“NOT UNTIL THEY GET IT RIGHT,” thundered the late Massachusetts Congressman Gerry Studds when asked why his name was not on the nation’s principal fisheries management act. It was, after all, his House bill (HR 200) that was signed into law in 1976 as the Fishery Conservation & Management Act, now called the Magnuson-Stevens Act after its two Senate sponsors.

Congress is now working on the fourth reauthorization of this law. And they still might not get it right.

The debate over Magnuson-Stevens (MSA) raging for the past few years has been mainly whether the Act is now “too rigid” in its prohibitions on overfishing and stock rebuilding requirements. Stock collapses in the early 1990’s amidst charges of overfishing led Congress in the 1996 reauthorization to insert explicit language in the Act to prohibit overfishing. But when that mandate failed to bring a turn-around in depleted fish populations, more specific and stringent stock rebuilding language was added in the 2006 reauthorization in use today.

The 10-year rebuilding plan requirement (which there is already some flexibility in meeting) has caused a great deal of consternation in New England in particular, but also along the rest of the Atlantic Seaboard and in the Gulf of Mexico. Measures the regional fishery councils in those areas finally put in place came about late and, as a result, necessitated highly restricted fishing and many closures. Even recreational fisheries were hit with closures, often for the first time, as it became evident that their effort, too, affected stock abundance.

The economic hit from collapsing stocks and the subsequent management measures imposed (mainly after the last reauthorization) to prevent excessive fishing effort and begin stock rebuilding has been hard. That led to two national protests by commercial fishing and recreational angling groups, mainly from New England and the Gulf, calling for more “flexibility” in Magnuson-Stevens for the councils developing plans to prevent overfishing and rebuild stocks.

For most in the environmental and scientific community, however, as well as some in the commercial fishing industry – at least here on the West Coast – “flexibility” is merely code for going back to the old ways of doing things that led to depleted stocks and collapsed fisheries. Retreating from the 1996 and 2006 rebuilding measures is seen as a sure path to disaster – leading to the long-term collapse of America’s oldest industry and the economic, if not actual, extinction of many stocks.

The Commerce Department (NOAA/NMFS) report issued last summer verified that there are now fewer overfished fisheries and more stocks in the process of being rebuilt (or already rebuilt), and that would seem to confirm the success of the measures mandated in the last two MSA reauthorizations.

In fairness to the regional councils and many in the fisheries, not all of the problems that led to past overfishing and stock depletion were the result of avarice or ignorance. In some instances the science (what little was available) led managers to believe that stocks were more robust than they were, subsequently leading to overfishing. On the other hand, the “best available science” has also led to more dire stock predictions than actually occurred, sometimes resulting in draconian management measures being unnecessarily imposed.

Our conclusion is that the fault is not with the MSA, but with the fishing industry, the environmental and scientific community, and the fishery councils – and ultimately Congress – for their collective failure to aggressively push for the funding needed to pay for fundamental data collection and research essential for sustainable fishery management.

Last May 2013, following the nation-
al conference in DC on managing the nation’s fisheries, the Senate Commerce Committee’s Fisheries Subcommittee, and the House Natural Resources Committee separately held a series of hearings on the MSA preparing for the fourth reauthorization (technically, authorization for the Act expired in 2013, although the MSA itself continues in place until the next reauthorization). The first product of the Resources Committee’s hearings was a discussion draft released by its Republican majority on 19 December.

A Senate Commerce Committee draft should be forthcoming in early 2014, and either a Democrat alternative discussion draft or at least some alternative language to the House Republican version is expected, as well, from key Democrat Resources Committee members (e.g., Oregon’s Peter DeFazio, California’s Jared Huffman). When these are released we will have a better idea of the full range of issues and options Congress is considering.

The Republican draft contains some interesting, even innovative proposals, but some that are problematic as well, including the following:

- It retreats from the current stringent requirement of the MSA on rebuilding depleted fisheries and setting annual catch levels. On the positive side, however, it recognizes and provides for alternatives to annual quotas for managing some fisheries, where quota management (e.g., TACs) does not work (e.g., many Pacific salmon stocks).
- It does not require National Environmental Policy Act (NEPA) compliance, which is a problem. Many of the regional councils have been trying for years to get around NEPA, but NEPA is an important protection for ensuring that the councils consider a broad range of alternatives when developing management plans or amendments.
- It substitutes the term “depleted” for “overfished.” While it is important to prevent overfishing, increasingly non-fishing activities have led to stock depletions, with Pacific salmon a prime example. Furthermore, climate change and various forms of pollution will likely result in more fish stock depletions in the future.
- It calls for referendums on any new catch share programs. The problem is that this language does not apply to the Pacific, where fishermen also deserve the right to choose whether or not to opt for this means of allocating fish.
- It does push for development of electronic monitoring as an alternative to on-board observers. This is particularly important given the clamor for more information about catch without the necessity of an on-board observer, which can be expensive and an onerous burden on smaller fisheries and small-boat operations.

Within the next month or two we should have some other drafts to compare to the December House Republican language. In the meantime, avoiding all the clutter about “flexibility” or the councils trying to circumvent NEPA (with which arguably they don’t really comply anyway), much less those who advocate doing nothing, we think that four changes are needed in this reauthorization round. They are:

(1) Protecting Fishing Communities

Congress needs to finish what it started in the 2006 reauthorization when it authorized creation of “community fishing associations (CFAs)” to hold quota and be eligible for initial quota allocation. Congress cannot leave the details of what constitutes a CFA, or how they are formed or operated, up to NOAA/NMFS – agencies that have proven to be laggards and incompetents when it comes to community protections in fisheries.

Moreover, a moratorium on the issuance of any fishery quota is needed until such time as guidelines and standards for CFAs are established and implemented. This is essential to make sure that in any catch share program, fishing communities are in place for initial allocation of quota, to ensure their fishermen, processors and fishery-dependent businesses are protected.

Finally, Congress needs to revisit the 1996 reauthorization, and do what it had already once ordered NMFS to do – establish regulatory standards for individual fishing quota (IFQ) systems. As you may remember, NOAA/NMFS ignored the Congressional mandate to the agency in the 1996 reauthorization to adopt such standards. When the moratorium on IFQs later expired, the agency went back to pimping IFQs, still with no standards to assure a fair allocation of quota, that only those engaged in fishing could hold quota, or putting effective caps on quota ownership in place to prevent consolidation of quota ownership/control.

(2) “Depleted” is the Word

Use of the overly broad term “overfishing” to describe any stock that is depleted for whatever reason is an issue we have long complained of. The inadequacy of that definition was made glaringly obvious in the mid-1990’s when West Coast coho, along their southern range, were listed under the Endangered Species Act (ESA). Years prior to that listing, broad fishing restrictions had been imposed on the coho catch, but after nearly a score of years of fishing restrictions those coho populations remain depressed. Clearly the cause was not overfishing.

Nor were the 2008-2009 Central Valley chinook collapses caused by overfishing, but by excessive extraction of the Delta’s freshwater inflow. When diverted flows were returned pursuant to a successful PCFFA lawsuit, those stocks rebounded.

Although fishing restrictions may be needed to prevent further exacerbation of a stock depletion problem, there must be an explicit recognition – whether in a fishery plan, amendment, or regulation – when fishing is not the cause of the depletion, as well as an identification of the non-fishing cause(s) of the decline and acknowledgement that fishing restrictions alone will not rebuild such stock or stocks.

(3) No More Silence

The regional fishery councils, together with NMFS, were charged by Congress in the 1976 MSA with conserving and managing our nation’s fisheries. For the better part of forty years that charge has been viewed narrowly as simply regulating fishing and allocat-
ing fish. That is no longer good enough.

If the nation hopes to truly conserve its fish stocks and protect its fisheries, those charged with conservation and management need to be explicitly mandated to speak out on behalf of the fish where they may now lack regulatory authority over non-fishing activities affecting fisheries.

To its credit, the Pacific Fishery Management Council has occasionally, if reluctantly, spoken out on non-fishing actions affecting the health of stocks it is charged with managing. But those charged with conserving fish stocks can no longer be reluctant or occasional, nor missing in action as so many of the regional councils have been.

Explicit language is needed in the MSA mandating the regional councils and NMFS to notify any agency with regulatory authority over an activity that will impair or threaten a fish stock or stocks for which a council/NMFS has jurisdiction, identifying the nature of the threat, along with proposed measures for mitigating the threat, and requiring any agency so notified to then consult with that regional council and NMFS on measures to eliminate or mitigate the impact of that non-fishing activity. Consultation cannot just be limited to NMFS and ESA-listed species as it is today.

This consultation requirement cannot be optional or permissive, it has to be mandatory – our fisheries will not be conserved by silence.

(4) Show Us the Money

Finally, for more than a decade PCFFA has argued for creation of a national Fishery Trust Fund to pay for fishery science as well as other fishery needs ranging from development of cleaner fishing gear, to some form of catch insurance and disaster relief funding.

In the 2006 reauthorization, Senators Ted Stevens (R-AK) and Barbara Boxer (D-CA) successfully inserted language for the creation of such a Fishery Trust Fund. Left undone, however, was identifying a specific source of revenue to support that fund.

The Pew Charitable Trust, to its credit, has taken on this issue; in 2012 then-Senators John Kerry (D-Ma) and Olympia Snowe (R-ME) introduced legislation that would have tapped the Saltonstall-Kennedy Act fund to pay for fishery research. Introduced late, that legislation didn’t move, and unfortunately there was no follow-up in 2013.

Good fishery management doesn’t happen without good science, but good science has to be paid for. It’s time for Congress to revisit the Fishery Trust Fund and designate a permanent revenue source to support it. Maybe then there’ll be less clutter about “flexibility” and economic hardships and more about getting on with understanding fish stocks and caring for those whose fisheries are being rebuilt.

Fishermen cannot ignore this fourth reauthorization. They have to be part of the debate, if we expect to finally get the MSA right.

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