken by regional fisheries management councils pursuant to the MSA are not the equivalent of those established under ESA, NMSA and NEPA. While the MSA includes limitations on overfishing, habitat damage and bycatch, it is not designed to fully examine the broader impacts of fishery management decisions to the marine ecosystems as NEPA does. Likewise, the MSA does not address the unique needs of threatened and endangered species as the ESA does. HR 1335 would undermine the authority and impact of these critically important environmental laws by:

- *Exempting federal fishery management actions from the environmental analysis required by NEPA.* NEPA establishes a process enabling full-disclosure and informed and reasoned decision-making for major federal actions significantly affecting the health of the environment. While NEPA is often triggered in the development and review of fishery management plans under the MSA and species recovery plans under the ESA, NEPA jurisdiction extends beyond NOAA.
- *Allowing the MSA to be the controlling statute where there is conflict between the MSA and the NMSA and/or Antiquities Act.* NOAA's interests in healthy oceans extend beyond the regional councils' fishery management jurisdictions. NOAA's responsibilities under NMSA, the Antiquities Act (and NEPA) are not delegable to the quasi-governmental regional fishery management councils. Moreover, goals of the NMSA and Antiquities Act may not be diminished by the MSA.
- *Undermining the ESA by putting the industry-dominated regional fishery management councils in charge of recovering endangered and threatened marine mammals, sea turtles, and other vulnerable ocean species impacted by fishing.* Unlike the ESA which focuses on catch avoidance and to enable species recovery and/or protection, fishery management under the MSA is primarily designed to authorize, manage and promote fishing activities by achieving optimum yield for all U.S. fisheries. Responsibility and jurisdiction for implementing the ESA rests exclusively with NOAA and the U.S. Fish and Wildlife Service (FWS) in the Department of the Interior. NOAA's and the FWS's responsibilities under the ESA are not delegable.
- *Interfering with agency independence and expertise with regards to implementation and enforcement of other environmental laws.* Indeed, the agencies of jurisdiction, not the quasi-governmental fishery management councils, are responsible for executing the ESA, NEPA, NMSA and Antiquities Act. Not only do they have time-tested procedures for reaching decisions, but they have specific expertise with respect to those statutes that the fishery management councils do not share and cannot replicate. HR 1335 would generate conflict with statutory goals and authority and increase the burdens on fishery managers by interfering with a well-established and integrated system. HR 1335 does not increase efficiency or improve inter-agency coordination. Rather it creates new standards and processes that would undermine agency independence, generate confusion and delay, and increase the potential for litigation.

HR 1335 would undermine our nation's fundamental commitment to open, participatory and transparent government and compromise strong science-based management of marine resources. The proposed amendment puts taxpayer-funded data and data collected by the federal government off limits to the public and, in some cases, to states and other federal agencies by:

- *Imposing an unprecedented level of confidentiality* that would make many types of fisheries-related information secret from the public, including: the results of taxpayer funded cooperative research and data collected by government-funded observers.



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- *Denying state and federal agencies (outside of NMFS) access to any fisheries “monitoring and enforcement” information if such information is to be used to inform coastal and marine spatial planning decisions. This would effectively undermine interagency coordination and compromise well-informed multi-stakeholder decision-making around siting and development of emerging ocean industries, such as offshore wind and aquaculture.*

New and confounding challenges such as climate change, ocean acidification and other stressors contribute to the complexity of fisheries management. Innovative management tools along with a more holistic and precautionary ecosystem-based approach to management can build resilience in our oceans and help us improve our response to existing and future threats. The MSA reauthorization process provides an opportunity to build on the progress that has been made thus far and mitigate these future threats. As such, we urge Congress to safeguard the MSA, uphold its legacy of success and support efforts to strengthen and sustain our nation’s valuable marine resources by rejecting HR 1335.

Sincerely,

Nigella Hillgarth Ph.D., President & CEO

Meghan Jeans J.D., Director of Conservation

Scott Kraus Ph.D., Vice President of Research

Tania Taranovski, Director of Sustainable Seafood Programs

Michael Tlusty Ph.D., Director of Ocean Sustainability Science

Cc:

The Honorable John Boehner, Speaker of the House U.S. House of Representatives
The Honorable Nancy Pelosi, Democratic Leader U.S. House of Representatives
The Honorable Kevin McCarthy, Majority Leader
The Honorable Steve Scalise, Majority Whip
The Honorable Steny Hoyer, Democratic Whip
The Honorable Rob Bishop, Chairman of the Committee on Natural Resources
The Honorable Raúl Grijalva, Ranking Member of the Committee on Natural Resources
The Honorable Don Young, U.S. Representative, Alaska’s At-Large District