

**H.R. 4742, TO AMEND THE MAGNUSON-  
STEVENS FISHERY CONSERVATION AND  
MANAGEMENT ACT TO PROVIDE FLEXI-  
BILITY FOR FISHERY MANAGERS AND  
STABILITY FOR FISHERMEN, AND FOR  
OTHER PURPOSES, “STRENGTHENING  
FISHING COMMUNITIES AND INCREAS-  
ING FLEXIBILITY IN FISHERIES MANAGE-  
MENT ACT”—PART 1 AND 2**

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**LEGISLATIVE HEARING**

BEFORE THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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Tuesday, February 4, 2014 (Part 1)

Friday, February 28, 2014 (Part 2)

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**LEGISLATIVE HEARING ON H.R. 4742, TO  
AMEND THE MAGNUSON-STEVENSON FISHERY  
CONSERVATION AND MANAGEMENT ACT TO  
PROVIDE FLEXIBILITY FOR FISHERY MAN-  
AGERS AND STABILITY FOR FISHERMEN,  
AND FOR OTHER PURPOSES, “STRENGTH-  
ENING FISHING COMMUNITIES AND IN-  
CREASING FLEXIBILITY IN FISHERIES MAN-  
AGEMENT ACT”—PART 1**

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**Tuesday, February 4, 2014  
U.S. House of Representatives  
Committee on Natural Resources  
Washington, DC**

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The committee met, pursuant to notice, at 10:10 a.m., in room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Young, Wittman, Fleming, McClintock, Duncan, Southerland, Mullin, LaMalfa, McAllister, Byrne, DeFazio, Pallone, Napolitano, Holt, Bordallo, Costa, Sablan, Tsongas, Hanabusa, Horsford, Huffman, Shea-Porter, Garcia, and Clark.

Also present: Representative Tierney.

The CHAIRMAN. The committee will come to order, and the Chairman notes the presence of a quorum, which I thank Members on both sides of the aisle here.

We are here today for a legislative hearing on the discussion draft titled, “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.” Or, put another way, the reauthorization of the Magnuson-Stevens Act.

I will now recognize myself for my opening statement, and we will get the witnesses up there.

**STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON**

The CHAIRMAN. So I would like to welcome our witnesses for today’s hearing on a discussion draft for the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.

Since 2011, eight full committee or subcommittee hearings relating to the reauthorization and Federal fisheries management have been held. This hearing will be the ninth in that series.

In addition to our hearings, eight regional fishery management councils held a national conference specifically on reauthorization issues. Each of the eight Councils submitted recommendations to that conference, and the result of the conference was yet another set of recommendations. The National Academy of Sciences also re-

leased a report detailing additional recommendations on the rebuilding provisions of the Act.

With all of the activity focused on the reauthorization, it certainly should not be a surprise that all of those recommendations were reviewed, and many of them were assembled into a bill. The bill is a discussion draft that was released and circulated in mid-December, about a month and a half ago.

The draft is entitled the “Strengthening Fishing Communities and Increasing Flexibility in Fishery Management Act.” It has been released as a draft, rather than as an introduced bill with text locked in stone to allow for public discussion, review, and comment. The intent is to seek feedback and listen to input. I would note that many of the provisions in the draft also came from or were influenced by legislation introduced in the past Congress by Congressmen Wittman, Pallone, Runyan, Jones, and our former colleague from Massachusetts, Barney Frank.

In the hearings we have held, there was general agreement that the Act is working. I have said all along that I believe the Act is fundamentally sound. And success does not mean the Act works perfectly, or should not be modified or improved. We have heard at almost every hearing that the balance between preventing overfishing and optimizing the yield from our fisheries has become unbalanced, and that additional flexibility for fisheries managers should be added.

The revisions in the discussion draft uphold the underpinnings of the Act. But let me be clear about what this discussion draft does not do. It does not eliminate the requirements that Councils and the Secretary stop overfishing. It does not eliminate the requirement that Councils and the Secretary rebuild overfished fisheries. It does not eliminate the requirement that Councils and the Secretary develop and implement annual catch limits. It does not eliminate the requirement for accountability measures. It does not eliminate the requirement that management decisions should be based on science.

This draft addresses the requests of fishermen, fishing communities, fishery management councils, and the recommendations of the National Academy of Sciences that the Act be modified to provide fishery managers with more flexibility. That is the key word in this discussion draft: flexibility.

The draft provides the Councils with more flexibility in how they rebuild fisheries, and it provides Councils with flexibility in how the Councils set the annual catch limits. But it does not eliminate these requirements. This discussion draft maintains that requirement to stop overfishing, a requirement to rebuild overfished fisheries, and the requirement to set annual catch limits. But it provides more flexibility for better local decisions to achieve these goals.

The testimony throughout these last 3 years—or, I should say, in testimony through the last 3 years, we have heard that the 2006/2007 amendments, while well intentioned, may have gone too far in restricting the ability of fishery managers, and the Councils, in particular, from making management decisions that include a calculation of the economic impact on coastal and fishery-dependent communities.

I have noticed that some people oppose providing more flexibility to allow fishery managers to take the economic impact of fishing restrictions and environmental conditions into account when implementing these restrictions. That may be because those people are not directly affected by the sometimes draconian economic impacts. But the fishermen who are directly impacted have requested flexibility. The fishery managers who have to implement the restrictions have requested flexibility, and the National Academy of Sciences has recommended flexibility.

So, I would further invite comments on the discussion draft with the understanding that the intent is to move forward on this legislation with the goal of reauthorizing the Act by the end of the year. [The prepared statement of Mr. Hastings follows:]

PREPARED STATEMENT OF HON. DOC HASTINGS, CHAIRMAN, COMMITTEE ON NATURAL RESOURCES

I would like to welcome our witnesses for today's hearing on the discussion draft for the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act.

Since 2011, eight full committee or subcommittee hearings related to the reauthorization and Federal fisheries management have been held. This hearing will be the ninth.

In addition to our hearings, the eight regional fishery management councils held a national conference specifically on reauthorization issues. Each of the eight Councils submitted recommendations to that conference and the result of the conference was yet another set of recommendations. The National Academy of Sciences also released a report detailing additional recommendations on the rebuilding provisions of the Act.

With all of that activity focused on the reauthorization, it certainly should not be a surprise that all of those recommendations were reviewed, and then many were assembled into a bill. That bill is the discussion draft that was released and circulated in mid-December. It is titled H.R. 4742—The “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”.

It has been released as a draft rather than as an introduced bill with text locked in stone to allow for public discussion, review and comment. The intent is to seek feedback and listen to input. I would note that many of the provisions in the draft also came from or were influenced by legislation introduced in the last Congress by Congressmen Wittman, Pallone, Runyan, Jones, and our former colleague, Barney Frank.

In the hearings we've held, there was general agreement that the Act is working. I have said all along that I believe the Act is fundamentally sound. But success does not mean the Act works perfectly or should not be modified or improved. We have heard at almost every hearing that the balance between preventing overfishing and optimizing the yield from our fisheries has become unbalanced and that additional flexibility for fisheries managers should be added.

The revisions in the discussion draft uphold the underpinnings of the Act. Let me be clear about what this discussion draft does not do—it does not eliminate the requirements that Councils and the Secretary stop overfishing. It does not eliminate the requirement that Councils and the Secretary rebuild overfished fisheries. It does not eliminate the requirement that Councils and the Secretary develop and implement annual catch limits. It does not eliminate the requirement for accountability measures. It does not eliminate the requirement that management decisions be based on science. This draft addresses the requests of fishermen, fishing communities, fishery management Councils, and the recommendations of the National Academy of Sciences that the Act be modified to provide fishery managers with more flexibility. That is the key word: flexibility.

The draft provides the Councils with more flexibility in how they rebuild fisheries, and it provides Councils with flexibility in how the Councils set the annual catch limits. But it does not eliminate those requirements. This discussion draft maintains the requirement to stop overfishing, the requirement to rebuild overfished fisheries, and the requirement to set annual catch limits—but it provides more flexibility for better, local decisions to achieve these goals.

In testimony through the last 3 years, we have heard that the 2006/2007 amendments, while well intentioned, may have gone too far in restricting the ability of

fishery managers, and the Councils in particular, from making management decisions that include a calculation of the economic impact on coastal and fishery dependent communities.

I have noticed that some people oppose providing more flexibility to allow fishery managers to take the economic impact of fishing restrictions and environmental conditions into account when implementing those restrictions. That may be because those people are not directly affected by the sometimes draconian economic impacts. But the fishermen who are directly impacted have requested flexibility. The fishery managers who have to implement the restrictions have requested flexibility. And the National Academy of Sciences has recommended flexibility.

I invite further comments on the discussion draft with the understanding that the intent is move forward on legislation with the goal of reauthorizing the Act by the end of this year.

I look forward to today's testimony.

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The CHAIRMAN. So, I look forward to the witnesses' testimony, and I recognize the Ranking Member.

**STATEMENT OF THE HON. PETER A. DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. DEFAZIO. Thank you, Mr. Chairman. I would like to welcome a Member from Massachusetts, Mr. Tierney, here today, who along with many other Members has a very direct interest in this.

I have a bicoastal concern and knowledge of this industry. Actually, my dad ran a camp for inner-city kids on Cape Cod in the summertime growing up. He was a teacher. And one of our neighbors was a fisherman. And I have been to the Georges Banks on a small boat, and I kind of understand what that kind of life is all about. I also—I have been in Oregon now for a very long time, and I represent half the Oregon coast. And we have very robust fisheries there.

And, it is an ongoing work in progress to balance the conservation needs with the economic needs. And I think the Pacific Council has been doing a pretty good job, but they can do better in a number of areas.

I heard a lot of "nots" from the Chairman, and I guess that—well, let me back up for a minute. When we held the hearings in the fall, I thought that this would be an issue on which we could work on a bipartisan basis, with the current concerns that were raised. None of the witnesses said, "Let's do away with the Magnuson Act and its requirements." And I just heard the Chairman give a long litany of what we are not doing. But, unfortunately, I read the legislation a little differently with a number of exceptions that are provided. And, in the end, even after you go through the whole list of exceptions on which you can delay rebuilding of a stock, you—the Councils, at least in my interpretation, under this bill are given total license to ignore any and all quantitative science that is provided to them about stocks, and just decide that a stock is not overfished. It is kind of like the biblical passage, making fish that fill previously empty nets. It was a miracle in those days, and we are going to try to do it legislatively.

As Gerry Studds said many years ago, "Without fish, there is no fishing industry." So, there is a balance here that has to constantly be struck between devastating the communities dependent upon these fisheries and people whose livelihood is at stake, and the future of those stocks for those fishermen and women.

So, I have a lot of concerns about many of the provisions of this draft. And there are a number of things it doesn't look at, which are real problems, too. Cooperative research and management, I think that is a big problem, we need more of that. Pirate fishing, no new provisions there. Refinancing, at least from a parochial perspective, the West Coast ground fishery buyout, which has been set up in a very inequitable and unaffordable way, we don't deal with that. Conflicts with ocean energy development, putting prime fishing areas at risk or off limits, nothing in the bill about that, and I think that is a big, 21st-century problem for our fishermen, in dealing with BOEM.

And then, there is a particularly troubling issue that relates to giving the Councils the authority to OK, without any environmental review, large-scale, offshore fish farms full of GMO fish, which I think are an unbelievable threat to the future of, particularly, salmon. I mean we have these new, enhanced salmon, and they say—they have said to me, “Don't worry,” you know, “most of them are sterile, and they won't get out, anyway.” Well, let's think about a floating net pen fishery full of GMO salmon off the West Coast, and what potential havoc that could wreak with the recovery of salmon on which my people are paying \$400 million or more a year to operate our hydro system differently to help recover salmon, in addition to a whole host of other measures. We are putting those things at risk with some of these thoughtless provisions in this bill, to basically just give the Councils total license to do whatever they want. That is the bottom line with this bill.

If all those “nots” that the Chairman talked about are sincere, then we need to make a lot of revisions to this bill to deliver on the promise that it is not doing those things. Thank you, Mr. Chairman.

[The prepared statement of Mr. DeFazio follows:]

PREPARED STATEMENT OF HON. PETER A. DEFazio, RANKING MEMBER, COMMITTEE  
ON NATURAL RESOURCES

It is unfortunate that we find ourselves here today debating legislation that the Democratic side of the aisle had no part in developing. Despite our offers to work cooperatively on issues of concern to our fishermen—issues like cooperative research and management, curtailing pirate fishing, and refinancing the west coast ground-fish fishery's buyout—the legislation we are discussing here today addresses none of those concerns.

Instead, we are considering legislation that would undo 20 years of fisheries reforms fought for by members like Gerry Studds from Massachusetts and Ted Stevens from Alaska. No fisheries dilettantes, these Members represented and worked closely with the fishing industry throughout their decades in Congress. They knew the challenges fishing communities faced, and they knew the economic importance of fishing to their districts and their constituents—in fact, this is what drove them to push for the passage of the Magnuson Act in 1976. Yet, they also knew, as Studds would often say, “that without fish, there is no fishing industry.”

They watched in the late 1980s and early 1990s—in the heyday following the passage of the Act—as a rapidly growing industry harvested many fish stocks around the country at rates far beyond what was scientifically advisable or economically sustainable. They saw short-term political and economic pressures drive Councils to allow overfishing and ignore rebuilding. In New England, they saw ground fish stocks collapse, costing the industry hundreds of millions of dollars a year in lost revenue.

By 1995, it was clear things had to change. As Senator Stevens said in 1996, “If the fisheries management councils have allowed a fishery to become overfished, we want it to be stopped immediately.”

Sadly, this bill undermines fundamental reforms added to the law in 1996 and 2006, most notably the requirements for Councils to end overfishing immediately, rebuild overfished stocks within 10 years, and set science-based annual catch limits.

Under the guise of flexibility, the bill would transport us back in time, allowing the Councils to once again to set catch limits based on economic and social considerations, and eliminating timelines for returning stocks to healthy levels that will sustain fishing communities.

Even more remarkable, this bill says if a Council decides a fishery is not overfished, then—poof—it is not and the rebuilding requirements of the law no longer apply. Making fish fill previously empty nets used to be the stuff of miracles—now apparently anyone can do it. This make-believe does not just apply to fish. A water bill we will debate on the House Floor tomorrow takes a similar approach, ignoring the fact that California is in the middle of the worst drought it has ever seen.

And as they have done with drought, Committee Republicans are using a serious situation as an opportunity to push other polarizing provisions. In the case of the bill before us today, that means rolling back environmental laws like NEPA, the ESA, and the Antiquities Act.

We cannot just pretend there is more water or more fish, or conveniently blame the law for shortages. We have to make hard choices about conservation that, in the case of fish, will lead to more stable and profitable fisheries and stronger fishing communities. As Sam Rauch will tell us here again today, the Act is working. Overfishing is at an all-time low, and fisheries landings and revenue are at or near all-time highs. Now is not the time to forgo the progress we have made.

In closing, Mr. Chairman, I think it is regretful we are going down this path and missing some of the real challenges facing the fishing industry today. And because we do not think this hearing provides sufficient opportunity for a wide range of voices to be heard, I am submitting my request under Rule 11 that another hearing be held where the minority can invite additional witnesses to discuss these very important issues.

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The CHAIRMAN. I thank the Ranking Member. And I apologize for Mr. Tierney, I didn't see you there. So I ask unanimous consent that Mr.——

Mr. DEFAZIO. I forgot, Mr. Chairman——

The CHAIRMAN. Well, see, that is my one way of getting back at you, by me making the unanimous consent request.

[Laughter.]

Mr. DEFAZIO. Doc, come on, please. I am—oh, I have another one, though, OK? Can I ask this one?

The CHAIRMAN. Yes, go ahead.

Mr. DEFAZIO. OK. I ask unanimous consent that the previously mentioned Mr. Tierney be allowed to sit on the dais for today's hearing.

[No response.]

The CHAIRMAN. Without objection, so ordered.

Mr. DEFAZIO. OK. And then, Mr. Chairman, I—the Minority can invite additional witnesses to discuss a number of provisions in the bill.

The CHAIRMAN. The request is noted.

Mr. DEFAZIO. Thank you, Mr. Chairman.

The CHAIRMAN. I am pleased to welcome our first panel here. We have Mr. Samuel Rauch III, who is Deputy Assistant Administrator of the National Marine Fisheries Service, part of the National Oceanic and Atmospheric Administration, or NOAA. And we have Mr. Richard B. Robins, Jr., Chair of the Mid-Atlantic Fishery Management Council.

I want to thank both of you for appearing today. Just to give you the rules here, if you have not had the opportunity to testify before, your full statement that we ask of you will appear in the record.

But we would ask that you keep your oral remarks to within the 5 minutes.

And the way the lights work, when the green light is going you are doing very well. But when the yellow light comes on, that means there is a minute to go. And when the red light comes on, that means your time is absolutely exhausted. So with that, if you can keep your remarks within that timeframe, we would appreciate that.

And, Mr. Rauch, we will recognize you for 5 minutes.

**STATEMENT OF SAMUEL D. RAUCH III, DEPUTY ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Mr. RAUCH. Good morning, Mr. Chairman, Ranking Member DeFazio, and members of the committee. Thank you for the opportunity to testify before you today. My name is Samuel Rauch, and I am the Deputy Assistant Administrator for regulatory programs at NOAA's National Marine Fisheries Service.

Marine fish in fisheries, such as halibut in Alaska, salmon in the Pacific Northwest, tropical tunas in the Western and Central Pacific, cod in New England, and red snapper in the Gulf of Mexico, are vital to the prosperity and cultural identity of coastal communities in the United States.

They also play an enormous role in the U.S. economy. Our most recent economic statistics show that U.S. commercial fishermen landed 9.6 billion pounds of seafood, valued at \$5.1 billion, in 2012, the second-highest landing volume and value over the past decade. The seafood industry generated an estimated \$129 billion in sales impacts, and 37 billion in income impacts, and supported 1.2 billion jobs in 2011. Recreational fishing generated an estimated \$56 billion in sales impacts, and 18 billion in economic impacts, and supported 364,000 jobs in 2011.

The success we are seeing is a product of the hard work and ingenuity by the industry, and a sound Federal fishery management system that is effectively rebuilding fisheries.

Since its initial passage in 1976, the Magnuson-Stevens Act has charted a groundbreaking course for sustainable fisheries. Today, the law requires rebuilding plans for overfished stocks and annual catch limits and accountability measures to prevent overfishing. Ending overfishing and rebuilding depleted fisheries brings significant biological, economic, and social benefit. The Federal Fishery Management System is effectively ending overfishing and rebuilding overfished fisheries. And, as a result, U.S. fisheries are producing sustainable U.S. seafood.

Under the Magnuson-Stevens Act, if a stock is determined to be overfished, the Council has 2 years to develop a rebuilding plan. By statute, the period to rebuild a stock may not exceed 10 years, but it permits a longer time period in cases where the biology of the fish stocks and international agreement or other environmental conditions dictate otherwise. Of the 43 active rebuilding plans with a target time to rebuild, 23 of them are set longer than 10 years right now.

For example, the Pacific yelloweye rockfish has a rebuilding time of 71 years, and red snapper in the Gulf of Mexico is 32 years. The

remaining 20 rebuilding plans are set for 10 years or less. Flexibility also exists under the Act to adjust rebuilding plans when a stock is failing to make adequate progress, or when new scientific information indicates changing conditions.

To successfully rebuild, we must first end overfishing. Annual catch limits, or ACLs, are a powerful tool to accomplish this. Prior to the implementation of ACLs, a number of rebuilding plans experienced difficulty in ending overfishing. Nine of the 20 stocks currently in rebuilding had failed to end overfishing as of their last stock assessment. However, ACLs are now in place, and we anticipate the next stock assessment for these species to confirm that overfishing has ended. With the implementation of ACLs and accountability measures, we expect the number of stocks on our overfishing list to continue to decrease, and to see further declines in the number of overfished stocks, and see increases in the number of rebuilt stocks.

Challenges still remain, however. Fishermen, fishing communities, and the Councils have had to make difficult decisions to absorb the near-term cost of conservation and investment in long-term economic and biological sustainability.

Without high-quality fishery science, we cannot be confident the Nation is attaining optimum yield from its fisheries, or that we are preventing overfishing and harm to the ecosystems of fishing communities. That is why NMFS is committed to generating the best fishery science and research to support the goals of the Magnuson-Stevens Act. The importance of increasing the frequency of stock assessments, improving the quality of fisheries science with a better understanding of ecosystem factors, investing in cooperative research and electronic monitoring technology, and enhancing our engagement with fishermen cannot be stressed enough. Partnerships with industry and academia are a key component of successful fisheries management.

We all share the common goal of healthy fisheries that can be sustained for generations. Without clear, science-based rules, fair enforcement, and a shared commitment to sustainable management, short-term pressures can easily undermine progress toward restoring the social, economic, and environmental benefits of a healthy fishery. As we look to the future, we must look for opportunities to build on the successes we are seeing now. We need to approach the challenges we are facing in our fisheries in a holistic, deliberative, and thoughtful way that includes input from a wide range of stakeholders who care deeply about these issues.

While NOAA has not yet completed its review of the draft bill, we look forward to continuing to work with you on this complex and important issue.

Thank you again for inviting me to testify before the committee today, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Rauch follows:]

PREPARED STATEMENT OF SAMUEL D. RAUCH III, DEPUTY ASSISTANT ADMINISTRATOR  
FOR THE NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION

INTRODUCTION

Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to testify before you today. My name is Samuel D. Rauch and I am the Deputy Assistant Administrator for the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) in the Department of Commerce. NMFS is dedicated to the stewardship of living marine resources through science-based conservation and management. Much of this work occurs under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which sets forth standards for conservation, management, and sustainable use of our Nation's fisheries resources.

Marine fish and fisheries—such as tropical tunas in the Western and Central Pacific, salmon in the Pacific Northwest, halibut in Alaska, cod in New England and red snapper in the Gulf of Mexico—are vital to the prosperity and cultural identity of coastal communities in the United States. U.S. fisheries play an enormous role in the U.S. economy. Commercial fishing supports fishermen, contributes to coastal communities and businesses, and provides Americans with a valuable source of local, sustainable, and healthy food. Non-commercial and recreational fishing provides food for many individuals, families, and communities; is an important social activity; and is a critical economic driver of local and regional economies, as well as a major contributor to the national economy. Subsistence and ceremonial fishing provides an essential food source and has deep cultural significance for indigenous peoples in the Pacific Islands and Alaska and for many Tribes on the West Coast.

Our most recent estimates show that the landed volume and the value of commercial U.S. wild-caught fisheries remained near the high levels posted in 2011. U.S. commercial fishermen landed 9.6 billion pounds of seafood valued at \$5.1 billion in 2012, the second highest landings volume and value over the past decade.<sup>1</sup> The seafood industry—harvesters, seafood processors and dealers, seafood wholesalers and seafood retailers, including imports and multiplier effects—generated an estimated \$129 billion in sales impacts and \$37 billion in income impacts, and supported 1.2 million jobs in 2011. Jobs supported by commercial businesses held steady from the previous year.<sup>2</sup>

At the same time, recreational catch remained stable. Recreational fishing generated an estimated \$56 billion in sales impacts and \$18 billion in income impacts, and supported 364,000 jobs in 2011.<sup>3</sup> Jobs generated by the recreational fishing industry represented a 12 percent increase over 2010.<sup>4</sup>

The advancement of our science and management tools has resulted in improved sustainability of fisheries and greater stability for industry. Key requirements in the 2007 reauthorization mandated the use of science-based annual catch limits and accountability measures to better prevent and end overfishing. The reauthorization provided more explicitly for market-based fishery management through Limited Access Privilege Programs, and addressed the need to improve the science used to inform fisheries management.

The United States has many effective tools to apply in marine fisheries management. Yet, as we look to the future, we must continue looking for opportunities to further improve our management system. While significant progress has been made since the 2007 reauthorization, progress has not come without a cost to some. Challenges remain. Fishermen, fishing communities, and the Councils have had to make difficult decisions and absorb the near-term cost of conservation and investment in long-term economic and biological sustainability.

We all share the common goal of healthy fisheries that can be sustained for generations. Without clear, science-based rules, fair enforcement, and a shared commitment to sustainable management, short-term pressures can easily undermine progress toward restoring the social, economic, and environmental benefits of a healthy fishery. Although challenges remain in some fisheries, the benefits for the

<sup>1</sup> See NOAA Annual Commercial Fisheries Landings Database, available at <http://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/annual-landings/index>.

<sup>2</sup> See Fisheries Economics of the U.S. 2011. NMFS Office of Science & Technology, available at: [http://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries\\_economics\\_2011](http://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries_economics_2011).

<sup>3</sup> Lovell, Sabrina, Scott Steinback, and James Hilger. 2013. The Economic Contribution of Marine Angler Expenditures in the United States, 2011. U.S. Dep. Commerce, NOAA Tech. Memo. NMFS-F/SPO-134, 188 p.

<sup>4</sup> See Fisheries Economics of the U.S. 2011. NMFS Office of Science & Technology, available at: [http://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries\\_economics\\_2011](http://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries_economics_2011).

resource, the industries it supports, and the economy are beginning to be seen as fish populations grow and catch limits increase.

My testimony today will focus on NMFS' progress in implementing the Magnuson-Stevens Act's key domestic provisions, and some thoughts about the future and the next reauthorization. NOAA has not yet completed review of the draft bill but looks forward to working with Congress on this complex issue.

#### PROGRESS IN IMPLEMENTATION

Working together, NMFS, the Councils, coastal States and territories, treaty fishing tribes, and a wide range of industry groups and other stakeholders have made significant progress in implementing key provisions of this legislation.

##### *Ending Overfishing and Rebuilding Fisheries*

U.S. fisheries are producing sustainable U.S. seafood. The Federal fishery management system is effectively ending overfishing and rebuilding overfished fisheries. We continue to make progress toward long-term biological and economic sustainability and stability. Since its initial passage in 1976, the Magnuson-Stevens Act has charted a groundbreaking course for sustainable fisheries. When reauthorized in 2007, the Act gave the eight Regional Fishery Management Councils and NMFS a very clear charge and some new tools to support improved science and management. We are now seeing the results of those tools. As of December 31, 2013, 91 percent of stocks for which we have assessments are not subject to overfishing, and 82 percent are not overfished—both all-time highs. The number of stocks subject to overfishing was highest in 2000, when 48 stocks were on the overfishing list. In 2002, 55 stocks were overfished. Nationally, we have rebuilt 34 stocks since 2000.<sup>5</sup>

We expect the number of stocks on the overfishing list to continue to decrease as a result of management under annual catch limits. Ending overfishing allows stocks to increase in abundance, so we expect to see further declines in the number of overfished stocks and increases in the number of rebuilt stocks.

Flexibility is inherent in the Magnuson-Stevens Act's rebuilding requirements. The Act requires that the period to rebuild a stock not exceed 10 years, but it permits a longer time period in certain cases where the biology of the fish stock, management measures under an international agreement in which the United States participates, or other environmental conditions dictate otherwise, although this period still must be as short as possible. Current rebuilding time periods for stocks with active rebuilding plans range from 4 years to more than 100 years. Of the 43 active rebuilding plans with a target time to rebuild, 23 of them (53 percent) are set longer than 10 years due to the biology of the stock (slow reproducing, long lived species) or environmental conditions. For example, Pacific yelloweye rockfish has a rebuilding timeline of 71 years. The remaining 20 rebuilding plans are set for 10 years or less. Of the 33 stocks rebuilt since 2000, 18 stocks were rebuilt within 10 years. Two additional stocks in 10-year plans were rebuilt within 12 years.

The Magnuson-Stevens Act provides flexibility to adjust rebuilding plans when a stock is failing to make adequate progress toward rebuilding. In these situations, the Councils can amend the rebuilding plan with revised conservation and management measures. The Act requires that the revised plan be implemented within 2 years and that it end overfishing (if overfishing is occurring) immediately upon implementation.

Rebuilding plans are also adaptable when new scientific information indicates changing conditions. For example, the target time to rebuild Pacific ocean perch off the Pacific Coast was recently lengthened based on information within a new stock assessment. The assessment, conducted in 2011, revised our understanding of the Pacific ocean perch stock status and productivity and showed that, even in the absence of fishing, the time it would take to rebuild the stock would be longer than the previously established target time to rebuild. Given this information, NMFS worked with the Pacific Fishery Management Council in 2012 to modify the rebuilding plan and extend the target time for stock rebuilding from 2017 to 2020.

Rebuilding timelines can also be shortened based on new information. As one example, the original rebuilding plan for cowcod, a Pacific Coast groundfish, was 95 years. The rebuilding time has been modified based on updated scientific information, and is currently 67 years.

Rebuilding fisheries brings significant biological, economic, and social benefits, but doing so takes time, persistence, sacrifice, and adherence to scientific information. Of 26 rebuilt stocks for which information is available, half of them now produce

<sup>5</sup>These statistics were compiled from the quarterly stock status reports at: <http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm>.

at least 50 percent more revenue than they did when they were overfished. Seven stocks have current revenue levels that are more than 100 percent higher than the lowest revenue point when the stock was overfished.

Atlantic sea scallops provide one example of rebuilding success. In the early 1990s, the abundance of Atlantic sea scallops was near record lows and the fishing mortality rate was at a record high. Fishery managers implemented a number of measures to allow the stock to recover, including an innovative area management system. The stock was declared rebuilt in 2001. In real terms, revenues increased sixfold as the fishery rebuilt, from \$44 million in 1998 to \$389 million in 2012, making New Bedford the Nation's top port by value of landings since 2000.

Another example of rebuilding success can be seen with Bering Sea snow crab. In 1999, scientists found that Bering Sea snow crab was overfished. In response, managers reduced harvests to a level that would allow the stock to rebuild, and the stock was declared rebuilt in 2011. In the 2011–2012 fishing year, managers were able to increase the harvest limit by 56 percent to nearly 66 million pounds. By 2012, revenue from the fishery had increased to almost 400 percent of the 2006 revenue (the low point during the rebuilding period).

#### *Benefits of Annual Catch Limits*

One of the most significant management provisions of the 2007 reauthorization of the Magnuson-Stevens Act was the mandate to implement annual catch limits, including measures to ensure accountability and to end and prevent overfishing in federally managed fisheries by 2011 (an annual catch limit is an amount of fish that can be caught in a year such that overfishing does not occur; accountability measures are management controls to prevent annual catch limits from being exceeded, and to correct or mitigate overages of the limits if they occur). This is an important move away from a management system that could only be corrected by going back through the full Council process in order to amend Fishery Management Plans—often taking years to accomplish, all while overfishing continued.

Now, when developing a fishery management plan or amendment, the Councils must consider, in advance, the actions that will occur if a fishery does not meet its performance objectives. As of December 31, 2013, overfishing had ended for 71 percent of the 38 domestic U.S. stocks that were subject to overfishing in 2007 when the Magnuson-Stevens Act was reauthorized.<sup>6</sup>

Ending overfishing is the first step in rebuilding. Prior to the implementation of annual catch limits, a number of rebuilding plans experienced difficulty in ending overfishing and achieving the fishing mortality rate called for in the plan. As a result, rebuilding was delayed. Conversely, stocks where overfishing has ended quickly have seen their stock size increase and rebuild more quickly. For example, Widow rockfish in the Pacific was declared overfished in 2001. Fishing mortality on Widow rockfish was immediately substantially reduced resulting in a corresponding increase in stock size. The stock was declared rebuilt in 2011, ahead of the rebuilding deadline.

Most major reductions in allowable catch experienced by fishermen when stocks enter rebuilding plans are predominantly from the requirement to prevent overfishing—which is now required through annual catch limits for all stocks, not just those determined to be overfished. When unsustainably large catches have occurred due to high levels of overfishing on a depleted stock, large reductions in catch will be needed to end overfishing, and the stock must rebuild in abundance before catches will increase.

Because ending overfishing is essential to rebuilding, annual catch limits are a powerful tool to address prior problems in achieving rebuilding. Nine of the 20 stocks currently in 10-year (or less) rebuilding plans had failed to end overfishing as of their last stock assessment. Annual catch limits, which are now in place as a mechanism to control catch to the level specified in the rebuilding plan, are working and we anticipate the next stock assessments for these species to confirm that overfishing has ended. With that result, we will begin to see stronger rebuilding for these stocks. In addition, preliminary data show that annual catch limits have been effective in limiting catch and preventing overfishing for the majority of stocks. Fisheries have successfully stayed within their annual catch limit for over 90 percent of the stocks for which we have catch data.

<sup>6</sup>See Fish Stock Sustainability Index. This report was the source for the underlying data, but the numbers presented here were compiled specifically for this hearing. The report is available at: <http://www.nmfs.noaa.gov/sfa/statusoffisheries/2012/fourth/Q4%202012%20FSSI%20Summary%20Changes.pdf>.

*Ensuring Transparency and Stakeholder Engagement*

The Magnuson-Stevens Act created broad goals for U.S. fisheries management and a unique, highly participatory management structure centered on the Councils. This structure ensures that input and decisions about how to manage U.S. fisheries develop through a “bottom up” process that includes fishermen, other fishery stakeholders, affected States, tribal governments, and the Federal Government. By working together with the Councils, States, tribes, and fishermen—under the standards set in the Magnuson-Stevens Act—we have made great strides in ending overfishing, rebuilding stocks, and building a sustainable future for our fishing-dependent communities.

The Magnuson-Stevens Act guides fisheries conservation and management through 10 National Standards. These standards, which have their roots in the original 1976 Act, provide a yardstick against which all fishery management plans and actions developed by the Councils are measured. National Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery, which is the average amount of harvest that will provide the greatest overall ecological, economic, and social benefits to the Nation, particularly by providing seafood and recreational opportunities while affording protection to marine ecosystems.

The Councils can choose from a variety of approaches and tools to manage fish stocks to meet this mandate—e.g., catch shares, area closures, and gear restrictions—and, when necessary, also determine how to allocate fish among user groups. These measures are submitted to the U.S. Secretary of Commerce for approval and are implemented by NMFS. Thus, the Councils, in developing their plans, must carefully balance the need for stable fishing jobs, ecological conservation, and societal interests to create holistically sustainable fisheries. A key aspect of this effort is to ensure that overfishing is prevented, and if it occurs, to end it quickly and rebuild any stock that becomes overfished. Other National Standards mandate that conservation and management measures be based upon the best scientific information available, not discriminate between residents of different States, take into account variations in fisheries and catches, minimize bycatch, and promote the safety of human life at sea.

Effects on fishing communities are central to many Council decisions. Fishing communities rely on fishing-related jobs, as well as the non-commercial and cultural benefits derived from these resources. Marine fisheries are the lifeblood of many coastal communities in the Pacific Islands and West Coast regions and around our Nation. Communities, fishermen, and fishing industries rely not only on today’s catch, but also on the predictability of future catches. The need to provide stable domestic fishing and processing jobs is paramount to fulfilling one of the Magnuson-Stevens Act’s goals—to provide the Nation with sources of domestic seafood. This objective has even greater purpose now than when the Act was passed, as today U.S. consumers are seeking—more than ever—options for healthy, safe, sustainable, and local seafood. Under the standards set in the Magnuson-Stevens Act—and together with the Councils, States, tribes, territories, and fishermen—we have made great strides in maintaining more stocks at biologically sustainable levels, ending overfishing, rebuilding overfished stocks, building a sustainable future for our fishing-dependent communities, and providing more domestic options for U.S. seafood consumers in a market dominated by imports. Thanks in large part to the strengthened Magnuson-Stevens Act and the sacrifices and investment in conservation by fishing communities across the country, the condition of many of our most economically important fish stocks has improved steadily over the past decade.

*Limited Access Privilege Programs (LAPPs)*

The Magnuson-Stevens Act authorizes the use of LAPPs, which dedicate a secure share of fish to fishermen for their exclusive use via a Federal permit. NMFS has implemented LAPPs in multiple fisheries nationwide and additional programs are under development.

While limited access privilege programs are just one of many management options the Councils can consider, they have proven to be effective in meeting a number of management objectives when they have broad stakeholder support. Both in the United States and abroad, such programs are helping to achieve annual catch limits, reduce the cost of producing seafood, extend fishing seasons, increase revenues, and improve fishermen’s safety.

For example, NMFS has three LAPPs in the Southeast Region, including a South Atlantic commercial wreckfish individual transferable quota program implemented in 1992, a Gulf of Mexico commercial red snapper individual fishing quota program implemented in 2007, and a Gulf of Mexico commercial grouper and tilefish individual fishing quota program implemented in 2010. While the grouper and tilefish

program is too young to fully evaluate, recent reviews of the wreckfish and red snapper programs demonstrate they are working as intended. The wreckfish program eliminated excess fleet capacity and the race to catch fish and reduced gear and fishing area conflicts. The red snapper program is better aligning the capacity of the fleet with the commercial catch limit, mitigating short fishing seasons, improving safety at sea and increasing the profitability of the fishery. Individual fishing quota participants are targeting red snapper year round, compared to an average of 121-day seasons prior to implementation of the LAPP. And the average ex-vessel price of red snapper in 2012 was 27 percent greater than the average inflation adjusted ex-vessel price in 2007.

In the West Coast Region, the groundfish trawl catch share program has been remarkably successful in its first 2 years of implementation. Results from 2012 indicate a substantial reduction in bycatch, with fishermen catching more of their targeted species and fewer species that should be avoided. Because fishermen have more flexibility under a catch share program, they can be more selective in the areas they target. To catch fish in better condition and sell them at a higher price, fishermen are shifting their tactics. For example, trawl fishermen increased their use of fixed gear (i.e., fixed pots that rest on the sea floor or baited hooks on miles-long lines) the first 2 years of the program. Additionally, in 2012, 58 percent of sablefish revenue in the catch shares program was from fixed gear, up from 48 percent in 2011. The number of quota transfers in 2012—a good indicator of how fishermen are fine-tuning their quota holdings to better reflect their fishing plans—was double that of 2011. The total pounds of such vessel-to-vessel transfers in 2012 was 25 percent above 2011 and suggests that participants are planning earlier and becoming more comfortable with the individual fishing quota management system. This strong partnership will carry the West Coast Groundfish Catch Shares Program toward the common goal of healthy, sustainable fisheries and fishing communities. NMFS is hopeful that the increased planning and knowledge about the fishery will lead to the continued success of the program.

#### *Improvements to Science and Recreational Fishing Data*

Without high-quality fishery science, we cannot be confident the Nation is attaining optimum yield from its fisheries, or that we're preventing overfishing and harm to ecosystems and fishing communities. Attaining optimum yield requires investing in information about fish stocks, marine habitats, and ecosystems and the individuals and groups that rely upon fishing. NMFS is committed to generating the best fishery science—biological, ecological, and socioeconomic—to support the goals of the Magnuson-Stevens Act. To achieve the goals of the Act, we are conducting the research and analyses necessary to understand the environmental and habitat factors affecting the sustainability of fish populations. We must continue to increase what we know about our fish stocks in order to reduce uncertainty and avoid potentially reduced annual catch limits, resulting in lost economic opportunities.

The importance of increasing the frequency of stock assessments, improving the quality of fisheries science with a better understanding of ecosystem factors, investing in cooperative research and electronic monitoring technology, and enhancing our engagement with fishermen cannot be stressed enough. Partnerships with industry and academia are a key component of successful fisheries management. Cooperative research provides a means for commercial and recreational fishermen to become involved in the science and data collection needed to improve assessments, and develop and support successful fishery management measures.

With regard to electronic monitoring, the agency recently implemented a national policy to encourage the consideration of electronic technologies to complement and/or improve existing fishery-dependent data collection programs to achieve the most cost-effective and sustainable approach that ensures alignment of management goals, data needs, funding sources and regulations. In consultation with the Councils and subject matter experts, we will assemble guidance and best practices for use by Regional Offices, Councils and stakeholders when they consider electronic technology options. Implementation of electronic technologies in a fishery-dependent data collection program is subject to the Magnuson-Stevens Act and Council regulatory process and other relevant State and Federal regulations.

In the Southeast, the SouthEast Data, Assessment, and Review (SEDAR) is a cooperative process initiated in 2002 to improve the quality and reliability of Southeast Region stock assessments, and to increase stakeholder participation in the process. SEDAR is managed by the Caribbean, Gulf of Mexico, and South Atlantic Fishery Management Councils in coordination with NMFS and the Atlantic and Gulf States Marine Fisheries Commissions. SEDAR emphasizes stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. The

Territorial Fisheries Science Initiative in the Pacific Islands and Caribbean is an effort to overcome the lack of data collection capacity in the U.S. territories that has resulted in a paucity of scientific information to guide management actions. The small size of the territory governments with their modest budgets; the relatively low commercial value of the diverse and small-scale fisheries; and the limited NMFS presence in the territories have all contributed to the current shortcomings. This initiative also is intended to address these shortcomings and improve the quality and reliability of Pacific Islands Region stock assessments and increase stakeholder participation in the process.

The Magnuson-Stevens Act required improvements to recreational fisheries data collected by NMFS for use in management decisions. In October 2008, NMFS established the Marine Recreational Information Program (MRIP), a new program to improve recreational fishery data collection efforts, consistent with the Magnuson-Stevens Act requirement and the 2006 recommendations of the National Research Council. MRIP is a national system of coordinated regional data collection programs designed to address specific needs for improved recreational fishing information. One major component of this program is the development of a national registry of anglers which NMFS has been using in a series of pilot studies to test more efficient mail and telephone surveys for the collection of data on recreational fishing activity. Based on the results of these studies, NMFS expects to be ready to implement new registry-based survey designs in 2015.

MRIP is also developing and implementing numerous other survey improvements to address the National Research Council's recommendations, including improvements in estimation methodologies, shoreside survey design, and for-hire fishery data collections.

Improved fisheries science also relies on data collected by fisheries observers as well as collaborative research with non-government partners. Adequate observer coverage also is critical for improving our bycatch data, and the biological samples collected by observers are used in stock assessments and life history studies. National Standard 9 requires fishery management plans to take into account the impact of the fishery on bycatch, particularly for protected species. NMFS continues to work with the Councils and through take reduction teams established under the Marine Mammal Protection Act to identify measures that can be taken to minimize serious injury and mortality to sea turtles, corals, dolphins and other marine mammals throughout the Nation's oceans.

#### *Successes and Challenges*

There are many examples of what fishermen, scientists, and managers can do by working together to bring back a resource that once was in trouble. In the Pacific Islands Region, NMFS, the Western Pacific Fishery Management Council, the State of Hawaii, and fishing communities have ended overfishing of the Hawaiian archipelago's deep-water bottomfish complex—a culturally significant grouping of seven species of snapper and grouper. This has enabled NMFS to increase annual catch limits for these stocks for both commercial and recreational fishermen and ensure these fish are available year-round.

On the West Coast, NMFS and the Pacific Fishery Management Council, the fishing industry, recreational anglers, and other partners have successfully rebuilt a number of once overfished stocks, including coho salmon, lingcod, Pacific whiting, and widow rockfish. These and other conservation gains, including implementation of the West Coast groundfish trawl rationalization program, enabled NMFS to increase catch limits for abundant West Coast groundfish species that co-occur with groundfish species in rebuilding plans.

In the Southeast Region, NOAA, the Gulf of Mexico and South Atlantic Fishery Management Councils, the fishing industries, recreational anglers and other partners have successfully rebuilt a number of once overfished stocks, including red grouper and king mackerel in the Gulf of Mexico, black sea bass in the South Atlantic, and yellowtail snapper, which is shared by both the Gulf of Mexico and South Atlantic regions. These and other conservation gains enabled NMFS to increase catch limits for six stocks or stock complexes and eliminate or reduce two fixed seasonal closures over the last year. The additional harvest opportunities attributed to rebuilding the South Atlantic black sea bass stock alone have increased annual consumer surplus for recreational anglers, annual ex-vessel revenues for commercial fishermen and annual profits for for-hire vessels by about \$13 million, \$1 million and \$350,000, respectively.<sup>7</sup>

<sup>7</sup> SAFMC (South Atlantic Fishery Management Council). 2013. Regulatory Amendment 19 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region.

The Atlantic sea scallop resource in New England was rebuilt after fishermen partnered with academic and NOAA scientists to learn more about scallop abundance and distribution, and then embraced a rotational management approach focused on long-term sustainability. Valued at approximately \$389 million dollars in 2012, the scallop fishery has made New Bedford, MA, the top revenue port in the United States. In fact, many fisheries in the Northeast and Mid-Atlantic are a significant part of the national success story. Of the 32 stocks rebuilt nationally since 2000, 18, more than half, were rebuilt by NOAA, the Northeast and Mid-Atlantic Fishery Management Councils, the fishing industries, recreational anglers, and other partners on the Atlantic coast. In addition to Atlantic sea scallops, these include other important stocks such as summer flounder and Atlantic swordfish.

But meeting mandates to prevent and end overfishing and implement annual catch limits can be very challenging where data is scarce, which is the case for many of the stocks in the Pacific Islands region and the Caribbean, particularly those species being fished in the coral reef ecosystem. The agency has begun the process of reviewing the National Standard 1 guidelines, which were modified in 2009 to focus on implementing the requirement for annual catch limits. This was a major change in how many fisheries were managed, and we want to ensure the guidance we have in place reflects current thinking on the most effective way to meet the objectives of National Standard 1, building on what we and the Councils have learned. A May 2012 Advance Notice of Proposed Rulemaking was followed by an almost 6-month public comment period where we asked for input on 11 topics addressed in the guidelines. We received a significant amount of input, and are in the process of working through the comments and developing options for moving forward, be it through additional technical guidelines, regulatory changes, and/or identifying issues for discussion as part of a reauthorization of the Magnuson-Stevens Act.

We also face formidable challenges managing recovering stocks to benefit both commercial and recreational user groups with fundamentally different goals and objectives. This is perhaps most evident in the Gulf of Mexico red snapper fishery. Rebuilding measures put in place in 2007 are working. That stock is rapidly recovering and now supports the largest combined commercial and recreational catch quota ever specified for this stock. Commercial individual fishing quota program participants directly benefit from stock recovery by receiving additional pounds of quota that can be fished more efficiently as catch rates and fish size increase over time. But recreational fishermen who simply desire the opportunity to fish are seeing that opportunity progressively restricted as the stock recovers because they are able to reach their quota in fewer and fewer days. A lasting red snapper management strategy will require broad agreement, equitable application and management support at both State and Federal levels.

Currently, all Gulf Coast States have expressed support for moving to a regional red snapper management strategy which could provide greater flexibility in tailoring the recreational fishing season, bag limit and minimum size limit to meet constituent needs. The Gulf Council is working toward implementing such a regime in the recreational fishery for the 2015 fishing year. NMFS fully supports this and any other management option that has broad stakeholder support and provides the fishery greater stability, while meeting conservation objectives.

#### LOOKING TO THE FUTURE

##### *Remaining Challenges*

Amid these successes, challenges remain. It is critical that we maintain progress toward meeting the mandate of the Magnuson-Stevens Act to end overfishing and rebuild overfished stocks. Annual catch limits have been an effective tool in improving the sustainability of fisheries around the Nation, but managing fisheries using annual catch limits and accountability measures was a major change for some fisheries, and the initial implementation has identified some areas where we can improve that process. We will continue to work with the Councils to achieve the best possible alignment of science and management for each fishery to attain the goals of the Magnuson-Stevens Act. We will continue to develop our science and management tools, improve our stock assessments and monitoring efforts, and create more effective annual catch limits and accountability measures. In so doing, we must continue to ensure solid, science-based determinations of stock status and better linkages to biological, socioeconomic, and ecosystem conditions.

We value the important partnerships we have formed with the States, territories, tribes, fishermen, and other interest groups in helping address these challenges. These partnerships are critical to developing successful management strategies. Together with our partners, we continue to explore alternative and innovative approaches that will produce the best available information to incorporate into management.

It is also increasingly important that we better understand ecosystem and habitat factors, such as the effects of climate change, interannual and interdecadal climate shifts, ocean acidification, and other environmental regime shifts and natural disasters, and incorporate this information into our stock assessments and management decisions. Resilient ecosystems and habitat form the foundation for robust fisheries and fishing jobs. The Magnuson-Stevens Act currently provides flexibility for bringing ecosystem considerations into fisheries management. This flexibility in the Magnuson-Stevens Act is one of the Act's strengths, allowing us to meet our responsibilities under the Act in concert with related legislation, such as the Marine Mammal Protection Act and the Endangered Species Act, to reduce bycatch of protected species to mandated levels. The alignment of measures to conserve habitat and protected species with measures to end overfishing and rebuild and manage fish stocks will be a key component of NOAA's success in implementing ecosystem-based fisheries management.

NOAA supports the collaborative and transparent process embodied in the Councils, as authorized in the Magnuson-Stevens Act, and strongly believes that all viable management tools should continue to be available as options for the Councils to consider when developing management programs.

*The Next Reauthorization of the Magnuson-Stevens Act*

With some of the largest and most successful fisheries in the world, the United States has become a global model of responsible fisheries management. This success is due to strong partnerships among the commercial and recreational fishing, conservation, and science and management communities. Continued collaboration is necessary to address the ongoing challenges of maintaining productive and sustainable fisheries.

The *Managing Our Nation's Fisheries 3* conference—co-sponsored by the eight Councils and NMFS—brought together a broad spectrum of partners and interests to discuss current and developing concepts addressing the sustainability of U.S. marine fisheries and their management. The conference was developed around three themes: (1) improving fishery management essentials, (2) advancing ecosystem-based decisionmaking, and (3) providing for fishing community sustainability.

We were excited to see a wide range of stakeholders represent many points of view, from commercial and recreational fishermen, to conservation and science and management organizations, to indigenous communities. Before the last reauthorization, we co-sponsored two of these conferences, and they played an important role in bringing people together and creating an opportunity to present ideas and understand different perspectives. We expect the ideas that emerged from this event to inform potential legislative changes to the Magnuson-Stevens Act, but the benefits are much greater than that. The communication across regions and Councils provided an opportunity to share best practices and lessons learned, and could also inform changes to current policy or regulations that can be accomplished without statutory changes.

CONCLUSION

Because of the Magnuson-Stevens Act, the United States is sustainably and responsibly managing U.S. fisheries, to ensure that stocks are maintained at healthy levels, fishing is conducted in a way that minimizes impacts on the marine ecosystem, and fishing communities' needs are considered in management decisions. Fisheries harvested in the United States are scientifically monitored, regionally managed, and enforced under 10 National Standards of sustainability. But we did not get here overnight. Under the Magnuson-Stevens Act, our Nation's journey toward sustainable fisheries has evolved over the course of 38 years.

In 2007, Congress gave NOAA and the Councils a clear mandate, new authority, and new tools to achieve the goal of sustainable fisheries within measurable timeframes. Notable among these were the requirements for annual catch limits and accountability measures to prevent, respond to, and end overfishing—real game changers in our national journey toward sustainable fisheries that are rapidly delivering results.

This progress has been made possible by the collaborative involvement of our U.S. commercial and recreational fishing fleets and their commitment to science-based management, improving gear-technologies, and application of best stewardship prac-

tices. We have established strong partnerships with States, tribes, Councils, and fishing industries. By working together through the highly participatory process established in the Magnuson-Stevens Act, we will continue to address management challenges in a changing environment.

To understand where we are, it is important to reflect on where we've been. We have made great progress but our achievements have not come easily, nor will they be sustained without continued attention. This is a critical time in the history of Federal fisheries management, and we must move forward in a thoughtful and disciplined way to ensure our Nation's fisheries are able to meet the needs of both current and future generations. We will take the recommendations from the *Managing Our Nation's Fisheries 3* conference, and look to the future in a holistic, comprehensive way that considers the needs of the fish, fishermen, ecosystems and communities.

Thank you again for the opportunity to discuss implementation progress of the Magnuson-Stevens Act. We are available to answer any questions you may have.

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The CHAIRMAN. Thank you very much, Mr. Rauch.

Now, let me introduce Mr. Richard Robins, Jr., who is the Chair of the Mid-Atlantic Fishery Management Council.

Mr. Robins, you are recognized for 5 minutes.

**STATEMENT OF RICHARD B. ROBINS, JR., CHAIR, MID-ATLANTIC FISHERY MANAGEMENT COUNCIL**

Mr. ROBINS. Good morning, Chairman Hastings, Ranking Member DeFazio, and distinguished members of the committee. I am Rick Robins, Chairman of the Mid-Atlantic Fishery Management Council, and I appreciate the opportunity to testify before you again on the reauthorization of the Act.

The Magnuson-Stevens Act is the strongest regulatory framework and statutory framework for managing fisheries and sustainable fisheries in the world. However, since the 2006 reauthorization was implemented, it has become clear that the Councils need focused flexibility to make decisions that are tailored to the needs and circumstances of each fishery.

The Mid-Atlantic region has had its share of rebuilding successes. All of our assessed stocks are at, near, or above their biological targets. These efforts have been successful in biological terms. But the current statutory requirements prevented the Council from considering alternative schedules that would have attenuated the social and economic impacts associated with the mandated rebuilding schedules. The Act should enable the Councils to achieve success more fully in biological, ecological, social, and economic dimensions, and this reauthorization presents an important opportunity to fine-tune, but not sacrifice, the primacy of biology in U.S. fisheries management.

These changes should facilitate successful social and economic outcomes, while preserving the integrity of the Act. The most significant change you can make to enable the Councils to more fully consider tradeoffs in stock rebuilding is addressed effectively in the draft's proposal to replace the requirement to rebuild stocks "as quickly as possible" with "as quickly as practicable," and eliminating the 10-year requirement. I will focus my comments today on ways that I think the draft can still be improved.

I was concerned to find that several important issues were not addressed in the draft, and I would strongly encourage the committee to consider revisions to address the following issues.

First, the draft does not address the problems with recreational accountability measures. I strongly believe recreational fisheries can be successfully managed under this Act. But the Councils need statutory flexibility to develop accountability measures that are appropriate, relative to the available data and their statistical characteristics. Recreational management should not be reduced to an exercise in catch accounting, particularly in regions where catch estimates lack the accuracy and precision to justify rigid responses in management.

Second, the draft does not respond to the need for sustainability certifications or verifications. Our standards are among the toughest in the world. And in an increasingly global market, U.S. fishermen and processors should be able to market their fish as sustainably caught under U.S. Federal fisheries management.

Third, the draft does not encourage or advance ecosystem-based fisheries management references in the Act. The ecosystem-based management may require temporarily fishing some stocks at levels above maximum sustainable yield, which is not an option of the current law. The draft is also silent on the management of forage fish. Adequate consideration of the ecological role of forage fish within the marine ecosystem is a core principle of ecosystem-based management, and should be addressed.

Fourth, the draft does not create any additional funding mechanisms for observer coverage. Councils should be able to specify observer coverage level requirements within their fishery management plans. Cost sharing between the agency and industry could facilitate improved coverage, and should be added to the Act, but the agency also needs to have more discretion about allocating funding to cover the incidental costs associated with observer coverage.

The reauthorization should build on the Act's existing strengths, and exemptions to key requirements should not weaken our ability to ensure the sustainable management of U.S. fisheries, or to address future challenges. I will highlight several concerns regarding the provisions in the draft.

The draft changes to the role of the SSC may set up a conflict with National Standard 2 by changing the annual catch limit ceiling to the overfishing limit, rather than their fishing level recommendation. The buffers between those two values are essentially determined by the Council's ABC control rule, or risk policy. Where the Councils do need flexibility, in my opinion, on this issue is in the management of data-poor stocks. And I would suggest re-crafting this exemption for data-poor stocks.

The proposed exemption for incidentally caught species, as proposed, would exempt any incidentally caught species from annual catch limits. Some species considered to be incidentally caught, in technical terms, are, in fact, high-volume important species. This exemption needs significant revision.

We need a workable mixed-stock exception. And the recent National Academy of Sciences' review offered insight into this issue. The 1998 NS1 guidelines were essentially too weak in their protection of weak stocks in a complex. They were inadequate, while the current NS1 guidelines preclude effective mixed species management. We need a solution in the middle that maintains

fishing mortality rates at appropriate levels for weak stocks to ensure their continued resilience, while enhancing yields on more productive stocks in the fishery.

Finally, the data confidentiality section of the draft does not significantly improve the Council's ability to make informed decisions, and the prohibition on the use of fisheries data in coastal marine spatial planning would significantly disadvantage U.S. fisheries in this process. Marine planning is a data-driven process, and fisheries in the Mid-Atlantic could be compromised if fisheries data are prohibited from use in marine planning discussions in advance of large-scale wind energy development.

Thank you again for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Robins follows:]

PREPARED STATEMENT OF RICHARD B. ROBINS, JR., CHAIRMAN, MID-ATLANTIC  
FISHERY MANAGEMENT COUNCIL

Chairman Hastings, Ranking Member DeFazio, and members of the committee, thank you for the opportunity to testify before you today regarding the discussion draft titled "H.R. 4742, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act." I am Richard B. Robins, and I serve as the Chairman of the Mid-Atlantic Fishery Management Council. The Mid-Atlantic Council has primary management authority for 12 species of fish and shellfish in Federal waters off the coast of North Carolina through New York.

Through the Magnuson-Stevens Fishery Conservation and Management Act, the United States has one of the world's strongest statutory frameworks for the management of sustainable fisheries. The Act is highly effective at preventing overfishing and rebuilding overfished stocks. However, in the years since the requirements of the last reauthorization have been implemented, it has become increasingly clear that the Councils need more flexibility to make decisions that are tailored to the needs and circumstances of each fishery.

I applaud the committee's efforts to increase flexibility in the Act by addressing one of the most acute impediments to the successful management of some U.S. fisheries—the 10-year rebuilding requirement. Giving the Councils flexibility to rebuild stocks as quickly as practicable, instead of on a 10-year rebuilding timeline, will allow Councils to incorporate biological, ecological, social, and economic considerations more effectively into the development of rebuilding plans. I strongly believe that this change will enable the Councils to achieve more meaningful and durable successes in the stock rebuilding process while promoting more productive and resilient fisheries.

Spiny dogfish is one example of a fishery that would have benefited significantly from the proposed amendment to the 10-year rebuilding requirement. The spiny dogfish rebuilding plan initially called for a 5-year rebuilding plan. This aggressive rebuilding schedule required a 1-year transition to an "exit" fishery that eliminated the directed fishery in Federal waters and limited catches to incidental quantities of 600 pounds per day. At the time, the fishery accounted for over 60 million pounds of landings annually and supported hundreds of predominantly small, day boats and their crews from Cape Hatteras to Maine. Spiny dogfish have a mean generation time of 35 years, so the proposed modifications to the rebuilding requirements in Section 3 of the draft would have allowed for a longer rebuilding period that would have stabilized the fishery at a lower level. This would have substantially mitigated the social and economic impacts to coastal fishing communities.

I also appreciate the addition of a provision to vest the liaisons of the New England Fishery Management Council and Mid-Atlantic Fishery Management Council with voting rights. This solution responds effectively to concerns among many Mid-Atlantic and New England stakeholders and will facilitate enhanced coordination between the two Councils.

These are important provisions that, if included in the final reauthorization, will have undoubtedly positive impacts on our Nation's fisheries. However, after careful review of the draft I continue to have a number of concerns. My testimony today will have two parts. First, I will briefly comment on several issues that were not addressed in the draft, despite being highlighted during the initial hearings. Second, I will share a number of specific concerns regarding content within the draft.

**The draft does not address problematic accountability requirements in recreational fisheries.** The 2006 reauthorization of the MSA introduced a new requirement for the Councils to develop accountability measures (AMs) for all federally managed fisheries. While AMs have been effective management tools for some fisheries, they must be developed appropriately for recreational fisheries, relative to the available catch data. Councils need the ability to develop recreational AMs that are consistent with the precision, accuracy, and timeliness of the catch estimates, in order to manage recreational fisheries effectively. This issue is critical to the successful management of recreational fisheries. The need for more statutory flexibility in the development of recreational AMs was evidenced most recently by the Agency's partial disapproval of the Mid-Atlantic Council's Recreational Omnibus Amendment. In recreational fisheries monitored by NMFS' Marine Recreational Information Program (MRIP), the Councils should be able to consider confidence intervals about the catch estimates when developing triggers for AMs.

**The draft does not respond to the numerous recommendations regarding a sustainability certification for U.S. fisheries managed under the Act.** In an increasingly global market, the sustainability of U.S. fisheries needs to be affirmed. Our standards for sustainable management are the strongest in the world, and an affirmation of this sustainability would be an important step to facilitate education, awareness and marketing for the benefit of U.S. fisheries.

**The draft does not strengthen or clarify the Act's references regarding ecological considerations or ecosystem approaches to fisheries management.** Implementing ecosystem principles in fisheries management could require fishing some individual stocks at levels above  $F_{MSY}$  temporarily, which is currently precluded by the Act. This is a statutory impediment to the implementation of ecosystem management principles, and should be resolved by allowing fishing on individual stocks at levels above  $F_{MSY}$  on a temporary basis, if those levels are within ecosystem reference points recommended by the Scientific and Statistical Committee. The draft is also silent on the management of forage fish stocks, which play an important role in the structure and function of marine ecosystems. The optimum yield (OY) definition in the current Act provides for reductions below maximum sustainable yield for ecological considerations, and the National Standard 1 guidelines include references to managing forage stocks at levels above  $B_{MSY}$ . Adequate consideration of the importance of forage stocks within regional ecosystems is an important consideration in the implementation of ecosystem principles in fisheries management and should be clarified in the Act.

**The draft does not include any provisions for cost-sharing or other funding mechanisms for observer coverage, and the draft does not extend any of the section 313 provisions to Councils other than the North Pacific Fishery Management Council.** The draft also does not enable the other seven Councils to specify observer coverage levels within their fishery management plans. Councils should have the authority to specify observer coverage levels in their FMPs. This need is reinforced by the recent disapproval by the National Marine Fisheries Service of the observer coverage requirements in Amendment 5 to the New England Fishery Management Council's Atlantic Herring Fishery Management Plan and Amendment 14 to the Mid-Atlantic Fishery Management Council's Squid, Mackerel, and Butterfish Fishery Management Plan. Councils should be able to specify required observer coverage levels within their fishery management plans. In the Northeast Region, this discretion should supersede the inflexible allocations required by the Standardized Bycatch Reporting Methodology (SBRM) omnibus amendment. The Act should also enable the Agency to use cost-sharing mechanisms, with the industry, to cover at-sea observer costs, and should have specific discretion within their appropriations, to allocate sufficient funds to meet observer coverage levels.

The reauthorization should build on the Act's strengths and enhance its flexibility, without compromising its integrity. The exemptions to the requirements in the current Act should be reviewed carefully to ensure that they would not substantially weaken the Act's ability to ensure the sustainable and effective management of U.S. fisheries, or compromise our ability to address future challenges in fisheries management, including changing environmental conditions associated with climate change.

Several provisions in the draft reauthorization are of particular concern. These include:

- The ACL exemption for incidentally caught species,
- The exemption for rebuilding mixed-stock fisheries,
- The changes in the role of the Scientific and Statistical Committees (SSC),

- The proposed data confidentiality provisions, including the prohibition on the use of fisheries monitoring data in coastal marine spatial planning.

**The draft's proposal to exempt incidentally caught species from ACLs poses several problems** (reference Page 8, line 16). Some incidentally caught species are landed on a very large scale, and this exemption would exempt them from quota-based management. Monkfish is one example—most of the Northern Management Area landings of monkfish are landed under “incidental” trip limits. Other species, such as river herring, are caught incidentally but are a species of concern, and are currently being managed by catch caps in the Northeast Region. This exemption could be difficult to define and could substantially weaken the management of important fisheries resources.

**This reauthorization should address the mixed-stock exception, as it relates to rebuilding requirements.** The 1998 version of the NS1 guidelines allowed weak stock components within a mixed-stock fishery to be exempted from rebuilding requirements, if they were not expected to invoke protection under the Endangered Species Act. These guidelines offered inadequate protection for weak stock components, while the current NS1 guidance is overly rigid, since it does not exempt weak stocks from the statutory rebuilding requirements. The National Academy of Sciences' National Research Council devoted considerable attention to the limitations of the current mixed-stock exception in their 2013 report, and it should be enhanced in this reauthorization. The draft proposes to exempt weak stock components from rebuilding requirements if they would result in significant economic consequences. This exemption attempts to address the NRC's conclusions, but results in a wholesale exemption from the rebuilding requirements. The NRC also suggested focusing on maintaining F rates, rather than focusing on fixed rebuilding schedules. Perhaps these concepts can come together in the mixed-stock exception, by exempting weak stocks from a fixed rebuilding requirement, but requiring the maintenance of an appropriate F rate on the weak stock. This would ensure more biological protection than the proposed solution in the draft, and would give Councils more flexibility to mitigate the social and economic impacts associated with the application of the current NS1 guidelines to the more productive stocks in the complex.

**The draft proposes to substantially change the role of the SSC, by modifying the ACL ceiling from the SSC's fishing level recommendation to their overfishing level recommendation** (Page 9, line 3.) For Councils that have a risk policy, the buffer between the overfishing level (OFL) and the SSC's acceptable biological catch (ABC) recommendation, is determined by applying the Council's risk policy to the OFL, in fisheries with stock assessments that produce biological reference points. All but one of the Councils have risk policies or ABC control rules. In fisheries with adequate assessments, the Councils ultimately determine the relationship between ABC and OFL through their risk policy. In data-poor stocks that do not have assessment-based reference points, the SSCs use ad hoc methods to determine ABC, and the Councils generally have less control over the buffer. Since the OFL is determined in the stock assessment and peer review process, this change would marginalize the role of the SSC, and sets up a potential conflict with National Standard 2.

The SSC's responsibilities, which include providing the Councils with advice on ABC, do not change in the draft. Consequently, the SSC would still be providing the Councils with ABC and OFL, and a certification that their advice represents the best available science. If the Council subsequently set an ACL above the ABC, it would create a tension with the National Standard 2 requirements of the Act.

The greatest need for flexibility on this issue is on data-poor stocks, rather than on stocks that are adequately assessed. Councils should have more discretion in establishing ACLs on data-poor stocks that do not have assessment-based reference points, or in cases where the SSC invalidates the reference points. This issue should be addressed in both section 302(h)(6) and section 302(g)(B) to avoid conflicts relative to National Standard 2 in the management of data-poor stocks.

**With respect to the data confidentiality section of the draft, the Act should safeguard the identity of individuals while ensuring informed decisionmaking by the Councils and the Agency.** Section 8 of the draft does not adequately advance the ability of the Councils to make informed decisions. Furthermore, the prohibition on the use of fisheries monitoring data for purposes of coastal marine spatial planning would significantly disadvantage U.S. fisheries in the future. Marine spatial planning is a multi-sectoral, data driven process. The Mid-Atlantic region of the United States is expected to experience significant development of offshore wind energy. Preserving access to these important fisheries will depend on adequate fisheries monitoring data, and incorporating this data in data

portals as the wind energy siting process moves forward. This issue will be among our most important challenges in the future on the East Coast, and the Act should put the regional councils and U.S. fisheries in a strong and effective position.

To the extent that electronic monitoring is intended to monitor interactions with public, U.S. fisheries resources, it should be available for law enforcement purposes. Fisheries monitoring data (e.g., VMS data) should also be available to the U.S. Coast Guard for search-and-rescue operations to promote safety at sea.

The transparency requirements proposed in Section 6 would benefit from additional review. Transparency is an important aspect of the Council process, and we have undertaken important efforts to webcast our Council meetings, which facilitates enhanced access and transparency. The proposal to require video broadcasting of the meetings would require additional resources and would not add significantly to the transparency of the process. Similarly, the proposed requirement for written transcripts would add considerable costs without providing additional resources. Audio archives of our Council meetings are already available on our Web site and should satisfy these concerns.

Section 7 proposes to extend the referendum requirements for new catch share programs beyond the Gulf and New England Councils. Referenda may be appropriate in certain circumstances, but may not result in the most effective management of fisheries in other situations. Many East Coast fisheries have been through a period of overexploitation and stock depletion that were preceded and accompanied by open access and oversubscription. If the referendum requirement is extended to other jurisdictions, the Councils should have flexibility in determining eligibility and voting details. I recognize that major fisheries reforms require broad support, and we have made stakeholder engagement a hallmark of our Council's management philosophy and programs. Our Council has a solid track record of evaluating catch shares objectively and pragmatically, as one option among many in the management of fisheries, and we have not adopted catch shares in the large majority of our fisheries.

I appreciate the committee's efforts to make resources available for cooperative research priorities in Section 8(e) through the use of the Asset Forfeiture Fund, and in Section 10, through Saltonstall-Kennedy (SK) funds. I would suggest making a portion of the SK funds available to all of the regions to support cooperative research priorities identified by the Councils. I would also suggest including the Northeast Area Monitoring and Assessment Program (NEAMAP) in your definition of eligible research programs in both of these sections.

The reauthorization also presents an important opportunity to enhance the coordination between the Act and other Federal statutes; notably, the National Environmental Policy Act, the Endangered Species Act, and the National Marine Sanctuaries Act. The references to these coordination opportunities in the draft discussion document would benefit from additional discussion by the regional councils, and I look forward to providing additional information on these important references following the upcoming meeting of the Council Coordination Committee (CCC).

I have included below additional comments that focus on specific details within the draft in the attached appendix. I appreciate the complexity of the reauthorization before the committee and sincerely appreciate the opportunity to testify before you.

## **DETAILED COMMENTS ON "H.R. 4742, STRENGTHENING FISHING COMMUNITIES AND INCREASING FLEXIBILITY IN FISHERIES MANAGEMENT ACT"**

### **SEC. 3—FLEXIBILITY IN REBUILDING FISH STOCKS**

#### **Page 2, Line 13**

*Description:* In the management of "highly dynamic fisheries," the Council could phase-in the rebuilding plan over a 3-year period.

*Comments:* "Highly dynamic fisheries" should be defined. This exemption may also benefit from some biological caveats.

#### **Page 3, Line 17**

*Description:* Exemption III to the rebuilding requirements would exempt the requirement to rebuild components of a mixed-stock fishery from the  $T_{max}$  requirement if it would result in "significant economic harm to the fishery."

*Comments:* "Significant" is not defined. The mixed-stock exception should be refined in this reauthorization, to strike a balance between the 1998 NS1 guidance and the current guidance, to facilitate its implementation where appropriate.

**Page 3, Line 18**

*Description:* Exemption III to the rebuilding requirements also exempts mixed stock components from the  $T_{\max}$  rebuilding requirement if that component cannot be rebuilt in that timeframe without “causing another component of the mixed-stock fishery to approach a depleted status.”

*Comments:* Ecosystem references in the current Act should be clarified and strengthened, particularly as they relate to OY and to the management of fisheries across trophic levels.

**Page 4, Line 9**

*Description:* Exemption V provides an exemption to the rebuilding timeframe if the Secretary “determines that the stock has been affected by unusual events.”

*Comments:* “Unusual events” are not defined. Councils should be able to amend rebuilding timelines if ecological conditions inhibit the recovery of the stock.

**Page 4, Line 18**

*Description:* The proposed requirement to consider “predator/prey relationships” in specifying a rebuilding timeframe does not appear to have any specific implication and would benefit from additional clarification.

**Page 5, Line 7**

*Description:* This proposed provision would allow the use of “alternative rebuilding strategies, including harvest control rules and fishing mortality targets.”

*Comments:* If such an alternative still resulted in the development of a rebuilding plan consistent with the other, proposed requirements of Section 304, this may not be problematic. However, if the control rules and fishing mortality targets are not set at levels that are expected to achieve stock rebuilding within the proposed  $T_{\max}$ , subject to the other draft exemptions, then this may not result in stock rebuilding.

**Page 5, Line 13**

*Description:* “Depleted” appears here and is defined elsewhere in the draft as a level below the normal range of stock sizes associated with the production of MSY.

*Comments:* The addition of this language is welcome for stocks that are depleted as a result of factors other than fishing. The definition would benefit from additional review and discussion.

**Page 5, Line 13**

*Description:* The draft proposes to allow Councils to terminate the application of paragraph (3), which include the requirements to end or prevent overfishing, if a Council meets one of two exemptions if the Council determines that a fishery is not depleted.

*Comments:* Exemption B is based on the completion of the next stock assessment. Exemption A is the end of the 2-year period following the effective date of a regulation, plan, or amendment. A stock assessment or assessment update would be essential to making the determination that the fishery is not depleted, so it may be cleaner to base this exemption just on the assessment-based determination. If an assessment update or other analytical product would satisfy this determination requirement, that should be clarified.

**Page 6, Line 8**

*Description:* This proposed exemption to ending overfishing would allow Councils to phase-in the regulations to end overfishing over a 3-year period if chronic overfishing has not occurred and if an immediate end to overfishing would result in significant adverse economic impacts.

*Comments:* “Significant adverse economic impacts” are not defined. This provision could be helpful in cases where assessments produce results that are dramatically worse than previous assessments. This may have the practical effect of allowing overfishing to continue for up to 3 years in some cases. This section may benefit from some additional detail or biological caveats if this exemption goes forward.

**SEC. 4—MODIFICATIONS TO THE ANNUAL CATCH LIMIT REQUIREMENT****Page 6, Line 19**

*Description:* This adds language allowing Councils to consider “changes in an ecosystem and the economic needs of the fishing communities” in establishing annual catch limits (ACLs).

*Comments:* This is vague, and it is unclear how these considerations relate to National Standard 1 and OY. Ecosystem changes that have adverse consequences for stock performance would typically result in lower yields, and may lead to lower reference points if they persist. Would this exemption allow Councils to specify higher ACLs than indicated in an assessment due to ecosystem changes? If so, this would not promote the ecological sustainability of our fisheries. Similarly, could

Councils set ACLs higher than currently allowed in order to meet the economic needs of the fishing communities, and, if so, how does this relate to National Standard 1? We have previously testified that Councils should have the flexibility to optimize rebuilding periods to more fully consider biological, ecological, and economic factors, and the draft addresses this by replacing “as short as possible” with “as short as practicable,” and by eliminating the 10-year requirement. This proposed language, beginning in line 19, should be reviewed relative to National Standard 1 and clarified.

**Page 7, Line 9**

*Description:* The ACL exemption for short-lived species would be extended to a stock for which “more than half of a single-year class will complete their life cycle in less than 18 months.”

*Comments:* We use the short-lived exemption for squid on the East Coast, but we still set quotas for those fisheries, based on SSC advice, and we still have to satisfy National Standard 2. The practical benefit of the exemption is that accountability measures (AMs) are not required on these short-lived species. The exemptions for short-lived species might be more appropriately applied as exemptions to AMs (at a minimum, they should be exempt from paybacks), since year classes are already dead before regulations could be developed and implemented.

**Page 8, Line 8**

*Description:* ACLs may be set for a “stock complex.”

*Comments:* “Stock complex” is not defined in the language and the implications of this provision are unclear.

**Page 8, Line 16**

*Description:* This section defines Ecosystem Component Species as stocks of fish that are “non-target, incidentally harvested stock of fish in a fishery, *or* (emphasis added) a non-target, incidentally harvested stock of fish that a Council or the Secretary has determined . . .” is not subject to overfishing or depleted.

*Comments:* The use of “or” in line 16 would effectively exempt all non-target, incidentally caught species from annual catch limits. Consequently, this language is problematic and would benefit from additional review and discussion.

**Page 9, Line 2**

*Description:* This language would substantially modify the role of the SSC, by striking “fishing” and inserting “overfishing.” Whereas Councils are currently required to set ACLs within the “fishing level recommendations of its scientific and statistical committee,” the draft language would require Councils to set ACLs within an “overfishing” level set by the SSC.

*Comments:* With the exception of data-poor stocks, the current overfishing levels (OFLs) are identified in the stock assessment process. This modification would marginalize the role of the SSC, and could create a tension with NS2. The current process works well for stocks that have adequate stock assessments, and has produced more inconsistent results in the absence of reference points. We have testified in support of having more flexibility in setting ACLs on data-poor stocks. This section could also benefit from additional review and discussion.

**SEC. 5—DISTINGUISHING BETWEEN OVERFISHED AND DEPLETED**

**Page 9, Line 22**

*Description:* Replacing the term “overfished” with “depleted” acknowledges that the deterioration of some stocks may result from anthropogenic and other impacts unrelated to fishing.

*Comments:* The proposed definition of the term “depleted” would benefit from additional review and discussion.

**SEC. 6—TRANSPARENCY AND PUBLIC PROCESS FOR SCIENTIFIC AND MANAGEMENT ACTIONS**

**Page 10, Lines 15 and 20; Page 11, Line 4**

*Description:* This section would require live broadcast of the Council and CCC meetings, and audio/video archives of each meeting.

*Comments:* Transparency is an important attribute of the Council process. Audio webcasts and archives should be considered as an alternative to the proposed video requirement. Similarly, written transcripts pose a significant cost and an audio archive should be sufficient for most uses.

**Page 11, Line 17**

*Description:* NEPA streamlining.

*Comments:* This reauthorization is an opportunity to streamline the NEPA and Magnuson-Stevens processes.

**SEC. 7—LIMITATION ON FUTURE CATCH SHARE PROGRAMS****Page 12, Line 12**

*Description:* Catch shares are defined here to include “sectors.”

*Comments:* This may need some revision, since “sector” is used broadly in fisheries discussions, but has a distinct use in the New England groundfish fishery. This language should be reviewed and refined.

**Page 14, Line 16**

*Description:* This section includes a hardship provision for participation in a referendum.

*Comments:* This could make it impracticable to conduct a referendum. Limiting referenda to permit holders would facilitate the administration of referenda. This section should be reviewed and discussed.

**Page 15, Line 2**

*Description:* This section would preclude the use of catch shares in any Secretariially managed fisheries unless first petitioned by a majority of those eligible to participate in the fishery.

*Comments:* This requirement is burdensome and would diminish the role of the HMS AP in the development of plan amendments.

**SEC. 8—DATA COLLECTION AND DATA CONFIDENTIALITY****Page 16, Line 6**

*Description:* This language would not authorize use of electronic monitoring for law enforcement.

*Comments:* If electronic monitoring is in use to monitor interactions with public fishery resources, they should be available to law enforcement.

**Page 16, Line 21**

*Description:* This section would allow Councils to develop plans to substitute electronic monitoring for human observers, if it will “provide the same level of coverage as a human observer.”

*Comments:* This may be impracticable or impossible, depending on the nature of the fishery and the details of the vessel. This requirement should be reviewed and revised to facilitate and encourage the development and use of electronic monitoring.

**Page 18, Line 1**

*Description:* Confidentiality provisions.

*Comments:* The confidentiality protections should allow for reasonable use of fisheries data by Councils in making management decisions, and by stock assessment scientists, without identifying individual vessels or operators. Limiting the use to Council employees may prevent Councils from making informed decisions regarding important issues. That was the case when our Council made allocations to tiers in the Tilefish fishery. The tiers were based on history, but we did not know what the allocations were. This section should be amended to improve decisionmaking.

**Page 21, Line 14**

*Description:* This would prevent the Secretary from providing fisheries monitoring data to any person for the purposes of coastal and marine spatial planning under Executive Order 13547.

*Comments:* This would severely disadvantage U.S. fisheries in the ocean planning process and should be deleted. Ocean planning is a multi-sectoral, data-driven process, and the best defense of traditional fisheries uses of the ocean will depend on effective data collection and interpretation.

**Page 23, Line 4**

*Description:* This would allow the Secretary to use law enforcement proceeds within regions for fisheries science. At line 4, it states “subject to appropriations.”

*Comments:* Since this section provides for the use of law enforcement penalties, is it necessary to make it subject to appropriations?

**SEC. 9—COUNCIL JURISDICTION FOR OVERLAPPING FISHERIES****Page 26, Line 1**

*Description:* This section would prioritize Saltonstall-Kennedy (SK) funds for Gulf of Mexico Cooperative Research and Red Snapper Management.

*Comments:* This same model could be used around the Nation to address data-poor fisheries, and would benefit from broader discussion. Some portion of the SK funds should be made available to all of the regions to support cooperative research.

QUESTION SUBMITTED FOR THE RECORD BY REPRESENTATIVE HANABUSA TO RICHARD B. ROBINS, JR.

Thank you for the opportunity to respond to Representative Colleen Hanabusa's question regarding the implications of proposed Federal fisheries legislation relative to the Endangered Species Act (ESA) and the National Marine Sanctuaries Act (NMSA).

Answer. The current Magnuson-Stevens Act (MSA) requires that fishery management plans be consistent with all applicable Federal law. Representative Hanabusa raises important questions about the relationship between MSA, ESA, NMSA, and the role of the Council.

Through the Council Coordinating Committee (CCC), the leadership of the U.S. regional fishery management councils have agreed to form a working group to address the interface between MSA and other Federal statutes, including ESA, NMSA, NEPA, and MMPA, among others, relative to the draft reauthorization. This item will be discussed at the May meeting of the CCC, and I anticipate that the CCC will develop specific comments on this issue at the May meeting.

The CCC has expressed a strong interest in the role of the Councils in the ESA consultation and implementation process. At the February, 2014 meeting of the CCC, a MAFAC working group made recommendations that were endorsed by the CCC. These included measures that will clarify the role of the Councils in the ESA process through the development of regional memoranda of understanding (MOU) between the regional offices of NMFS and the Councils, and the development of national policy guidance on best available science in ESA determinations. Previously, Councils have been involved to varying degrees around the Nation in ESA consultations. The role of the Councils in the ESA process should be clarified and will benefit from the development of regional MOUs. Another important aspect of ESA related to fisheries is the inconsistent integration of the regional offices of Sustainable Fisheries within NMFS during ESA listing determinations, and this issue is beyond the scope of the draft. Organizationally, SF should be more effectively and more consistently integrated with the offices of Protected Resources during listing determinations.

Regarding the Member's question of legal supremacy, if a more restrictive regulation has been implemented under another statute, or another statute is more restrictive than the MSA, then such other more restrictive regulations or statutes take legal precedence under current Federal law. However, the current situation under NMSA is more complex because of certain exemptions from it applying to fishing activities regulated under the MSA. As long as a NMSA regulation is not specifically exempted from being applicable to fishing, it would also be the controlling legislation. The proposed legislative changes in the draft are incorporated in the following language, "In any case of a conflict between this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or the Antiquities Act of 1906 (16 U.S.C. 431 et seq.), this Act shall control." The draft language would make MSA controlling in the event of a conflict, which would ensure that regulation of fishing activities in areas designated as marine sanctuaries under NMSA or areas otherwise protected under the Antiquities Act would remain under the control of Federal fishery managers operating under MSA. If the draft is implemented, existing limitations on fishing established under ESA or NMSA would remain in effect unless superseded by regulations subsequently promulgated under ESA, NMSA, or MSA.

Thank you again for the opportunity to respond to questions from the Committee on Natural Resources and I look forward to continued engagement with your committee as you move forward with the reauthorization of our Nation's Federal fisheries legislation.

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The CHAIRMAN. Thank you very much, Mr. Robins, for your testimony. Mr. Rauch, thank you also. I will now recognize myself for 5 minutes for questions.

For you, Mr. Rauch, Section 303 of the Act tells Councils what is required in each fishery management plan, requires that each fishery management plan created by the Council—and I will quote—"contain the conservation and management measures which are necessary and appropriate for conservation and management of the fishery to prevent overfishing."

Does the draft discussion that is out there eliminate this requirement?

Mr. RAUCH. No.

The CHAIRMAN. Next question I have, also on Section 303. Requires that the fishery management plans—and I quote again—“In the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition, or is overfished, contain conservation and management measures to prevent overfishing or end overfishing.”

Once again, does the discussion draft eliminate this requirement?

Mr. RAUCH. No.

The CHAIRMAN. And my final question for you is National Standard number 1 of the Act states that—and I quote—“Conservation and management measures shall prevent overfishing, while achieving, on a continuing basis, the optimum yield for each fishery for the United States industry.”

Once again, does this discussion draft eliminate the requirement to end that standard?

Mr. RAUCH. No.

The CHAIRMAN. OK. Thank you very much. And the reason I ask those questions is simply to suggest that we are keeping the basic parts of Magnuson-Stevens, but giving flexibility, hopefully, to the Councils to carry out those instructions.

So, Mr. Robins, let me ask you this question. The last time that Magnuson-Stevens was looked at was 2006, 2007. And the 2006 amendments required NOAA, along with CEQ, to revise the NEPA guidelines to make the timelines mesh with the Magnuson-Stevens timelines. Did that occur?

Mr. ROBINS. It has not, to the best of my knowledge.

The CHAIRMAN. So it is—OK, fair question. I have been—or fair answer. But our understanding, it has not occurred. And this goes, to me, to the very basic point. This is very, very important in order to carry out your roles. And if they haven’t followed that through on something that they need to follow through, why wouldn’t one give flexibility to the Councils, because you are the one on the ground—probably a bad way—on the water to look at that? Am I correct in that assessment?

Mr. ROBINS. Yes, sir.

The CHAIRMAN. OK. Those are the only questions I have, and I see a lot of members want to ask questions. So I recognize now the Ranking Member.

Mr. DEFAZIO. Thank you, Mr. Chairman. I will just follow up with Mr. Robins.

You said something which I think reflected a concern I expressed at the beginning, which is, having held a meeting on the coast of my district recently, a meeting with fishermen, they expressed a lot of concern about some proposed wind and wave energy off the coast, and felt that, in the current hierarchy of things, they are kind of at the end, in terms of being consulted, and the Bureau of Energy Management doesn’t really have them formally as part of the process. And their only opportunity comes at the NEPA analysis of what has already been proposed, as opposed to perhaps up front, being better able to accommodate their concerns.

And you said something interesting. It said that the restrictions in this bill that say you can't use any of the data for any marine spatial planning would really inhibit that, and could be destructive. Could you just expand on that for a second?

Mr. ROBINS. Certainly. If you think about what could happen in the offshore environment, particularly in the Mid-Atlantic and in the Northeast of the United States, we could see significant wind energy development. And we have never seen anything like that in the offshore environment.

Wind energy is obviously something that is in the Nation's interest to pursue, as far as renewable energy development goes, but when an offshore array is sited, it could take up 25 to 30 square miles of the ocean. And those areas may then be out of play for mobile gear commercial fisheries.

Mr. DEFAZIO. So, your concern is that if we have data that shows, particularly where they want to put it, is a prime fishing area, well stocked, we couldn't use that data to oppose it.

Mr. ROBINS. That is correct. And I think it is critically important that that data come into those discussions, to ensure that our traditional uses of those areas and fisheries—

Mr. DEFAZIO. Right.

Mr. ROBINS [continuing]. And/or the resources—

Mr. DEFAZIO. Yes, OK. Well, thank you. I appreciate that. That points to one problem.

Mr. Rauch, some of what is happening here is because of the slowness of the bureaucracy. And I will raise two issues.

One, we have a pilot for electronic monitoring in the Pacific, in North Pacific region, in our region, PFMC. And it seems to be going very well. Yet I don't know what progress has been made in other areas. And, further, in our region we are requiring, as your—the share of the agency's budget for observers goes down, putting an incredible burden—it is already difficult enough to have another person on a small boat, let alone to have another person on a small boat who isn't contributing to your income, and have to pay them.

Can't we move this along more quickly? The bill would mandate you do it all within 6 months. So, would you address that, please? How quickly can you move?

Mr. RAUCH. Thank you. The agency supports electronic monitoring and other types of observing systems. But, in particular, the new advents of electronic monitoring, they offer a lot of promise, in terms of better data collection, in terms of more cost-effective data collection. I don't think that there is a circumstance in the near future in which they will completely replace observers and all the things that observers can get. But they certainly can supplement, and in many instances can do some of the same things that the observers do.

In the Pacific—well, let me back up. We, the agency, did issue a policy last year, articulating those principles of support, and requiring our regional offices to work with their respective councils to come up with regional plans to move out and to actually start implementing some of these systems, to move out of the pilot process, which we are in, into actual implementation.

The Councils are a key partner in this process. The Councils have to set the goals for the monitoring. They have to—

Mr. DEFAZIO. OK, so—and, you know, we are going to run out of time, I have other questions.

Mr. RAUCH. OK.

Mr. DEFAZIO. So you are basically putting the blame back on the Councils for slow implementation.

Mr. RAUCH. No, sir. But I think it is a partnership that we need to work together to move more quickly.

Mr. DEFAZIO. OK. Well, you hear the frustration here.

Mr. RAUCH. I do.

Mr. DEFAZIO. And that is what is reflected in the legislation.

ESA issues. This would put the Councils in charge of ESA. I am wondering. How would that work for recovery of, say, the Snake River sockeye salmon? Does the Council have the expertise to deal with the BiOp up the Columbia River, how could they be in charge?

Mr. RAUCH. Well, certainly the Councils don't have the expertise to deal with all of the ramifications of ESA recovery.

I view the provision in the draft discussion bill as saying that whenever you issue a fishery management rule, which is a critical part for some species recovery, that that has to be done in the Magnuson Act.

But there are many other things that are affecting salmon and many of our other species which would retain their original jurisdiction. Recovery plans are documents by—that the Marine Fisheries Service does. And I don't see the draft is changing that. It does, I think, say that if we do a harvest regulation for salmon or other stocks, that that has to be run through the council process.

Mr. DEFAZIO. OK, thank you. Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Louisiana, Dr. Fleming.

Dr. FLEMING. Thank you, Mr. Chairman. Mr. Rauch, a significant amount of money is going to be funding research in the Gulf of Mexico from the RESTORE Act. A concern has been raised that NOAA may not incorporate data from the research projects such as surveys around the artificial reefs, and oil and gas structures into upcoming stock assessments.

Our first question is why NOAA doesn't—why doesn't NOAA currently search around reefs for red snapper in stock assessments? Red snapper is a reef fish. Wouldn't it make sense to survey around reefs?

Mr. RAUCH. Thank you for the question. NOAA does conduct a number of reef fish surveys which look for red snapper across the Gulf. Some of those surveys intercept them around reefs and others don't. They do not make—in these independent surveys, they do not make a special effort to highlight around reefs, because that would tend to bias the surveys, in terms of the reefs.

We are aware that there are a number of data sets involving the abundance of red snapper and others around reefs, and we were looking for ways to incorporate those into the stock assessments, accounting for the sampling bias that you always have when you say that you are going to sample any particular place. We think it can be done, and it should work into the stock assessment. And we certainly think that information that is generated through the RESTORE Act should be used and incorporated into our stock assessments.

Dr. FLEMING. OK. So, if I understand you correctly, what you are saying is that you are still going to sample random parts of the ocean, not necessarily going where the red snapper usually live. Am I correct about that answer?

Mr. RAUCH. We use a standard random sampling design. Yes, sir.

Dr. FLEMING. OK. I mean, obviously, if you are looking for timber wolves, you wouldn't go to, say, a desert. Certainly you wouldn't look for polar bears in Florida. So, again, if it is a reef fish, why not sample on the reefs?

Mr. RAUCH. The fish exist throughout the Gulf. They are prevalent on the reef, they are a reef fish, but they also exist everywhere else. They are ubiquitous throughout—

Dr. FLEMING. Well, let me ask you this. That is your opinion. Do you have any proof that they live apart from the reef as much as they do around the reefs?

Mr. RAUCH. I think you are right, Congressman, that they are much more abundant around the reefs than everywhere else. But they do live everywhere else. They do—

Dr. FLEMING. We don't have—we haven't been monitoring, we don't have any science, any data to actually support that.

Mr. RAUCH. I believe there are data to support the fact that they are prevalent on the reefs.

Dr. FLEMING. So I can get on to the next question. Would you please submit to the committee the data, the science, that supports your statements on that?

Mr. RAUCH. Yes.

Dr. FLEMING. OK, thank you. Number two, NOAA's past practice has been to wait 6 years or more to assess trends before using a new source data. Wouldn't it make sense to incorporate new data right away, and adjust as more data becomes available? In some sense, isn't that what NOAA is doing by using a predictive model and then adjusting after more data becomes available?

In other words, the data that you may actually begin to use could be as old as 6 years. Obviously—you know, I can understand looking at trends, but why not look at data as recent as it is put out in your science?

Mr. RAUCH. Thank you. We do tend to look at both types of data. If data is immediately available for some purposes, you can use it immediately. There are certainly biological data on species health, species presence or absence, that you can incorporate immediately. But when you are looking at trends, as you indicated, it takes a while for those trends to develop. And for trends, you do need to wait and incorporate those into the science when the trend becomes available. But there are certain subsets of data that you absolutely should be using immediately.

Dr. FLEMING. So you would then agree that, while it may have a value for trend purposes, that as soon as it rolls out, we should be quite willing to utilize it immediately?

Mr. RAUCH. It depends on what it is. Not all data tell you the same things. Certain things can be utilized immediately in stock assessment, and should be. Others only tell you information about trends, and those you need to wait. But we should evaluate the data that we get, and the ones that are appropriate to use immediately, we absolutely should be doing that.

Dr. FLEMING. OK. My time I have left, Mr. Robins, real quickly. Do the eight regional fishery management councils believe that increased flexibility is a priority for the reauthorization of the Magnuson-Stevens Act?

Mr. ROBINS. They have identified that as a priority through the CCC discussions. The CCC has not had an opportunity to develop an all-council position. We have not had a meeting since the draft came out. But just building on the discussions that we had through the Managing Our Nation's Fisheries Conference 3, I would say that that is a priority.

Dr. FLEMING. OK, thank you. I yield back.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from New Jersey, Mr. Pallone, is recognized.

Mr. PALLONE. Thank you, Chairman Hastings. I would first like to say that I agree with you that the Magnuson-Stevens Act requires changes, and that in its current form it is not working for fishermen. I appreciate today's hearing, and would like to stress my belief that this reauthorization requires careful consideration. And I hope that we can work together after today to ensure that our committee puts forth a strong bipartisan reauthorization bill.

My questions are of Chairman Robins. I have two questions. Hopefully we can get through them. One, the draft legislation we are examining includes flexibility in the rebuilding timeline for stocks, something I have been advocating for years, and have introduced legislation to accomplish. It also allows the Councils to use alternative rebuilding strategies.

From your perspective, will these types of flexibility allow the Mid-Atlantic Council to sustainably manage fisheries? And how will this allow the Councils to mitigate social and economic impacts associated with the current rebuilding requirements? And finally, are there any other provisions needed to improve the rebuilding requirements?

I have a second set, too, but let's take this first.

Mr. ROBINS. And I appreciate the first question. I would suggest that what is in the draft, relative to the elimination of "as soon as possible" and replacing that with "as soon as practicable," and eliminating the 10-year requirement and replacing that, and leaving the maximum rebuilding time as  $F = 0$  plus 1 mean generation time, I think that, more than anything else, gives us the flexibility we need to fully consider a broader range of rebuilding alternatives.

And if you think about the example of spiny dogfish that happened in the Mid-Atlantic, that was probably the most extreme case of rebuilding, where we started out with a plan that would rebuild it in 5 years. It has a mean generation time of 35 years. I think that highlights the difference in range of potential outcomes that we could have considered. And I am not suggesting we would have gone to the maximum, but we could have considered a schedule that would have allowed us to attenuate those impacts that wasn't available to us at that time, and we could have allowed a sustainable but lower level of fishery to occur that would preserve the infrastructure.

So, I think—in addition, I think that there is some need at the end of a rebuilding period, if biological or environmental conditions

aren't favorable for rebuilding—you know, if you have a period of low recruitment, or if growth changes and your projections aren't realized in a stock that you are trying to rebuild, I think you should have flexibility to amend the timeline. You still have to maintain a low rate of removals.

But part of the problem is if you get to the point that you have 2 years left in a 10-year period and you are not there, you may have to impose very draconian cuts on the fishery. And we considered that in summer flounder, as you know, in the past.

Mr. PALLONE. Exactly. All right, let me ask you a second question. I am interested in your proposal to give Councils flexibility in the development of recreational accountability measures when there is poor scientific information. And I have proposed making management more contingent upon having adequate scientific information.

Would you elaborate on how the Council could develop ways of basing management on levels of scientific certainty, and what type of statutory authority you would need to achieve that?

Mr. ROBINS. Certainly. I think there are two areas where this is most significant. One is in the process of setting quotas. So, just thinking back to the way that the assessments work, and then putting that through the SSC, the draft does include a provision that would change the advice coming from the SSC, or the ceiling that we would have in setting quotas. And I see some problems with that provision. But I think if that were re-purposed around giving the Councils some discretion in setting quotas on data-poor stocks, I think that would give us important flexibility, and that would be important for some of our recreational fisheries in the Mid, like black sea bass.

But with respect to the recreational accountability measures, I think they shouldn't be set up in a way that implies a level of precision and accuracy that does not exist. And that is where we are now. So, if we had the ability to consider the confidence intervals, for example, about the catch estimates in developing accountability measures, I think that would allow us to temper our responses and make them more appropriate. Because these are not census estimates, they are simply—on the East Coast they are sample-based surveys. And it is not a complete enumeration of catch.

So, in those situations we need to treat the data appropriately. I think accountability is still in order, but it needs to reflect the data better.

Mr. PALLONE. All right, thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The Chair recognizes the gentleman from South Carolina, Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman, and thanks for holding this hearing. I am looking forward to the whole day's worth of panels, and probably don't have any questions for this gentleman in particular.

But I do want to share some comments, just for the record, from the Charleston Area Hospitality Association, a number of restaurants, and fishermen down in that area. It is not in my district, but it is in our State. And I will tell you what. I enjoy going down to Charleston and experiencing the culture and the cuisine. And

the cuisine means it is local seafood, that shrimp, that snapper, that grouper, and all the other species that they serve at those restaurants.

But the fishermen in South Carolina and the wider South Atlantic Coast are now fishing under historically low fishing quotas during seasons that can only be described as derby seasons. All fishermen race out to catch as much fish as they can before the quota closes, regardless of weather and other safety conditions, based on stock assessments that are, more often than not, based on very little data.

Most of the species that chefs rely on for their menus are caught in Federal waters, and are managed by one of the regional fishery management councils, based on the guidance and science provided by the particular regional office or the NOAA National Marine Fisheries Service. By law, as prescribed in the Magnuson-Stevens Fishery Conservation and Management Act, when one of these assessments identifies a fishery as undergoing overfishing, drastic measures must be taken immediately to end that overfishing, often resulting in the closed fisheries—red snapper, for an example—or huge quota reductions for snapper and black sea bass, with little time for businesses to plan or adjust.

And a chef that I talked with back in November, he states that our culinary identity is one of the main reasons that people come to visit the Charleston area, and we owe that, by and large, to our fishing and shrimp fleets. These are huge investments in these fleets. And one of the things he says is that the data and the closure creates so much uncertainty that we are going to start losing some of these fleets in South Carolina because of the uncertainty that is created.

He says the flexibility—I will just read his whole statement here. “One of the things we are trying to accomplish as a way to change the Magnuson-Stevens Act is to where there is a little bit of flexibility in the shut-down times and allowing businesses to prepare for it.” Chef after chef that was quoted in here mentioned that, that we lag behind in collecting data that I think is paramount. But let’s have real data that is solid before we make these decisions.

Just the transparency of data, the way—and, more importantly, that that data is collected and shared is just integrally as important for all. The government is not making it super-easy for fishermen to make an honest living, in my opinion.

So, I will just wrap up my comments and say that we need real data. Over the past, when we have had hearings on this Act, we have heard from folks that have talked about the data not being indicative of what they are actually finding at the docks. When people go out and talk to the captains that are coming in, and they are finding out what the fishery is like out there, whether it is in South Carolina or Florida, I think that that data is just as important as my friend from Florida said once, as two guys in a lab coat up in a cubicle here in Washington, using some computer model to figure out what the fishery should be like. We need to use real data. We need to use the data that, when you talk to the captains and you talk to the guys.

And then, the last thing I will say is we need to make sure that the recreational fishermen aren't cut out of this loop, and they feel like that they are ostracized in a lot of ways.

So, I appreciate the hearing. I look forward to the other comments today, as we move forward, and I yield back.

The CHAIRMAN. I thank the gentleman. The Chair recognizes the gentlelady from California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair. And listening to the comments from my colleague in regard to the chefs, the plans to adjust, maybe we need to be able to figure out if there is a phased-in notification, so they are able to plan ahead for, I would say, a month, at least to be able to give them notification of whether there is going to be a shut-down of—in overfishing in certain areas. That might be something that might help be able to create a better environment for the fishing fleets and for the people who own the restaurants, so there is a continuous assistance to them, if you will. That is just a comment.

Mr. Rauch, you indicated that the bill does not eliminate the requirement to end overfishing, but it would let overfishing continue for as much as 7 years. Is that correct?

Mr. RAUCH. I did not say that. I am not aware of where the 7 years came from.

Mrs. NAPOLITANO. That is apparently in the record somewhere, the 7 years.

The CHAIRMAN. I was consulting. What was the question? I apologize.

Mrs. NAPOLITANO. Well, if overfishing is allowed for as much as 7 years, would that harm? And would that be a good move? Would that be detrimental or helpful?

Mr. RAUCH. The United States right now enjoys a very good reputation nationally and with our consumers for being sustainable. That reputation is based on the fact that we end overfishing immediately. We do not allow it to continue.

In prior versions of the Magnuson Act, before 2007, there were situations in which you could allow overfishing to continue. That led to a degradation of the stocks.

Mrs. NAPOLITANO. Right.

Mr. RAUCH. Led to a degradation of the reputation of U.S. fishermen. It is something that we do not face right now, and so we would try to—

Mrs. NAPOLITANO. All right, thank you. And my time is running out. The fact that there are still some endangered species, am I correct, that are being overfished.

Mr. RAUCH. There are still some stocks subject to overfishing. Most of those are international. The ones that are overfishing in the United States, domestically, it is because we don't have a stock assessment to demonstrate that overfishing has ended.

Mrs. NAPOLITANO. OK. And how often do you assess? To be able to answer Mr. Duncan's concern is that you are able to determine that you are nearing a level of overfishing. Am I correct?

Mr. RAUCH. Some stocks we assess annually, some stocks we assess usually on a 2- to 5-year basis.

Mrs. NAPOLITANO. Is it based on their being overfished?

Mr. RAUCH. Some of them we assess more frequently, based on their vulnerability. Some of them we assess more frequently, based on their importance to the U.S. economy, or to the community. So it does vary, in terms of what we do. But we try to assess the more vulnerable stocks more frequently.

Mrs. NAPOLITANO. But then, overfishing could continue, if not watched.

Mr. RAUCH. Yes. If we do not monitor the fisheries, overfishing could continue, even with well-meaning managers and fishermen. It could happen.

Mrs. NAPOLITANO. Thank you, sir. Mr. Robins, one thing that has not really been highlighted, though Dr. Pikitch mentioned it in her testimony, the fact that any of the exceptions to rebuilding timeline that are included in the draft be triggered, there is then no timeline at all for rebuilding an overfished stock.

And, as the Chairman of the Council, do you think it is a good idea—one question—to have no timelines for rebuilding more fish? Second, hasn't your Council already rebuilt all stocks under the existing requirements of the law?

And, third, would that have happened, had you had no rebuilding deadlines whatsoever?

Mr. ROBINS. I appreciate the question, and we have, in fact, rebuilt our stocks in our portfolio. We have stocks that are at, near, or above their rebuilding targets. So we have done that. And I would suggest that we would have still rebuilt stocks, albeit on a different timeline, if we had had the option to consider what is in the draft.

But, having said that—

Mrs. NAPOLITANO. Which part of consideration of the draft are you talking about, sir?

Mr. ROBINS. That is the elimination to rebuild a stock "as quickly as possible," and replacing that with "as quickly as practicable," and allowing the maximum stock rebuilding timeline to be the time it would take, in the absence of any fishing, plus one mean generation, which is currently in the Act as what we call T-max, that is the maximum time. But that would still be there.

So, you would still have to rebuild it within that timeline. But having that range would allow you to consider more fully, I think, the tradeoffs involved in the biological timelines versus the social and economic mitigations that we have talked about.

Mrs. NAPOLITANO. Thank you for your answer. Mr. Chair, I yield back.

The CHAIRMAN. I thank the gentlelady. I recognize now the gentleman from Florida, Mr. Southerland.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. Mr. Rauch, I am going to ask you some questions. I am going to give you just a couple here.

The 2014 omnibus contains \$25 million for catch shares. How do you plan to spend that?

Mr. RAUCH. We have yet to submit our spend plans to the Appropriations Committee, so I can just tell you in general, but not the details. There are a number of existing catch share programs around the country that we plan to invest in, some of them in your region in the Gulf.

Mr. SOUTHERLAND. Wonderful.

Mr. RAUCH. Some of them on the West Coast. But in terms of working out the actual details, I do not have any until we get through with our discussions with the Appropriations Committee.

Mr. SOUTHERLAND. Red snapper, as you know, is closed in the South Atlantic. What year was that closed?

Mr. RAUCH. I don't recall. It was before 2010, I think.

Mr. SOUTHERLAND. OK. I think—

Mr. RAUCH. Something like that.

Mr. SOUTHERLAND. I think it was 2008, but I may be off a year or two. So we are in the same—

Mr. RAUCH. Yes.

Mr. SOUTHERLAND [continuing]. Understanding there. Red snapper—and it still remains closed with no updated assessment. Is there—I mean what is the plan? When can we—you know, because I know, according to National Standard Number 8, the economic viability—and in your own testimony you alluded to the red snapper and its economic viability to our region.

So, therefore, I am trying to find some consistency, because I find great inconsistency to name a fish that is so viably, economically important that you would name it in your written testimony and verbally allude to it, and yet it has been closed since 2008 and we still have not had an assessment. Give me an idea into what you are thinking.

Mr. RAUCH. Red snapper is very important to the region, both—

Mr. SOUTHERLAND. You stated that.

Mr. RAUCH [continuing]. Both in the Gulf and the South Atlantic.

Mr. SOUTHERLAND. Yes.

Mr. RAUCH. It has been closed in the South Atlantic. We did create a framework that allows short-term openings, and it did—there was a very brief opening—

Mr. SOUTHERLAND. Weekend, one weekend.

Mr. RAUCH. Yes, very brief.

Mr. SOUTHERLAND. Very, very brief.

Mr. RAUCH. Very brief.

Mr. SOUTHERLAND. So, you and I, we talk the same language.

Mr. RAUCH. Yes.

Mr. SOUTHERLAND. That was very, very brief.

Mr. RAUCH. It was very brief. We are concerned—we were concerned when we closed it, because the way that you assess the science in that fishery is with the fishermen's landings. And once you close it, the fishermen aren't landing anything, so you have no way to assess the stock.

So, in 2010 we created a fishery independent survey with our Southeast Science Center to send a vessel out there to collect the data on which to assess it. We are going to do a stock assessment in 2014, which would allow us to evaluate those openings, based on a set of data that didn't exist in 2008. And hopefully, if the stock is recovered, we will be able to expand those very brief openings into much more substantial openings, and to see some more of the economic promise that red snapper does hold for the region.

Mr. SOUTHERLAND. There was an assessment done in the Gulf of Mexico in 2004 that said there were 8 million pounds of red snap-

per. The one that was done last year, 2013, the fish had doubled to 16 million pounds. And the recreational fishermen were rewarded with reduced days. I found it ironic that our Council would not release those results, or not address those results, until after the season had been announced. Kind of a—seemed like a little poke in the eye to most people.

But if something is—you know, you have not done an assessment in so long, I have to think that you can chum for snapper in the South Atlantic, as reports have been given.

So, you are saying that, even if the data comes back and it is good, we can look for very brief—and you and I have determined that “brief” is like a weekend—brief openings for a fishery that clearly has rebounded?

Mr. RAUCH. So the stock assessment was about Gulf red snapper. So the Gulf red snapper has—

Mr. SOUTHERLAND. I understand.

Mr. RAUCH [continuing]. Rebounded fantastically.

Mr. SOUTHERLAND. But I am hearing the same observations that I hear in the Gulf about how the fish have rebounded.

Mr. RAUCH. So, if that is correct, I would be hopeful that we could have more than a brief season next year. But we haven’t seen that stock assessment yet.

Mr. SOUTHERLAND. Because there hasn’t been one.

Mr. RAUCH. There hasn’t been one in the South Atlantic.

Mr. SOUTHERLAND. That is my point.

Mr. RAUCH. Right.

Mr. SOUTHERLAND. So you are waiting for an assessment that hasn’t been scheduled.

Mr. RAUCH. It is going to happen in 2014, we believe.

Mr. SOUTHERLAND. OK. I will be eager for those results.

Last question with 28 seconds. When a Council opens up a public comment period, is there a threshold that needs to be met before action is taken? For example, over 4,000 individual comments against sector separation, and yet the Council has been moving—in our neck of the woods—moving ahead with it, now voting on something called “voluntary sector separation.” If 4,000 people showed up at a meeting and made public comments, wouldn’t that get the Council’s attention?

Mr. RAUCH. I think it would get the Council’s attention.

Mr. SOUTHERLAND. It doesn’t.

Mr. RAUCH. I don’t think—I have not yet seen the Council meet in a room that could hold 4,000 people.

Mr. SOUTHERLAND. No, but I am talking about the comments that come in. Clearly, the comments have been clearly against them moving forward. And yet, there is a rush to get this done.

Mr. RAUCH. The Councils are quasi-independent bodies. And, much like Congress, they take issues up in their own time. There are standards for action in the council process that, before they take a final action, they have to meet certain standards dictated by the Magnuson Act or we will overturn the amendment. But within those broad standards, the Council sets its own agenda.

The CHAIRMAN. The time of the gentleman—

Mr. SOUTHERLAND. I yield back, thank you.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentlelady from Guam, Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. Mr. Rauch, I have a couple of questions for you.

On Guam in the Western Pacific, data collection and scientific methods remain a significant challenge to us. But they are crucial to the health of our fisheries and ecosystems. Now, I also believe a science-based approach can and should take into consideration unique cultural issues, as well as our diverse ecosystem.

With that said, do you believe that this draft bill's provision that undermined the advice of scientific and statistical committees will result in more profitable and sustainable fisheries?

Mr. RAUCH. I am not sure what provision you are talking about, but I do want to echo your concern about the importance of science in the Western Pacific. It is something that we have been very concerned about. We have recently increased our investment there.

I do believe that fishery management depends on good science. There needs to be science-based decisions and there is a national standard that requires all management determinations to be based on best available science.

Ultimately, at the end of the day, the Secretary acts as the gatekeeper for science. We have to approve all the regulations, and we will have to make sure that the Councils—or that the regulations are based on best-available science. So I am not sure exactly what provision you are talking about, but we are concerned that the decisions need to continue to be made science-based. And if there was any undermining of that, that would be of a concern to us.

Ms. BORDALLO. All right. And my second question for you is under current law, NOAA makes the determination of whether or not a stock is overfished. Now, Section 3 of the draft bill, it says it would remove scientific criteria and allow Councils to, one, determine independently whether or not a stock is overfished; and, two, unilaterally terminate rebuilding efforts. So, what would be the result of removing such scientific criteria from determining whether or not a stock is overfished?

Mr. RAUCH. So that issue is somewhat complicated right now. Currently, the Councils set the criteria for what is overfished in all existing fishery management plans. It has to be based on the best-available science. We, ultimately, as I said, are the gate-keepers. So every fishery management plan right now has a council-generated definition of what is overfished or not. We then, the Fisheries Service, comes in and we run the science and the stock assessments and determine were those criteria met in any given basis. So, we will tell the Council whether the situation has met that.

The current bill would seem to allow the Councils to short-cut a rebuilding plan before it has achieved its objectives by saying it was depleted and it is no longer depleted. And it is unclear to me how that process works. We have seen in the past, situations where rebuilding plans were going on, and then, for whatever reason, the situation changes. And there needs to be some flexibility and adjustment. We think we have done that, but we have heard that there is this issue about rebuilding plans which need to terminate early. This bill, it would seem, would allow the Councils to termi-

nate the rebuilding plan early. It is not clear what the criteria they would use to do that.

But, as I said, ultimately, the Secretary would be the gatekeeper, and would require that it be based on the best available science, but that is an issue that we would need to look into.

Ms. BORDALLO. So, let me get back to, then, this provision that we spoke of, here. It would be a concern. Is that correct?

Mr. RAUCH. The concern is that when we set out a rebuilding plan, we say we are going to achieve a biological target. That biological target, then, has economic consequences. The reason we are doing this is we want to generate economic growth in the fishery. This would appear to allow the Councils to stop their rebuilding before you achieve that target. And it is not clear to me what the consequences of that are.

Whether—so are you leaving economic value—are you foregoing economic value, or are there significant short-term costs that you need to account? So that is a delicate balancing that we would have to look at. So we would want to look at that issue before we take a firm position. But that would be the issue about terminating before you achieve your biological target.

Ms. BORDALLO. In listening to the answers to my questions, Mr. Rauch, I do feel that you think that scientific methods are important, whatever section of the bill we are talking about.

Mr. RAUCH. Absolutely.

Ms. BORDALLO. Thank you.

The CHAIRMAN. The gentlelady yields back her time? I thank the gentlelady. The Chair recognizes the gentleman from Louisiana, Mr. McAllister.

Mr. MCALLISTER. I yield back my time, Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from the Northern Marianas, Mr. Sablan.

Mr. SABLAN. Thank you very much, Mr. Chairman. And, Mr. Rauch, thank you for meeting with me. And we are still looking forward to a letter we wrote to NOAA. And please extend my congratulations to the new Assistant Secretary Administrator of NOAA.

Several of the witnesses have reiterated the argument that the law does not provide flexibility when it comes to rebuilding requirements. Yet, as you point out, 53 percent of the stock currently in a rebuilding plan have rebuilding timelines that exceed 10 years, due to a biology or environmental conditions, and that current rebuilding timelines actually range from 4 to 100 years. That seems very flexible to me, as does your mention of the ability to revise building plans based on new scientific information, or when a stock is failing to make progress in rebuilding.

Would you care to expand on that? Elaborate on this, please.

Mr. RAUCH. Thank you, Mr. Congressman. Yes, we do believe that there is a great deal of flexibility in the rebuilding timeframes. First, on the timeframes themselves. As you say, there is this perception that there is 10 years, and there is, in statute. But there are a number of areas that would allow us to extend them, based on certain factors, including the biology of the stocks and others that I mentioned in my oral and written testimony, so that we have

roughly half of them are longer, and some of them much longer, than 10 years.

Once you set the timeframe itself, there are circumstances where you can change it, based on biological conditions, as we have done a number of times in the Pacific Coast, or you could determine that you are not making adequate progress, and revisit that, like we are doing on the East Coast in a couple of occasions. So, I do think that there is some flexibility there.

But I do have to reflect that the National Academy of Sciences did just come out with a report that indicated that perhaps there are better ways to look at this. If the law stays as written, we are undergoing a National Standard 1 rewrite process in which we are looking at those flexibilities to see if we can take the National Academy of Sciences' recommendations within the law as it is currently structured to highlight the flexibility that does exist.

Mr. SABLAN. So my other question is, as you have mentioned before, there are all types of electronic monitoring, from catch accounting to electronic log books to VMS, vessel monitoring systems. This bill contains language that would prevent electronic monitoring data from being used for law enforcement purposes. And the way it is written seems to preclude the use of VMS. What would be the consequence of that? And what other types of EM are necessary for compliance, enforcement, and safety-at-sea purposes?

Mr. RAUCH. Well, we certainly use a wide variety of electronic monitoring systems for both enforcement and for data collection. It would be a concern to us, in terms of how are you going to implement the Act, if you could not use electronic monitoring for such enforcement. And I did read that provision in the statute. And, as written, it does seem to do that, although I think that there may perhaps be another interpretation which might not go so far.

So, we do use that currently. I know a number of Councils we talked about with another one of the Members about the importance of trying to develop more electronic monitoring systems, and some of the Councils currently are considering uses for this for enforcement purposes. So I do think that the bill, as written, would limit that ability. And then we would have a concern about how else are you going to enforce the Act if you can't rely on these systems.

Mr. SABLAN. All right. And before I ask my last questions, I also want to associate myself with the distinguished lady from Guam, and your office giving greater attention to the Pacific, especially Guam and the Northern Marianas, in review.

But my final question for you, Mr. Rauch, is that we have heard testimony today and over the past year that NOAA is putting too much emphasis on ending overfishing, and not enough emphasis on achieving optimal yield from fisheries. While I agree that there should be coequal goals, isn't the second contingent on the first? Is it possible to achieve OY while overfishing is occurring? Optimal yield while overfishing is occurring?

Mr. RAUCH. I think ending overfishing is important, not only for environmental sustainability reasons, but I think the fishermen are achieving a great benefit from being able to demonstrate that they sustainably fish their harvest. I think that they get a competitive advantage from that. They are improving the product, not only for

the U.S. markets, but for international markets. It is something we would not want to lightly give away, even if we environmentally could.

I do not think that we could achieve optimum yield and allow overfishing, certainly on a long-term basis. Theoretically, it might be possible to do it in a year. But over the long term, you could not do that.

The CHAIRMAN. The time of the gentleman has expired. Recognize the gentleman from Alabama, Mr. Byrne.

Mr. BYRNE. Thank you, Mr. Chairman. Mr. Rauch, I have some questions for you about snapper. I think I heard you say, in response to a question from Mr. Southerland, that the Gulf red snapper has "rebounded fantastically." Did you say that?

Mr. RAUCH. If I didn't say that exactly, I said something like it.

Mr. BYRNE. OK. Now, is that based upon the assessments by the Southeast Science Committee?

Mr. RAUCH. Southeast Science Center and the Council's Science and Statistical Committee.

Mr. BYRNE. OK.

Mr. RAUCH. Yes.

Mr. BYRNE. And in reply to a previous question about snapper, you talked about how you assess not just the reefs, as this is a reef fish, but other areas in the Gulf, as well. So it is based upon that total assessment.

Mr. RAUCH. Yes.

Mr. BYRNE. Can you tell me, then, why the snapper season for this coming year has only been increased by 10 days?

Mr. RAUCH. While the stock itself has increased, and it has increased much quicker than we thought, fishing effort has also increased with the Gulf. The fish have expanded their range, so they are encountering more recreational fishermen than they did before. They are bigger than we expected, so one fish that a fisherman got historically is now two or three times that size.

So, what that means is that the impact that the recreational fishermen may be having is also growing, at the same time that the fish population is growing. So, while we have consistently added to the recreational quota in every year for the past—I could get this wrong—for the past several years, we have looked at the recreational effort and added fish, increased the quota based on the growing thing, the growing health of the biomass, it is also true that the effort—the recreational fishermen have quickly caught that quota every single year, and they continue to do so.

So, we did expand the quota, based on recent numbers. But we couldn't expand it more than 40 days this year. We continue to work with the Council. The Council is meeting, I think, this week, to look for ways to increase that season. We understand how important it is to the Gulf.

Mr. BYRNE. Well, and I appreciate your saying how important it is to the Gulf. Under the draft legislation, you would be required to come up with a prioritization of the species that you are actually assessing. Does that mean you are going to prioritize the red snapper?

Mr. RAUCH. I could be wrong. I think it talked about prioritizing data-poor stocks. We already prioritize red snapper. Red snapper is

one of the most important economic species in the Gulf, and is one that we are devoting a substantial amount of our resources to, because it is so important. I don't think that it would be any less important under any prioritization scheme that we do.

Mr. SOUTHERLAND. Would the gentleman yield?

Mr. BYRNE. Yes, sir.

Mr. SOUTHERLAND. The statement you just made, you said you based red snapper as a priority. And yet we know, in the South Atlantic, it has been closed since 2008 and you haven't had a survey. That contradicts the statement you just made. It is not a priority.

Mr. RAUCH. We instituted a survey in 2010 for South Atlantic red snapper.

Mr. SOUTHERLAND. My point—

Mr. RAUCH. And—

Mr. SOUTHERLAND. OK. But, I mean, you clearly made a statement that it is a priority. And you are satisfied that the results from 2010 on a fishery that was closed in 2008—and you just—by the way, your Department has come and testified. You all just recently made the decision to do the 2014, because the last time your Department came and testified, that wasn't on the books. So, I mean, it is not a priority.

And with that I yield back to the gentleman. Thank you.

Mr. BYRNE. Let me go back to the Gulf Council, because I have talked to some of the members of the Council, including a marine scientist that is on the Council, a very respected marine scientist. And his conclusion, based upon data that he had, scientific data, is that there are far more snapper in the Gulf than you all are indicating.

Is it possible that the analysis that you are using, the data collection you are using, is under-counting the red snapper in the Gulf, because you are not adequately sampling around the reefs? And we know that there are a lot of artificial reefs out there.

Mr. RAUCH. So it is always possible. We don't count every fish, as I think Chairman Robins indicated. We count a subset of the fish and try to do that to estimate the entire population. In estimating the entire population, there is always a possibility that we are under-counting or over-counting that population. These uncertainties figured into the stock assessment, and I think I am familiar with the individual you are talking about, and he is a well-respected member. And we do try to account for his data in the stock assessment.

Mr. BYRNE. Well, let me ask you to go back again, bear down a little bit harder, because I think the data is going to reflect that we could fish more days than 40 days. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The Chair recognizes the gentlelady from Massachusetts, Ms. Tsongas.

Ms. TSONGAS. Thank you, Mr. Chairman. And I want to thank you all for being here today. I think your perspectives and your experiences under the Magnuson-Stevens are very important, as we continue to look at how best to reauthorize it.

I do not represent a coastal district, but my home State of Massachusetts is home to one of our Nation's most historic fishing industries. The fishing industry has not only shaped the history

and culture of our State for centuries—and it is a very proud heritage, one we share whether we are on a coastal community or not—but it also remains the lifeblood of many communities, with a significant, though fragile, economic impact. And while New Bedford, Massachusetts, is home to the most profitable port in the Nation, based on a scalloping industry, we have also seen the dire economic consequences of the near collapse of the New England groundfish population, and the ripple effects across many Massachusetts communities.

As today's hearing demonstrates, we all have similar goals for the Magnuson-Stevens reauthorization. We all want to implement a regulatory framework that results in healthy, sustainable fish stocks, but also one that encourages vibrant fishing communities. And I think, as you hear from the many questions here today, we all struggle with the economic impacts upon those who make a livelihood from fishing, as well as their communities, even as we understand the need to think carefully about how to maintain vibrant fishing stocks.

I have real concerns about this bill's potential impact on the long-term success of Massachusetts fisheries. When I visit our fishing communities, one of the main themes that I hear is how best to balance the short-term needs of our fishermen and their families with the long-term sustainability of the stocks, which is necessary for the long-term survival of our fishing economy, and for the generational responsibility many of those who have spent not only their livelihood, but over many years, their family's livelihood, and who look to preserve a fishing life for their children.

But I am concerned that this draft prioritizes the short term over the long term. I am also concerned about the impact of waving bedrock environmental laws such as the National Environmental Policy Act and the Endangered Species Act, which are essential for maintaining the healthy marine ecosystems crucial to securing the Massachusetts fishing industry well into the future.

So, this is really more of a statement, just simply that, as we work on reauthorizing Magnuson-Stevens, we know it is not an easy process, we are all trying to find that delicate balance, Dr. Rauch, that you referenced. But moving forward, I hope we can work together on a bipartisan basis to address some of these concerns.

And just, I guess, your thoughts, really, as to the balance in the proposed draft, and where we might look to bring it into better alignment in order to well understand the short-term challenges, but also maintain a vibrant fishing stock and a vibrant fishing industry, going forward, Dr. Rauch.

Mr. RAUCH. Thank you. The Administration has not taken a formal position on this discussion draft. And so I can't answer the question about my thoughts on that.

I will tell you some of my thoughts on National Standard 1, which are the regulations that we have written to implement these kinds of provisions in the past. And one of the things we have heard from fishermen through this process, through Managing Our Nation's Fisheries—information also went to the Congress—was about that balance that you just described.

We have done a very good job about ending overfishing, putting our fish and fishermen on a sustainable basis. And we are starting to see the economic value of that. But we also know that, in doing so, we are leaving some economic growth on the table, some growth that is important, some stability to the fishermen that is important. And I do think that, collectively, at least from the Administration's perspective, we want to re-look at our regulatory process to determine whether we have struck the balance correctly within the laws that exist. And I would hope that Congress will do the same.

It is an issue that we need to struggle with. It is something we are hearing from the fishermen.

Ms. TSONGAS. And, Mr. Robins, you have a few seconds here.

Mr. ROBINS. Thank you. I would tend to agree. I think the exemptions need to be treated very carefully, because, on the one hand, they are necessary to, I think, enhance the stability of the fisheries that we are all trying to achieve. And yet, if they are put in in such a way that undermines the integrity or the fundamental strengths of the Act, that would not be in our long-term interest. So I would suggest, as I have in my written testimony here today, that several of those exemptions receive significant revisions and consideration before they get approved.

Ms. TSONGAS. Thank you both. I yield.

The CHAIRMAN. The time of the gentlelady has expired. The Chair recognizes the gentleman from Virginia, Mr. Wittman.

Dr. WITTMAN. Thank you, Mr. Chairman. Gentlemen, thanks so much for joining us today. Mr. Robins, I want to go straight to you and talk a little bit about catch shares. You know there is a referendum requirement for the creation of new catch shares. I wanted to get your perspective in the Mid-Atlantic about the use of catch shares, and then also your thoughts about flexibility within the creation of those catch shares.

And you made some comments on Section 7, talking about the inclusion of sectors in defining catch shares, also hardship provisions there, how those hardship provisions might create some challenges. And then, also, a provision for the preclusion of the use of catch shares. Can you kind of give us your perspective in the Mid-Atlantic, and then talk about the flexibility elements in some of these issues that you pointed out that may contradict flexibility?

Mr. ROBINS. Thank you, Mr. Wittman, for the question, and I will. The Mid-Atlantic manages 12 different species of fin fish and shellfish. At this point, only three of those are subject to catch share management. Two of them were among the first ever in the country to have an ITQ, Surfclam and Ocean Quahog Fisheries.

Dr. WITTMAN. Yes.

Mr. ROBINS. Those have been successfully managed under that program for, now, over 20 years. The third is golden tilefish, which is a more recent development.

But we have a longstanding history, I think, as a Council, of looking relatively pragmatically at these questions, in terms of considering catch shares among many alternatives in managing a fishery. And we have a history of considering and generally not adopting catch shares in those fisheries, and that is why most of our fisheries now are not managed in that way. But I think Coun-

cils should have the flexibility to consider them as a management tool.

And I question whether the referendum is really an efficient way, or an effective way, for the decisionmaking process in fisheries management. There might be some situations where it is appropriate. But we have a history, I think, on the East Coast, some fisheries that had years and years of open access, and that led to over-subscription to the fishery. And so, you know, you may have a fishery that has a lot of inactivity and latent permits in it. Is a referendum the best way to address that question? I don't know that it is. And you have a lot of concerns about how to craft a referendum, who is eligible, how do the votes get counted. It strikes me as a cumbersome and somewhat unwieldy tool by which to consider how to best manage a fishery.

The council process allows for extensive public input. And if you are going to consider a major reform in the management of a fishery, it has to have broad support. I think that is a basic principle of fact in making good management decisions.

So, you know, I see it as somewhat unwieldy. And I think there is a loss of flexibility in what is proposed. If Councils do have to use that process, I think they ought to have the discretion to determine voting eligibility, and how it is going to be done. But, again, I think it is somewhat cumbersome.

Dr. WITTMAN. Let me ask this. As an alternative, then, maybe, to a referendum requirement, is there a higher level of rigor that possibly could be put in place to incorporate public comment in these decisions? Because I know some folks—and I think rightfully so—sometimes they are concerned that the public comment is separated from the ultimate public policy decisionmaking.

So, I didn't know if there is a way—if it is not a referendum, is there another tool that we could use to more closely connect that, so the public understands how their comments are put into the management decision process?

Mr. ROBINS. Well, I think, just reflecting more broadly on the experience in the Northeast region, and thinking about some of the difficulties that were experienced when the groundfish fishery moved into sectors, one consideration might be to have a minimum time for the development of allocated fisheries, because in that case, you know, the process was accelerated, and there was some significant dissatisfaction, as I know you all have heard.

But I think it is critical that Councils take a deliberative approach when they go through that process. And in that situation New England had to do a lot quickly to comply with the ACL requirements, and they were in a difficult position. But I think it is important to have adequate time for the development of those plans when they are being considered.

Dr. WITTMAN. Let me ask you one quick question, too, about energy development. Obviously, off the Mid-Atlantic the Outer Continental Shelf is a focus on energy development, especially there off the Virginia coast. Do you see that there is an opportunity for reconciling whatever conflicts may exist between OCS energy development and fisheries management within the Middle Atlantic?

Mr. ROBINS. I think there is. To some extent, the horse has already left the barn, but—you know, through the Smart From The

Start energy program. And yet, when those arrays are ultimately sited, there should be fisheries data that comes into those discussions as it relates to the micro-siting decisions. And I think, through that, we might be able to mitigate some of the impacts on our fisheries.

Dr. WITTMAN. Very good.

Mr. ROBINS. While accommodating the energy development.

Dr. WITTMAN. Very good, thanks. Thanks, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The Chair recognizes the gentlelady from Hawaii, Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chair. Mr. Rauch, you have heard both the Chair make reference and the gentlelady from Massachusetts also made reference to the NEPA requirements and the conflict between the MSA and NEPA. I think though, you know, I don't necessarily advocate that we do away with the NEPA requirements, you can understand the frustration, especially that the fishermen feel and others feel that have to deal with it, when in the 2006 MSA that basically NOAA was tasked with trying to resolve the conflict.

I understood from your response to the Chair that, basically, nothing has been done. I am asking now what exactly has been done. We may not have addressed it, but what have you done? And to really ignore a provision in an authorization act for this many years—under a different administration, albeit, but still—to ignore it is kind of difficult for those of us who want to support all of your efforts to sit there and say, “Well, 2006 to now”—that is a long period of time. And why hasn't it been done?

Mr. RAUCH. Thank you, Congresswoman, for that, and for giving me the opportunity to address this. I think the last time this issue was—it was addressed at Chairman Robins, who offered his opinion about whether it had been done.

I disagree. I think we have dealt with this. A little background on this issue. We have struggled, historically, with integrating the timeframe requirements, the analytical requirements between NEPA and the Magnuson Act for some time. But in 2000, after we had lost a series of court cases on this, we devoted a substantial amount of financial resources and agency resources, both on our side and the Council, to try to align the processes better. And we worked very hard on that.

And so, over that time, it is harder and harder to find any actual evidence of more than a theoretical conflict between the two statutes. It does require some increased analytical effort. It requires, sometimes, an increased time effort. But, largely, we have been able to mesh those two statutes.

In response to the 2006 requirement by Congress, we initially did a proposed rule, which we put out for public comment and then subsequently withdrew, which would mesh the two provisions better. We then decided that we could do much of the same thing by putting out a policy statement about how the Magnuson Act and the NEPA provisions are supposed to apply together. We have implementing policies. We did that last February, in February 2013. And, as we said, then we thought that that had complied with the 2006 requirements.

We are about to put that out for a further round of public review, recognizing it is a living document. And so, in the coming months I think you will see another revision of that, because once we put it out we talked to the Councils, and the Councils had some input they wanted to put into that process. And so we have taken that Council input, and we will be putting out a revision.

But we believe we have complied with the 2006 mandate between NEPA and the Magnuson-Stevens Act.

Ms. HANABUSA. Mr. Rauch, I guess my difficulty in understanding that is that you have a NEPA, which is a law. You have MSA, which is a law. And to mesh two laws together, it doesn't seem to be logical that you can simply do it by a policy statement. It would seem that you would need a law to mesh two laws together, to at least have some kind of force in effect.

And I still don't understand—2006 to 2013 is an awful long period of time to come up with a policy statement that has been put out, withdrawn, and now you are trying to convince me that what Congress has to accept is that a policy statement will mesh the MSA and NEPA. And, again, I want to believe that there is a resolution to this, I just can't understand how a mere policy statement can then trump two statutes that have the kind of historic implementation that NEPA and MSA has.

Mr. RAUCH. Well, we are not trying to trump either statute. The two statutes do mesh together remarkably well, as long as the Councils and NOAA make an affirmative effort to do that. Both statutes require a consideration of a number of environmental impacts before you take actions. Both have timelines and public processes that inform decisionmakers. The only real conflict comes, if it is not applied correctly, in that the minimum time for action under NEPA is the maximum time for action under the Magnuson Act. And so, you have to move a lot of the NEPA processes down to the council level in order to meet those timeframes.

So, we are able to mesh them together without trying to trump each statute. It does take a little work. But as long as we are invested in the process, and the Councils are, we think that the two can be handled coherently.

Ms. HANABUSA. Mr. Rauch, I respectfully disagree that you can mesh it like that.

Mr. Chair, I have some additional questions that I would like to submit for the record, if that is OK.

The CHAIRMAN. They will be, and I will make that announcement at the end of this panel. I thank the gentlelady from Hawaii.

Ms. HANABUSA. Thank you.

The CHAIRMAN. The Chair recognizes the gentleman from Alaska, Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman, and thank you for holding these hearings. I think I am the only one in this room that voted for this legislation when the original Magnuson-Stevens Act passed. So this is interesting; I appreciate the witnesses.

Mr. Rauch, as you know, in 2004, Congress required NMFS to reserve an allocation of pollock for the Aleutian Islands for the Aleut Corporation. Since NMFS set aside the Steller sea lion habitat, the Aleuts have been unable to fish its allocation, and NMFS has allocated it elsewhere in the Bering Sea, frustrating efforts to

improve the local economy following the closure of Adak's naval facility.

What solution do you suggest that allows either the Aleuts to fish their pollock allocation elsewhere in the Bering Sea, where the habitat restrictions will not prohibit it, or will allow them the economic benefit when others are allowed to fish that allocation elsewhere in the Bering Sea?

Mr. RAUCH. Thank you for the question. As you are well aware, we are in the process of reviewing those Steller sea lion restrictions. We had put out a biological opinion in, I believe, 2010, which opposed those restrictions. We have received a number of comments, critical comments from independent peer reviewers. We had a court telling us that we have to do the EIS for that process. We have reinitiated consultation, and we expect a new biological opinion out this spring. It is on a schedule, I don't recall it off the top of my head. But it is in the coming months.

So, if, as a result of that review, we find that a different harvest regime is available, that more flexibility is available that can be done and also protect the Steller sea lions, then we would look at how you could more easily effectuate the needs of the Aleutians in their pollock transfer, because there is a possibility there, if we find flexibility, we find that the Steller sea lions are doing better, we will do that.

We have committed to working with the Councils on the results of that biological opinion and having revised regulations in place next year, if we are also seeking an extension from the court. But if that is not granted, revised regulations will be in place January of next year, which may provide some relief in this instance.

Mr. YOUNG. Well, I appreciate that answer. Will you commit to me today that you will work with my office and the representative of the Aleut Corporation to find a solution?

Mr. RAUCH. Yes, we absolutely will work with your office.

Mr. YOUNG. I thank you. As you know, when areas experience poor fishing, the Magnuson-Stevens Act allows NMFS to declare disaster for commercial fishermen. However, poor returns don't simply affect commercial users, but also those subsistence users who rely on fish to feed their families. Do you have any thoughts on how we can address this contrast between the two?

Mr. RAUCH. Currently, the Magnuson Act requires disasters to be based on whether the commercial fishery has failed. That is in the current statute, and the discussion draft doesn't change that.

Once that finding has been made, however, the current statute allows—if Congress were to appropriate funds to mitigate that disaster, allows those mitigation funds to be spent on a wide variety of interests. Some of them could be subsistence uses. Some of them could be recreational interests, interests to other Members. It could be community-based interests that don't have a direct connection to the commercial fishery.

So, although the finding is based on a commercial fishery failure, by statute, the uses of the money could be much broader, to the extent that Congress appropriates money for that disaster.

Mr. YOUNG. OK. Mr. Rauch, I will compliment you. Usually, when we get Administration people down in front of us they dance

pretty well. You are not much of a dancer, and I want to compliment you on that.

Mr. RAUCH. I have never been much of a dancer.

[Laughter.]

The CHAIRMAN. Take that home with you and box it up.

[Laughter.]

The CHAIRMAN. I thank the gentleman. The Chair recognizes the gentlelady from Massachusetts, Ms. Clark.

Ms. CLARK. Thank you, Mr. Chairman. I yield back my time.

The CHAIRMAN. OK. Does the gentleman, your colleague sitting to your right, Mr. Tierney, have something to say?

Mr. TIERNEY. Mr. Chairman, I say simply that I want to appreciate the comments of both witnesses, and maybe just ask Mr. Robins to expound a little bit more on the flexibility issue with regard to how it might affect people in the Atlantic, particularly in the Northeast, on that basis about the need to have more flexibility in terms of the length of recovery time that might be allowed, and other aspects of that in their specific fishery.

Mr. ROBINS. Thank you, I appreciate the question. And, indeed, in the case of fish in the Northeast region, I think the flexibility that is proposed in the draft, relative to the rebuilding timelines and mandates, would afford more flexibility than we have had in the past to consider the tradeoffs between biological rebuilding schedules and the attendant social and economic impact. So I think that is important.

I think one of the most important considerations, though, in the Northeast in particular, for the groundfish fishery is having an effective mixed stock exception. And there is a proposal in the draft for that. I don't know that it affords enough protection for the weak stock, frankly.

But I think what is needed is something between that and what was in the old National Standard 1 guidelines. You know, so we need to strike a balance—a better balance, I think—in the management of those weak stocks, so that we can facilitate the effective yields out of the more productive stocks in a mixed-stock fishery. And in New England, in the Mid-Atlantic, we have some mixed fisheries where that would be an important consideration.

So, I think that is among the most important things in there. I think that does need some additional draft. But I think that would really help to create flexibility that could be translated into economic and social benefits.

Mr. TIERNEY. I thank you for those comments, and I yield back, Mr. Chairman.

The CHAIRMAN. Why don't you yield to Mr. DeFazio? He has a question.

Mr. TIERNEY. I will yield to Mr. DeFazio, thank you.

Mr. DEFazio. I thank the gentleman for yielding.

Mr. Rauch, you mentioned at the beginning you are in the process of evaluating National Standard 1 guidelines to look at a balance and an increase in flexibility. Where are you in that process? When can we expect to see a proposal, you know, so we have some idea on when it could be done?

Mr. RAUCH. Yes. The short answer is we think that this fall we will put out a proposed rule. We have, as has the Hill, been work-

ing, soliciting ideas from our stakeholders. We are still waiting on the Council chairs to see whether they will have inputs into this process. We have heard from a number of stakeholder communities, we expect to hear from the recreational community later, I think in March. So we wanted to collect all those inputs into the process before we put out a bill.

Mr. DEFAZIO. But, I mean, part of what you are hearing here today—and parts were reflected in the bill by the Majority—is the very ponderous pace at which you change things. And couldn't you just say, "We want comment, your ideas and suggestions, by this date, because we want to move ahead"? You have been in this review process for 3 years now. This is the third year.

And couldn't this just move a little more quickly, as opposed to saying, "Well, gee, we are waiting to hear from people, and we don't know if they are going to get something to us, but they are waiting for it," as opposed to putting out a notice, "Anybody who is concerned, send us your ideas by this date, because we are going to move ahead and we are going to be done by this date with a proposed rule"? I mean, is that too much to ask of a bureaucracy?

Mr. RAUCH. We did solicit an advance notice of proposed rule-making where we asked that. What we didn't have is your deadline date—

Mr. DEFAZIO. Yes, I mean, that is part of what you are hearing here today, is you are looking at some pretty radical changes, in my opinion—although they would say that we are not making some of those changes. But all of this is a reaction to bureaucracy. And a lot of what goes on in this House is a reaction to bureaucracy. And I would like to see a more adroit bureaucracy.

So, I am just suggesting that, if you could move that ahead more quickly—I guess I just ask that—have you commented?

Mr. ROBINS. The Councils have. But when we commented, it has actually been some time, I think, since we initially submitted comments. And at that point the implementation was still relatively early. I think if we were to take another bite at it today, we would have a whole other layer of comments that—

Mr. DEFAZIO. Well, couldn't you do that quickly? I mean does it take you a really long time, too, to do these things?

Mr. ROBINS. Sir, not nearly as long. I think we can develop comments fairly quickly.

Mr. DEFAZIO. OK, thank you—I thank the gentleman from Massachusetts, thank the Chairman.

Mr. TIERNEY. Thank you. And I want to thank both the Chair and the Ranking Member and my colleagues here for allowing me the opportunity to sit in on this hearing, and I yield back.

The CHAIRMAN. I thank the gentleman for his remarks. I ask unanimous consent that the following documents be included in the record: a letter from Mr. Young of Alaska, Mr. Larsen of Washington, to Samuel Rauch regarding confidentiality of information collected for fishery management; a letter from Mr. Don McIsaac to me and Senator Begich regarding a census statement; and then, information from the Charleston Area Hospitality Council; and then, finally, comments on the discussion draft that showed up on our Web site from a number of individuals and associations.

[No response.]

The CHAIRMAN. And, without objection, that will be part of the record.

I want to thank the first panel. Thank you very much. Many times, as Ms. Hanabusa said, there may be follow-up questions.

And if you get those questions, if you could respond in a quick period of time, we would appreciate it very much. And the first panel is dismissed.

And while that panel is being dismissed, I want to call up the second panel. Mr. Rick Marks from the firm Robertson, Monagle and Eastaugh; Mr. Vito Giacalone, Policy Director of the Northeast Seafood Coalition; Mr. David Krebs, President of Ariel Seafoods, representing the Gulf Seafood Institute; Mr. George Geiger, Owner and Operator of Chances Are Fishing Charters; Mr. Jeff Deem from the Recreational Fishing Alliance; and Ms. Ellen K. Pikitch, Ph.D., Professor and Executive Director of the Institute for Ocean Conservation Services from Stony Brook University.

OK, we will go through the testimony in the order that we have it here on my list. Most of you sat in on the first panel, and so you know what the rules are.

When the green light is going, you are going very well. When the yellow light goes on you have a minute to go. And when the red light comes on, we would ask you to wrap up your remarks. Your full testimony will appear as part of the record. So, with that, we will start with Mr. Rick Marks from the firm of Robertson, Monagle & Eastaugh.

You are recognized for 5 minutes.

**STATEMENT OF RICK E. MARKS, ROBERTSON, MONAGLE & EASTAUGH, PC**

Mr. MARKS. Thank you. I am here because I work with commercial fishermen, processors, and seafood markets, associations, fishing-dependent communities, Alaska Native corporations, and a fishing-dependent Indian Tribe from the Aleutians and Kodiak, Washington, Oregon, California, both coasts of Florida and the Florida Keys, North Carolina, New Jersey, New York, and Rhode Island. I canvassed these folks about the draft, and I provided their views alongside my own.

Thank you, Mr. Chairman, for a discussion draft. This provides an opportunity for input from all stakeholders, which is a great start, and much appreciated, given the significance of the topic.

Generally, the draft reflects much of what we heard from several industry members that have come to this table the past 2 years, the recommendations from Managing our Nation's Fisheries conference, as well as from the regional councils who deal with these challenging issues on a regular basis. Whenever we comprehensively reform complex policy, we cannot always get it all right. And it makes perfect sense to consider some carefully targeted reform to deal with some of the unintended consequences. We hope this can be a bipartisan rebalancing effort, rather than a perceived roll-back of conservation, as some groups have already suggested. We prefer to say "re-regulate," rather than "de-regulate."

Section 3 allows the Councils not to have to choose the shortest, most economically harmful rebuilding strategy, but still achieve the goals of the Act. The 10-year rebuild is replaced with a scientific

alternative, based on recommendations from NAS that a predetermined period is both arbitrary and harmful to coastal communities. Based on this report, those clinging to the 10-year dogma are likely more interested in harming our coastal economy than in reasonable scientific management. This section also provides the Secretary, and not the Councils, with some helpful, but limited, rebuilding considerations.

Section 4 provides the Councils with limited ACL exceptions for ecosystem species, short-lived species with high natural mortality, and some transboundary stocks, and Section 5 clarifies overfished and overfishing, much of these generally supported by industry.

Section 7 requires a catch share requirement only in certain regions and only for future programs. We very much need this provision to put an end to the inequity. There are some questions that remain: defining an inclusive vote criteria; determining whether we need to take prescriptive steps to protect new entrants; and ensure that catch shares remain within the fishing industry to protect the consumer.

I note here, Mr. Chairman, that even in the regions where this would not apply, there are differences of opinion on this topic.

There is industry support for clarifying provisions for confidential data. I recommend we review this provision to ensure that we do not inadvertently prevent industry from accessing their own data so they can use it to protect themselves in the national ocean policy arena, and to ensure that the data used to justify closing fishing areas are transparent.

Regarding electronic monitoring, there are divergent industry views. A prudent approach would be to encourage EM projects in specific regions in fisheries where they are needed and wanted, rather than a prescriptive national program. Section 10 requires improved scientific activities in the Gulf and South Atlantic, all things we have begged of the Southeast Science Center. This is an extremely important provision for industry in the lower half of the country.

Section 6 and 13 add transparency, streamlining, and consistency with other statutes impacting fisheries. Much of this is also being supported by industry.

What is missing from the draft? May I suggest respectfully the committee consider some of the following: a more developed mixed-stock exception to address underfishing, and consideration that all species cannot be maintained at peak levels; an ACL exception for spiny lobster in the Gulf, where there is no international agreement, but the stock is truly transboundary; require the Secretary to develop a comprehensive, national transparent stock assessment plan similar to that contained in H.R. 3063; a reconsideration of whether Congress intended for ACLs on every single minor species, and be wary of efforts to add forage fish to FMPs, a stalking horse to overwhelm the system with the proliferation of data-poor choke stocks; amend Section 306 to extend or remove the sunset date for authority over West Coast Dungeness crab; amend Section 312(a) to require the Secretary render a fishery disaster declaration within 9 months, or certainly no later than a year's time, after receipt of request.

Finally, Mr. Chairman, in sum, the draft provides a starting point for us to begin rebalancing the Act, providing a more practical application of rules and flexibility to deal with unique circumstances, and also an opportunity to ensure that we are achieving, on a continuing basis, optimum yield in every fishery. Thank you all for your time.

[The prepared statement of Mr. Marks follows:]

PREPARED STATEMENT OF RICK E. MARKS, ROBERTSON, MONAGLE & EASTAUGH, PC

Chairman Hastings, Ranking Member DeFazio and distinguished members of the committee, I appreciate the opportunity to speak with you about the "Discussion Draft" legislation titled "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act" (henceforth referred to as "Draft").

I am Rick Marks, a Principal at Robertson, Monagle & Eastaugh, P.C. ("ROMEA") of Reston, VA. Our extensive fisheries-related client base includes fishermen, fish houses, shore-based processors, fishing associations and fishing-dependent coastal communities in many States from several regions around the Nation.

My background includes service on the Mid-Atlantic Fishery Management Council, as a supervisory marine fish biologist for the State of North Carolina and as a Fishery Reporting Specialist and Benthic Marine Field Technician for NOAA. I hold a Master of Science degree in Marine Environmental Science and a Bachelor of Science degree in Biology. I have authored several scientific papers in peer-reviewed journals regarding various aspects of marine finfish ecology and biology and have a professional certification in Environmental Conflict Resolution from the Morris K. Udall Foundation in Arizona.

My comments here today are my own as a Principal at ROMEA and advocate for the U.S. commercial fishing and seafood industry. However, in my preparation for this hearing I canvassed our clients extensively about specific contents of the "Draft" so in large part my testimony reflects feedback on issues critical to many of our clients operating in Alaska, Washington, Oregon, California, Florida (Gulf Coast, East Coast, and the entire FL Keys), New Jersey, New York, and Rhode Island.

The 2006 Amendments and subsequent implementation fundamentally altered the way domestic fishery resources are managed. The core concept was to separate fish politics from science. The new provisions focused on ending overfishing immediately, accountability, rebuilding stocks as quickly as possible, reducing fishing capacity through limited access programs—all in the context of a more intensive reliance on science in the decisionmaking process.

In 2009 NOAA revised the National Standard One Guidelines (NSG1) requiring the Regional Fishery Management Councils (RFMCs) to consider both scientific and management uncertainty when setting quotas. For the 2006 reauthorization to work it required a heavy reliance on high quality scientific information. Unfortunately, this is information that in most regions we simply do not have. Juxtaposition of insufficient data on many stocks with consideration of uncertainty in the quota setting process has resulted in precautionary buffers and yields below MSY at the expense of the industry and our Nation. In addition, proliferation of unpopular catch share programs in some regions has intensified the call for reform.

The following points justify the idea that additional reform is necessary and to address the unintended consequences from 2006. These include but are not limited to: (1) the committee considered no less than eight bills focusing on MSA reform in 2011; (2) you have convened 6 hearings with testimony from almost 100 witnesses in the 113th Congress; (3) NOAA is conducting a re-examination of NSG1 and data confidentiality standards; (4) in 2013 the GAO concluded that the 10-year rebuilding requirement was arbitrary and the mixed-stock exemption should be revisited; (5) many of the recommendations from the 2013 "Managing Our Nations Fisheries III" and from the Regional Fishery Management Councils (RFMCs) strongly support carefully targeted reform; (6) we are plagued by weak stock management and a requirement to have all stocks, incl. minor ones, at MSY in the same time/space; and (7) we are not meeting our objectives to maximize harvest to provide the greatest benefit to the Nation.

Whenever comprehensive changes are made to complex policies we don't always get it all right. The time to begin discussing a responsible rebalancing of the Act is now and we appreciate the committee's attention to and leadership in this matter.

**SECTION 3: Flexibility in Rebuilding Fish Stocks**

The title of the “Draft” reflects the interest from around the country in restoring some measure of flexibility to the stock rebuilding requirements without undermining conservation. This theme resonates with many in the fishing industry. RFMCs unanimously supported adding an element of stock rebuilding flexibility during the 2006 reauthorization and renewed those efforts in 2013–2014.

The change to section 304(e)(4)(A)(i) of the Act of “possible” to “practicable” in terms of rebuilding periods affects the existing 9th Circuit Court ruling in *NRDC v. Daley* which has been an issue for the Pacific Council and the subject of Council comments. If approved, this provision would provide the Council the option to choose between several rebuilding scenarios and not just the shortest and most harmful. The proposed change is viewed by the industry as beneficial to coastal communities without undermining stock rebuilding objectives.

The section also removes the 10-year rebuilding timeframe and substitutes the time a fishery could be rebuilt without fishing, plus one mean generation (which is the current NSG1 for stocks that can’t be rebuilt in 10 years). The 10-year requirement has long been considered by industry to be completely arbitrary but was touted by the environmental community as the gold standard.

The National Academy of Science (NAS) concluded in their report titled “Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the U.S.” (NAS 2013) that the pre-set 10-year rebuilding requirement was indeed arbitrary and harmful, thus ending the debate. We need to replace this requirement with more scientifically valid metrics.

The “Draft” also provides several common-sense exceptions to the rebuilding time period which will be determined by the Secretary (not the RFMCs) including: (1) biology of the stock, environmental conditions or management measures under an informal international agreement; (2) the cause of depletion is outside the jurisdiction of the Council or can’t be affected simply by limiting fishing; (3) if a stock is part of a mixed-stock fishery that cannot be rebuilt in the timeframe if that causes another component to approach depleted status, or will lead to significant economic harm; (4) informal transboundary agreements that affect rebuilding; and (5) “Unusual events” affecting the stock and rebuilding and rebuilding can’t be accomplished without significant economic harm to fishing communities.

Subsection (a) also adds helpful new flexibility requirements that rebuilding plans take into account environmental factors, including predator/prey relationships; a schedule for reviewing rebuilding targets and progress being made on reaching those targets; and consideration of alternative rebuilding strategies including harvest control rules and fishing mortality targets, things also requested by the RFMCs.

The “Draft” also includes a helpful flexibility provision allowing a RFMC the ability to terminate a rebuilding plan for a fishery that was initially determined to be overfished when updated science determines the stock is no longer overfished. This clarifies that once a stock is in a rebuilding period the process does not have to proceed to completion irrespective of stock response and condition.

The “Draft” omits a change to MSA Section 312(a) Fisheries Disaster Relief that was a provision in 2011 in Mr. Runyan’s H.R. 1646 which requires the Secretary to render a disaster determination within specified time period after receiving a disaster request. Currently, Section 312 applies no time constraint for the Secretary to render a declaration. *We recommend the committee consider a response time not to exceed 1 year.*

To illustrate, in May 2009 the Secretary closed the entire Gulf of Mexico snapper-grouper fishery to protect sea turtles for 5 consecutive months. The Governor of Florida issued a formal request to the Secretary for a fisheries disaster declaration along with 350 members of the Florida fishing industry. The Secretary did not respond to this situation until early 2011, and determined that despite the hardship the industry survived the closure so no disaster declaration was necessary.

By comparison, it took the Secretary of Commerce just 90 days to respond to the most recent 2013 disaster request for a commercial fishery failure for Frazier River Sockeye in Washington State.

Subsection (c) allows increased flexibility by allowing a RFMC to phase-in rebuilding restrictions over a period of 3 years for healthy fisheries not subject to chronic overfishing and for which immediate restrictions will result in significant economic impacts to fishing communities. It is critical to note that overfishing will still need to end but that in certain circumstances, up to 3 years will be allowed to lessen economic harm.

#### SECTION 4: Modifications to the ACL Requirements

This section provides Councils with increased flexibility in setting annual catch limits (ACL). The ACL requirement is retained in the Act but the RFMCs could consider changes in ecosystem and economic needs of the communities when setting limits. In light of changing environmental conditions, these additions make scientific and common sense.

There are helpful targeted ACL exceptions for ecosystem component species that are not overfished or subject to overfishing or likely to become subject to those conditions. These species are defined in a manner that generally matches what is now in the NSG1. Since these non-targeted species are such minor components, it makes sense to retain them generally in the management context but not as species “in the fishery”. This allows for ecological monitoring but does not increase management complexity or negative economic ramifications. A potential example of this application is the Giant Grenadier in Alaska trawl fisheries in the BSAI/GOA.

The “Draft” allows setting multiple year ACLs and annual catch limits for a stock complex. We suggest “stock complex” be replaced with “mixed stock assemblage”. This provision will provide some limited flexibility for RFMCs to set a single ACL for a group of fish stocks that are commonly found in association with each other. Often, the availability of individual species within a mixed stock assemblage will fluctuate and may be inconsistent with species-specific ACLs. However, this provision does not really address the weak stock management problems inherent in mixed stock fisheries and should be further developed to address minimum stock biomass. This problem can be exacerbated as stocks rebuild, in data poor situations, and where monitoring is not timely.

The Act currently provides an exemption from the ACL control rules for stocks managed under international agreements and for species whose life cycle is approximately 1 year that is not subject to overfishing. These provisions are too narrow in scope and do not address species that are truly transboundary in nature that have an informal agreement (or no agreement) in place, or are species whose life history characteristics prevent NOAA from being able to apply the ACL control rules in an efficient manner. The “Draft” contains helpful provisions to address two of these three concerns.

For example, in the case of *Atlantic mackerel*, scientific evidence indicates the stock distribution is shifting into Canadian waters (Overholtz, 2011). Unfortunately, the United States has no formal transboundary sharing agreement and Canada takes what they can harvest. In this instance, unilateral U.S. management actions pursuant to MSA do not affect rebuilding or end overfishing but disadvantage our fishermen and weaken the U.S. negotiating position. While the U.S. opportunity to harvest mackerel was reduced by more than 80,000 metric tons since 2007 (from 115,000 mt to 34,907 mt) the Canadian government allowed their fishermen to harvest most of the available quota since their fishermen are under no obligation to fish under MSA rules. Due to the lack of a transboundary ACL exemption, rigid interpretation of MSA requirements, and application of layers of scientific uncertainty, the U.S. mackerel fishery (which is not overfished) has been severely restricted and it will prove difficult to rebuild quota levels under the new MSA standards.

The proposed ACL exception is also appropriate for *Atlantic butterfish*, a species that exhibits a short lifespan (1–3 years), an extremely high natural mortality rate, highly uncertain and variable survey indices, and an exceedingly variable catch level so that it is not possible to accurately determine the condition of the stock on a timely basis. Each of these uncertainties contributes to precautionary ACLs, essentially turning butterfish into a “choke” stock with negative effects on fishing for other robust species, undermining our ability to achieve Optimum Yield (OY) which is a requirement of National Standard 1.

However, Section (3)(B) in the Draft (Page 7) does not quite address the problems related to the *Spiny Lobster* fishery in the Gulf of Mexico. While valued at \$375M and supporting more than 3,500 jobs in Monroe County, FL alone—U.S. fishermen account for just 6 percent of the total harvest. Genetic evidence indicates that stock recruitment occurs entirely outside U.S. jurisdiction within the Caribbean Basin and waters of Southern Cuba, Brazil, Belize, Honduras and Columbia.

In 2011, NOAA’s Southeast Data Assessment Review (SEDAR) determined it was not possible to establish population benchmarks based only on the U.S. segment of the population (FKCFA 2011). There is no agreement (formal or informal) to manage this international stock.

Despite the true transboundary nature of this stock and insufficient data available to render a status determination, MSA requirements could force the RFMC’s to set precautionary ACL control rules for this species that will harm U.S. fishermen with no biological benefit to the stock. Considerations should be made in this

particular instance where there is no transboundary agreement but the recruitment, distribution, life history and preponderance of fishing activities are transboundary.

#### **SECTION 5: Overfished and Overfishing Defined**

This section correctly defines “overfishing” and removes the term “overfished” from the Act, substituting the newly defined term “depleted”. The section also requires changes to the annual Status of Stocks report submitted by the Secretary to distinguish between stocks that are depleted or approaching that condition due to fishing and those meeting that definition as a result of other factors. The industry supports the separation and clarification of the two terms and the requirement to differentiate vis a vis stocks status. However, we recommend the proposed definition of “overfished” be revised to include a minimum stock biomass level which reflects the current NSG1.

#### **SECTION 6: Transparency and Public Process**

This section requires RFMC Science and Statistical Committees (SSCs) to develop advice in a transparent manner and allow for public input. However, the 2006 MSA amendments ceded unprecedented authority to the SSC and the increased use of video/call conferencing/webinar technology has increased to where critical decisions can be made outside of the public eye. So, there is an elemental need to consider public access.

While each Council operates differently, and the range of comfort in the regulated community varies from region to region based on those differences, there is no reason why we should not require RFMC, SSC and Council Coordinating Committee (CCC) meetings be widely available in some timely manner and archived for public access.

We note that subsection (b) requires the Council and CCC to provide a live broadcast only if practicable to do so, but does require an audio recording, video (if the meeting was in person or via video conference), and a transcript of each Council and SSC meeting on its Web site within 30 days. Note there are some concerns being expressed that 60 days may be a more appropriate timeframe. It will be the responsibility of the Secretary (not the RFMCs) to maintain and make available an archive of the Council and SSC meetings.

This concept of ensuring public access was raised originally in 2011 and generally supported by the fishing industry, especially in the Gulf of Mexico and South Atlantic regions as a provision in H.R. 2753: *“The Fishery Management Transparency and Accountability Act”* introduced by Rep. Walter Jones (NC-R).

Subsection 6(c) stipulates that fishery management plans, amendments, and regulations implementing those plans and amendments are deemed to have met the requirements of the National Environmental Policy Act (NEPA). The provision also specifies that MSA timelines will be the controlling schedule.

In spite of clear direction given by Congress in 2006 (Section 304(i), as added by P.L. 109-479), NMFS and the Council on Environmental Quality have yet to adequately streamline the procedures for review under the two statutes. The results are unconscionable delays in conserving and managing our fish stocks due to duplicative mandates. This delays and hamstring the RFMC process and can harm the fishing industry.

For example, 2014 measures for West Coast Groundfish are based on data from 2010 to inform a regulatory process that began in 2011 in order to comply with environmental review timelines. At its November 2011 meeting, the Pacific Fishery Management Council voted to maintain status quo on almost all ACLs through 2014 in spite of data showing markedly increased abundance on key stocks, simply because the environmental review time requirements would prevent the fishery from starting on time.

#### **SECTION 7: Limitations on Catch Share Programs**

Generally, the industry supports this comprehensive definition of the term “catch share”. We note the inclusion of the term “sector” which heretofore has been excluded from the limited access program concept and one that has different connotations. The term “sector” should include the system being used today to manage New England Groundfish.

My processors in Alaska, the West Coast, and New Jersey support retention of “processors” in the definition. Though this inclusion does not mandate that harvesting shares be awarded to processors, it is a continual recognition (along with recognition of cooperatives and communities), that in certain high volume fisheries where there is a heavy reliance on shore side processing capacity, investment and marketing capability, (such as Atlantic mackerel and pelagic squids, Alaska and Pacific groundfish), that consideration can be given to these critical elements of the infrastructure.

We note that Subsection (b) establishes a formal simple majority catch share referendum process applicable only to future catch share programs in New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico regions. This is broad support across the fishing industry in the named regions for an iron-clad transparent referendum process. Now, there is no interest in my broad client base to dismantle existing catch share programs or remove the tool entirely from the system. However, what may not be widely known is a lack of consensus in the *exempted* regions about a referendum requirement for future programs. This is readily apparent in the small boat fishing-dependent communities in the Aleutians and on the West Coast.

There is a groundswell of opposition from the named regions against NOAA's National Catch Share program that plays out annually in the Commerce-Justice-State appropriations process. It is important to note this widespread opposition is not against the policy but rather its implementation. Many in the fishing industry, particularly in the Gulf and South Atlantic, consider the catch share process to be a top-down process. NOAA indicated as early as December 2009 (in the initial stages of the *DRAFT* policy!) that "32 additional programs will begin development in fiscal year 2012" (NOAA 2009). Many fishermen firmly believe the process to be tainted by foundation trust grants to NGOs who do not have the best long-term interests of the U.S. commercial fishing industry in mind.

It is important to note here that in some regions, catch share programs are supported by industry, while in other areas they are flatly opposed and viewed not as conservation tools but as a means of social engineering and worse. NOAA clearly knows this, stating in the Policy that "Taken together, ACLs and LAPs [limited access privilege programs] combine the positive benefits of a firm cap on fishery removals with the additional benefits of achieving important economic and social objectives . . . ." (NOAA 2010).

It is the darker side of social and economic implications of catch share programs that are the reason the fishing industry in many regions desires to have an honest transparent vote. Reforming the referendum process contained in Section 303(A) was first raised in 2011 by Rep. Runyan in H.R. 1646/2772. The current law does not protect fishermen, particularly small boat fishermen in New England and Gulf of Mexico, and there is no referendum provision for the South Atlantic and Mid-Atlantic, leaving the industry in those areas exposed to proliferation of catch share programs they mostly do not want and for which there is often insufficient scientific information.

Frankly, the only question before the committee should be what definition of "Permit holders eligible to participate" is the most appropriate. Some of my fishermen in the named regions support the current proposed definition that requires holders of a permit with landings in 3 of most recent 5 years (with allowances for hardship considerations); while many others, particularly in the Gulf of Mexico and South Atlantic, believe that an active permit holder (with no or very low landing requirements) should be allowed to vote. There is agreement in all named regions that all catch share program specifics must be provided in advance to ensure a fully informed vote.

#### **SECTION 8: Data Collection and Confidentiality**

This comprehensive section constitutes a very large segment of the "Draft" and received mixed reviews from industry across regions, covering the gamut of issues. I also note here there is currently controversy surrounding the agency's codification of practices pertaining to the protection of confidential data so the topic has relevance.

First, regarding Electronic Monitoring (EM)—the industry feedback was essentially that EM can be helpful in some targeted regional fisheries (some of our clients are experimenting with electronic logbooks to enhance reporting efficiency/accuracy; some fishermen see EM as a key to cost savings for observer coverage) but perhaps not as part of a national model. As such, there was some concern expressed by industry that developing EM programs at a regional level would be difficult enough and the Secretary should not be trying to develop national objectives, performance standards and regulations.

Also, perceptions exist that the development of a national EM program could be West-Coast centric. There was also concern that this section could be interpreted as a potential mandate for broad use of EM and about potential costs to industry. Many industry stakeholders oppose video cameras while some support it, and there are others that actually prefer human observers.

I fully recognize and appreciate the growing interest in EM being expressed by NOAA in the 2014 "Priorities and Annual Guidance" Report (NOAA 2013); in discussions at the recent CCC meetings; and for the work being done by the PSMFC,

the PFMC, and some participants in the West Coast Groundfish IFQ program and in some small boat fisheries in Alaska as a potential cost savings option.

However, I am not convinced from the feedback I am receiving from industry that there is broad national acceptance for EM, esp. video cameras, in all regions/fisheries. Perhaps a more suitable approach for the “Draft” would be to limit EM to pilot projects in specific fisheries where the RFMC of jurisdiction and stakeholders can collaborate to develop/implement a program with objectives, standards, regulations and costs suitable to the specific needs of a given fishery.

Regarding confidentiality of information in Subsection (c), there is general industry support for clarifying and enhancing the current language regarding the collection and use of confidential information and providing a comprehensive definition of what constitutes “observer information”.

I noted earlier that NOAA is under pressure from the NGO community to relax confidentiality standards and increase the types of information made available to the public, including trade secrets and proprietary information. The “Draft” provides a clear indication that it is the intent of Congress to protect sensitive information.

The only concerns raised by industry (from the West Coast mainly) include: (1) the potential for an interpretation of the changes to Section 402(b) to mean that NOAA/observers could be prevented from informing fishermen of their catch, discards and MMPA interactions for an observed trip; and (2) the inability to release data *in the aggregate* to show the value of a fishery or a particular fishing area to help the industry defend its interests during National Ocean Policy implementation.

Subsection 8(d) focuses on Data-Poor fisheries by authorizing the use of area-specific money in the Asset Forfeiture Fund (AFF) to gather fishery independent data, to survey/assess “Data-Poor” fisheries, and to develop cooperative research to collect fishery independent data. It also requires the RFMCs to list and prioritize Data-Poor fisheries.

NOAA currently manages 528 stocks of fish. Of this total, roughly 114 are considered adequately assessed by the agency. Most of the 114 assessments (approximately 80) occur regularly on economically important stocks in Alaska and New England. In other regions, the assessment periodicity is far less—approximately 15 per year in the Gulf of Mexico, South Atlantic and Caribbean combined (Angers 2011). Thus, a large majority of fish stocks are Data-Poor or not adequately assessed at all with the result being uncertainty trumping opportunity for the achievement of OY.

There is widespread industry support for the improved data collection and focus on Data-Poor stocks contained in the “Draft”, especially in the Gulf of Mexico, South Atlantic and Mid-Atlantic regions where assessments occur less frequently compared to other areas.

I note here that Rep. Wittman introduced H.R. 3063 which contains a potentially useful provision pertaining to development of a national stock assessment plan under MSA Section 404(b). I have long been a proponent for a national, transparent, prioritized stock assessment and survey program to ensure that adequate assessments, supporting surveys and cooperative research are conducted in each region to support healthy commercial/charter/sport fisheries. This provision should be considered in the context of the “Draft” and dovetail with current requirements specified in MSA Section 302(h)(7).

#### **SECTION 9: Council Jurisdiction for Overlapping Fisheries**

This section adds reciprocal voting rights to established Council “liaison” positions between the New England and Mid-Atlantic RFMCs only. While fishermen in the Mid-Atlantic have not requested this action and do not wish to dismantle established Council membership, fishermen in New England made the request. Since the provision establishes a limited reciprocal voting right and does not disrupt current Council procedures, there is general agreement about this provision between fishermen in the two areas. Please note that H.R. 3848 was referred to this committee and provides the State of NY with a non-reciprocal, 3-vote seat on the NEFMC. This legislation is likely to meet with stiff opposition from fishermen in both regions and from States on both RFMCs.

#### **SECTION 10: GOMEX Cooperative Research and Red Snapper Management**

There is longstanding and widespread industry support in the Gulf of Mexico and South Atlantic for a requirement that the Secretary, working with States, GMFMC/SAFMC, and commercial/charter/sport stakeholders, develop and implement a cooperative research program for both regions with a priority on data-poor stocks.

I note here that industry comments from Alaska elucidated concerns that S-K funding proposed to be diverted for use in implementation of subsection (b)(2) could potentially pull funds from other regions.

Subsection (d) of the “Draft” outlines specific scientific requirements for timely surveys and stock assessments and task prioritization at the NMFS Southeast Regional Science Center; and adds a requirement to utilize any information generated from RESTORE Act funding to be used as soon as possible in any fisheries stock assessment. There is widespread industry support in the affected regions for these requirements.

Regarding red snapper management and State seaward boundaries in the Gulf of Mexico in Subsection (f), the proposal to uniformly extend State jurisdiction 9 nautical miles has generated little comment from my constituents in Florida. Their State already has jurisdiction out to 9 miles so this represents little change for Florida fishermen. The comments that I did receive indicate the existing boundaries are historic and should remain as they are, and also that the Federal Government should not be dictating individual Gulf State authority.

#### **SECTION 11: NPFMC Clarification**

This section should be expanded to include extension (or removal) of the sunset date for authority over the West Coast Dungeness crab fishery (*See* 16 U.S.C. 1856 note).

#### **SECTION 13: Consistency With Other Laws**

This section clarifies that fisheries management activity impacted by the National Marine Sanctuaries Act (NMSA), the Antiquities Act, or the Endangered Species Act (ESA) be accomplished under the MSA using the RFMC process. In instances where the MSA conflicts with these other laws, the MSA shall be the controlling process. This provision does not amend these other statutes.

Regarding Marine Sanctuaries, many stakeholders who fish in/around these areas believe there are definitely conflicting jurisdictions between the National Marine Sanctuary Act (*See* NMSA 16 U.S.C. 1434) and the MSA when it comes to fishing regulations. I hear most often about these conflicts (and the potential for increasing problems . . .) related to the Channel Islands, Olympic Coast and Florida Keys Sanctuaries.

The specific problem appears in Section 304(a)(5) of NMSA (16 U.S.C. 1434) whereby the Councils are afforded the opportunity to prepare draft regulations using the MSA as guidance only “to the extent that the standards are consistent and compatible with the goals and objectives” of the Sanctuary designation. This is the crux of the jurisdictional and philosophical conflict between NOAA/NMFS and NOAA/National Ocean Service (NOS).

The RFMC Chairmen adopted a unanimous position in 2006 to amend both the NMSA and the MSA to exclude fishery resources as sanctuary resources and to achieve jurisdictional clarity by vesting Federal fisheries management under the MSA. The House Natural Resources Committee attempted to address this issue during the 2006 reauthorization but members at the time deferred to the NMSA reauthorization.

The RFMCs did not resurface this as primary issue for the 2014 MSA reauthorization. None the less, I agree with the 2006 position and recommend the committee consider at least supporting the provision contained in the “Draft” to ensure jurisdictional clarity under the MSA in instances of conflict between the statutes. This approach will help ensure that fishery resources are intended to be managed consistently throughout their range and under a transparent public and scientific process.

The potential for widespread adverse industry impacts from Antiquities Act authority increases during the latter part of every administration. Creation of the Hawaiian Islands National Marine Monument was a case in point. The provision contained in the “Draft” will likely not protect the industry from expansive closures but could provide some level of protection with the application of MSA requirements.

Regarding conflicts with the ESA—during the past 20 years, ROMEA’s clients in several regions have struggled to contend with intrusive ESA impacts in federally managed fisheries involving a number of protected species. We assisted our clients with ESA decisions involving: Steller Sea Lions (Alaska trawl fisheries); Loggerhead Sea turtles (Gulf of Mexico longline fisheries); Atlantic Right Whales (South Atlantic gillnet fisheries); Atlantic Sturgeon (Mid-Atlantic gillnet fisheries); and Sea Turtles (Mid-Atlantic/NE Atlantic Sea Scallop dredge fishery).

Each one of these environmental conflicts represented extremely difficult challenges that mostly did not end well for industry. In many instances, fisheries were closed and industry losses severe. These processes were often marred by NGO litigation (or threats thereof) but also by several key characteristics such as: (1) lack of

a transparent process, (2) lack of adequate scientific data; (3) lack of adequate time to address the problem, and (4) lack of a clearly defined role for the RFMC.

The noted exception to this was the most recent 2013 situation with Atlantic Sturgeon. NOAA/NMFS leadership adopted a different model for the sturgeon, providing a Draft Biological Opinion and allowing input from the RFMCs, Atlantic States Marine Fisheries Commission, and the public. The adequate time and added transparency ensured that additional data were considered (a first ever stock assessment is underway) which has, so far, allowed for a more informed decisionmaking process.

The provision contained in the "Draft" specifying that the MSA process will be used to develop changes to federally managed fisheries impacted by these statutes is widely supported by industry and should facilitate a less litigious, more transparent process, and signal it is the intent of Congress that this be the preferred approach.

#### CLOSING

Implementation of the 2006 MSA amendments exceeded our scientific capabilities and limited our flexibility. The NSG1 evolved to include precautionary decision-making leading to ACLs with safety buffers that effectively prevent the U.S. fishing industry from achieving OY. Furthermore, Data-Poor stocks persist and unwanted catch shares threaten fishermen in several regions. These are some of the weaknesses of U.S. fisheries policy yet achieving OY is a primary objective of MSA.

Mr. Chairman, thank you and Mr. DeFazio and the members of this committee for beginning this process in earnest. I and many of my clients view the "Draft" as a helpful, measured step in the right direction. I look forward to working with this committee to refine the "Draft" and to seek constructive balanced improvements in our Nation's fisheries policy.

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The CHAIRMAN. I thank the gentleman for his testimony, and I will recognize Mr. Vito Giacalone, Policy Director of the Northeast Seafood Coalition.

You are recognized for 5 minutes, Mr. Giacalone.

#### **STATEMENT OF VITO GIACALONE, POLICY DIRECTOR, NORTHEAST SEAFOOD COALITION**

Mr. GIACALONE. Thank you, Mr. Chairman and distinguished members of the committee. Let me begin by expressing our profound appreciation to all those Members of Congress and their exceptional staff who supported the fishing disaster funding included in the fiscal year 2014 omnibus appropriations. With that assistance in place, we can now fully focus on those aspects of U.S. fishery policy that could be improved to ensure the long-term biological and economic sustainability of our fishery and many others nationwide.

I would like to highlight several measures set forth in your draft bill that I believe would greatly contribute to achieving that objective. I note that there are so many provisions that we view as positive and progressive that it will be difficult to choose which to highlight today.

Section 3(a)(3) would add a new paragraph 8 to the rebuilding provision of the Act that provides authority for the Councils to implement alternative rebuilding strategies that are based on fishing mortality rate targets such as Fmsy. This represents perhaps the most important move in the direction of basing rebuilding strategies on the actual biological, ecological, and environmental realities that drive the population dynamics of fish stocks.

Note this provision reflects the very specific recommendations of the NRC in their recent report to Congress. This policy allows the Councils to develop rebuilding plans that will, by definition, achieve the dual primary biological objectives of the Act to prevent overfishing and to rebuild overfished stocks. But it will do so in a timeframe and to a biomass that is the product of prevailing ecological and environmental conditions, rather than man's arbitrary goals. This approach will also, by definition, achieve the full suite of elusive congressional objectives set forth in National Standard 8, including, in particular, to minimize, to the extent practicable, adverse economic impacts on fishing communities.

That said, an equally important and necessary component of implementing this approach is to ensure that Councils have the authority to adapt their management response to drastic fluctuations and results of stock assessments. We have suggested one such authority, which is to revise the current definition of overfishing to accommodate multi-year evaluations of overfishing as a means to smooth the management responses to these fluctuations.

A strategy structured around Fmsy will, instead, provide the space to effectively smooth management responses to drastic fluctuations in stock abundance estimates. While some have argued that authority already exists for the Councils to employ such smoothing techniques, we reiterate our request for the committee to consider making that explicit in the overfishing definitions.

Section 3(a) would eliminate the arbitrary 10-year rebuilding timeframe and the discontinuity between stocks that can be rebuilt in less than 10 years and those that cannot. We appreciate your proposal to, instead, provide a consistent biological basis for setting the rebuilding period based on  $T_{min}$  plus one mean generation for all stocks. We see this as a major step forward in managing fisheries based on biological and ecological realities, rather than arbitrary-stated goals.

Section 3 further sets forth a number of important scenarios under which the Council can both phase in and extend the rebuilding timeframe to reflect a range of realities and circumstances that are beyond the Council's control. While, again, this approach would still involve setting a specific rebuilding timeframe and biomass target, these provisions will provide the needed flexibility for the Councils to make common-sense management decisions. They will enable the Councils to avoid the kind of prescriptive management responses that have achieved little, if anything, biologically in our

fishery, but which have been catastrophic to the economics of our fishery and communities.

I note that one of the scenarios recognized the difficulties faced in managing internationally shared stocks to informal transboundary agreements. One such agreement with Canada has profound impacts on our fishery for our valuable Georges Bank cod, haddock, and yellowtail flounder stocks.

Another scenario contemplates unusual events that make rebuilding within the specified timeframe improbable, without significant harm to fishing communities. This is a scenario we have endured often in New England.

Thank you again for this opportunity to provide some input on these incredibly important and positive proposals in your bill, and many more too numerous to address in this short timeframe. We have learned the hard way in New England that U.S. policy under the current statute is simply too narrow and too prescriptive to embrace the dynamics of our fisheries and ecosystems. This policy needs more flexibility to be realistic and effective, so we greatly appreciate this effort and look forward to working further with you and your fine staff on this excellent draft.

[The prepared statement of Mr. Giacalone follows:]

PREPARED STATEMENT OF VITO GIACALONE, POLICY DIRECTOR, NORTHEAST SEAFOOD COALITION

Thank you Mr. Chairman and distinguished members of the committee.

Let me begin by expressing our profound appreciation to all those Members of Congress and their exceptional staff who worked on and supported the fishery disaster funding included in the fiscal year 2014 Omnibus Appropriations.

With that assistance in place, we can now fully focus on those aspects of U.S. fishery policy that could be improved to ensure the long-term biological and economic sustainability of our fishery and many others nationwide.

With that in mind, I would like to highlight several measures set forth in your draft bill that I believe would greatly contribute to achieving that objective. I note that there are so many provisions that we view as positive and progressive that it was difficult to choose which to highlight today.

1. Section 3(a)(3) would add a new paragraph (8) to the rebuilding provisions of the Act that provides authority for the Councils to implement alternative rebuilding strategies that are based on fishing mortality rate targets such as Fmsy.

This represents perhaps the most important move in the direction of basing rebuilding strategies on the actual biological, ecological and environmental realities that drive the population dynamics of fish stocks. I note this provision reflects the very specific recommendations of the NRC in their recent report to Congress. This policy allows the Councils to develop rebuilding plans that will by definition achieve the dual primary biological goals of the Act—to prevent overfishing and to rebuild overfished stocks. But it will do so in a timeframe and to a biomass that is a product of prevailing ecological and environmental conditions rather than man's arbitrary goals. This approach will also by definition achieve the full suite of elusive congressional objectives set forth in National Standard 8—including in particular, to minimize—to the extent practicable—adverse economic impacts on fishing communities.

That said, an equally important and necessary component of implementing this approach is to ensure the Councils have the authority to adapt their management responses to drastic fluctuations in the results of stock assessments. We have suggested one such authority which is to revise the current definition of overfishing to accommodate multiyear evaluations of overfishing as a means to smooth the management responses to these fluctuations. A strategy structured around Fmsy will instead provide the space to effectively smooth management responses to drastic fluctuations in stock abundance estimates. While some have argued that authority already exists for the Coun-

cils to employ such smoothing techniques, we reiterate our request for the committee to consider making that explicit in the overfishing definition.

2. Section 3(a) would eliminate the arbitrary 10-year rebuilding timeframe and the discontinuity between stocks that can be rebuilt in less than 10 years and those that cannot. We appreciate your proposal to instead provide a consistent biological basis for setting the rebuilding period based on  $T_{min}$  plus one mean generation for all stocks. We see this as a major step forward in managing fisheries based on biological and ecological realities rather than arbitrary statutory goals.
3. Section 3(a) further sets forth a number of important scenarios under which the Council can both phase-in and extend the rebuilding timeframe to reflect a range of realities and circumstances that are beyond the Councils' control. While again, this approach would still involve setting a specific rebuilding timeframe and biomass target, these provisions will provide the needed flexibility for the Councils to make common sense management decisions. They will enable the Councils to avoid the kind of prescriptive management responses that have achieved little if anything biologically in our fishery but which have been catastrophic to the economics of our fishery and communities.

I note that one of the scenarios recognizes the difficulties faced in managing internationally shared stocks through informal transboundary agreements. One such agreement with Canada has a profound impact on our fishery for our valuable Georges Bank cod, haddock and yellowtail flounder stocks. Another scenario contemplates "*unusual events that make rebuilding within the specified time period improbable without significant harm to fishing communities*" which is certainly near and dear to our hearts.

Thank you again for this opportunity to provide some input on these incredibly important and positive proposals in your bill and many more too numerous to address in this short timeframe. We have learned the hard way in New England that U.S. fishery policy under the current statute is simply too narrow and too prescriptive to embrace the dynamics of our fisheries and ecosystems. This policy needs more flexibility to be realistic and effective—and so we greatly appreciate this effort and look forward to working further with you and your fine staff on this excellent draft.

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QUESTIONS SUBMITTED FOR THE RECORD BY REPUBLICAN MEMBERS TO VITO  
GIACALONE

*Question.* In your testimony you highlight and support the need to provide the Councils with authority to implement alternative F-based rebuilding strategies—coupled with the need to provide managers with the tools to smooth-out the drastic fluctuations in stock assessment results for groundfish in your region. Can you elaborate on this?

*Answer.* To elaborate, there is only one rebuilding strategy currently authorized in the Act—the so-called '10-year rebuilding strategy' set forth in section 304(e)(4)—which prescribes a rebuilding period to be as short as possible but not to exceed 10 years except in certain limited circumstances.

This strategy is based on making a scientific projection of what MSY and, therefore,  $B_{msy}$  will be at the end of the rebuilding period once a stock is fully rebuilt. The current MSA rebuilding strategy is based on the assumption that the stock biomass will rebuild during the rebuilding period at a rate that is sufficient to achieve  $B_{msy}$  by the end of the rebuilding timeline.

However, the rate at which stock biomass increases (or decreases) over time and what biomass it will achieve in that timeframe depends on three key elements of a stock's biological population dynamics. These are: (1) "recruitment"—the measure of reproductive success in any given year and the degree to which it contributes to stock biomass, (2) "growth"—the measure of the collective growth of individuals in the population and the degree to which that contributes to stock biomass, and (3) "natural mortality"—the measure of non-fishing deaths that occur naturally in the population through, for example, disease or predation, and the degree to which those deaths subtract from the stock biomass.

None of these three biological dynamics can be controlled by man. They are instead a product of 'nature' and they are highly susceptible to changes in ecological and environmental conditions. Thus, they can be extremely difficult to predict into

the future, especially when the dynamics of the ecosystem and environment are highly volatile and unpredictable in themselves. In this way the current MSA rebuilding strategy places unrealistic demands on science. (see NRC Summary, Task 4 discussion, Conclusions).

The fourth key element affecting stock biomass is “fishing mortality”—the measure of deaths caused by fishing and the degree to which that mortality subtracts from the stock biomass. Unlike the other three key elements, however, fishing mortality can be controlled by man and, as confirmed by the NRC, is more predictable than estimates of biomass itself. (see NRC Summary, Key Findings 2 & 3, Task 1 discussion, and Conclusions).

Not surprisingly, the NRC report concluded that the current rebuilding strategy has produced mixed results. “Fishing mortality . . . has generally been reduced”, and “stock biomass has generally increased” while . . . “others are still below rebuilding targets and some continue to experience overfishing.” “This reflects a mismatch between policymakers’ expectations and the inherent limitations of science due to the complex dynamics of ecosystems.” (see NRC Summary).

One major reason for these mixed results identified by the NRC is that MSY (on which rebuilding targets are based) is not a static quantity. Instead, MSY reflects the productivity of a stock (i.e. the additions and subtractions by the three key elements above) under prevailing ecological and environmental conditions which can change quite dramatically and unpredictably over the course of a 10-year rebuilding plan. MSY is not subject to man’s management control—it is a product of “nature”. Thus, the setting of a Bmsy rebuilding target 10 or more years in advance is a highly uncertain exercise. (see NRC Summary Task I discussion)

These inherent flaws in the reasoning behind the current MSA rebuilding strategy are why most rebuilding plans begin with the stated probability of success in achieving their objectives being no more than 50 or 60 percent. Unfortunately, when the 40 or 50 percent chance of failure occurs, the burden is placed on the fishery—through fishing mortality controls—to correct the error. And, as is often the case when the deviation from rebuilding expectations occurs late in the term of a rebuilding period, the resulting fishing mortality reductions can be so extreme as to effectively shut the fishery down. This is a highly disruptive, ineffective and costly strategy for rebuilding a fish stock.

Despite these realities of nature, there is currently only one tool in the Act’s toolbox of rebuilding strategies in the statute. This ‘one size fits all’ strategy policy is clearly not working for some important stocks, even those which are considered data rich including the multispecies groundfish complex. Indeed, as noted by the NRC, this has had significant social and economic consequences.

As set forth in the NRC’s “key findings” the scientific community has definitively concluded and recommended that a rebuilding strategy based on controlling the fishing mortality rate would be more effective than the current rebuilding target/timeframe strategy especially in situations of high ecosystem/environmental dynamics:

3. *Rebuilding plans that focus more on meeting selected fishing mortality targets than on exact schedules for attaining biomass targets may be more robust to assessment uncertainties, natural variability and ecosystem considerations, and have lower social and economic impact.*
  - a. *The rate at which a fish stock rebuilds depends on ecological and other environmental conditions such as climate change, in addition to the fishing-induced mortality,*
  - b. *A rebuilding strategy that maintains reduced fishing mortality for an extended period (e.g., longer than the mean generation time) would rebuild the stock’s age structure and be less dependent on environmental conditions than one that requires rebuilding to prespecified biomass targets, and*
  - c. *When rebuilding is slower than expected, keeping fishing mortality at a constant level below FMSY may forgo less yield and have fewer social and economic impacts than a rule that requires ever more severe controls to meet a predetermined schedule for reaching a biomass target. (NRC Summary key findings #3. See also Summary Task 2 Discussion, Task 5 and Conclusions).*

Once again, consistent with the NRC’s advice, I believe there is a critical need to add new additional discretionary authority to the Act to enable the Councils to develop, and for the agency to approve and implement, one or more alternative rebuilding strategies that are more robust to the uncontrollable and unpredictable ecosystem and environmental dynamics that are driving groundfish stock productivity.

Your proposed addition of paragraph (8) to section 304(e) of the Act is right on target. (see NRC Summary Conclusions).

Taking into consideration the foregoing discussion, an equally important and necessary component of implementing such an alternative rebuilding approach is to ensure the Councils have the authority to adapt their management responses to drastic fluctuations in the results of stock assessments.

We have suggested one such authority which is to revise the current definition of overfishing to accommodate multiyear evaluations of overfishing as a means to smooth the management responses to these fluctuations. A strategy structured around Fmsy will instead provide the space to effectively smooth management responses to drastic fluctuations in stock abundance estimates. While some have argued that authority already exists for the Councils to employ such smoothing techniques, we reiterate our request for the committee to consider making that explicit in the overfishing definition or elsewhere in the Act.

*Question.* Some witnesses have testified that the Act currently provides enough flexibility and no additional flexibility is required. Do you agree?

*Answer.* Although I would agree that there exists a more broad and sensible interpretation of the current version of the Act than has been implemented or opined by the Secretary (Agency), persistent legal challenges have thwarted attempts to utilize these more sensible interpretations. The legal “vulnerabilities” that plague the most important areas where “flexibility” was once perceived to exist, in my opinion, now drives the agency’s notorious tendency to interpret the Act in the most rigid, conservative manner. Perhaps now it could be said that there exists more flexibility to interpret some provisions in the Act far more conservatively than was intended by Congress when enacted.

Now that areas where “flexibility” was perceived to have existed have been marginalized through legal decisions or more often, simply through persistent threats of challenge from ENGO’s and what appears to be a practice by NOAA General Counsel to make decisions on Council recommendations based on an analysis of the financial, political and public relations resources of the plaintiffs and the probabilities for winning or losing—rather on what is the right thing to do. It appears these decisions are then backfilled with whatever legal justification is needed. So, the bottom line is that while additional flexibility in the Act may exist, a combination of non-scientific forces does not allow for it to be implemented.

For key provisions such as rebuilding and status determination (overfished or overfishing) it is clear that we need more explicit alternatives that are crafted from the experience of operating under MSRA 2006 in order to advance the goals of balancing conservation and maintaining viable fishing communities. Unless and until we acknowledge the fact that the current provisions demand far more precision, knowledge and control of stock dynamics than we are capable of delivering, we will only succeed in achieving rebuilding and stock status objectives by coincidence—i.e. by luck. In my opinion, many if not most of our fishery management “successes” with regards to attaining Bmsy have been largely due to chance because, with the exception of limiting fishing to an ACL, everything else is outside of our control.

Nowhere in the current version of the Act is there a rebuilding alternative that adequately considers these realities. For this reason, finding “flexibility” adequate to mitigate the impacts of holding fisheries accountable for stock performance that is outside our control is often difficult if not impossible.

*Question.* The Discussion Draft extends the time period under which emergency or interim measures can be used. Do you support this provision and can you explain why this was requested by the New England fishing industry and whether this change is supported by the New England Council?

*Answer.* We strongly support this provision. Section 3(b) of the draft bill addresses the apparent discontinuity in the statute that we were the unfortunate victims of with the management of our Gulf of Maine cod stock. In that instance the Council and agency had agreed to adopt interim measures for 1 year that, pursuant to section 304(e)(6) of the Act, would reduce rather than end overfishing during the time a new rebuilding plan was being developed. Although section 304(e)(3) of the Act provides the Councils up to 2 years to develop such a new plan—and despite the fact that the New England Council had clearly notified the agency of its intent to fully utilize those 2 years—the agency rejected the Council’s request to have interim measures implemented for a second year. This rejection was based on a misinterpretation of the Council’s request itself and a rather contorted interpretation of the statute.

While section 305(c) does indeed limit the duration of any single set of interim measures to 1 year, it in no way restricts the Council from requesting or the agency

from approving a second, sequential set of interim measures for a second year. Such an interpretation would have been consistent with the clear congressional intent of providing the Councils with up to 2 years to develop a new rebuilding plan (Section 304(e)(3)), and of allowing interim measures that reduce rather than end overfishing to be implemented during the 2-year full term of this plan development process. The agency's onerous decision unnecessarily limited our Gulf of Maine small boat fleets' access to their most important stock at a crucial time when the fishery was in a state of disaster declared by the Secretary of commerce 5 months earlier. Once again it appears the agency's incoherent decision was made as a result of evaluating litigation probabilities rather than sound policy and common sense.

Given this experience, we appreciate that the draft bill would address this discontinuity with a common sense approach of allowing emergency and interim measures to be in place for up to 2 years, including those interim measures to reduce rather than end overfishing during the development of a rebuilding plan. We can only wish we had this provision in place 2 years ago—but this situation we faced then may well arise again in the future.

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The CHAIRMAN. Thank you, Mr. Giacalone, for your testimony.

And now I will recognize Mr. David Krebs, Jr., President of Ariel Seafoods, representing the Gulf Seafood Institute.

Mr. Krebs, you are recognized for 5 minutes.

**STATEMENT OF DAVID A. KREBS, JR., PRESIDENT, ARIEL SEAFOODS, INC., REPRESENTING THE GULF SEAFOOD INSTITUTE**

Mr. KREBS. Mr. Chairman, Ranking Member, members of the committee, my name is David Krebs, and I am pleased to be here to discuss reauthorization of the Magnuson-Stevens Act. I am a lifelong commercial fisherman, and owner of Ariel Seafoods, based in Destin, Florida. For today's hearing, I will be speaking as a board member of the Gulf Seafood Institute, GSI, representing all facets of the Gulf of Mexico seafood distribution chain.

The mission of the Gulf Seafood Institute is to protect the Gulf's unique culture and environment, while elevating the Gulf's seafood brand with consumers, customers, and policy leaders through advocacy, education, and science. Overall, GSI maintains that MSA is working. The Department of Commerce, NMFS, and the Council work together to monitor, manage, and enforce a program that has led the United States to its position as a global leader in responsibly managed fisheries and sustainable seafood.

Prior to seeing the committee's discussion draft, GSI had already outlined a platform for reauthorization that included the following.

**Flexibility in rebuilding timelines.** GSI is in full agreement with NRC's recommendations, which include support for a biologically-based approach to rebuilding plans.

**Annual catch limits.** In order for fishery managers to set appropriate annual catch limits, data collection must be improved by accounting for actual take, both retained and discarded. While a revision of National Standard 1 guidelines might address this concern, it should be explicitly defined in MSA.

**Role of science and statistical committees.** In today's fast-moving world, we should be able to react swiftly by calling SSC and other council meetings in a more timely manner. The notice period for meetings should be more flexible to help address very time-sensitive matters quickly and efficiently. The process is overly long and needs better integration with the demands of NEPA require-

ments to achieve a balance in time, public access, and reasonable deliberation.

Regional fishery management council accountability. Strict accountability measures must be established for the Councils and their actions. Measures should include a revision of the council membership and appointment process to ensure fair and equitable representation from both the commercial and recreational communities, as well as consumers.

One way to achieve this important goal would be to revive language from Section 302(b)(2)(D)(I) of the 2006 Act that required governors from States participating in the Gulf Council to include at least one nominee each from the commercial, recreational, and charter fishing sectors, and at least one individual who is knowledgeable regarding the conservation and management of fisheries resources when making appointments to the Council.

Regarding catch share programs, Section 7 would require referendum by a majority of the permit holders prior to the Gulf Council submitting any new catch share program for approval by Commerce. We support this concept, but feel that referendums should be constrained to stakeholders. With regard to data collection, GSI strongly supports the use of electronic monitoring, and we believe this is an important part of the data collection process.

Red snapper, Section 10. While there have been management challenges in the recreational red snapper fishery in recent years, the current program on the harvest side is working. While I agree that Congress should take steps to improve management of recreationally caught red snapper, any solution that upsets the success of the commercial red snapper program is not a solution at all, and will only harm the industry, seaside communities, and the millions of consumers who depend on the year-round availability of red snapper.

Section 10(f) of the discussion draft simply extends State seaward boundaries in the Gulf to 9 miles, which would have the effect of turning management of red snapper over to five Gulf States. While this seems like a simple, straightforward solution, the devil is in the details. Most importantly, we need to clarify that this section only applies to the recreational red snapper fishery. Our further concern is the impact of the extension of State water boundaries on the commercial fleet if they are excluded from operating in traditional areas.

The committee should also take this opportunity to reassess language found in Section 407(d)(1) of the current MSA that mandates the shut-down of the entire recreational fishery, which currently includes charter-for-hire boats, when that sector's quota is met. Some other options that you should consider include separate quotas for the charter-for-hire and private angler user group, questions of State enforcement capabilities, State scientific data collection capabilities, State funding ability, and the enforcement of interstate boundaries at sea.

With this testimony I hope I have provided the committee with more clarity on how the proposed changes to MSA will impact the Gulf of Mexico seafood community and consumers who depend on us.

I look forward to working with the committee on these important issues, and I welcome any questions you may have.

[The prepared statement of Mr. Krebs follows:

PREPARED STATEMENT OF DAVID KREBS, PRESIDENT, ARIEL SEAFOODS, DESTIN,  
FLORIDA, REPRESENTING THE GULF SEAFOOD INSTITUTE

Chairman Hastings, Ranking Member DeFazio, and members of the committee, my name is David Krebs and I am pleased to be here to testify before you today on the committee's draft reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). I am a lifelong commercial fisherman and owner of Ariel Seafoods based in Destin, Florida. For purposes of today's hearing, I will be speaking as a Board member of the Gulf Seafood Institute (GSI), a broad-based group representing all facets of the Gulf of Mexico seafood distribution chain.

The mission of the Gulf Seafood Institute (GSI) is to protect the Gulf's unique culture and environment while elevating the Gulf seafood brand with consumers, customers and policy leaders through advocacy, education and science. The GSI's board of directors represents every Gulf State as well as every aspect of our industry—both commercial, charter for hire, and recreational—and is positioned to be a leading voice on key issues including sustainability, seafood safety, disaster mitigation and recovery, and data collection. Additionally, GSI seeks to bolster fisheries science and research to help preserve the Gulf seafood resource and contribute to the longevity of the industry overall. The GSI came together in July 2013 and is currently taking the steps necessary to organize under the laws of the State of Louisiana and will then seek approval of the IRS for determination of approved 501(c)(6) status.

Today, I will highlight several areas of the discussion draft that GSI sees as improvements to current law, I will outline a few additional measures for you to consider, and I will give you our perspective on Section 10, "Gulf of Mexico Cooperative Research and Red Snapper Management" which drastically modifies Sec. 407 of the current statute.

Overall, GSI maintains that the process outlined under MSA is working. The Department of Commerce, the National Marine Fisheries Service (NMFS) and the eight Regional Fishery Management Councils work together to monitor, manage and enforce a program that has led the United States to its position as a global leader in responsibly managed fisheries and sustainable seafood. Guided by 10 National Standards of sustainability, these agencies monitor, manage and legally enforce all marine fisheries in the United States under the most restrictive regulations in the world. As a result, U.S. fish populations are rebuilding and overall fish abundance is improving. Since 2000, 32 fish stocks in the United States have been rebuilt meaning that routine stock assessments conducted by fishery scientists indicate that the abundance of the stock is above the maximum sustainable yield.

Prior to seeing the committee's discussion draft, GSI had already outlined a platform for reauthorization that included the following:

*Flexibility in Rebuilding Timelines:*

- Timelines for rebuilding fisheries must be relaxed to enhance flexibility for fishery managers. The current MSA requirement for rebuilding overfished fisheries within 10 years, with certain exceptions, is an arbitrary timeframe and totally unrelated to the biological needs at hand. Similarly, the requirement to end overfishing immediately considers no other factors. These strict, arbitrary timelines for rebuilding fisheries lead to significant disruptions for the seafood community while the fishery is usually capable of a far more gentle transition.
- A recent National Research Council (NRC) report issued in September 2013<sup>1</sup> addresses the existing rebuilding needs and realities. GSI is in full agreement with NRC's recommendations, which include support for a biologically-based approach to rebuilding plans. We urge incorporation of those recommendations into the revised MSA. Recognition of the need for establishing a biological basis to rebuilding strategies is a fundamental change to achieve success for the fish stocks and the populace.

<sup>1</sup>National Research Council. Division of Earth Life Sciences. Ocean Board. *Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States*. Washington, DC: U.S. National Academies Press, 2013.

*Annual Catch Limits:*

- The process for establishing ACLs should be revised to increase flexibility, particularly in cases where a fish stock lacks enough data to make sound management decisions.
- In order for fishery managers to set appropriate ACLs, data collection must be improved by accounting for actual “take,” both retained and discarded. While the current consideration of revision of National Standard 1 Guidelines might well address this concern, it should be explicitly defined in MSA.

*New Funding Sources:*

- Monies collected from marine enforcement actions and permitting fees should stay within the region in which they were collected and *not* be transmitted to the general fund. These funds should be managed by the relevant Regional Fishery Management Council.
- Balance should be incorporated into MSA’s enforcement language to ensure that the collection of fines does not drive the process, but instead helps to achieve the true objective of 100 percent compliance and \$0 in fines.

*Role of Science and Statistical Committees:*

- In today’s fast-moving world, we should be able to react swiftly by calling SSC and other Council meetings in a more timely manner. The notice period for meetings should be more flexible to help address very time-sensitive matters quickly and efficiently. The process is overly long and needs better integration with the demands of NEPA requirements to achieve a balance in time, public access, and reasonable deliberation.

*Regional Fishery Management Council Accountability:*

- Strict accountability measures must be established for the Councils and their actions. Measures should include a revision of the Council membership and appointment process to ensure fair and equitable representation from both the commercial and recreational communities as well as consumers. One way to achieve this important goal would be to revive language from Section 302(b)(2)(D)(i) of the 2006 MSA reauthorization that required governors from States participating in the Gulf of Mexico Fishery Management Council to include at least one nominee each from the commercial, recreational and charter fishing sectors and at least one other individual who is knowledgeable regarding the conservation and management of fisheries resources when making appointments to the Council. Unfortunately, this provision of the 2006 bill has since expired, leaving the balanced makeup of the Gulf Council in jeopardy. GSI strongly recommends that this language be renewed and made permanent.

The GSI is pleased to note that several of these priority issues are adequately addressed in the discussion draft and we thank you for seeing our concerns were met. For example, on the issue of *rebuilding timelines*, the committee draft vastly improves current law by allowing for 3 years to end overfishing for highly dynamic fisheries and provides that rebuilding times must be as short as “practicable” as opposed to short as “possible” which we feel gives more appropriate consideration for human needs.

Regarding *Annual Catch Limits (ACLs)*, the draft bill provides for consideration of the economic needs of fishing communities when establishing and modifying ACLs which GSI believes is a step in the right direction. We are also pleased to see language providing for 3-year ACLs which is an improvement over the current 1-year requirement. One area that could still be improved would be to require fishery managers to incorporate actual “take,” both retained and discarded, when setting ACLs as suggested in our list of recommendations.

Further, the GSI supports language in Sec. 6 requiring the Science and Statistical Committees (SSCs) to develop their advice in a more *transparent* manner that allows for greater public involvement.

Regarding *catch share programs*, Section 7 would require a referendum by a majority of the permit holders prior to the Gulf of Mexico Fishery Management Council submitting any new catch share program for approval by Commerce. GSI would appreciate some clarification on whether this new requirement would impact pilot programs and, if so how? Also, Section 7(b)(1)(D)(i) provides that in order to be eligible for the referendum, you must have fished in the past 5 years, yet Section

7(b)(1)(D)(iii) provides that you must have fished in 3 out of the 5 last years. It should be made clearer as to what the exact eligibility requirements are. Further, is a petition required before any catch share program can be considered? If a petition by the majority is required, then a potential catch share program is given a thumbs up or a thumbs down before it is even designed and its ramifications determined, effectively shutting down consideration of catch share programs before the Council can thoroughly evaluate them. This may pose a serious challenge to Councils as they work on a regional basis to implement management programs that may make sense in their areas.

With regard to *data collection*, Sec. 8 requires the Councils to work with the fishing industry to develop regulations to govern the use of electronic monitoring for data collection within 6 months of enactment. GSI strongly supports the use of electronic monitoring and has already been working independently with the charter boat fishery in the Gulf to establish similar, voluntary programs. Electronic monitoring has come a long way in recent years with the introduction of smartphone and tablet apps that can be available to all fishers in the industry. We believe electronic monitoring is an important part of the data collection process and programs that encourage its use should absolutely be supported wherever possible.

Section 8(d) provides for the use of the asset forfeiture fund to pay for surveys on *data-poor fisheries*. GSI supports this concept as many of our stocks are considered data-poor and any additional funding to increase science in those areas is appreciated. We also support the concept of making fisheries that have not been surveyed in the preceding 5-year period a top priority. However, given that many species in the Gulf would meet that requirement, we may have a very long list of priorities and conducting surveys on such a broad list might be unrealistic.

#### *Red Snapper/Section 10*

Section 10 of the discussion draft addresses management of the red snapper fishery in the Gulf of Mexico, an issue that has become fairly volatile in the Gulf seafood community in recent years. This section will uniquely impact GSI, our customers and all those that depend on a healthy Gulf seafood supply chain. I know this committee held a hearing on red snapper management in June of last year and GSI's interim Chairman, Harlon Pearce, was a witness at that hearing. During his testimony, Harlon outlined the importance of preserving a healthy, commercial red snapper fishery for the benefit of consumers nationwide and I fully support that position. I would ask that the committee revisit his written testimony while deliberating this section as it outlines some very important concepts of importance to GSI and the commercial seafood community broadly.

While there have been management challenges in the recreational red snapper fishery in recent years, the current program on the harvest side is working. Yes, there have been challenges with overfishing of the stock in the past, however the species is no longer undergoing overfishing and it is now being managed under a rebuilding plan which will allow the species to rebuild back to target population levels. The commercial red snapper Individual Fishing Quota (IFQ) program, which began in 2007, has reduced the number of vessels and improved the operation of this fishery. The IFQ program now provides the harvesting sector with flexibility to fish during times that suit their needs and the needs of the market resulting in less pressure on the fishery and less pressure on the resource. Unfortunately, the recreational red snapper sector has yet to adopt a similar solution and Federal management of the recreational side of the business is in turmoil. Fishery managers, still relying on the antiquated "days at sea" model for management, have drastically reduced fishing days for recreational red snapper leading to serious economic implications for the Gulf Coast economy. While I agree that Congress should take steps to improve management of recreationally caught red snapper, any solution that upsets the success of the commercial red snapper program is not a solution at all and would only harm the industry, seaside communities and the millions of consumers who depend on the year-round availability of red snapper.

Section 10(f) of the discussion draft simply extends State seaward boundaries in the Gulf to 9 miles which would have the effect of turning management of red snapper over to the five Gulf States. While this seems like a simple, straightforward solution, the devil is in the details.

Most importantly, we need to clarify that this section *only* applies to the recreational red snapper fishery. Simply inserting the word "recreational" before the term "red snapper" in this section should meet this important goal. Management of the commercial red snapper fishery is working and to throw that program into turmoil would be detrimental to communities and to consumers who might lose access to the resource. Of equal importance to the future of the fishery would be to ensure that the sustainability standards required by MSA be preserved in any new State-

run red snapper management program. It is in all our best interests to maintain strong Federal oversight of these new State programs to ensure a positive long-term prognosis for the species and those who rely upon it to make a living. Finally, we would like clarification on the seaward boundary lines. Section 10(f) seems to extend the seaward boundary for red snapper to 9 miles two separate times so it is unclear if the final boundary is 9 miles or 18 miles. A final boundary of 9 miles is acceptable and would be comparable to the territorial sea boundaries of Texas and the west coast of Florida, while 18 miles is not and would be inconsistent with the boundaries of Texas and Florida.

Of further concern is the impact of the extension of State water boundaries on the commercial fleet if they are excluded from operating in traditional areas. For example, in Florida, commercial vessels are prohibited from harvesting reef fish in State waters and currently, those waters extend to 9 miles. So, if the boundaries are extended to 9 miles in Alabama, Louisiana and Mississippi as well, the vibrant commercial red snapper fishery that has been operating in those areas traditionally will suddenly be shut out causing serious challenges to our community. Congress must ensure that traditional fishing grounds for the commercial red snapper fleet are maintained.

The committee should also take this opportunity to reassess language found in Sec. 407(d)(1) of the current MSA that mandates the shut-down of the entire recreational fishery, which currently includes charter boats, when that sector's quota is met. Under the current MSA, charter boats are considered part of the recreational fishery, despite the fact that the Gulf Council is moving forward with some innovative new management programs that apply to charter boats only. If the broader recreational community exceeds their quota, under current law, the shut down of that sector would also handicap the charter boats. One way to address this might be to remove language in Sec. 407(d)(1) that states that the term "recreational" shall include charter boats for purposes of this subsection. The GSI would appreciate an opportunity to discuss this concept in more depth with the committee as this reauthorization moves forward.

Some other questions that you should consider before moving forward with this section include questions of State enforcement capabilities, State scientific data collection capabilities, State funding ability, and the enforcement of interstate boundaries at sea. Despite the usual procedural challenges, the Council management process works as intended and to throw one fishery into a State-run model might set a misguided precedent that threatens to undermine the great successes MSA has had overall.

While GSI has reservations about the State boundary language of Section 10, the remainder of the section addressing research is very positive. We strongly support the development of a real-time reporting and data collection program, increased frequency of stock surveys, and the use of updated fisheries information in red snapper stock assessments. In fact, it would be helpful if these concepts were expanded to all fisheries in the Gulf of Mexico, not just red snapper. We look forward to working closely with the committee to see these priorities are enacted.

With this testimony, I hope I have provided the committee with more clarity on how the proposed changes to MSA will impact the Gulf of Mexico seafood community and consumers who depend on us. Again, maintenance of the Federal framework for sustainability and the preservation of the current IFQ program for the commercial community is imperative to any plan designed to eliminate confusion in the red snapper fishery. Our consumers and the American public depend on it. Further, I hope I've given you some food for thought with regard to additional modifications to the draft bill that might benefit our Nation's fishery management system overall.

I look forward to working with the committee on these important issues and I welcome any questions you may have.

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The CHAIRMAN. Thank you very much, Mr. Krebs, for your testimony.

I will now recognize Mr. George Geiger, Owner and Operator of Chances Are Fishing Charters.

You are recognized for 5 minutes, Mr. Geiger.

**STATEMENT OF GEORGE J. GEIGER, OWNER AND OPERATOR,  
CHANCES ARE FISHING CHARTERS**

Mr. GEIGER. Thank you, Chairman Hastings and Ranking Member DeFazio and members of the House Natural Resources Committee. Thank you for the opportunity to testify today.

My involvement with fisheries began when I retired from the U.S. Army active duty in 1987, and my return to Florida. To understand where we are, it is critical to understand where we were with regard to fisheries prior to the 2006 amendment.

The story begins during my Army assignment in Daytona Beach in 1971 and 1972. During that assignment I experienced fishing opportunities with regard to species diversity and abundance only dreamed of. The experience resulted in my buying property in Sebastian, Florida, with a dream of an eventual return as a resident, post-Army retirement. In a scant 14 years, the dream became reality, along with the realization the fisheries which served to lure me had become a mere shadow of what I knew in 1972. Worse, it seemed those in other fisheries were in an unchecked continuing downward spiral.

I felt betrayed and angered, and began an effort to understand what had happened, the cause, and who was responsible for this debacle. A conclusion which readily became apparent was the responsibility for managing and conserving fish stocks was not being faithfully administered. It became too obvious the system in place was fraught with potential abuse, as there were no standards or firm goals established for the fishery management councils to achieve.

To the contrary, the Councils had broad discretionary powers—you can call it flexibility—allowing them to bend to political pressures and the wishes of local fishers, the majority of whom had a vested financial interest in short-term economic decisions. The result were fisheries which were becoming overfished, and overfishing seemed to be the goal, as it appeared minimal and ineffective effort was applied to stopping it.

After railing against the system, 19 years later, I was nominated and appointed to the South Atlantic Fishery Management Council in 2002, eventually serving three terms. I worked joylessly for the first 3 years under the failed then extant pretend system, getting and going virtually nowhere.

One only has to review the South Atlantic Council's snapper/grouper fishery management plans from 1982 to 2004 to see virtually every one—save two, which involved closures—fail to meet the purpose and need of the plan, and virtually every stock in the complex was in a continuing downward spiral. That is 24 years of failed management, or, if you choose, 24 years of successful mismanagement.

Even efforts with the 1994 reauthorization failed. The degree of overfishing resultant from Magnuson-Stevens Act, which gave the Councils broad discretionary authority, and the subsequent abuse of that authority, became so pervasive that Congress, in a bipartisan effort, reauthorized the Magnuson-Stevens Fishery Management Council and Conservation Act—excuse me, Management and Conservation Act—in 2006, with requirements for Councils to end overfishing managed species, and put measures in place to ensure

it didn't reoccur. And further, put measures in place to recover those stocks so affected in a specific flexible time period, acting upon the advice of their science and statistical committees, where heretofore were generally ignored.

My final 6 years on the Council working under the requirements of the 2006 reauthorization were hard, but extremely rewarding. The recoveries to date resultant from science-based recovery plans, annual catch limits, and accountability measures are testimony to the wisdom crafted in that bipartisan Act in 2006, and has resulted in proven, sound management, going far in ensuring sustainability of our fisheries.

The fact is, it is not about the process. It is always about the answer. Assessed stocks that do not require regulatory action which are assessed using the same assessment processes across the board, using the same type of data, are never questioned as to their validity. The only stocks that are challenged, the assessments that are challenged, are the ones that require regulatory management.

The written proposals in the Magnuson-Stevens reauthorization discussion draft would revert the fishery management process to a period when the Councils failed to do their duty with regard to managing and conserving fisheries for long-term sustainability. The 2006 reauthorization is ending, and has ended overfishing. Catch limits are in place, overfishing does not reoccur. Recoveries are widespread and well underway nationwide, with significant positive results reflected in the NOAA Fisheries Annual Report to Congress.

Unfortunately, new species since have fallen into the overfished category, and need mandates in the Act to recover. Now is not the time, just 7 years into recovering our fisheries, to make changes to a wisely crafted, successful bipartisan bill, negating the sacrifice of fishers and hard work done by fishery management councils and NOAA fisheries to date, especially with the effect of returning fisheries management to a period when our fisheries and fishers suffered under a system of political influence and short-term economic decisionmaking.

I strongly urge Congress exercise its courage and political will and leave in place the proven and amply flexible requirements in the 2006 reauthorization, and allow the long-term economic benefits to the resource and fishermen accrue with recovered long-term sustainable fisheries. If there is a desire or a need——

The CHAIRMAN. Just finish your quick thought.

Mr. GEIGER. Thank you, Chairman. If there is a desire to improve fisheries management, provide direction and leadership to the Councils to transition from single-species management to an ecosystem-based management system. Thank you, sir.

[The prepared statement of Mr. Geiger follows:]

PREPARED STATEMENT OF GEORGE J. GEIGER, OWNER/OPERATOR, CHANCES ARE FISHING CHARTERS

Chairman Hastings and members of the committee, thank you for inviting me to this legislative hearing to discuss the discussion draft entitled "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act." I am George Geiger, a former Chairman and three-term member of the South Atlantic Fishery Management Council (SAFMC or Council). I am also a recreational fisherman and fishing guide with a Coast Guard 50 Ton Ocean Operator License. I operated a for-hire service for offshore and inshore trips until 1998, when I switched to

guiding near shore and inshore clients exclusively. In my personal time, I still enjoy fishing offshore for coastal pelagic and benthic species. I am also a retired U.S. Army Lieutenant Colonel, privileged to have been stationed in Daytona Beach, Florida from 1971–72. During those 2 years I experienced fishing opportunities and abundance heretofore undreamed of by me. I knew Florida was where my wife and I wished to retire, if I was so privileged as to earn the right to remain on active duty.

Upon my retirement and return to Florida in 1986, I was at first shocked, then increasingly disgusted, and eventually angered to see that the fisheries which lured me to my retirement Mecca had become virtual shadows of what I'd experienced in the 1970s. I was angered to the point of seeking out and joining the Florida Conservation Association (now the Coastal Conservation Association of Florida). This association lasted almost as long as my military career and culminated in my rise through leadership positions to the Chairmanship of CCA Florida in 2007.

During my 19 years with CCA Florida, I worked extensively on Florida inshore fishery issues and was appointed to multiple Federal advisory panels, including the Atlantic States Marine Fisheries Commission's bluefish advisory panel and the South Atlantic Council's red drum advisory panel. That work led to me to apply for an at-large seat on the South Atlantic Council, a position that I held for three terms, including serving as Chairman from 2006 to 2008.

Decades of experience with the South Atlantic Council and other organizations has taught me that type of flexibility being proposed in the Magnuson-Stevens Act (MSA) reauthorization discussion draft before this committee would lead us back to the failed policies of the past that led to severe overfishing problems in the South Atlantic and nationwide. My testimony will outline some of the key lessons learned from the South Atlantic, and illustrate why a bipartisan Congress reauthorized the Magnuson-Stevens Act in 1996 and 2006 with requirements to implement science-based management, including annual catch limits (ACLs) and accountability measures (AMs), to ensure the end of overfishing in U.S. waters. Implementation of those requirements coincided with my tenure as Council Chair. I'm very familiar with the arguments—and sometimes fervent passion—about our charge to end overfishing immediately. I'm also familiar with successes wrought by our Council's difficult but necessary decisions, such as the recent recovery of black sea bass after two failed rebuilding plans and more than 20 years of being subject to overfishing.

Overfishing, or catching fish more quickly than the population can reproduce, is ultimately a losing proposition for fish, but more importantly, for fishermen. Just like it is important to maintain fiscal discipline and make hard choices in order to balance the Federal budget, managers must make difficult, and sometimes unpopular, decisions to ensure that we don't "overspend" by allowing more fish to be caught than populations can reasonably sustain.

The consequences of decades of chronic overfishing became acutely clear with the sudden collapse of some of the Nation's most important fisheries in the early 1990s. In the Sustainable Fisheries Act of 1996, Congress took decisive action mandating that stocks that were overfished (at unhealthy population levels) must be rebuilt "as soon as possible" and within 10 years, unless the biology of the stock, or an international agreement, dictated otherwise. In some parts of the country, including New England and the Southeast regions, overfishing continued unabated and it had become clear that traditional management tools were not working. In 2006, Congress once again amended the MSA in the following fundamental ways: ensuring that scientific-based decisionmaking was prioritized over those based on short-term economics, requiring science-based annual catch limits and accountability measures for all managed stocks, with some exceptions, and removing the Councils' discretion to permit continued overfishing. These changes provided clear statutory mandates that empowered the Councils to take action to address overfishing and rebuild populations, within the boundaries of scientific advice.

At the time the MSA was reauthorized in 2006, the very same type of "flexible" management being proposed in the draft bill before the committee had resulted in 11 stocks officially subject to overfishing, and dozens more with unknown status. Anyone who has attended a South Atlantic Council meeting knows that ending and preventing overfishing in our region, like many others, has not been easy, but the changes that Congress authorized were absolutely necessary to force our Council into action to address overfishing, and to establish clear guidance on how to rebuild fish populations to healthy levels. The Council manages 76 species through 8 Fishery Management Plans (FMPs), and still suffers from the ramifications of decades of overfishing for a number of snapper and grouper species. The annual catch limit requirements have changed how the Councils operate and forced real accountability. In the past, we generally managed fishing only using indirect controls like "bag limits"—limits on the number of fish each angler could retain per day, size limits in-

tended to protect juvenile fish and older fish that are often the best breeders, and trip limits that capped how many fish commercial vessels could bring back to the dock at any one time. However, very few of the species that we manage were subject to a cap on the total amount of fish that could be taken out of the water each year.

With the passage of the 2006 MSA reauthorization, the Council embarked on a difficult, but necessary, path to implement science-based management and rebuild overfished stocks. We succeeded in meeting the statutory deadlines of 2010 and 2011 for implementing annual catch limits and accountability measures for all of the stocks requiring them. Today, we have catch limits and accountability measures in place across the country. This is a major, precedent-setting accomplishment that has made American fisheries some of the most sustainable and best managed in the world.

Today, I see a number of our South Atlantic fish stocks benefiting from implementation of catch limits and accountability measures. The number of stocks subject to overfishing has dropped nearly in half, from 11 to 6. One example is black sea bass, a popular recreational and commercial target and a mainstay for many charter operators in our region. It's recovery in 2013 offers a clear example of how the MSA is working to rebuild depleted stocks, increase fishing access and provide benefits to our coastal economies and communities. Before the MSA was reauthorized to close the loopholes that had allowed overfishing to continue, the South Atlantic Council approved not one, but two plans to rebuild this species. Both of these plans failed to do so, and nothing much changed because there was no accountability when quotas were exceeded. Because of the 2006 Magnuson requirements, a new rebuilding plan was initiated that included accountability measures to make sure the catch limits were not exceeded. Austerity worked and fishermen reaped the benefit: as of April 2013, 3 years earlier than expected, the population was rebuilt and the catch limit was more than doubled to 1.8 million pounds. The black sea bass example illustrates why we must not deviate from the MSA's course of recovery and prudent management practices, and suggests the wisdom of the clear, science-based requirements with strong accountability measures.

As this committee has heard numerous times before, recreational fishing in the Southeast continues to increase, and this further complicates the challenges of preventing and ending overfishing. According to NMFS data, the number of angler trips in the South Atlantic has increased from less than 15 million per year in the 1980s, to about 17 million a year in the 1990s, to more than 20 million per year since 2000. Cheap and widely available technological enhancements, such as GPS and fish finding technologies, have led to an increase in fishing pressure. This increasing fishing pressure makes it increasingly challenging to manage many of our vulnerable snapper and grouper species, some of which take 5–10 years to reach reproductive maturity and can live for 50 years or longer. Once overfished, some stocks can take decades to rebuild. Implementing annual catch limits provides necessary accountability to ensure our fisheries continue to recover and are able to support a growing number of recreational anglers over time.

In the South Atlantic, we are faced with managing many species for which limited scientific information is available. However, there are no species that we know nothing about. For every species we manage, some combination of data on catch and fish landed at the dock, biology, reproduction, habitat, and other life history characteristics are available. The annual catch limit mandate has spurred a flurry of scientific advances in assessing and setting catch limits for stocks for which we have more limited data than we may have for stocks that have undergone more conventional assessment. Today, there are multiple data-limited assessment methods and tools that are designed to utilize the available data to determine catch limits that prevent overfishing and allow higher long-term yields. For example, the Pacific region has pioneered the use of several of these methods, which are now regularly applied to over 90 stocks of previously unassessed, data-limited groundfish. The Southeast region has lagged behind these scientific advances in other regions due to a less efficient assessment process, a propensity to conduct repeated and duplicative assessments on a limited number of the most commercially valuable stocks, and a lack of familiarity with some of the latest scientific methods. Fortunately, this is now beginning to change thanks to the hard work of a number of fisheries scientists in the region. Just a few weeks ago, about 30 of the Nation's leading fisheries scientists, including many from the Southeast Fisheries Science Center, gathered in Miami to review new and emerging data-limited methods, to unveil a new data-limited assessment toolkit, and to discuss a specific roadmap for streamlining the assessment process to utilize the available data on all currently unassessed stocks. In a few short years since the annual catch limit requirement went into effect, we are seeing transformative changes in how we assess and manage many dozens of stocks of previously neglected stocks with important ecological and economic value.

While some of the stocks may not be as valuable commercially as the most popular, targeted stocks, there is no doubt that they are essential parts of the ecosystem and fisheries of the region. When I, like most all of my recreational counterparts, fish on the diverse fisheries of the Southeast and want to see more than a few under-sized red snapper and black sea bass. And the heavily targeted fish, like red snapper and black sea bass, are dependent on healthy populations of other fish to survive and thrive.

Driven by the ACL requirements, we have developed rational scientific ways to set catch limits when full stock assessments are not available. These approaches use the best science available to set reasonable catch limits until new science becomes available that makes it clear a population can support an increase in catch. With this science-based framework in place, new information can continually inform managers and we can make adjustments to maximize the benefits for all participants in the fishery. This is exactly what we are doing now in the South Atlantic, and it makes sense because it is a lot better to deal with a short period of reduced catch than suffer the years of painful recovery after a fish population has crashed.

Transitioning from the “flexibility” of the past to today’s science-based management system was a long and deliberate process, with extensive public participation and scientific contributions, that took years and cost American taxpayers tens of millions of dollars. I believe we have made major improvements that could achieve sustainability for our marine resources in the Southeast. Despite all of this progress, this committee is now considering draft legislation that would backpedal and return to the ineffective management practices that produced failure after failure in fisheries management. This legislation would re-instate the failed policies of the past, eliminate the science from science-based management, and constrain the ability of the public to evaluate or participate in fisheries management decisions. In particular, I would like to highlight several specific concerns with the draft legislation. The bill would:

- Remove any time limit for rebuilding overfished stocks;
- Allow Councils to continue overfishing for up to 7 years on vulnerable fish populations that are in most need of protection;
- Permit Councils to ignore science-based annual catch limits that prevent overfishing and protect long-term economic value in the fishery; and
- Remove the annual catch limit requirement for literally hundreds of “non-target” stocks, many of which are not specifically targeted but still valued by fishermen.

In addition to these concerns, the draft legislation also significantly weakens other important requirements to fully evaluate the impacts of management decisions and to provide the public access to important information. Specifically, the legislation would:

- Eliminate the authority of other important laws, such as the Endangered Species Act and the National Environmental Policy Act, to influence management decisions related to fisheries;
- Establish new rules for data confidentiality that would significantly restrict the ability of the public to access data related to Federal fisheries; and
- Create a new State management regime for Gulf of Mexico red snapper fishery without any of the accountability measures of the MSA.

Taken together, these amendments to the MSA would waste years of sacrifice by fishers and hard work that have put our fisheries on a course to sustainability. The conservation measures we have put in place in the South Atlantic and around the country are working, but require strong action supported by clear legal mandates to protect and rebuild fisheries. I ask members of this committee to carefully consider the history of fisheries management in this country, and to recognize that we are only just beginning to see the benefits of our science-based management system. Further, I strongly urge members to reject this short-sighted proposal and redraft a new bill that will move us ahead to address the challenges of the future rather than reinventing the problems of the past.

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The CHAIRMAN. Thank you very much.

I now recognize Mr. Jeff Deem, who is here to testify on behalf of the Recreational Fishing Alliance.

**STATEMENT OF JEFF DEEM, RECREATIONAL FISHING  
ALLIANCE**

Mr. DEEM. Good morning, Mr. Chairman and members of the committee. I am Jeff Deem. And, although I serve on the Mid-Atlantic Council representing Virginia, I am here today to present the position of Mr. Jim Donofrio, the Executive Director of the Recreational Fishing Alliance, who is, unfortunately, snowbound in New Jersey this morning.

I would like to thank Chairman Hastings, committee members and committee staff for holding a series of hearings over the past 2 years, and listening to the concerns, needs, and suggestions from the fishing community, fishery managers, business owners, academics, and private citizens. The RFA and many other stakeholders in the recreational fishing community are encouraged to see many of the deficiencies identified at previous hearings included in the discussion draft released to the public on December 19.

The spirit and intent of MSA was to conserve fish stocks for the benefit of the Nation in terms of food production, economic output, and recreational opportunities. With this in mind, we believe Magnuson is only producing positive results in the conservation half of this equation, and this failure of MSA to achieve both objectives is most painfully visible in recreational fisheries.

Unlike commercial fishing operations that become more efficient and profitable by spending less time on the water and achieving more fish when stocks rebuild, the exact opposite is true for the recreational sector. The recreational sector desires open access and opportunity to allow the most participants to engage in the fishery.

The rebuilding contradiction lies in the fact that, as stocks rebuild, regulations must become more restrictive as the fish become more available to anglers. To enforce annual catch limits in the recreational sector, as mandated under the current reauthorization regime, seasons become shorter, bag limits are reduced, and minimum size limits are increased. Not only does this scenario depress the socioeconomic capacity of the recreational fishing industry, but, from a conservation standpoint, the mortality associated with harvest is converted to mortality associated with dead discards, which serves no purpose. RFA believes language offered in the discussion draft attempts to address this issue and inequity.

Flexibility is a common theme throughout the draft. RFA strongly supports the use of limited, common-sense flexibility in rebuilding fish stocks, and with ending overfishing. As seen in the summer flounder fishery in the Mid-Atlantic region, which was subjected to limited flexibility through the 2007 reauthorization of MSA, limited flexibility can be used to accommodate the needs of the fishing industry, while causing no more conservation issues with the stock.

In fact, the summer flounder stock continued to rebuild during the period when limited flexibility was applied, contrary to the dire predictions of the flexibility critics. RFA believes that the successful use of limited flexibility in the summer flounder fishery demonstrates the value of providing flexibility and adaptive management options in all federally managed species when appropriate. The use of flexibility acknowledges a known fact that we

cannot count every single fish in the ocean, nor can we predict how every environmental factor—water temperatures, salinity, current strength, et cetera—will impact a stock’s recruitment or speed at which it can rebuild. Flexibility is simply using an adaptive fishery management approach to accommodate the limitations of an imperfect science.

RFA is encouraged to find that the discussion bill deals with the application of annual catch limits specifications—excuse me—specific to the recreational fishing community. No recreational data collection program currently exists that is designed specifically for quota monitoring, or that can monitor recreational performance relative to an annual catch limit. That said, annual catch limits either force managers to use excessive precaution when setting specifications for the recreational sector, thereby depriving the sector from fully maximizing their allocation of fish stocks. Our recreational fishermen are punished for simply following regulations approved and put in place by fisheries managers to receive specific annual catch limits.

In regards to the issue of catch shares, which is addressed in Section 7 of the discussion draft, RFA is adamantly opposed to the use of such measures in the recreational fishery. The primary purpose of catch shares is to reduce capacity in the fishing sector. This concept is a complete contradiction to the traditional open access approach needed to allow the recreational fishing sector to achieve its full socioeconomic potential.

Furthermore, the implementation of commercial catch share programs in a mixed-use fishery limits the ability to revise commercial and recreational allocations. This is an issue that must be raised during any referendum procedure. RFA suggests that the members of the committee consider developing options to allow some recreational input during any referendum process. Also, the committee should work to develop a mechanism or process to evaluate commercial-recreational allocation in fisheries where a commercial sector has or is considering a catch share program.

We appreciate this opportunity, and we are happy to answer any questions.

[The prepared statement of Mr. James A. Donofrio, Executive Director, Recreational Fishing Alliance follows:]

PREPARED STATEMENT OF MR. JAMES A. DONOFRIO, EXECUTIVE DIRECTOR,  
RECREATIONAL FISHING ALLIANCE

Mr. Chairman and members of the committee, I am Jim Donofrio, the Executive Director of the Recreational Fishing Alliance (RFA). The RFA is a national 501(c)(4) non-profit grassroots political action organization whose mission is to safeguard the rights of salt water anglers, protect marine, boat, and tackle industry jobs, and insure the long-term sustainability of our Nation’s marine fisheries. Recreational fishing produces significant economic activity in the United States. The U.S. Department of Commerce estimates the economic output of recreational saltwater fishing includes \$59 billion in direct sales impacts, \$27 billion in value added impacts and supports over 260,000 full-time jobs. The recreational fishing industry is “Main Street America” in every sense; it is largely composed of small, family-run, mom and pop businesses. It goes without saying that these businesses serve a critical role in the economic health of the Nation’s coastal economies.

I would like to thank Chairman Hastings, committee members and committee staff for holding a series of hearings over the past 2 years and listening to the concerns, needs and suggestions from the fishing community, fishery managers, business owners, academics and private citizens. The RFA and many other stakeholders in the recreational fishing community are encouraged to see many of the deficiencies

identified at previous hearings included in the discussion draft released to the public on December 19, 2013.

#### GENERAL COMMENTS

From a recreational fishing standpoint, it is difficult to justify a statement that claims that the Magnuson-Stevens Fishery Conservation and Management Act has been a success. As will be pointed out by other witnesses today, the conservation portion of the Act has largely worked. The number of stocks experiencing overfishing has been significantly reduced and many fisheries are either rebuilt or on a trajectory to rebuild in the near future. If conservation was the only measure of success, we could claim that Magnuson has been working but we can't. The spirit and intent of this fisheries law was to conserve fish stocks for the benefit of the Nation in terms of food production, economic output and recreational opportunities. With this in mind, Magnuson is only producing positive results in one half of this equation and this failure of MSA to achieve both objectives is most painfully visible in the recreational fisheries. Unlike the commercial fishing operations that become more efficient and profitable by spending less time on the water and catching more fish when stocks rebuild, the exact opposite is true for the recreational sector. The recreational sector desires open access and opportunity to allow the most participants to engage the fishery. The rebuilding contradiction lies in the fact that as stocks rebuild, regulations must become more restrictive as the fish become more available to anglers. To enforce annual catch limits in the recreational sector as mandated under the current 2007 reauthorization regime, seasons become shorter, bag limits are reduced and minimum size limits are increased. Not only does this scenario depress the socioeconomic capacity of the recreational fishing industry but from a conservation standpoint, the mortality associated with harvest is converted to mortality associated with dead discards which serves no purpose. RFA believes language offered in the discussion draft attempts to address this issue and inequity.

Flexibility is a common theme throughout the discussion draft. RFA strongly supports the use of limited, common sense flexibility in rebuilding fish stocks and with ending overfishing. As seen in the summer flounder fishery in the Mid-Atlantic region which was subjected to limited flexibility through the 2007 reauthorization of MSA, limited flexibility can be used to accommodate the needs of the fishing industry while causing no conservation issues with the stock. In fact, the summer flounder stock continued to rebuild during the period when limited flexibility was applied, contrary to the dire predictions of the flexibility critics. RFA believes the successful use of limited flexibility in the summer flounder fishery demonstrates the value of providing flexibility and adaptive management options in all federally managed species when appropriate. The use of flexibility acknowledges the known fact that we cannot count every single fish in the ocean nor can we predict how every environmental condition (water temperature, salinity, current strength, etc. . . ) will impact a stock's recruitment or speed at which it can rebuild. Flexibility is simply using an adaptive fishery management approach to accommodate the limitations of an imperfect science.

RFA is encouraged by language in the discussion draft that provides more power to the Regional Fishing Management Councils when setting rebuilding timeframes and other rebuilding requirements contained in fishery management plans. RFA believes the regional councils represent the best composition of managers, industry representatives, and fishing stakeholders to develop specifications in terms of quotas that balances the needs of fishermen and the needs of the fish stock as the Magnuson Act intended. However, fishery management plans and amendments prepared by the regional Councils are not promulgated until approved by the Secretary of Commerce. Moreover, a strong push by the environmental industry to seat their representatives on the regional fishery management councils has minimized the number of votes by those representatives with a vested interest in the long-term, sustainable management of our Nation's marine resources. RFA encourages members of the committee to participate in the regional Council appointment process beginning at the State level and conclude with the Secretary of Commerce to ensure that the composition of the regional Councils reflects the true and widely held views of the collective commercial and recreational fishing community of the region and not the ideological agenda of the environmental industry.

RFA is encouraged to find the discussion bill deals with application of annual catch limits. Specific to the recreational fishing community, no recreational data collection program currently exists that is designed specifically for quota monitoring, or that can monitor recreational performance relative to an annual catch limit. That said, annual catch limits either force managers to use excessive precaution when setting specifications for the recreational sector, thereby depriving the recreational

sector from fully maximizing their allocation of fish stocks, or recreational fishermen are punished for simply following regulations approved and put in place by fishery managers to achieve a specific annual catch limit.

RFA supports greater transparency in the process that sets annual catch limits and supports efforts that would allow a greater number of stakeholders in the fishery management process. Engaging the fishery management process can be costly and time prohibition for many fishermen. Councils and Commissions should not only broadcast meetings online but also allow for public comment via the web or teleconference. This would expand the voice from stakeholders and allow fishery managers to make management decisions based on a more comprehensive public comment.

In regards to the issue of catch shares which is addressed in Section 7 of the discussion draft, RFA is adamantly opposed to the use of such measures in the recreational fishery. The primary purpose of catch shares is to reduce capacity in a fishing sector. This concept is in complete contradiction to the traditional 'open access' approach needed to allow the recreational fishing sector to achieve its full socioeconomic potential. Furthermore, the implementation of a commercial catch share program in a mixed use fishery limits the ability to revise commercial/recreational allocations. This is an issue that must be raised during any referendum procedure. RFA suggests that the members of the committee consider developing options to allow some recreational input during any referendum process. Also, the committee should work to develop a mechanism or process to evaluate commercial/recreational allocation in fisheries where the commercial sector has or is considering a catch share program.

#### **Comments on H.R. 4742, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act**

RFA submits the following suggestions and recommendations for the committee's consideration.

#### **SECTION 3. FLEXIBILITY IN REBUILDING FISH STOCKS**

The urgency to rebuild fish stocks with complete disregard to the needs of the fishing industry is a flawed management approach that fails to achieve optimum yield from fisheries and reduces the overall social and economic benefits that can be achieved from a well managed fishery. Save the rebuilding timeframe extension language for summer flounder included in the 2007 reauthorization, RFA was convinced that mandates and lack of flexibility included in the 2007 reauthorization was going to move fishery management away from the fundamental objectives of the law when originally passed in 1976. What was most concerning to the RFA was that the pain caused by the 2007 reauthorization would not be short-term but would cause permanent loss of recreational fishing infrastructure. That said, RFA is encouraged to see that the discussion draft attempts to address the shortcomings the 2007 reauthorization by inserting limit flexibility when appropriate. RFA offers minor recommendations for this section.

RFA suggests that additional information be provided by the committee to aid NOAA when defining the term *highly dynamic fishery* as included in this section. RFA assumes that the intention of the term is to provide implementation flexibility for fisheries that are shorted-lived (<2 years) or display high variability in either recruitment or spawning stock biomass on a year-to-year basis. Such fisheries are typically influenced more by environmental conditions than direct fishing pressure. However, this cannot be determined from the existing language in the discussion draft and therefore RFA suggests some clarification for this new term.

RFA supports changing *possible* to *practicable* as included in Sec. 3(a)(2)(A). RFA has long supported this wording change and experience has proven that the time and rate to rebuild a stock should be a lower priority compared to minimizing socioeconomic impacts on the affected fishing communities. Most marine fish stocks have proven to be extremely resilient and will respond rapidly to even modest fishing restrictions. The fishing infrastructure that makes up a fishing community is not nearly as resilient and as mentioned above, loss of recreational fishing infrastructure tends to be permanent. Therefore, the focus should be preserving and protecting the fishing industries, not rebuilding a fish stock as quickly as possible. From an ecological standpoint, rebuilding a fish stock in a time period as short as possible may cause tropic imbalances where a stock dominates or impedes other stocks' rebuilding progress. Again, this wording change would promote more adaptive fishery management that is more responsive to the dynamic nature of the marine environment.

In Sec. 3(a)(2)(B)(ii), RFA notes that the time to rebuild a stock in the absence of fishing is a period of time that will vary from year to year for a particular stock based on stock size, average recruitment, environmental conditions, habitat limitations, etc. Also, the time to rebuild in the absence of fishing will also vary throughout the course of a rebuilding timeframe. It is unclear from the wording provided in this section if the time to rebuild a stock in the absence of fishing will be periodically reviewed or if it is a static value. RFA suggests including some clarification in this section on the process to revisit the extension period based on the time to rebuild without fishing.

RFA would suggest to committee members that they consider also providing limited flexibility to the provision that require ending overfishing immediately as contained in MSA § 304(e)(3)(A). RFA certainly agrees that there are conservation benefits in ending overfishing, yet, a review of post-Sustainable Fisheries Act fisheries management proves that significant rebuilding can occur even if overfishing is occurring in a fishery. To this point, Dr. Ray Hilborn testified before the House Resources Committee in September 2013 that an unwavering drive to end overfishing has resulting in the unnecessary loss of harvest, jobs, recreational opportunities and revenue. Moreover, this self-imposed obligation to end overfishing has not resulted in significantly more conservation benefits than the those benefits that would have been achieved by ending overfishing at a more reasonable pace.

RFA suggests that the members of the committee consider applying minimal flexibility to section 304(e)(3)(A) which would ultimately allow managers to put forward a wider range of options when ending overfishing. Possible wording for this flexibility to end overfishing could be the addition of the following, *or measures to end overfishing* following the word plan in Sec. 3(a)(1) of the discussion draft. An alternative fix could simply be striking the word *immediately* in MSA 302(a)(3)(A) which would continue to ensure that overfishing is ended but on a more reasonable schedule if needed.

RFA suggests adding section (VI) to Sec. 3(a)(2)(B)(ii) to read as follows: *The Council(s) determines that new information supports a revision or modification to the rebuilding plan.* RFA believes the addition of this wording would allow the Councils to adjust rebuilding plans and rebuilding as new information becomes available or as stock assessments are released.

RFA suggests the following wording be added to the end of Sec. 3(a)(2)(C)(B), *all other non-fishing related factors that influence a rate at which a stock can rebuild.* RFA agrees with the discussion draft that predator/prey relationships should be taken into consideration when setting and evaluating rebuilding plans. However, RFA believes that this consideration should not be limited to predator/prey relationships and that all non-fishing related environmental conditions should be factored when estimating the rate at which a stock is able to rebuild. This type of approach is the very basis for ecosystem-based management which is the preferred direction that the regional fishery management councils and the recreational fishing community have indicated they that wish to move toward. Ecosystem base management can be very data demanding and expensive, yet, simply looking at a fishery and how it interacts with its marine environment and other species as this section suggests, is a very practical approach in light of the resources currently available to the regional Councils and Commissions.

RFA suggests amending Sec. 3(a)(1)(E) by adding the following wording at the end of the subparagraph; *and socioeconomic impacts resulting of rebuilding efforts and progress.* Consistent with the original intent of the Magnuson-Stevens Fishery Conservation and Management Act, RFA believes a primary purpose for rebuilding fish stocks is for deriving social and economic benefits from the fisheries. Therefore, it is necessary to determine if this objective is being achieved as fish stocks rebuild. Gauging success by simply measuring the absolute amount of fish does not capture the health of the fishing communities that are dependent on these fish stocks.

RFA supports Sec 3.(a)(3)(8) which approves the use of alternative rebuilding strategies such as harvest control rules and fishing mortality targets. RFA believes that the use of these strategies would allow the regional fishery management Councils to manage the recreational sector through traditional management regulations such as season, size limits and bag limits. Moreover, monitoring recreational mortality in the context of fishing mortality is a vast improvement over monitoring recreational performance relative to a rigid annual catch limit set in pounds of fish. Such an approach is neither appropriate for the recreational sector nor practical due to the known design limitations of the existing recreational data collection programs.

In Sec. 3(b), RFA is unclear why MSA should be amended to increase the time for which emergency regulations and interim measures can be put in place. RFA suggests that rationale for this amendment be provided by the authors of the discus-

sion draft. In addition, RFA suggests that the committee members consider expanding the authority of the Secretary under MSA 305(c)(3)(B) to implement emergency regulations and interim measures in order to allow a fishery to achieve optimum yield. RFA makes this suggestion to expedite immediate access to a fishery if information becomes available supporting an increase in quota or easing of regulations.

#### **SECTION 4. MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIREMENT**

In Sec. 4(a), RFA suggest changing *may* to *shall* in subparagraph (m)(1). The stated purpose of marine fisheries management in the United States is to manage fisheries for the benefit of the Nation. Those benefits are provided to the citizens of the United States by way of food and recreational opportunities through fishing communities. Regional fishery management Councils must take into consideration the economic needs of the fishing communities when setting annual catch limits to ensure that this necessary infrastructure is sufficient enough to parlay the benefits of rebuilding fish stocks to the American people.

#### **SECTION 5. DISTINGUISHING BETWEEN OVERFISHED AND DEPLETED**

RFA supports revisions to the Magnuson Act that would distinguish between overfished and depleted fish stocks. In most stock assessments, natural mortality is a theoretical fixed parameter because empirical data to determine a species-specific natural mortality rate is not available. When natural mortality parameters are static, fluctuations in natural mortality are reflected in fishing mortality rates which can then trigger overfishing or overfished determinations. Fishing is not always the cause for a stock to depart from a level associated with maximum sustainable yield and therefore, the term *depleted* may be a more accurate term in some fisheries.

#### **SECTION 6. TRANSPARENCY AND PUBLIC PROCESS FOR SCIENTIFIC AND MANAGEMENT ACTIONS**

RFA supports the intent of Section 6 in the discussion draft. Scientific and Statistical Committee meetings are proving to be extremely important in the fisheries management process as they are the one opportunity where the public can comment on an annual catch limits prior to them being released by the committee. Once annual catch limit recommendations are released, having the Science and Statistical Committees revisit these recommendations can be difficult if not impossible. Despite their importance, it can be difficult and expensive for the general public to attend Scientific and Statistical Committee meetings. Moreover, participation in such meetings should not be limited to those who are able to attend in person but any stakeholder that has an interest. Inexpensive options exist that can allow remote participation and thereby expanding the opportunities for members of the fishing community to contribute to these important meetings.

RFA also supports the inclusion of wording in Sec. 6 that the preparation of any fishery management plan, amendment or addendum consistent with the Magnuson-Stevens Fishery Conservation and Management Act satisfies and complies with the National Environmental Policy Act of 1969.

#### **SECTION 7. LIMITATION OF FUTURE CATCH SHARE PROGRAMS**

RFA does not support the use of catch shares in the recreational fisheries. We believe that catch shares are a management tool that has absolutely no place in the management of recreational fisheries. Specific to Sec. 7, the recreational fishing community must be afforded an equal opportunity to weigh in on approval or implementation of a catch share program in any commercial fishery that also has a recreational component to that fishery. RFA believes this is necessary to ensure that the allocation provided to the commercial catch share program is representative and fair to the recreational sector. RFA asks that the members of the committee consider this point and put forward language for this section that would ensure that commercial/recreational allocations are evaluated prior to the implementation of a commercial catch share program in a mixed fishery and periodically there after upon implementation.

#### **SECTION 8. DATA COLLECTION AND DATA CONFIDENTIALITY**

RFA supports amendments to MSA offered in Sec. 8. However, RFA suggests to committee members that equal consideration in terms of use of electronic reporting and monitoring be afforded to the recreational sector. Specifically, provide greater opportunities for private anglers to submit voluntary catch data and expand electronic vessel trip reporting for for-hire and head boats. The recreational fishing community has long been critical of NOAA for not using vessel trip reports from federally permitted charter and head boats. Perhaps if those trip reports were in an electronic format then NOAA would be more willing to use this valuable information.

## SECTION 10. GULF OF MEXICO COOPERATIVE RESEARCH AND RED SNAPPER MANAGEMENT

The RFA supports the development of cooperative research programs and making opportunities available to the recreational sector to participate in such programs. The entire recreational fishing community is in collective agreement that securing better data for both stock assessments and quota monitoring is a top priority. A lack of data almost always results in artificially lower quotas and unnecessarily restrictive regulations that hurt participation and overall economic output from the sector. Federal funding to improve fisheries science has been drastically reduced over the past few years and RFA is encouraged by the discussion draft's wording that would restore the proper use of Saltonstall-Kennedy funds by making cooperative research a priority for the Act. RFA also encourages committee members to consider prioritizing money generated through the Sportfish Restoration Act for cooperative research.

Consistent with the theme of Section 10, RFA suggests that members of the committee consider the initiation of a review of recreational data collection programs by the National Research Council. Congress and the fishing industry called for such a review in 2005. In response to this pressure, NOAA requested NRC conduct a review. The review included public hearings and public comment periods in addition to an in-depth analysis of programs in place at the time to collection information on recreational catch, harvest, effort and participation. The NRC released their findings in a 2006 report titled *Review of Recreational Fishing Survey Method*. The report included numerous recommendations developed by non-bias experts in statistical design to improve the accuracy, precision, timeliness and confidence in the Marine Recreational Fishing Statistics Survey (MRFSS), the Large Pelagic Survey (LPS), the Recreational Billfish Survey, and other federally administered data collection programs. During the MSA reauthorization process in 2006 and early 2007, Section 401(g) was included in the final bill that endeavored to improve recreational data collection by adopting many of these recommendations put forward by the NRC. NOAA's attempt to implement this section is manifest in the renamed MRFSS known as Marine Recreational Information Program (MRIP). During previous committee hearings, NOAA personnel have indicated that they have complied with section 401(g).

This January marks the seventh year since then President George W. Bush signed the Magnuson Reauthorization Act of 2007 into law. Many in the recreational fishing community have not been satisfied with the progress made by NOAA fisheries to make these improvements. Dr. F. J. Breidt who served on the NRC panel for the 2006 review, indicated in his testimony before this committee on May of 2013 that he felt the Marine Recreational Information Program (MRIP) has "directly addressed the concerns noted in the 2006 NRC report and is now a complete statistical system with a sound scientific basis." Based on this statement, RFA believes it is appropriate for the NRC to again conduct a formal review of NOAA's recreational data collection programs.

Acknowledging the budgetary constraints at the Federal and State level, RFA encourages members of the committee to authorize the use of funds from the Sportfish Restoration Fund. Funds in the Sportfish Restoration Fund are derived from a federally imposed tax on all fishing tackle, electronic fishing equipment, electric outboard motors, import duties and marine fuel which on average amounts to \$650 million per year. Of these funds, Sportfish Restoration Fund disburses approximately \$383 million to State agencies to aid with the administration of their fish, wildlife, game and habitat restoration and protection programs which RFA believes is a valuable use of this money.

Of the remaining funds, approximately \$13 million is provided for national outreach and communication programs. These programs are primarily marketing campaigns administered by non-governmental organizations given access to the funds under noncompetitive agreements. These organizations directly benefit from marketing the sport of fishing and boating and that also glean administrative fees from of these programs. The results of these outreach and communication programs have been minimal and \$13 million set aside for these efforts have become a private advertising account for a few industry groups. RFA believes that a far better use of this money would be to fund a follow-up NRC review of recreational data collection.

The 2006 NRC review cost approximately \$430,000. RFA contends that this number is insignificant considering the fact that the recreational fishing industry generates several hundred million dollars in Federal taxes every year. However, RFA also appreciates Congress's commitment to reducing government spending which is why it suggests the committee look to the Sportfish Restoration Fund, a fishermen funded account. Not only would the money for a follow-up NRC review stand to benefit all saltwater anglers that fund the Sportfish Restoration Fund through their

fishing related purchases, but such a review ultimately stands to improve the management and conservation of the Nation's saltwater fisheries. RFA believes a follow-up NRC review is the only way that fishermen will ever gain any confidence in the new MRIP program.

For the committee's consideration, RFA offers the following new language which would create an additional section in the discussion draft and read as follows:

**SECTION 14. EVALUATION OF RECREATIONAL DATA COLLECTION**

- a. Upon enactment of this Act, the Secretary of Commerce will charge the National Research Council to undertake a review of all recreational data collection programs to evaluate their accuracy, precision, and timeliness and to offer recommendations for improvements.
- b. The National Research Council would make available their findings to Congress within 365 days.
- c. Funding for recreational data collection evaluation conducted by the National Research Council under subparagraph (a) will be made available from the Sportfish Restoration Fund (16 U.S.C. § 777-7771).

CLOSING REMARKS

In closing, I would like to again thank Chairman Hastings and committee members for the opportunity to testify today on this important issue. RFA believes the discussion draft is a good start and stands to spur improvements to the current fishery management process. The current reauthorization process being initiated for Magnuson represents a significant opportunity to strike a balance between conservation and the needs of the fishing communities in U.S. fisheries. RFA appreciates the commitment taken by Chairman Hastings, committee members and staff in reaching out to the fishing stakeholders and putting forward pragmatic solutions to correct and improve U.S. fisheries management. RFA looks forward to working with Chairman Hastings and committee members in the coming months to refine the discussion draft.

The CHAIRMAN. Thank you very much, Mr. Deem, for your testimony.

And last, but certainly not least, Ms. Ellen Pikitch. Did I say it correctly?

Dr. PIKITCH. Yes, sir.

The CHAIRMAN. I did say it correctly, OK. Professor and Executive Director of the Institute for Ocean Conservation Science from Stony Brook, you are recognized for 5 minutes.

**STATEMENT OF ELLEN K. PIKITCH, PH.D., PROFESSOR AND EXECUTIVE DIRECTOR, INSTITUTE FOR OCEAN CONSERVATION SCIENCE, SCHOOL OF MARINE AND ATMOSPHERIC SCIENCES, STONY BROOK UNIVERSITY**

Dr. PIKITCH. Thank you, Chairman Hastings, Ranking Member DeFazio, and members of the committee. I appreciate the opportunity to comment on the discussion draft to amend the Magnuson-Stevens Fishery Conservation and Management Act.

Throughout my 30-plus-year career beginning in Oregon, conducting research of commercial fishing vessels, I have been deeply involved in fishery science and management. While serving on the scientific and statistical committees of the Pacific and New England Councils during the 1980s and 1990s, I witnessed first-hand how flexibility was used to avoid addressing difficult problems.

Scientific advice was often ignored. Political pressure was applied to delay action desperately needed to prevent overfishing and rebuild fish stocks. Over-fishing continued, even on extremely de-

pleted stocks. Coastal communities faced economic hardships, due to collapsing fish populations. Congress took notice. In 1996, and then in 2006, the law was amended, strengthening the overfishing provisions and ensuring the foundational importance of science.

Consequently, we have turned the corner. Many fish populations have been rebuilt. The number experiencing overfishing has declined. And science-based catch limits are now in place for all federally managed fish.

In addition, fisheries profitability has increased. And jobs, even in the recreational sector, have been created. Although we have more work to do, the state of our fisheries is improving. It is certainly stronger now than at any time during my professional career.

I am very concerned, however, with the Chairman's discussion draft, as it rolls back key provisions of the Magnuson-Stevens Act that have boosted the health of our fisheries. Among its shortcomings, the draft proposal would weaken the Act's rebuilding requirements, reverse recent gains in science-based fishery management, diminish the ability of managers to prevent overfishing of forage fish, and put basic fishery data, including information collected using taxpayer support, off-limits to the general public. Rather than revert to using policies and practices that were not successful in the past, we should build on the success of the Magnuson-Stevens Act.

No fish is an island. We must shift from managing fish as separate, individual species, and recognize that they are part of an interacting web of life, an ecosystem. We need to stop using scientific uncertainty as an excuse for inaction. Instead, we must see it as a sign that care is needed to sustainably manage the ecosystem's interconnected parts. We must confront new challenges, such as the impacts of a changing climate on fish populations.

I recommend that, during this reauthorization of the Act, that Congress firmly establish ecosystem-based fishery management approaches in the law. Specifically, this would include measures to sharpen existing provisions to protect habitat, to enhance provisions to reduce by-catch, to require Councils to prepare and implement fishery ecosystem plans, and to ensure that forage fish are managed to account for the important role they hold in the ocean.

As Chair of the Lenfest Forage Fish Task Force, I would like to discuss why small fish matter so much. These fish are small, short-lived, but they represent about a third of the world's wild marine fish catch. Yet only 10 percent are consumed directly by people. In the ocean, forage fish serve as a primary food source for larger fish, such as cod, salmon, and tuna, as well as other marine life. Overfishing of forage fish jeopardizes not only the target species, but also the health of the entire food web.

The task force I chaired estimated that the supportive value of forage fish as food for commercially important fishes is more than twice their value, as direct targets of harvesting. In other words, forage fish are worth twice as much when left in the water as they are taken out in a net. Forage fish contribute to many other economically important coastal activities, so there are even more reasons to expect that little fish will equal big bucks.

So, to summarize, our Nation has taken steps to implement science-based fishery management, and there is considerable progress to report. Let's not undo the success we have worked so hard to obtain. We must move forward with the Magnuson Act that will help us confront the challenges ahead. Thank you again.

[The prepared statement of Dr. Pikitch follows:]

PREPARED STATEMENT OF ELLEN K. PIKITCH, PH.D., PROFESSOR AND EXECUTIVE DIRECTOR, INSTITUTE FOR OCEAN CONSERVATION SCIENCE, SCHOOL OF MARINE AND ATMOSPHERIC SCIENCES, STONY BROOK UNIVERSITY

Good morning Chairman Hastings, Ranking Member DeFazio, and members of the committee. Thank you for inviting me to appear before you today. I appreciate the opportunity to offer my perspectives on the discussion draft circulated by Chairman Hastings to amend the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and my recommendations for the next reauthorization of this critical law.

I am a Professor and the Founder and Executive Director of the Institute for Ocean Conservation Science at Stony Brook University.<sup>1</sup> The Institute conducts world-class scientific research in order to increase our knowledge about critical threats to the ocean and its inhabitants, provide the foundation for smarter ocean policy, and establish new frameworks for improved ocean conservation. A primary focus of our work is to advance ecosystem-based fishery management, or put another way, to support the progression of fishery science and management from its current species-by-species emphasis to a more comprehensive and realistic approach. Importantly, an ecosystem-based methodology accounts for the interactions among marine species, their habitat requirements and environment, and the people who depend upon them. There is a growing consensus among scientists that this approach to management is the necessary next step to ensure sustainable stewardship of our ocean resources.

As such, I am very concerned about the Chairman's discussion draft, as it roll backs many of the important provisions of the Magnuson-Stevens Act that have led to recent improvements in the health of the Nation's fisheries. Rather than relapse to using policies and practices that were not successful when widely applied in the past, we should use this opportunity to move forward, adopt ecosystem-based fisheries management, and better equip our fishery managers to address future challenges facing our oceans.

Throughout my professional career, I have been deeply involved in fishery conservation and fisheries management science. As an Assistant Professor at Oregon State University in the early 1980s, I conducted cooperative research with the commercial fishing industry focusing on Pacific coast groundfish assessments and complex management issues (such as bycatch and discards) arising from the multi-species nature of the trawl fishery. Much of this work took place aboard commercial fishing vessels operating under commercial fishing conditions. Later, while on the faculty of the University of Washington, I directed the Fisheries Research Institute and expanded my research program into Alaskan waters. I served on the Pacific Regional Fishery Management Council's Scientific and Statistical Committee between 1989 and 1994, and chaired its Groundfish Subcommittee in 1993 and 1994. I also served as chairman of the New England Regional Fishery Management Council's Scientific and Statistical Committee from 1998 to 2000. I have been a member of several advisory panels convened by the National Academy of Sciences to research sustainable fishery management issues. I have conducted field research, in the United States and overseas, on many iconic fish species, including sturgeon, sharks, and several species of groundfish.

In the late 1980s and 1990s, I witnessed firsthand how regional fishery management councils used flexibility to avoid addressing the difficult problems affecting many of our Nation's important fisheries. Scientific advice was often ignored. Political pressure was applied to delay action desperately needed to prevent overfishing and rebuild depleted fish populations. So, overfishing continued, even on stocks experiencing substantial population declines. In many areas along our Nation's coastline, fishing-dependent communities faced economic hardships due to collapsing fish populations.

<sup>1</sup>The views expressed in this testimony are mine. They do not necessarily reflect the views of Stony Brook University.

Congress took notice. In 1996 and 2006, a bipartisan group of Senators and Representatives, led by the late U.S. Senator Ted Stevens, amended the law to establish clearer provisions to prevent overfishing, rebuild fish populations, and ensure scientific advice provides a solid foundation for our Nation's fishery management system. In 1996, Congress added a requirement that overfished fish stocks be rebuilt in as short as time as possible but not to exceed 10 years, with certain limited exceptions. A decade later, Congress amended the law to require science-based catch limits and accountability measures in order to restore and maintain fish populations.

Due to the hard work of managers, fishermen, scientists, conservationists, and others, we are turning the corner in fishery management. Although we certainly have more work to do, the state of our fisheries is improving—it is certainly stronger now than at any time during my professional career.

In December of 2013, the National Marine Fisheries Service reported that 34 fish stocks have been rebuilt since 2000.<sup>2</sup> These include Pacific Coast lingcod, Georges Bank haddock, Southern Atlantic black sea bass, and Gulf of Mexico red grouper. In addition, the number of stocks experiencing overfishing has declined from 72 in 2000 to 28 by the end of 2013.<sup>3</sup> Science-based catch limits, designed to prevent overfishing, are in place for all federally managed fish populations.

According to National Marine Fisheries Service testimony submitted to this committee last September, “U.S. commercial fishermen landed 9.9 billion pounds of seafood valued at \$5.3 billion in 2011, which reflects an increase of 1.6 billion pounds (20 percent) and \$829 million (18 percent) over 2010 figures. 2011 was the highest landing volume since 1997 and highest value in nominal terms ever recorded.” The agency went on to report that jobs generated by recreational fishing represented a 40 percent increase between 2010 and 2011.<sup>4</sup>

I proudly share these facts, along with stories detailing how much we have accomplished, with my students. The improvements we are making are not only benefiting fish populations and ocean ecosystems but also making important economic contributions through jobs and more profitable fisheries. The United States has one of the best management systems in the world thanks to our commitment to follow scientific recommendations, prevent overfishing, and rebuild fish populations. As we consider modifications to the Magnuson-Stevens Act, it is imperative that we maintain and build upon this recent progress.

#### *Concerns With the Discussion Draft*

Unfortunately, the draft proposal circulated in December would jeopardize the hard-earned progress the United States has made in recent years. It would undercut the very requirements of the Magnuson-Stevens Act that are largely responsible for the recent turn-around. It fully embraces and re-institutes many 20th century management policies that, in the 1980s and 1990s, failed to promote sustainable fish populations and foster long-term productivity for fisheries and coastal communities. It is not the forward-looking vision we need to ensure our fishery management system can respond to and overcome challenges of changing oceans in the 21st century. Among its shortcomings, the draft proposal would:

- *Weaken the Act's rebuilding requirements.* The proposal would allow overfishing to continue by delaying the onset of rebuilding measures in a rebuilding plan for 5, and perhaps up to 7 years, once a population has been declared to be below healthy levels. There are both ecological and economic arguments to begin rebuilding overfished populations immediately. Allowing depleted fish populations to further decline may reduce survival of early life stages, decrease genetic diversity, and cause shifts in ecosystem structure and function. Extending overfishing will, at worst, increase the risk of severe collapse for some fish populations, and, at best, greatly delay their recovery—jeopardizing both the resiliency of the fish population and the long-term economic viability of businesses

<sup>2</sup>NOAA Fisheries. Status of U.S. Fisheries. 2013 Quarter 4 Update through Dec. 31, 2013. Available at <http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm>.

<sup>3</sup>NOAA Fisheries. Status of U.S. Fisheries. Data from 2000 and 2013 updates. Available online at <http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm>.

<sup>4</sup>Rauch, Samuel D. 2013. Written Testimony by Samuel D. Rauch III, Acting Assistant Administrator for the National Marine Fisheries Service. For a Hearing on Magnuson-Stevens Fishery Conservation and Management Act before the Committee on Natural Resources. September 11, 2013.

and communities that rely upon them.<sup>5 6</sup> For species like forage fish, continued overfishing or extended periods of depletion jeopardizes not only the target species, but also the health of the entire food web of marine species.

In addition, the discussion draft would eliminate the target to rebuild an overfished stock within 10 years if biologically possible and add a number of new, broad exceptions for setting any timeline. My research and that of others concludes that it is biologically possible for the majority of fish species to recover in 10 years, even if they were significantly depleted at the start of rebuilding.<sup>7 8</sup> Moreover, rapid rebuilding confers long-term economic benefits because the sooner a population approaches a sustainable level, the sooner catches (and hence revenues generated by the fishery) can increase.<sup>9</sup> In a comparison of rebuilding strategies, my colleagues and I concluded that the best strategy to ensure healthy populations and economic returns was to employ both a 10-year rebuilding target as well as management strategies called harvest control rules that set varying levels of catch in accordance with the abundance (or size) of the fish population.<sup>10</sup>

In addition, the discussion draft includes several broad exceptions that would give regional fishery management councils the option not to set any rebuilding target date. If these exceptions were to be used, I would be concerned that rebuilding a stock to a sustainable level could be delayed indefinitely. This would risk the long-term economic benefits associated with a rebuilt, sustainable fishery.

Current provisions of the Act already permit sufficient flexibility including the ability to deviate from the 10-year timeframe in appropriate circumstances, such as if biological conditions of the stock would require a longer period. In fact, the majority of stocks currently undergoing rebuilding have plans that exceed 10 years.<sup>11</sup> The Natural Resources Defense Council (NRDC) analyzed 44 fish stocks that had been put in rebuilding plans since 1996 and had sufficient information to evaluate progress. In its 2013 report, NRDC found that the average rebuilding time periods for these plans is close to 20 years.<sup>12</sup>

- *Reverse recent gains in better incorporating science in our fishery management system.* The proposal would make significant changes to existing requirements for science-based fishery management. For example, it would allow regional fishery management councils to dismiss recommendations of the Council's scientific and statistical committees in setting annual catch limits by providing them with opportunities to elevate short-term economic issues, jeopardizing the sustainability of fish populations and sacrificing long-term economic benefits.
- *Diminish the ability of managers to prevent overfishing of forage fish.* The proposal includes provisions that would exempt forage fish species from the Act's requirements to establish science-based catch limits that prevent overfishing. As a food source of larger fish and other marine wildlife, forage fish play a critical role in marine ecosystems. Because of this, they contribute to many economically important coastal activities, including commercial fisheries, recreational fishing, whale watching, and bird viewing. It would be a mistake to sideline consideration of this crucial link in the ocean food web by excluding forage fish from requirements to set science-based limits that would help manage their populations.
- *Put basic fishery data, including information collected using taxpayer support, off limits to the general public.* The proposal would reduce public access to data collected by on-board observers and through cooperative research projects involving fishermen and scientists. University and independent scientists rely on

<sup>5</sup> Pikitch, Ellen K. 2003. The Scientific Case for Precautionary Management: Current Fishery Problems Traced to Improper Use of Science. In: Managing Marine Fisheries in the United States. Proceedings of the Pew Oceans Commission Workshop on Marine Fishery Management.

<sup>6</sup> Babcock, Elizabeth A., McAllister, Murdoch K. and Pikitch, Ellen K. 2007. Comparison of Harvest Control Policies for Rebuilding Overfished Populations within a Fixed Rebuilding Time Frame. *North American Journal of Fisheries Management*. 27: 1326-1342.

<sup>7</sup> Safina, Carl, et al. 2005. U.S. Ocean Fish Recovery: Staying the Course. *Science*. 309: 707-708. 29 July 2005.

<sup>8</sup> Babcock, McAlister and Pikitch, 2007.

<sup>9</sup> Babcock, McAlister and Pikitch, 2007.

<sup>10</sup> Babcock, McAlister and Pikitch, 2007.

<sup>11</sup> NOAA Fisheries. Status of U.S. Fisheries. Available online at <http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm>.

<sup>12</sup> Natural Resources Defense Council. Bringing Back the Fish: An Evaluation of U.S. Fisheries Rebuilding Under the Magnuson-Stevens Fishery Conservation and Management Act. 2013. Appendix A.

this data, typically shared in ways to maintain privacy and confidential information, to conduct research that helps improve knowledge of fish populations and efficacy of management measures. Keeping vast amounts of this information out of the public domain will not only be a set-back to fishery science but also undermines our Nation's commitment to open government, particularly for managing public resources such as fish.

I am also concerned about provisions in the discussion draft that would weaken core environmental laws, including the National Environmental Policy Act, the Endangered Species Act, the National Marine Sanctuaries Act, and the Antiquities Act, as they would apply to fishery management decisions.

*Recommendations for Magnuson-Stevens Reauthorization*

Instead of these regressive changes, Congress, the administration, and those of us involved in fishery management and science should be considering and implementing ways to build on the success of the Magnuson-Stevens Act. We have unfinished business, such as how to minimize bycatch, protect and restore fish habitat, and invest in science.

No fish is an island. A species may be in good shape from a single species perspective—but may be overfished from an ecosystem perspective.

We must shift our focus from managing fish as separate, individual species with a primary goal of maintaining populations of key target species, and move toward recognizing they are part of an interacting web of marine life, an ecosystem. We need to stop using scientific uncertainty as an excuse for inaction, and instead see it as an indicator that precautionary care is needed to sustainably manage the inter-connecting parts of ecosystem. In addition, we must confront new challenges, such as the impacts of a changing climate on fish populations.

The concept of ecosystem-based fisheries management is not new. In fact, in 1996 Congress called for an expert panel to offer recommendations “to expand the application of ecosystem principles in fishery conservation and management activities.”<sup>13</sup> In its subsequently released report to Congress the Ecosystem Principles Advisory Panel set forth core recommendations for incorporating ecosystem principles in fishery management, including: that each regional fishery management council be required to develop a fishery ecosystem plan for the ecosystem(s) under its jurisdiction; that the Secretary of Commerce should establish guidelines for developing fishery ecosystem plans, and; that management measures consider predator-prey interactions, consider the impact of bycatch to the ecosystem, and minimize the impacts of fishing operations on essential fish habitat.<sup>14</sup>

In 2004, several colleagues and I further analyzed and outlined this approach.<sup>15</sup> We identified several key components of Ecosystem-based Fishery Management including:

- Consideration of the overall state of the ecosystem, habitat, protected species, and non-target species when designing precautionary fishery management plans;
- Identification, restoration and conservation of essential habitat to ensure spawning and other crucial life stages of species are protected;
- Reduction of bycatch, or the killing of non-target species or undersized individuals;
- Accounting for direct and indirect impacts on endangered and protected species, including ecological processes essential for their recovery;
- Requirements that new and developing fisheries first prove that fishing pressure will have minimal direct or indirect effects on ecosystem function; and
- Management of forage fish with special consideration that accounts for their role as prey for marine predators.

Subsequent, peer-reviewed scientific papers have been published, exhibiting a strong and growing scientific consensus supporting a more integrated ecosystem-based approach to fishery management.

In addition, in 2003 the Pew Oceans Commission recommended that the principal objective of our Nation's fishery policy should be “to protect the long-term health and viability of fisheries by protecting, maintaining, and restoring the health, integ-

<sup>13</sup> Magnuson-Stevens Fishery Conservation and Management Act, Section 406(a)–(e), 16 U.S.C. 1882.

<sup>14</sup> Ecosystem-based Fishery Management, A Report to Congress by the Ecosystem Principles Advisory Panel as mandated by the Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act 1996, 1998, pp. 3–5.

<sup>15</sup> Pikitch, E. K. et al. 2004. Ecosystem-Based Fishery Management. *Science*. 305: 346–347. 16 July 2004.

riety, productive capacity and resilience of the marine ecosystems upon which they depend.”<sup>16</sup> And, in 2004, the U.S. Commission on Ocean Policy, established by the U.S. Congress and appointed by President George W. Bush, called for managers to begin moving toward a more ecosystem-based fishery management approach.<sup>17</sup>

Ecosystem-based fishery management will be our best tool for ensuring productive and economically viable fisheries in the face of stressors like climate change, ocean acidification, pollution, habitat destruction, and the long-term consequences of fishing pressure. Using ecosystem-based fishery management, we can sustain the long-term socioeconomic benefits of fisheries without compromising the ecosystem. In fact—we are likely to be able to enhance socioeconomic benefits of fisheries as well.

*I recommend that during this reauthorization of the Magnuson-Stevens Act, Congress firmly establish ecosystem-based fishery management approaches in the law.* More specifically, this would include measures to:

- sharpen existing provisions in the Act to protect habitat needed for fish, including habitat adversely affected by non-fishing activities;
- enhance existing provisions to reduce bycatch;
- ensure that forage fish are managed to account for the important role they hold in our ocean; and
- require Councils to prepare and implement fishery ecosystems plans.

Each of these elements is important, but due to my recent experience chairing an expert panel of 13 marine and fisheries scientists that examined the unique role of forage fish in sustaining ocean food webs, I would like to briefly discuss why these small fish matter so much to marine ecosystems and coastal economies. This project, conducted as the Lenfest Forage Fish Task Force, undertook a comprehensive worldwide analysis of the science and management of forage fish populations. Our findings were released in a report<sup>18</sup> and a peer-reviewed paper in 2012.<sup>19</sup>

Forage fish are small to medium-sized fish, such as sardines, anchovies, and menhaden, that provide a primary food source for marine mammals, sea birds, and larger commercially and recreationally important fish, such as cod, salmon, and tuna. Forage fish play a key function in transferring energy from the plankton they feed on to the larger animals that prey on them and thus are essential to ensuring productive, resilient ocean ecosystems. Scientists have estimated that the world’s marine mammals consume up to 20 million tons of forage fish annually.<sup>20</sup> A 2011 study examining 14 species of seabirds, including puffins, penguins, and terns, in seven ecosystems around the world concluded that when the supply of forage fish drops to less than one-third its maximum historic level, seabird breeding success is greatly reduced which threatens the entire ecosystem.<sup>21</sup> Because many marine ecosystems have predators highly dependent on forage fish, it is biologically imperative that we develop improved management strategies for these small but significant species.

Forage fish mature early, live short lives, and produce substantial numbers of offspring. But, because of their short life span, they are susceptible to significant population fluctuations. In addition, forage fish are often found in large shoals. These characteristics make these fish highly detectable and catchable. About one-third of wild marine fish caught globally are forage fish. However, most forage fish are not used directly as human food. Rather, an estimated 90 percent is processed as feed for fish farms, poultry, and livestock, as well as human nutritional supplement.<sup>22</sup>

<sup>16</sup>Pew Oceans Commission. *America’s Living Oceans: Charting a Course for Sea Change*. A Report to the Nation. May 2003. p. 109.

<sup>17</sup>U.S. Commission on Ocean Policy. *An Ocean Blueprint for the 21st Century*. Final Report. 2004. p. 295.

<sup>18</sup>Pikitch, E., Boersma, P.D., Boyd, I.L., Conover, D.O., Cury, P., Essington, T., Heppell, S.S., Houde, E.D., Mangel, M., Pauly, D., Plagányi, E., Sainsbury, K., and Steneck, R.S. 2012. *Little Fish, Big Impact: Managing a Crucial Link in Ocean Food Webs*. Lenfest Ocean Program. Washington, DC. 108 pp.

<sup>19</sup>Pikitch, E. K., Rountos, K. J., Essington, T. E., Santora, C., Pauly, D., Watson, R., Sumaila, U. R., Boersma, P. D., Boyd, I. L., Conover, D. O., Cury, P., Heppell, S. S., Houde, E. D., Mangel, M., Plagányi, E., Sainsbury, K., Steneck, R. S., Geers, T. M., Gownaris, N. and Munch, S. B. (2012). The global contribution of forage fish to marine fisheries and ecosystems. *Fish and Fisheries*. doi: 10.1111/faf.12004.

<sup>20</sup>Kaschner, K., Karpouzi, V., Watson, R., and Pauly, D. “Forage fish consumption by marine mammals and seabirds,” pp. 33–46. In: Alder, J., and Pauly, D. (Eds.). *On the multiple uses of forage fish: from ecosystems to markets*. Fisheries Centre Research Reports 14(3) (2006), Fisheries Centre, University of British Columbia.

<sup>21</sup>Cury, Philippe M. et al. 2011. Global Seabird Response to Forage Fish Depletion—One Third for the Birds. *Science* 334: 1703–1706. 23 December 2011.

<sup>22</sup>Tacon, A. G. J., and Metian, M. 2008. Global overview on the use of fish meal and fish oil in industrially compounded aquafeeds: trends and future prospects. *Aquaculture*, 285 (1–4), 146–158.

Our panel synthesized 72 Ecopath models representing marine and estuarine ecosystems from around the world. Our panel's final report concluded that, in most ecosystems, at least twice as many forage fish should be left in the ocean as typically are now in order to account for their critical role as food for fish, seabirds, and marine mammals. Our analysis found that conventional management approaches of forage fish species did not "adequately account for the population dynamics of forage fish and their role in the ecosystem," thereby making these small species top candidates to lead the transition to ecosystem-based fishery management.<sup>23</sup>

There are several examples of current management regimes that have taken the step to account for the essential role forage fish play in marine ecosystems. For example, in the Barents Sea, in order to ensure an adequate food supply for cod, Norway and Russia established a threshold to limit direct fishing on capelin if its spawning stock biomass, a strong indicator of the population, falls below 200,000 tonnes. In addition to using other standard management tools, such as minimum landing size and fishing seasons, managers have instituted conservative catch levels for capelin, and ecosystem and multispecies models are used as part of a comprehensive assessment methodology. As these measures have been put in place, capelin populations have not collapsed, as they have done in the past and the cod fishery is improving.<sup>24</sup> In fact, the cod fishery is the most valuable fishery in the Barents Sea and is the largest stock of cod in the world.<sup>25 26</sup>

And, it is important to manage forage fish from a more holistic vantage point not only for the sake of the ecosystem—but for the economic vitality of our Nation. Using the Ecopath models, our panel estimated the economic importance of forage fish to global commercial fisheries. We estimated the total ex-vessel value of forage fish to global commercial fisheries to be an impressive \$16.9 billion (2006 USD) annually, yet only about one-third (\$5.6 billion) of this value derives from catches of forage fish themselves. The value of the supportive role of forage fish as food for larger commercially important fishes (estimated at \$11.3 billion annually) is more than twice their value as direct targets of harvesting.<sup>27</sup> In other words, we estimated that forage fish are worth twice as much when left in the water as they are taken out in a net.

The economic impact of wildlife viewing provides another compelling reason to ensure management of forage fish accounts for their vital ecological role. A recent report by Audubon Florida and The Pew Charitable Trusts examined the importance of forage fish to Florida's coastal waterbirds. The report cited Florida Fish and Wildlife Conservation Commission figures estimating the economic impact of bird watching and other wildlife viewing in Florida to be \$4.9 billion in 2011.<sup>28</sup> This is another example of how conservation of little fish translates into large economic gains.

### Conclusion

My work has taken me to many countries around the globe, conducting research and helping to establish best practices for conserving and sustaining fisheries. But I love these shores like nowhere else in the world and it is my urgent concern that our Nation's fisheries and oceans, and all the families who depend upon them, remain healthy and strong, now and for generations to come.

It is plain—without fish, there are no fishermen. In recent years, our Nation has taken steps to implement science-based fishery management and there is considerable progress to report. We are rebuilding fish populations and providing more opportunities for fishermen. Unfortunately, we still have work to do to and are facing

<sup>23</sup> Pikitch, E., Boersma, P.D., Boyd, I.L., Conover, D.O., Cury, P., Essington, T., Heppell, S.S., Houde, E.D., Mangel, M., Pauly, D., Plagányi, E., Sainsbury, K., and Steneck, R.S. 2012. Little Fish, Big Impact: Managing a Crucial Link in Ocean Food Webs. Lenfest Ocean Program. Washington, DC. 108 pp. At 86.

<sup>24</sup> Pikitch, E., Boersma, P.D., Boyd, I.L., Conover, D.O., Cury, P., Essington, T., Heppell, S.S., Houde, E.D., Mangel, M., Pauly, D., Plagányi, E., Sainsbury, K., and Steneck, R.S. 2012. Little Fish, Big Impact: Managing a Crucial Link in Ocean Food Webs. Lenfest Ocean Program. Washington, DC. 108 pp. At 31, 36–37.

<sup>25</sup> Pikitch, E., Boersma, P.D., Boyd, I.L., Conover, D.O., Cury, P., Essington, T., Heppell, S.S., Houde, E.D., Mangel, M., Pauly, D., Plagányi, E., Sainsbury, K., and Steneck, R.S. 2012. Little Fish, Big Impact: Managing a Crucial Link in Ocean Food Webs. Lenfest Ocean Program. Washington, DC. 108 pp. At 37.

<sup>26</sup> The IndiSeas Project. Indicators for the Seas. <http://www.indiseas.org/>.

<sup>27</sup> Pikitch, E. K., Rountos, K. J., Essington, T. E., Santora, C., Pauly, D., Watson, R., Sumaila, U. R., Boersma, P. D., Boyd, I. L., Conover, D. O., Cury, P., Heppell, S. S., Houde, E. D., Mangel, M., Plagányi, E., Sainsbury, K., Steneck, R. S., Geers, T. M., Gownaris, N. and Munch, S. B. (2012). The global contribution of forage fish to marine fisheries and ecosystems. *Fish and Fisheries*. doi: 10.1111/faf.12004.

<sup>28</sup> Florida Fish and Wildlife Conservation Commission. Overview—Fast Facts. Updated Oct 2013. Available online at <http://myfwc.com/about/overview>.

new trials, such as changing ocean conditions due to warmer oceans and ocean acidification. We need a Magnuson-Stevens Act that can help us confront these challenges.

That is why I am so concerned about the Hastings draft proposal. It would roll back the progress we have made in recent years and endanger the long-term health, sustainability and productivity of our oceans. Instead, we should be adopting an ecosystem-based fishery management approach, that includes enhancing protections for habitat, reducing bycatch, requiring fishery ecosystem plans, and ensuring we manage forage fish to account for the vital support they provide to ocean ecosystems and national and global economies.

Let's not undo the work we have accomplished that is widely regarded as a great success story. We must ensure the health of our fisheries—It is good for fishermen, it is good for the Nation, and we should be moving forward not retreating backwards. Thank you again for the opportunity to share my views.

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The CHAIRMAN. Thank you very much for your testimony. I want to thank all members of the panel for their testimony. I only have a couple of questions. First question is to Mr. Marks.

Since the mega-settlement on the Endangered Species Act in 2011, there has been more and more discussion on the Endangered Species Act, which—in coming from the Northwest, I am probably more sensitive than most people, because of imposition of the Endangered Species Act.

The discussion draft provides authority for the Councils to develop, through the Magnuson-Stevens Act, any fishery restrictions that would be the result of an interpretation of the Endangered Species Act. Would you elaborate on that?

Mr. MARKS. Thank you for the question. Yes. I have had the task of dealing with clients that have dealt with Steller sea lions in Alaska, South Atlantic right whales, loggerhead sea turtles in the Gulf, and Atlantic sturgeon on the East Coast. And all of those were ESA issues, and all of them incredibly challenging, because of either the lack of information, the short period of time, and not the best process to deal with that issue. And, essentially, the agency published a biological opinion, produced the alternatives, and basically handed it off to the Council.

I think the benefit of what the draft would do—and it certainly does not amend the Endangered Species Act—all it simply does is, in situations where those other statutes would affect fisheries and fishing regulations, it allows the Magnuson process to move forward as the process to qualify what regulations make sense. And, quite frankly, we put experts at the table in the council process. They are there to help craft, if we need alternatives to protect species and humans. The Council seems to be the most logical place to do that.

The CHAIRMAN. So this falls broadly in that discussion we had with the first panel of meshing statutes together. And we heard testimony, somewhat different, at least a different interpretation. But I think that the end result was that it didn't happen in a timely manner. This, from your point of view, would make whatever decisions happen in a timely manner, so there is some predictability. Is that correct?

Mr. MARKS. Well, not only timely, but a bit more transparent, and a bit more informed. And I think Atlantic sturgeon started to show that when we do it in a more collaborative, open manner, we

do a better job for the animal and the fisherman. And I think that is where we want to go.

The CHAIRMAN. Thank you very much for that. Mr. Giacalone, some witnesses—and you have heard—have testified that the current Act provides enough flexibility, and that there is no need for additional flexibility. Do you agree with that?

Mr. GIACALONE. No, Mr. Chairman. We emphatically disagree with that, that there isn't enough. And I think, really, what it comes down to when I look at this draft bill, your "not" list was right on, where it says we are not looking—you have not heard any commercial interests, and this bill does not talk about eliminating the need to end overfishing, or the requirement to end overfishing, annual catch limits set based on the overfishing limit.

I have heard folks say—I think incorrectly—that by ending overfishing, we are somehow suspending or foregoing the goal of rebuilding. That is not true. The definition of Fmsy, the act of ending overfishing, fish stocks rebuild. They rebuild to a full—the MSY level. It is just they get there at their own pace, at what Mother Nature's pace is.

And perhaps the shortcoming in the current law—and we went through a full 10 years attempting it—is that the portion of the 25 percent that humans have impact that we control through the Magnuson Act, which is fishing mortality, that we have succeeded at. And you are hearing commercial interests say, "That is a good thing, because that is how we are doing our part." It is the 75 percent of the stock that we leave in the water, and the three recruitment, natural mortality—you know, the things that we can't control, the congressional law can't change that.

And all we have right now is we hold fishing communities accountable for the lack of productivity that might be happening on a cyclical basis in nature. And that is the part where we need to get flexibility. End overfishing, do our part. Stocks will rebuild on Mother Nature's clock. They are not going to rebuild on our clock.

The CHAIRMAN. Thank you very much. I know that there is going to be a lot of discussion on that aspect. I think it deserves to be discussed, but I have always been one to believe that any law where it is closer to the source is better administered.

So, with that, I will recognize the gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Mr. Chairman, I would like to explore with Dr. Pikitch this idea about using more of an ecosystem approach, and particularly the forage fish issue. You know, I guess this bill, as I read it—and I will see if you agree—would say that forage fish would not need to be regulated at all. Is that correct?

Dr. PIKITCH. Well, that is the way I read it, too.

Mr. DEFAZIO. OK. And at this point are there unreasonable regulations on forage fish? I mean, what is happening with forage fish right now?

Dr. PIKITCH. Well, there are lots of examples of what is happening. There aren't requirements to manage forage fish in many places. And I would say that there need to be. We need to require that forage fish be managed, because they are so important in marine ecosystems.

In the United States we have everything from a total prohibition of fishing forage fish—so, for example, the Pacific Council prohibited the development of a krill fishery, because they recognized how important krill are to the marine ecosystem. And we have everything from that to species of forage fish that are totally ignored.

I would like to give an example that comes from outside the United States that I think is really telling, and that might help elucidate what managing forage fish can do.

Mr. DEFAZIO. Well, quickly, because I have—yes.

Dr. PIKITCH. Yes, OK. So, in the Bering Sea, Norway and Russia established a 200,000-ton minimum stock size for capelin, which cod feed upon. And they wanted to do that to ensure that cod had enough food. Prior to that, there had been collapses of both species. Yet today, the cod stock in the Bering Sea is the largest in the world. Compare that with what has happened with cod stocks in the United States.

Mr. DEFAZIO. So you think part of the problem with the low population, low density of cod stocks, is a loss of forage fish, menhaden, or whatever they eat?

Dr. PIKITCH. Well, I think that there are definitely some problems with herring and other forage fish species. Of course, there has been a lot of overfishing going on, as well.

Mr. DEFAZIO. OK. Mr. Deem, from a recreational angler standpoint? I know striped bass and forage fish issues kind of go together. So do you have concerns about no regulation on forage fish and how it could impact recreational fishing?

Mr. DEEM. Well, I don't think it is safe to say that there is no regulation on forage fish. The Mid-Atlantic Council has started a program to regulate river herring, working with the ASMFC to improve on the management of river herring. It doesn't necessarily get a formal plan. But everybody on the Council and in our public understands that you have to have forage fish to have healthy stocks.

Mr. DEFAZIO. OK.

Mr. DEEM. And we are taking steps very aggressively to protect those.

Mr. DEFAZIO. OK, that is good to hear. Mr. Geiger, I think you are the only person—I am not sure—up there who has served on a Council. And I guess I just want your perspective—I think you talked about it a little bit—in terms of if limits are essentially optional, because there is one section of the bill which I think—there are a number of exceptions in the bill for ACLs.

But then it goes, on page 5, section 9, it looks like they are giving an option that a Council could just opt out of catch limits and essentially deem something not to be overfished or understocked, even if it is. What do you think would happen at the Council with that kind of provision? Would there be a lot of political pressure on the Council? And was it like that in the old days?

Mr. GEIGER. It is exactly as you described. You give the Councils the opportunity to exercise discretionary powers, and in most cases you can't expect them to vote against their own self interest. It takes discipline, it takes personal courage and political courage to make the hard decisions to recover fisheries. If you try to satisfy

everybody under the umbrella of “everything is going to be OK,” with new legislation it is going to be a difficult process.

And I would like to thank—unfortunately, he is not here—Chairman Hastings for his vote in 2006 for the reauthorization then that got our fisheries back on track.

Mr. DEFAZIO. OK. Well, I will convey that to the Chairman for you. I think the Republican staff might not remember to do that. [Laughter.]

Mr. DEFAZIO. So I thank the Chairman.

Mr. SOUTHERLAND [presiding]. Thank you very much. Before Doc had to slip out, I was next in line. So I am going to ask my question, and then we will go to Mr. Garcia.

First of all, thank all of you for being here today. Mr. Krebs, I understand that when the Gulf Council and NOAA Fisheries first began red snapper catch share program, fishermen were opposed to allowing non-permit holders to own shares. Do you believe that anyone owning catch shares should also be a permit holder?

Mr. KREBS. Thank you, Congressman. So in the original IFQ, when the red snapper started, there was a 5-year where any permit holder could buy shares. That was an existing re-fish permit holder for the first 5 years. And that was to allow the system time to adjust to let fishermen decide who wanted to be in, who wanted to be out, before there was any outside influence. The advisory panel strongly was against opening it up to private citizens. It was the Council that said it should be opened up.

One of our revisions in the 5-year review that we have offered up is to go ahead and sunset that, and stop allowing the fishery to become an investor fishery. We think that catch share programs should remain in the industry.

Mr. SOUTHERLAND. OK. And so, therefore—so explain to me your feelings when the Gulf Council, contrary to the wishes of the fishermen who rise early in the morning and go out in those waters—your thoughts or your feelings when they ignored your wishes and voted to allow non-permit holders to purchase catch shares.

Mr. KREBS. Well, that is exactly why we bring up the sunset clause of Congressman Lott’s provisions to have a balanced Council. We feel that, at the time that the Council was looking at this, they actually thought that the fishery could be bought up by recreational interest. And I think that was why the votes went the way they went.

We definitely have to have provisions to have a balanced Council that will work toward solutions in the future to our fishery problems, and allow recreational and commercial people to sit down at the table and work out their differences.

Mr. SOUTHERLAND. You are obviously—you are a catch share owner, correct?

Mr. KREBS. Yes, sir.

Mr. SOUTHERLAND. Are you a proponent of inter-sector trading?

Mr. KREBS. I am one of those people, sir, that can sit at the table and see the bright light in anything. And I see promise and I see problems. I think it would take an awful lot of deliberation.

The problem is what happens is the one user group says, “Well, if you are willing to trade it, you don’t really need it.” Where, in the case of—as a quota holder myself, I do lease some of my red

snapper every year to my friends in the grouper industry that say, “Hey, Dave, if we don’t have red snapper quota available to us, we are going to be discarding fish that are going to be left dead. Will you lease us fish, rather than catching them yourself?”

Some people turn that around and say that that makes me a person who doesn’t need my fish. I say I am an environmentalist who says a dead fish is a dead fish, and we need to bring every fish we can to the dock, contrary—when you look at inter-sector trading or allowing commercial shares to go into the recreational fishery, that is a philosophical topic that says if you have a recreational component that says, “Hey, commercial fishermen, we are going to eat this fish, and we would like an opportunity to land fish outside of our quota, would you consider it?” I think we can sit down and talk about it.

Whether it makes sense or not, sir, I really don’t know. But I do like the discussion.

Mr. SOUTHERLAND. I appreciate your optimism. Let me ask you this. Do you support a referendum that allows all permitted fishermen to vote before new catch share programs can be implemented?

Mr. KREBS. I support all stakeholders in that fishery having the opportunity to vote. In other words, in the case of a grouper, in the grouper fishery—

Mr. SOUTHERLAND. So stakeholders? Now, wait a minute, you just opened up a Pandora’s box. I mean, when you are talking stakeholders, I am sure there are a lot of stakeholders that don’t have catch shares.

Mr. KREBS. No, sir. We are talking about people who get allowed to vote. So—

Mr. SOUTHERLAND. OK.

Mr. KREBS [continuing]. A guy that catches mullet shouldn’t vote on a guy that catches tuna’s referendum.

Mr. SOUTHERLAND. Right.

Mr. KREBS. That is my point. When I say “stakeholder,” I mean participant. Maybe I should clarify.

Mr. SOUTHERLAND. OK.

Mr. KREBS. If you participate in the fishery, then you should be allowed to vote. If you don’t participate in that fishery, even though you are a—

Mr. SOUTHERLAND. So how do you determine participation?

Mr. KREBS. We have had log book requirements since 1993. So their history is documented in Federal log books.

Mr. SOUTHERLAND. Mr. Marks, could you weigh in on that?

Mr. MARKS. Well, the only thing I would add is that the reason that is in the Act right now—and 303(a) doesn’t protect participant fishermen, because the Secretary and the Council can determine what level a fisherman has to have of landings in order to vote.

An example in the Gulf snapper-grouper program, the landings were 48,000 pounds over 6 years, or an average of 8,000 per year. A tremendous number of regular working fishermen didn’t meet the criteria, therefore never got to vote. So it definitely needs to be fixed, so there is a provision, as Mr. Krebs indicated, that all participating permitted fishermen should have a chance to vote, not just those with all the landings.

Mr. SOUTHERLAND. Very good. I see my time is expired. And the Chair recognizes the gentleman from Florida, Mr. Garcia.

Mr. GARCIA. Mr. Chairman, if we can recognize Mr. Costa, because of his much more senior status.

[Laughter.]

Mr. GARCIA. No, he has got an event to go to, so I will wait.

Mr. COSTA. I want to thank the gentleman from Florida for yielding the order of the time. Obviously, I have a meeting I have with the Secretary of Agriculture, and so this is very helpful. Thank you very much, Mr. Garcia.

Mr. Chairman and the Ranking Member, who have now had to leave, and to the members of this committee, I want to thank you for this opportunity to speak on some of the concerns related to the discussion on the draft of the Magnuson-Stevens Act reauthorization. And I would like to confine my comments—and, of course, they were applicable to the first panel, as well as the second panel—to what I refer to as the law of unintended consequences. And it may not be the intention, but I believe it is potentially the impact, when we talk about those of us who represent inland waterways and—in which the issue of the Endangered Species Act, particularly as it applies to endangered salmon, various runs, whether they be spring runs or fall runs, and how this reauthorization may impact that.

The majority of the fishery issues that affect my constituencies directly involve the Endangered Species Act, specifically how salmon are managed, and the impact on the water supplies for farming communities that are inland. When the salmon stocks are put in danger, it increases the problems that my constituents face, as it relates to the impacts of the Endangered Species Act.

When I look at this bill, I have to ask myself a simple question. And that is, how did the policies in this legislation impact my friends and neighbors, who are dependent upon that water supply, as our fishermen are?

The ESA provision in the Hastings Magnuson-Stevens reauthorization I think—when we review it, the Chairman's draft bill for reauthorizing this Act, I am particularly interested in the provision dealing with the Endangered Species Act, which has been a source of great contention, not only in California, but throughout the Western States. The provision, according to the language, applies to the "management of fisheries"—as I read this—"throughout their range." The management of fisheries throughout their range, and states that, "Any restrictions on the management of fishery resources that is necessary to implement a recovery plan under the ESA shall be implemented using the Magnuson-Stevens Act authority, and under the Magnuson processes and schedules."

Now, the way I could interpret this, based on what we have had to deal with, is that for species like salmon, whose range includes rivers, it appears that the in-river management would now occur under the Magnuson-Stevens Act, and be carried out by the fishery management councils.

This raises a question in my mind, and that is, do any of the fishery management committees—or councils, excuse me—contain any experience in dealing with in-river fish management? Or, with the complicated water issues associated with them that are always

tenuous, at best, and always a balancing act? Do any of the fishery management councils currently have staff with any agricultural expertise?

If the fishery management councils and their entire management process under the Magnuson-Stevens Act under this proposal, it seems to me would totally lack the expertise and the experience on these in-river management issues. For California, the water management issues in these extreme drought conditions we are facing are absolutely critical.

So, I don't think my farmers in the Central Valley are going to have faith that the Endangered Species Act issues can be handled by the fishery management councils in a way that won't disregard their interest or management decisions that could have adverse impact. So those are my concerns.

Mr. Geiger, I don't know if you have time to quickly comment on that or not. They tell me that you are the best person to direct my concerns to.

Mr. GEIGER. Well, thank you for the question, Congressman. Unfortunately, I served in the Southeast, and we don't have concerns such as salmon. But I certainly appreciate and understand your concerns with regard to Council staff having the expertise in agriculture to understand land use issues and water use issues in the Upland section, if they are responsible.

I can assure you that, based on my experience, unless it is written into the Act that it requires them to do so, it won't get done. You know, they are extremely busy; they focus on the issues that they consider to be extremely busy, extremely important. And you need to write that into legislation if you need it.

Mr. COSTA. But is my concern about the potential ripple effect, or this law of unintended consequences, real, do you believe?

Mr. GEIGER. I think it probably is real. I would be concerned about it.

Mr. COSTA. Thank you, Mr. Chairman. And thank you, Mr. Garcia, for yielding your time.

Mr. YOUNG [presiding]. Thank the gentleman. And, Rick, you want to comment on that, the question that was just asked?

Mr. MARKS. Well, I would only add that I am not sure what is in the draft actually undermines the authority of the Act. I think that the Section 7 and Section 10 processes and the State involvement, and jointly with the Fish and Wildlife Service inland, along with the agency, would still proceed. I think the only thing that would be changed is if there are any impacts determined from federally managed fisheries that, just to handle those aspects, the Councils would have to put in reasonable and prudent alternatives and measures under ESA, based on a biological opinion.

So, I am not sure that it undermines the process. But certainly, in those Federal waters, the Councils would be used to set those alternatives up.

Mr. YOUNG. Thank you. And, Rick, while we are at it, the Magnuson-Stevens Act national standards provide for the management of the stocks of fish throughout the range to the extent predictable, and the patchwork of marine sanctuaries, marine monuments, and marine protected areas implemented under such

status in some areas has created a patchwork of management regimes.

While the discussion draft does not restrict the creation of sanctions on monuments, it does provide that the Council provide the management of fish resources on the Magnuson-Stevens Act. Why is this important?

Mr. MARKS. I have a number of folks, Mr. Young, that operate in and around the Olympic Coast National Marine Sanctuary, the Channel Islands, Florida Keys National Marine Sanctuary. And there has been an ongoing debate for years. In fact, the Council chairman brought it up, that there should be management of Federal fisheries by the National Marine Fisheries Service, which is set up to actually do that, not NOS, which is set up to run the Councils. They don't really have a council process or a fisheries management process.

So, we felt all along that fishery resources that move in and out of these sanctuaries should be managed consistently, as you point out, across their range, and that the National Marine Fisheries Service is the right place for that.

In terms of what we are concerned about, there are constant issues of sanctuary boundary expansion, there are issues of potential Antiquities Act at the end of any administration—we collectively hold our breath—and issues of protecting habitat, protecting coral from fishing impacts. So it is nice to actually have a process where you can go to and resolve these things with a law that sets up a system. And that is why we think the Act is the right way to go.

Mr. YOUNG. Right. Mr. Garcia, you are up if you have questions.

Mr. GARCIA. Thank you. Just want to broadly sort of talk about this. And, obviously, I didn't make an earlier statement, but my district is the Florida Keys and part of Biscayne National Park. So I probably have the most recreational boating in the world in my area; I think there are more boats per capita in my district than anywhere else on earth. And, at the same time, we have a vibrant, although stressed, group of people that are engaged in fishing, and make their living. So I want to ask a few questions.

But, generally, as I look across—and you will forgive me for having arrived a little bit late—as I look across to all of you, if you were to say what the state of our fishing is since the last reauthorization, where it is today, would you say it is positive, or would you say it is neutral, or would you say we are falling behind? And I will just start with Rick and we will go that way.

Mr. MARKS. I would say it is—

Mr. GARCIA. And you can make an additional comment.

Mr. MARKS. Sure. I would just say it is positive with just the need to do some rebalancing.

Dr. PIKITCH. I would say it is working very well, positive.

Mr. KREBS. I would say in the Gulf it is positive, with some caveats. We have had some redirected effort that has impacted what the fisheries and other species look like, as the IFQs went into place in 2007 and 2010.

Mr. GIACALONE. I too think it is generally positive, but we do need now to fix the rebuilding requirements. We have ended over-

fishing. That is the biggest positive effect. And now we have gone too far.

Mr. DEEM. I think we have turned the corner, and the difficulty now will be in managing the recovery of these species and properly allocating them.

Mr. GEIGER. Definitely positive. But positive only because of the regulatory mandates that are put on the council process.

Mr. GARCIA. OK. I am going to go back to Rick here real quick, but any of you that want to comment on it, since I don't think anyone else is—if you don't mind, Mr. Chairman—is waiting.

So, fishermen have—at least I have found when I meet with the fishermen, they have an extensive knowledge of the species they catch, and I believe that knowledge needs to be included in what we are doing, in terms of management. And so, the broad question is, do you agree? And does the bill do enough to include the deep knowledge that some of the people who work with these resources have? Rick, and anybody else who—

Mr. MARKS. Well, I wholly agree. And I have been a big proponent of cooperative research anywhere that we can get it. And we have been asking for it down in your region, sir. We have had good success for it elsewhere.

In fact, I want to take the Northeast Cooperative Research Program, clone it, and move it around the country so we would actually have a dedicated cooperative research program in every single region, because I think the fishermen can bring a tremendous amount of research capability to the table, their knowledge, using their boats as platform, helping them keep employed when they are not fishing, and producing assessment-grade work. We have shown we can do that; we need to do more of it.

Mr. GARCIA. None of you have comment? Yes?

Mr. KREBS. Yes, I couldn't agree more. Cooperative research, this goes back to the earlier discussion about were we sampling rigs, were we sampling reefs, or were you just throwing gear in the middle of the desert. Getting the real truth from people who know where it is at, and then seeing what the trend is by going back to these sites year after year is key.

Mr. GARCIA. I guarantee blowing up rigs is probably the worst part we could do.

Mr. GIACALONE. Conservation requires stewardship. And buy-in to the science and the data that underlies it is huge, hugely important. And I think collaborative research is the biggest step in that.

Mr. DEEM. Well, I think I can speak on behalf of the RFA, that cooperative research is critical. And I think a perfect example would be the alarms that we were getting from all of the fishermen on the spiny dogfish issue before we lost complete control of that a few years ago, and now we are suffering the effects of that.

Mr. GEIGER. I would generally agree, but I just caution that it is dangerous to generalize an assumption that, because people fish, or because they speak about it, that they really know about it. And I was one of those people until I really got involved in this council process and got an education and held, basically, every public hearing in the State of Florida for 9 years. The things I have heard are unbelievable from people that you would think—and who should—know better. So it is difficult to just generalize.

Mr. GARCIA. Yes. No, no, there is no question. I am a fisherman, and I have no idea what I am talking about, usually.

[Laughter.]

Mr. GARCIA. But it is a general rule about fishermen.

I want to go back to the recreational part. And I will start with you, Mr. Geiger, because I think it is important. We have heard from several witnesses that the recreational fishing community complains about MRIP program, right? But this bill does nothing to improve data collection in most of the recreational fisheries. You are talking to a recreational fisherman.

So, how do you think we should go about improving the certainty and accountability of this sector?

Mr. GEIGER. To make those improvements would be cost prohibitive. The way the MRIP system is set up, it is a trend analysis. It demonstrates a trend in the recreational fisheries. That data, although not precise, although not a real data set that is like firm catch data based on landings—

Mr. GARCIA. Right.

Mr. GEIGER [continuing]. It is data that is used in the assessment process. All the data used in a stock assessment process is weighted by the assessment scientists. And through that weighting, that data can have different impacts on the eventual result in the stock assessment.

In addition to weighting that data, they also do sensitivity runs. So they artificially inflate the MRIP data, and they artificially deflate the MRIP data, to see what impact it has on the assessment. And because of the weighting of MRIP data, it really doesn't have all that much consequence to the end result in an assessment.

You know, things such as recreational fishing or release mortality has far more impact on the end result of a stock assessment than the MRIP data, in terms of effort.

Mr. GARCIA. Mr. Chairman, would you mind, if anybody else wants to answer that, that I could just take it real quick? Same question, I am not going to change it.

Anybody want to weigh in?

Mr. DEEM. If I may, the MRIP data is all that we have. And it is years behind schedule. And maybe once we fully implement it and have some experience with it and can fine-tune it, it will be worth more. But being all that we have, we have to use it, but we have to take it in perspective, and we have to give it credit only to the limit that we know it is not 100 percent.

Mr. GARCIA. Again, thank you all for being here. I didn't mention that at the beginning. And thank you, Mr. Chairman, for your indulgence.

Mr. YOUNG. Thank you. And, Rick, one last question. You raised concerns that NOAA had been increasing the amount of data, including predatory data, that is gathered for fishery management purposes. Did the current data confidentiality requirements adequately protect predatory data, including data voluntarily provided to NOAA?

Mr. MARKS. Well, we note that right now NOAA is undergoing a Federal Register process to basically implement, or codify, the regulations they are doing—using now to handle confidential data. And they are under, I think, some extreme pressure to relax those

standards. So there is a lot of concern about that right now. And I think the industry has weighed in during that comment process. What we think the draft does is enhance those protections, certainly shows congressional intent to protect critical information from your fishermen and your process, make sure it doesn't fall in the wrong hands.

So, we have a couple of issues with that. We don't want to go too far with it, either, to make sure that people can access the information they use in aggregate to defend themselves, for economic information, for fishing areas, and such like that.

But generally, what I have found the feedback from the industry has been, they support the protection of that information.

Mr. YOUNG. Thank you, Rick. And I want to thank the panel—I don't see any other Members around here—for your testimony. And as the father of this legislation—and I say it never should have been named the Magnuson-Stevens Act, it started on the House side. Mr. Studds and I wrote this bill—from Massachusetts. And it got over there, and of course, the Senate does what they usually do, they took the name and said, "We gave birth to it."

[Laughter.]

Mr. YOUNG. But that is not where it started. I would like to remind them of that.

But thank you all for your testimony, and we will be listening, and any comments you would like to submit.

And if there is no further business—wait a minute. Members of the committee may have additional questions for the witnesses, and I ask you to respond to them writing. The hearing record will be open for 10 days to receive the responses. If there is no further business, without objection, the committee stands in recess.

[Whereupon, at 12:58 p.m., the committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF MARK FINA, PH.D., J.D., SENIOR POLICY ANALYST, UNITED STATES SEAFOODS

Good morning Chairman Hastings, Ranking Member DeFazio, and members of the committee. I am Mark Fina, a policy analyst for United States Seafoods and President of the Alaska Seafood Cooperative. My company and the cooperative, which includes four other companies, fish in the non-pollock multispecies groundfish fisheries off Alaska. We are substantial participants in the flatfish, rockfish, Atka mackerel, and Pacific cod fisheries in the Bering Sea, Aleutian Islands, and Gulf of Alaska. We participate in both catch share fisheries, in which portions of the total allowable catches are allocated for exclusive harvest by the cooperative, as well as limited access, derby fisheries, which are governed by limits on entry and in-season monitoring of harvests of total allowable catches. I am not representing my employer, the cooperative, or any other group today. I appreciate having the opportunity to offer comments to the committee on its Draft Discussion Bill and the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. While I have some knowledge of fisheries throughout the country, I am most familiar with the fisheries in the North Pacific and therefore limit my comments to issues in the North Pacific.

Overall, I believe that the Magnuson-Stevens Fishery Conservation and Management Act (the Magnuson-Stevens Act), in its current form, is serving its intended purposes well. The Act and its interpretation and administration by the Regional Fishery Management Councils (the Councils) and the National Marine Fisheries Service (NMFS) provide for the sound conservation and management of our valuable national fishery resources and promotes domestic commercial and recreational fisheries as intended. In the North Pacific, we have sustainable stocks as demonstrated by years of catches consistently between 1.5 and 2 million metric tons and no over-

fishing. Given these circumstances, only limited and focused, carefully considered modifications to the Act would seem merited at this time. One area addressed by the committee's draft discussion bill is confidentiality of information. The majority of my comments will be focused on that subject.

#### *Data Confidentiality*

Before joining U.S. Seafoods last year, I worked for 11 years as the Senior Economist at the North Pacific Fishery Management Council (NPFMC or North Pacific Council). In that position, I routinely worked with confidential fisheries data preparing reports to be used by the North Pacific Council to guide their decision-making. In considering data confidentiality issues, the two primary questions that should be considered are:

1. Do policymakers have adequate information to make informed decisions? ; and
2. Do stakeholders and the public have adequate information to support their participation in that decisionmaking process?

Based on my experience under the existing rules *as they were interpreted when I worked as an analyst*, the answer to both of these questions is 'yes'.

General information concerning fisheries is readily accessible in standardized reports that are publicly available and posted on NMFS and Council Web sites. These include weekly and annual catch and bycatch reports, fishery allocations, and closures. In addition, annual Stock Assessment and Fishery Evaluations are available, which include detailed biological, social, and economic analyses of all fisheries and stocks under the North Pacific Council's management. In the most recent year in the North Pacific, the Bering Sea and Aleutian Islands report alone exceeded 2,500 pages, including an economic section that exceeded 300 pages and an ecosystem section that exceeded 200 pages. In addition, tens of thousands of pages of analysis and large volumes of data are available from the analyses of all previously adopted or considered measures. These documents, together with experience in or related to the fisheries, provide stakeholders with the foundational information needed to decide whether management changes should be advocated. If the North Pacific Council wishes to pursue a management action, staff prepare additional information and analyses examining specific aspects of the fisheries that might be affected by the proposed management changes. These reports and analyses provide ample information for decisionmaking and stakeholder participation in the Council and regulatory process.

#### *Aggregating Under the Rule of Three*

Analyses of fishery management measures tend to be data intensive. Stakeholders and policymakers are often interested in examining several alternatives and several different views of data that illuminate various aspects of the effects of those alternatives. For example, a Council considering a change in allocations may consider a variety of historical periods, each of which will result in different allocational distributions. Under the Magnuson-Stevens Act and current confidentiality rules, data may only be disclosed in "aggregate or summary" form to "not directly or indirectly disclose the identity and business" of the submitter. Analysts can comply with this requirement by showing the distribution of possible allocations applying a "rule-of-three" under which each data point is an aggregation of the data of at least three submitters. This rule effectively allows analysts to show fishing data to assess a variety of measures. Data can be aggregated spatially to examine management measures such as area closures intended to protect habitat or bycatch. Historical catches can be allocated across groups of vessels to examine allocative measures or across vessels that deliver to a particular community to examine the effects of a fishery on a community. At times, analysts can be challenged to develop aggregations across submitters' activities to display data. For example, if only a single vessel fishes in a geographic area during a week, aggregations across multiple weeks or a larger area would be needed to mask data at the weekly level. The interest of policymakers and stakeholders in a variety of displays of data can challenge analysts, but under the rules and practices that I applied as a Council staff member, Council members and stakeholders are able to understand the implications of alternative management actions in all but the rarest of instances.

#### *NMFS Proposed Rule on Data Confidentiality*

In May of 2012, NMFS released a proposed rule implementing the Act's current data confidentiality provisions for public comment. For the most part, the proposed rule simply formalizes current data confidentiality practices (see attached Department of Commerce, National Oceanic and Atmospheric Administration, Proposed Rule on Confidentiality of Information 77 FR 30486-30496, May 23, 2012). Most importantly, the proposed rule clearly establishes the requirement that any disclosure

of data be in “aggregate or summary” form to “not directly or indirectly disclose the identity and business” of the submitter. This provision is intended to clearly establish the “rule-of-three” aggregation requirement. The proposed rule also clarifies the breadth of protection of confidentiality rules by replacing the word “information” with “statistics”, ensuring that all “information” submitted to under a Fishery Management Plan (FMP) is subject to confidentiality protection. A variety of other clarifications are included in the proposed rule, including the development of more specific rules governing access to confidential information by NMFS, State, and Marine Fishery Commission employees and observer employees for fishery management purposes. These provisions all are consistent with the spirit of the current rule and formalize the requirement to continue current practices.

The rule also addresses the Act’s exception to confidentiality protections for information required to be submitted for “any determination under a limited access program”. Currently (and in the proposed rule) “limited entry program” is interpreted to mean any catch share program (meaning any program which “allocates privileges, such as a portion of the total allowable catch, to a person”) and “determination” is interpreted as “grant, denial, revocation of privileges, approval or denial of a transfer of a privilege”. Under this rule, any catch share allocations or transfers of those allocations are not subject to confidentiality protections. In my mind, this relatively narrow disclosure of information improves the workings of markets by ensuring that participants are aware of the distribution of shares to facilitate transfers. In addition, the disclosure is consistent with current practices, as NMFS routinely makes share allocations public through webpage postings.

Some comments to the proposed rule have suggested a broader interpretation of the term “determination” should be applied, under which any information used to make any decision under a catch share program should be disclosed. Other comments have suggested that any and all fishing information should be disclosed. These comments argue for the disclosure of all catch and observer data (including all catch amounts and fishing locations) in a disaggregated form with identification of the submitter. Applying this broad definition would be very compromising of proprietary information.

#### *What Fisheries Data are Proprietary*

Proprietary information is often thought of as financial information and market prices. Proprietary information often extends into many other aspects of a business, most importantly operational information. In the fishing industry, fishing locations and catch amounts are among the most sensitive business information. Location and timing of fishing drive costs and often determine a person’s position in markets. Fish quality and catch rates often change with timing and location of catch. Because of these factors, timing of fishing, catch rates, and catch amounts can have significant implications for market success and competition.

Contrary to the belief of some people, catch share programs often increase the proprietary value of this type of information. In most limited access fisheries, timing of catch is dictated by regulatory openings and closings. Fishing locations can be limited in a derby fishery by proximity to landing locations. Catch share programs, by providing exclusive access to a specific quantity of catch that may be harvested any time during an extended season, often provide participants with much greater latitude to decide when and where to fish. This greater flexibility increases the competitive effects of choices of fishing time and location. Participants can use proprietary operational information to increase their catch rates, improve product quality, and time deliveries of products to markets. Broadening the definition of “information used to make determinations under a catch share program” in a manner that divulges data and information revealing timing of fishing and location choices would compromise valuable proprietary information.

For the most part, fishery participants are satisfied that the masking effect of aggregating data under the “rule of three” protects their propriety interests in business information; however, some participants remain concerned that in cases where data are aggregated across only a few submitters, competitors will be able to glean information concerning their markets and operations. For example, estimates of catch amounts of competitors can be generated, if only a few other vessels are in a fishery during a period. Despite these concerns, the current rule and its aggregation requirement strike a reasonable balance between the interests of industry in maintaining confidentiality of this proprietary information and the public interest in obtaining information to participate in the effective management of fisheries. Councils receive adequate information for decisionmaking and a minimal level of protection is provided for fishing industry proprietary information.

*Data Confidentiality Rules Under New Catch Share Management Structures*

The development of new management structures, such as cooperatives in the North Pacific, and NMFS recent application of data disclosure limitations to these structures have unnecessarily complicated implementation of data confidentiality protections. Recently, NMFS made an internal decision to consider a cooperative a “submitter” of data for purposes of administering data confidentiality protections. If a cooperative is interpreted to be a submitter of data when applying the “rule-of-three” to data aggregations, some meaningful restrictions on the release of data can arise. For example, no data can be revealed in a fishery with only two cooperatives, if data from three cooperatives must be aggregated for disclosure. Such an interpretation shows a fundamental misunderstanding of the operations of cooperative management structures and data reporting. Under NMFS management, cooperatives are organizations that are formed for the purpose of coordinating harvest of annual allocations. NMFS and the cooperative members can achieve efficiencies by having a single quota allocation made to the cooperative. Under harvest agreements, which are not filed with NMFS, quota holders can easily move the allocation among vessels to efficiently harvest their collective allocation. To ensure that quotas are not overharvested, each cooperative member must agree to be jointly liable for any overharvest of their collective allocation. NMFS reduces administrative costs by overseeing a single allocation to several vessels.

In considering how to treat data of cooperative members for confidentiality purposes, it is useful to consider how cooperative data are collected. *Catch data submitted to NMFS are transmitted by vessel operators, who are employed by cooperative members (not the cooperative)*. The cooperative is not liable for failure to submit these data, the vessel operator is. Under most cooperative agreements, the cooperative will be provided access to landings data by each member, but typically the cooperatives access to a vessel’s data is limited to those data needed to oversee harvest of the allocation. A cooperative typically does not have access to each vessel’s fishing locations or detailed catches by specific location. Those data are only shared within the cooperative for limited purposes, such as identifying bycatch hotspots.

Cooperatives are not price setting entities and often do not even know the price paid to members for their catches. If cooperative members wish to share price information among members and negotiate prices collectively, they must take care to abide by antitrust laws, ensuring that members qualify for an exemption, most likely under the Fishermen’s Collective Marketing Act. If a cooperative (or for that matter, any fishermen in any fishery) chooses to avail itself of an antitrust exemption, NMFS is unlikely to know. Even if and when a cooperative negotiates pricing under the exemption, members may have side agreements with processors and buyers that include price adjustments or other types of compensation, which the cooperative may be unaware of. For these reasons, NMFS collects price data from vessel operators, not cooperatives, and any enforcement action for failure to submit data are pursued with the vessel owner, not the cooperative.

Given that cooperatives do not submit data to NMFS and often do not even have access to most of a member’s proprietary data, it is clear that a cooperative should not be considered to be a data submitter for purposes of data confidentiality protections and applying “rule-of-three” aggregations when implementing those protections. Applying the aggregations at the vessel level ensures that Councils, stakeholders, and the public have reasonable access to data for management and conservation purposes. Furthermore, only if “submitter” is interpreted as being a cooperative, is there even an argument that a broad release of data under the “catch share determination exemption” is needed for fishery management purposes. In short, maintaining the rule of three aggregation requirements at the vessel level and a narrow definition of “determination under a catch share program” for purposes of administering the exemption to confidentiality protections provides a reasonable balance between the interests of Councils, stakeholders, and the public in information for fishery conservation and management decisionmaking and fishery participants’ interest in protecting proprietary information.

From a practical standpoint, I can say that in working for the North Pacific Council for over 10 years I prepared thousands of pages of analysis that relied extensively on confidential data. In preparing those documents, I routinely applied the “rule-of-three” at the vessel level, and not the cooperative level. Not once during that time did any industry stakeholder express concern that aggregation at the vessel level compromised proprietary information. Given this state of things and the reality that cooperatives do not submit these data to NMFS, it is unclear why anyone would choose to interpret the term “submitter” to mean the cooperative.

*The Importance of Data Confidentiality to Maintaining Data Quality and Existing Data Management Programs*

The satisfaction of industry with current confidentiality protections provides management benefits by increasing the willingness of industry to improve fishery management information. In the North Pacific, industry representatives have worked extensively with the Council and NMFS in the development of new data collection initiatives, including programs to collect data concerning bycatch management and economic and social information. Although the Magnuson-Stevens Act provides the Council with authority to dictate these data collection initiatives independent of any industry cooperation, the effectiveness of the programs are often increased greatly by industry participation in their development. For example, book-keeping discrepancies across submitters and differences in interpretation of survey questions can often lead to errors and biases in data. Working with industry can ensure that questions and responses are accurate and correctly interpreted by analysts. It is not an overstatement to say that over half of the questions on the crab economic data collection forms were revised from their original form after discussions with industry. The importance of the NMFS/Council/industry working relationship is clearly described in the letter from the North Pacific Council in its October 14, 2013 letter to NMFS Assistant Administrator, which states:

. . . any further relaxation of these [confidentiality] provisions could undermine the cooperation and goodwill of the fishing industry we have worked hard to cultivate. This cooperation, including numerous biological monitoring and economic data collection programs associated with North Pacific catch share programs, is essential to the effective management of our fisheries. Through these programs we collect sensitive cost and other operational information from industry participants. We need to ensure that such information remains confidential, except where Congress expressly intended otherwise. (see attached letter)

A separate issue with respect to any revisions to data confidentiality protections, which may be specific to the North Pacific, concerns data sharing arrangements between NMFS and the State of Alaska. Currently, the State and NMFS jointly collect in-season management data under a data sharing agreement. To maintain this system NMFS must maintain data confidentiality to the extent required by State law. The proposed rule is consistent with the data protection agreement between the State of Alaska and NMFS and is consistent with the requirements of the State law. Further relaxation of confidentiality protections, such as providing for broader release of data under the catch share determination exemption, however, could jeopardize the existing relationship and require extensive restructuring of data collection in the North Pacific. As noted by the North Pacific Council in its letter to NMFS Assistant Administrator:

potential conflicts with State confidentiality statutes . . . would inhibit the ability of the State to share State fishery records with NMFS, and thus severely undermine the existing data collection system used for inseason management of Federal fisheries. Releasing information that the State deems to require aggregation would be in violation of both State statute and the existing data sharing agreement between the State and NOAA.

In concluding, I will concede that under the “rule-of-three”, it is possible that Councils and stakeholders may benefit from additional information that cannot be released under the current confidentiality rules. For example, in a fishery with only a few participating vessels or processors, it is possible that community landings cannot be revealed. This need, while important, should not provoke a large scale abandonment of data confidentiality protections. Any modification to address this shortcoming should be focused with a well-defined process for determining: (1) if a broader disclosure is necessary for sound management, (2) the appropriate scope of that disclosure, and (3) any limitations on the disclosure to protect confidentiality. In considering these data needs, it should be noted that these needs arise in both catch share and non-catch share fisheries and a simple provision exempting catch share data from confidentiality protections will not address the issue. Only carefully considered and developed exemptions that focuses directly on specific data needs and balances those needs against the need to protect proprietary data should be developed.

*Specific Comments on the Discussion Draft Bill*

**Section 3—Flexibility in Addressing Rebuilding Stocks**

*Modification of rebuilding timelines*—The proposed modification of the timeline for rebuilding would remove the current 10-year rebuilding requirement, replacing that requirement with a more flexible timeline. The proposed modification seems to appropriately accommodate the influences of other factors (such as non-fishing environmental effects) on rebuilding the time.

*Relief from rebuilding requirement if stock is not depleted*—Provision to relieve requirements for rebuilding if it is determined that a stock is not depleted is important, as it relieves the stress of rebuilding plans when improved stock information shows that a rebuilding plan was unnecessary in the first place.

**Section 4—Modifications to the Annual Catch Limit (ACL) Requirement**

*Ecosystem components*—The provision for the exemption of stocks from ACL requirement by inclusion as an ecosystem component provides effective protection to nontarget stocks that are unlikely to be affected by fishing.

*Scientific and Statistical Committee fishing/overfishing recommendations*—The bill would allow a Council to set an ACL for a stock above the recommended fishing level of its SSC. The North Pacific Council's policy of maintaining its ACLs at or below its SSC's recommended fishing level predates development of the provision of the current Magnuson-Stevens Act provision. Although a need for removing this requirement may exist in other regions, it is our hope that the North Pacific Council maintains its current policy of setting ACLs at or below the SSC recommended fishing level.

**Section 5—Distinguishing Between Overfished and Depleted Stocks**

Distinguishing overfished stocks from depleted stocks could be important in the future, if some stocks are depleted for reasons other than fishing. Adopting a revised definition of "depleted" could have some implications for the development of rebuilding plans depending on how that definition is interpreted. For example, a stock might be determined to be "depleted" by dipping "below the natural range of fluctuation associated with the production of maximum sustainable yield", without reaching an "overfished" state which occurs only if "a level that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis" is reached. The proposed definition of depleted will require that the "natural range of fluctuation associated with the production of maximum sustainable yield" be defined for all stocks. The current definition of overfished provides a more certain metric for assessing stock status. Maintaining the current definition (and applying it to the term "depleted") or developing a more transparent revised definition may provide more certainty on when a stock will be considered depleted.

**Section 6—Transparency and Process**

The procedural and analytical under the National Environmental Policy Act (NEPA) are somewhat redundant and at times difficult to reconcile with the procedural and analytical requirements of the Magnuson-Stevens Act. Notwithstanding, NMFS and the Regional Fishery Management Councils have generally managed to reconcile these requirements. An explicit statement that actions prepared in accordance with the Magnuson-Stevens Act are considered to comply with NEPA requirements would remove any uncertainty as to whether the reconciliation of the requirements has been fully achieved.

The requirements for video recording and broadcast and production of transcripts seem excessive. Currently, audio broadcasts and recordings and tape logs are available of North Pacific Council meetings and deliberations. These materials provide adequate information to the public without excessive costs. Maintaining the current process provides for adequate transparency and public participation in the North Pacific Council process.

**Section 7—Limitation on Future Catch Share Programs**

This applies only outside the North Pacific; therefore, I have no comment.

**Section 8—Data Collection and Data Confidentiality**

*Electronic monitoring*—The use of electronic monitoring will be important to gaining improved information in fisheries across the Nation. The timeline for developing standards and regulations seems aggressive, but the spirit of the measure seems appropriate.

To fully achieve the benefits of electronic monitoring, compliance monitoring should be permitted with electronic monitoring. In addition, several electronic technologies are currently used for compliance monitoring, such as Vessel Monitoring

Systems. Continued use of these existing electronic technologies for monitoring should be maintained by any electronic monitoring provision. Any legislation should clearly provide that electronic monitoring may be used for compliance monitoring. Throughout the consideration of electronic monitoring systems, attention should be given to avoiding redundancies with observer coverage to achieve the most cost effective monitoring.

*Video and acoustic survey technologies*—The support for further development of video and acoustic survey technologies is an appropriate measure for improving fishery information.

*Data confidentiality*—Under (c)(1)(B), the insertion limits the protection to being “exempt from disclosure under section 552(b)(3) of title 5, United States Code”. Depending on interpretation, as written this change could substantially broaden disclosures, since it only prevents disclosures under the Freedom of Information Act (FOIA). An alternative wording that provides the current protection could be: “shall be exempt from disclosure, including disclosure under section 552 of title 5, United States Code, except—”. This change would make it clear that FOIA disclosures are not permitted.

Under (c)(1)(B), the insertion at clause “(F)” disclosures “to a Council or State” are allowed with written authorization from the person submitting the data. The current rule allows disclosure of data to *any person* identified by the data submitter with written authorization. Industry has used the current exception to provide data to a third party for overseeing catches and bycatch, implementing bycatch reduction measures and area closures, and monitoring industry measures to reduce fishing impacts. Maintaining the ability of data submitters to release data to third parties, as permitted under the current exemption, is important to achieving the conservation benefits of these industry measures and poses no threat to confidentiality since disclosures are at the discretion of the submitter. Deletion of “to a Council or State” would clearly provide for the submitter to continue to release data to third parties.

Under (c)(1)(B), the insertion at clause “(G)” allows for the disclosure of information “required to be submitted to the Secretary for any determination under a catch share program.” This modification is consistent with the current interpretation of an exception that provides for disclosure of information “required to be submitted to the Secretary for any determination under a limited access program”. To date, NMFS has interpreted “limited access program” to mean “catch share program”. More problematic are the potential interpretations of the term “determination”. In the Proposed Rule of May 2012, NMFS suggests that a “determination” is limited to a “grant, denial, or revocation of privileges; approval or denial of a transfer of privileges; or other similar regulatory determinations by NMFS applicable to a person.” This interpretation adequately protects proprietary information of submitters. Including the specific definition of “determination” from the proposed rule in legislation could ensure that this protection is continued.

A provision for the release of bycatch information with and without vessel identification applicable only in the North Pacific is removed by the discussion draft. When first adopted, this provision provided important bycatch information that stigmatized poor bycatch performers and likely stimulated improved bycatch performance. Since that time, extensive regulatory bycatch control measures have been adopted and fleets have developed cooperative arrangements to further reduce bycatch impacts. In some cases, it is possible that disclosures under the exemption could discourage experimentation or fleet coordination that might yield further bycatch reductions. In addition, expansive bycatch information is available without the exemption. Given the advances in bycatch reduction, the potential for disclosures to create a disincentive for bycatch reductions and the breadth of information available regardless of the exemption, the need for continued release of bycatch information under the current exemption should be explored.

*Asset Forfeiture Funds*—The use of forfeiture funds would be beneficial for developing information on data-poor fisheries. In developing a provision, it should be borne in mind that NMFS often contracts surveys with private vessel owners. As written, the provision allows the use of funds to contract State personnel and resources for data development. A similar provision for the continued contracting of private vessels for surveys should be included.

Thank you for the opportunity to present this testimony. I look forward to working with the committee on the Magnuson-Stevens Act reauthorization process to continue the sound conservation and management of our Nation’s fisheries resources.

QUESTIONS SUBMITTED FOR THE RECORD BY REPUBLICAN MEMBERS TO MARK FINA,  
UNITED STATES SEAFOOD

*Question.* Can you explain how the disconnect between the timelines in the Magnuson-Stevens Act and NEPA affected your work when you worked as staff to the North Pacific Council? Do you believe the requirements of NEPA are already required under the Magnuson-Stevens Act? If not, what specific requirements of NEPA are not included in the Magnuson-Stevens Act?

*Answer.* Timelines for actions under the MSA are driven by fishery management council meeting schedules, fishing seasons, and the availability of information needed for management decisions. Although the Secretary of Commerce makes final determinations in the fishery management process, Councils typically shape and define regulatory measures. Consequently, stakeholder input and participation is most effective in the Council process. The EIS process and timeline are driven by NEPA, CEQ regulations, and NOAA Administrative Orders. Despite the extensive opportunity for stakeholder input in the Council process, NMFS interprets NEPA as requiring an independent scoping process with written and oral comments outside of Council meeting structure. Although NMFS staff typically provides the Council with summaries of stakeholder input received during the NEPA scoping process, this indirect participation is likely far less effective and influential than the direct input received through the Council process. This redundancy in processes is both costly and misguided especially for stakeholders who are less familiar with the fishery management process. In short, this confusing overlap of NEPA and the MSA processes further marginalizes persons who are infrequent participants in the fishery management process.

Conflicting NEPA and MSA timelines also arise from interpreting Secretary of Commerce approval (rather than a fishery management council's adoption) of a fishery management measure as the Federal action under NEPA. The most direct conflict between timelines for fishery management under the MSA and NEPA timelines occurs in the preparation of Environmental Impact Statements. By interpreting the Secretary of Commerce's approval as the Federal action under NEPA, all judgments concerning the timing and adequacy of an EIS for a fishery management action are evaluated based on the timing and substance of that secretarial approval. Consequently, it is possible that the analysis (including the scope of alternatives) may be deemed inadequate only at the time of Secretarial approval, which may be months after a determinative Council action. The result is that an action may need to be fully revisited in the Council process months after a final Council action.

The analytical requirements of the MSA fully satisfy the requirements of NEPA. The analytical requirements for taking action under the MSA are comprehensive. Analyses must broadly evaluate environmental effects (including impacts on the ecosystem), as well as social and economic effects. These MSA requirements not only fully satisfy NEPA requirements but are more appropriately directed to understanding the impacts of fishery management actions. It is unclear why it may be perceived that NEPA requirements bring anything other than procedural complications to the fishery management process.

*Question.* The 2006 amendments required NOAA and CEQ to revise the NEPA guidelines to make them match up with the Magnuson-Stevens Act timelines. Did that happen?

*Answer.* No, NOAA never completed the process of revising the NEPA guidelines to match up with MSA timelines. A proposed rule was published in May of 2008, but no final rule has been completed to date. NMFS has issued a policy on this subject that discusses some of the timeline conflicts, but fails to fully reconcile those conflicts.

*Question.* You raise concerns that NOAA has been increasing the amount of data—including proprietary data—that is gathered for fishery management purposes. Do the current data confidentiality requirements adequately protect proprietary data—including data voluntarily provided to NOAA? If not, what suggestions can you provide to ensure that fishery managers have the information they need while maintaining the confidentiality of propriety information?

*Answer.* Applying an aggregation rule-of-three at the vessel level for the disclosure of any proprietary data is adequate to protect confidentiality interests related to those data. Maintaining and abiding by this rule should address all concerns related to the disclosure of proprietary information in fishery management and analytical documents.

An additional concern that arises with the increased collection of proprietary data arises from the management of those data by NOAA. The availability and distribu-

tion of data to both NOAA employees and contractors should be evaluated to ensure that data are shared and used only to the extent necessary for management of fisheries. In addition, these data should be tracked after any distribution to ensure that they are destroyed once the intended use is satisfied. Currently, the greatest risk of disclosure of proprietary data is likely from inadvertent disclosures because of poor data management or uses for unintended purposes. These risks can be minimized through closely attending to data management. During my time as Council staff, NOAA data management was very good, but some risk of inadvertent disclosure, particularly through distribution of data to contractors, remained.

*Question.* Your testimony notes that the Act “currently provides flexibility for bringing ecosystem considerations into fisheries management.” Do you support the provisions in the Discussion Draft which would allow Councils additional flexibility to consider environmental changes when developing rebuilding schedules?

*Answer.* Yes. The current MSA provisions that dictate a rebuilding timeline that is as short as possible and no longer than 10 years can force restrictive management measures that provide little or no conservation benefit. At times, environmental conditions, including inherent characteristics of stocks, may prevent achieving rebuilding in the 10-year time period regardless of whether a rebuilding schedule that accommodates increased fishing would delay stock rebuilding. Allowing rebuilding schedules that consider environmental conditions with reasonable limits to prevent harm to the stock (as proposed in the Draft Discussion Bill) is a reasonable means of addressing this issue.

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LETTER SUBMITTED FOR THE RECORD TO SAMUEL D. RAUCH III, NATIONAL MARINE FISHERIES SERVICE, NOAA, FROM REPRESENTATIVES LARSEN AND YOUNG

CONGRESS OF THE UNITED STATES,  
WASHINGTON, DC 20515,  
DECEMBER 16, 2013.

Samuel D. Rauch III,  
*Acting Administrator,*  
*National Marine Fisheries Service,*  
*National Oceanic & Atmospheric Administration,*  
*Silver Spring, MD 20910.*

Dear Acting Administrator Rauch:

We are writing to strongly encourage the National Oceanic & Atmospheric Administration (NOAA) to promulgate a final rule implementing the information confidentiality provisions of the Magnuson-Stevens Act (MSA) that protects proprietary information and maintains reasonable recordkeeping requirements. On May 23, 2012, NOAA issued a proposed rule (*FDMS Docket No. NOAA-NMFS-2012-0030*) that largely meets these standards, which we urge you to keep as you move forward. We believe the final rule must remain largely consistent with Congressional intent and conform as closely as possible to the proposed rule.

As fisheries management programs such as Limited Access Programs and Catch Shares have been implemented, the data needs for effective fisheries management have increased. However, in both 1996 and 2006 Congress recognized that if fishery participants were going to be required to submit sensitive, proprietary information, then greater confidentiality provisions needed to be afforded as well.

We have heard from our constituents in the fishing industry that expanding the types and kinds of information subject to public release well beyond that outlined in the proposed rule would diminish the protections of confidential information in a way inconsistent with the requirements of the MSA.

Indeed, the unnecessary release of sensitive, proprietary information could undermine the healthy competitive relationships that exist among fishermen, subject individual companies to unwarranted attacks from outside groups, and destabilize the fundamental economics of fisheries. We therefore urge you to not expand the release of information beyond that outlined in the proposed rule.

Thank you for your consideration, We look forward to working with you in the future.

Sincerely,

RICK LARSEN,  
DON YOUNG,  
*U.S. Representatives.*

LETTER SUBMITTED FOR THE RECORD FROM REGIONAL FISHERY MANAGEMENT  
COUNCILREGIONAL FISHERY MANAGEMENT COUNCIL  
COORDINATION COMMITTEE,  
NOVEMBER 8, 2013.

Hon. DOC HASTINGS,  
*U.S. House of Representatives,  
1203 Longworth House Office Building,  
Washington, DC 20515.*

Hon. MARK BEGICH,  
*U.S. Senate,  
111 Russell Senate Office Building,  
Washington, DC 20510.*

DEAR REPRESENTATIVE HASTINGS AND SENATOR BEGICH:

On behalf of the eight Regional Fishery Management Councils, I am forwarding to you a consensus statement from the October 23–24, 2013 Webinar meeting of the Council Coordination Committee (CCC) relative to potential reauthorization of the Magnuson-Stevens Act (MSA). Given the understanding that legislation drafting is advancing rapidly in the near term, the following CCC statement is necessarily brief and general.

*In expressing confidence in most aspects of the MSA and the perspective that any changes should be carefully considered so as to not impair features that the CCC believes are key to current successes, the CCC noted the following as high priority candidate areas for improvement:*

- *stock rebuilding plans, including*
  - a. *providing flexibility in stock rebuilding schedules,*
  - b. *addressing the discontinuity of the 10-year requirement, and*
  - c. *taking into account socioeconomic impacts;*
- *ending overfishing;*
- *mixed stock fishery flexibility;*
- *recreational fishery considerations;*
- *management of data-poor stocks; and*
- *a variety of international fishery management issues.*

In addition to this topical, general input, the CCC would also draw your attention to the more detailed perspectives from each of the Regional Fishery Management Councils (RFMC) that was available at the time of the October 23–24 webinar meeting; these can be found at <http://www.pcouncil.org/council-operations/council-meetings/ccc-oct-2013/#oct2013cccBB>. Please note that individual RFMCs may further elaborate on their individual priorities via separate communication in the relatively near future, and that the CCC is scheduled to discuss any legislation that is introduced at their mid-February meeting in the Washington, DC area.

Last, please accept our thanks for the contributions of Mr. Dave Whaley and Mr. Jeff Lewis during the October 23–24 webinar meeting. Their professional participation was invaluable in making progress on this important matter.

If there are any questions or specific information you need, feel free to contact me at any time.

Sincerely,

D. O. McISAAC, PH.D.,  
*Executive Director,  
Pacific Fishery Management Council.*

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PREPARED STATEMENT OF STATE FISH AND WILDLIFE AGENCIES  
ASSOCIATION OF FISH AND WILDLIFE AGENCIES

*These comments are a compilation of issues raised by some of AFWA's members and not an exhaustive list. We look forward to working with the committee staff on addressing the State Fish and Wildlife Agencies' concerns and suggestions. Please contact Jen Mock Schaeffer at [jenmock@fishwildlife.org](mailto:jenmock@fishwildlife.org) for more information.*

### **Section 3. Flexibility in Rebuilding Fish Stocks**

- We agree with the proposed changes in this section.

### **Section 4. Modifications to the Annual Catch Limit Requirement (b)**

- It appears that changes to 302(h)(6) allows Councils to exceed recommendations made by the SSC and would only be prohibited from exceeding the OFL. Concerns were raised that this is not a helpful precedence and could set us back. Some Councils managing for sustainability look at everything and must make very deliberate decisions, which this section would not necessarily facilitate. One State questioned the need for such a provision if the bill is already providing more flexibility for States, communities and catches.

- We do not understand what is meant by “the Council may establish ACLs for each year in any continuous period up to 3 years”. Does this mean they can establish a 3-year ACL or three consecutive annual catch limits?

### **Section 5. Distinguishing Between Overfished and Depleted**

- We support these changes because they indicate that fisheries may be in decline for reasons other than fishing.

### **Section 6. Transparency and Public Process for Scientific and Management Actions**

- We support more transparency in the Council and SSC process.
- Do the audio/video/transcript requirements include Council committee meetings or just meetings of the full Council?
- We recommend giving Councils the option and flexibility to provide the audio, video or a transcript within 60 days because producing such transcripts can be costly and time consuming. Furthermore, some rural communities access to broadband and Internet access for downloading video could be challenging and limiting, and Councils need to be responsive to the needs and conditions of interested parties. Additionally, under some circumstances or intense discussion topics, videotaping the discussion could stifle the scientific discussion and reduce its effectiveness, an undesirable and unintended consequence. We recommend providing the Councils more flexibility to meet the public transparency needs of their communities.

### **Compliance with NEPA**

- We support these changes.

### **Section 7. Limitation on Future Catch Share Programs**

- The definition of catch share could be broadened: “. . . allocates a specific percentage, *poundage or portion*, of the total allowable catch . . .”

- Currently, fishermen can petition the Secretary requesting that a Council be authorized to initiate development of a Limited Access Privilege Program (LAPP) such as an Individual Fishing Quota (IFQ,) program. There is currently a special clause for multispecies permits in the Gulf of Mexico, which states that only participants who have “substantially fished” the LAPP proposed species shall be eligible to sign a petition asking for an LAPP. Additionally, only participants meeting these requirements would count toward the percentage needed (permit or allocation holders) to petition the Secretary. There is no such provision for multispecies permits in the South Atlantic (such as Snapper Grouper and Coastal Migratory Pelagics), which means that fishermen could be eligible to request an IFQ program or other LAPP for species that they do not harvest.

We suggest revising the term “permit holder eligible to participate” to specify that only participants who have “substantially fished” the LAPP proposed species shall be eligible to sign a petition asking for a LAPP in the South Atlantic. The suggested change would help ensure that only fishermen that have “substantially fished” for a particular species can request LAPPs for that species. This is important because many fishermen specialize in harvesting a few species, even though their multispecies permit allows them to harvest dozens of other species. This is also important because several South Atlantic fisheries are regional, such as yellowtail snapper, which only occurs in South Florida. Thus, in this example, anyone holding a snapper-grouper permit would not be able to vote on a yellowtail snapper LAPP, only those folks actually fishing for yellowtail snapper (since that is one of many species covered by this permit).

- In many cases, the captain and crew of a fishing vessel may not own the permits under which they fish, but derive all or a significant portion of their income from fishing. If a referenda is held to determine if an LAPP program should be created in the Gulf or South Atlantic, such fishery participants are not eligible to vote, even though they are familiar with operation of the fishery and directly affected by the referenda.

*Suggested Change:* Modify Sec. 303A(c)(6)(D)(v) of the Magnuson-Stevens Act to require the Secretary to promulgate criteria for determining whether additional fishery participants are eligible to vote in Gulf and South Atlantic referenda to ensure crew members that derive a significant portion of their income from the fishery are eligible to vote. This is already a requirement for New England.

*Reason for Change:* This change would ensure crew members that derive a significant portion of their income from the fishery can vote on LAPPs that could change their industry and communities are created.

### **Section 8. Data Collection and Confidentiality**

- We do not support the limitation on enforcement use of electronic monitoring (EM) because it may disrupt law enforcement efforts to monitor the IFQ fisheries and ensure compliance with regulations. States use electronic monitoring, in part, for enforcement, and they believe limiting EM's use will hamper management of the fisheries resources. In a time of low State budgets and reduced resources, there should not be limitations placed on EM. Councils should have the flexibility to utilize EM as needed for various purposes to address resource, capacity, and other needs because it is significantly cheaper than the alternatives.

- We support the change that allows asset forfeiture funds to go to fisheries independent data in the region from which they were collected.

- Under (3) “may” could result in nothing happening. Councils should determine how best to monitor, but the intent of this language is not clear to us.

- (3)(B) doesn't seem to facilitate the use of EM, which the States need and want. Some will argue that nothing replaces human observers, and therefore, that is the only acceptable course of action, but it is not a financially realistic one. What is the intent with this language?

- (3)(c) Confidentiality of Information—Current rulemaking for this is underway, and a final rule has not yet been published. Understanding what constitutes a “determination” is very relevant as well as the definition of confidentiality. Electronic landing systems are at risk and could conflict with current State laws/rules. States like the proposed rule but are not sure what will come out in the final rule; States do not support having all information made public and none kept confidential. States are comfortable maintaining the status quo on confidentiality. They are not willing to provide individual vessel info, but providing aggregated data for several vessels is acceptable.

- p. 21, (5)—The intent and purpose of this provision is unclear to us, but States think it will make marine spatial planning more challenging.

### **Section 9. Council Jurisdiction for Overlapping Fisheries**

- No comment.

### **Section 10. Gulf of Mexico Cooperative Research and Red Snapper Monitoring**

- We support extending seaward boundary of State waters in the Gulf of Mexico to 9 miles.

- We support the repeal of 16 U.S. Code § 1854, Gulf of Mexico Red Snapper Research.

- We support the Cooperative Research Program for the Gulf and South Atlantic that gives priority to data-poor species.

- Reporting and Data Collection Program:

- It appears that the bill is separating the recreational sector into two separate sectors: “charter” and “recreational” (assumed to be private recreational anglers). They are currently managed as a single sector by the Gulf Council.

- We assume that a real-time reporting program would have to be implemented by NMFS for the red snapper fishery with the data collection program being implemented by the States through dockside surveys. We are concerned that adequate funds would not be available to administer such programs.

- Stock Surveys and Assessments
  - We support more frequent assessments for the southeast region, but are concerned that inadequate funds are available for the data collection and modeling needs for this effort.
  - We support any effort to incorporate new fisheries data into assessments as soon as possible.

**Section 11. North Pacific Fishery Management Clarification**

- We support this change because it remedies an existing loophole.

**Section 12. Authorization of Appropriations**

- No comments.

**Section 13. Ensuring Consistent Management for Fisheries Management Under Other Federal Laws**

- We support these changes.

**Other Suggested Changes that are not Currently in the Bill:**

- *Suggested change:* Section 302(b)(2)(D) should be removed from the reauthorization and the process should be eliminated. Section 302(b)(2)(D) established a special Council appointment process for the Gulf of Mexico Fishery Management Council that expired at the end of fiscal year 2012. This process was overly burdensome and should not be renewed. The existing process that is used for the other Councils and is currently being used for the Gulf Council is sufficient for appointing quality candidates to the Gulf Council.

- *Issue:* There has been concern that advisory panel members that are purportedly representing a particular sector (e.g., commercial) are paid by NGOs, either directly or indirectly, to attend Council meetings, serve on Advisory Panels, and lobby Council members.

*Suggested change:* Modify Sec. 302(g) of the Magnuson-Stevens Act to require disclosure of financial interests by advisory panel members.

*Reason for change:* Sec. 302(g) currently requires disclosure of financial interests by those serving on Council science and statistical committees, but there is no such requirement for advisory panel members. Requiring disclosure of such financial interests would help identify which organizations are represented by advisory panel members.

- Section 317 Shark Feeding should prohibit shark feeding in the Gulf of Mexico and South Atlantic EEZ. The purpose of this change would be to reduce dangers to divers who encounter sharks.

- *Issue:* Highly Migratory Species like sharks, tunas, swordfish, and billfish are regulated by NOAA Fisheries, but are not managed through the Council process. Magnuson establishes that the Federal Councils have Scientific and Statistical Committees (SSCs) that provide scientific advice for management decisions, but Magnuson does not establish SSCs to review Highly Migratory Species management actions.

*Suggested Change:* Sec. 304(g) of the Magnuson Act should be modified to establish an SSC to provide scientific advice on potential fishery management plans and plan amendments for Atlantic Highly Migratory Species. At minimum, a mechanism for scientific peer review of proposed management alternatives for HMS species should be established.

*Reason for Change:* There is no mechanism for scientific peer review of proposed management actions taken by NOAA Fisheries for Highly Migratory Species. Such review is important in determining if potential management actions are backed by sound science. This section already provides for establishment of an advisory panel for Highly Migratory Species.

- *Issue:* According to the Magnuson-Stevens Act, a State may only regulate a fishing vessel outside State boundaries in adjacent Federal waters (A) “if the fishing vessel is registered under the law of that State,” there is no Federal FMP for the fishery in question, or the State’s laws are consistent with the Federal FMP and Federal fisheries regulations or (B) if fishery management authority is delegated to the State. Accordingly, Florida has extended several of their fishery regulations into Federal waters (ex. Snook) when those fisheries are not federally managed. However, there are two issues with this part of the Magnuson Act. First, the extension

of State fishing regulations into Federal waters has been successfully challenged in court when Florida claimed regulatory authority over fishing for a State-regulated species in Federal waters. Additionally, the State is currently unable to enforce regulations on out-of-State fishing vessels in Federal waters off Florida.

*Suggested Change:* Sec. 306(a)(3) of the Magnuson Act should be changed to allow the State to regulate fishing and fishing vessels. In Sec. 306(a)(3)(A), the requirement that the fishing vessel be registered under the law of the State should be removed.

*Reason for Change:* These changes would address court challenges in which the defendant claimed that the Magnuson Act only allows the State to regulate fishing vessels, and not fishing activity. They would also allow State officers working in Federal waters to enforce State rules that have been extended in Federal waters on ALL vessels, including vessels registered by the Coast Guard or in other States.

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PREPARED STATEMENT OF WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL

Below are detailed comments from the Western Pacific Fishery Management Council on the draft House Bill to amend the Magnuson-Stevens Fishery Conservation and Management Act. The comments and recommendations are presented by section.

**Section 3: Flexibility in Rebuilding Fish Stocks**

Overall, the Council supports the language proposed in Section 3 to provide flexibility in rebuilding fish stocks. In particular, allowing for a phased-in approach over a 3-year period is practical and takes into consideration impacts to affected communities. However, further guidance is needed in defining “highly dynamic fishery” as it applies to the use of this phased-in approach.

This Section notes that rebuilding may be contingent on factors beyond the control of the Councils, or in some cases beyond that of the USA with regard to shared transboundary stocks. Moreover, it notes that environmental conditions may predicate the rebuilding schedule. The statement in item IV is unclear which refers to “*informal transboundary agreements*” under which management activities outside the EEZ by another country may hinder conservation effort by U.S. fishermen”. How do “informal transboundary agreements” differ from international agreements which are included in Section (I)?

Finally, Section 3(2)(C), we question the utility of including the “predator/prey relationships” in this sentence as it is only one example of many that may be considered when accounting for “environmental conditions.” We suggest it be removed.

**Section 4: Modifications to the Annual Catch Limit Requirement**

The proposed changes in the Annual Catch Limit (ACL) section of this bill addresses many of the problems faced in implementing ACLs in the Western Pacific Region. Providing the Council the authority and opportunity to consider ecosystem and economic needs of the fishing community in implementing ACLs is a beneficial change to the current MSA text. The Western Pacific Council provides for similar considerations through an analysis that considers social, economic, ecological and management uncertainty. Consideration should be given to include social and management elements in this section as ecosystem and economic variations are already accounted for. Given the overall underutilized status of fisheries in the Western Pacific Region, this language could be revised to: “*In evaluating the need to establish annual catch limits, a Council may consider changes in an ecosystem and the economic needs of the fishing community*”. This provides the Council flexibility in having to apply ACLs for in fisheries where it may not be appropriate.

With regard to exempting Councils for having to develop ACLs, we suggest adding a third item for fisheries that are currently inactive and will remain inactive in the foreseeable future. Having to specify annual limits for dormant fisheries, such as deepwater shrimp and precious corals in the Western Pacific, unnecessarily consumes Council and NMFS resources.

With regard to the section on “Relationships of International Efforts”, the Council is concerned as those stocks managed through international agreements would now be required to have ACLs established, where currently they are exempt as established through NMFS guidelines.

The Council supports the provisions included addressing multispecies complexes and multi-year catch limits and defining ecosystem component species.

The suggested change to Section 302(h)(6) in striking “fishing” and inserting “overfishing” will result in a technical conflict with the NS1 guidelines. Currently,

the *fishing level recommendation* by the SSC is the acceptable biological catch or ABC. The overfishing level is derived from the stock assessment developed by NMFS. Changing fishing to overfishing puts the onus on the SSC to develop its own stock assessment which changes the process on how ACLs are specified. Is this the intended outcome of this provision?

#### **Section 5: Distinguishing Between Overfished and Depleted**

The Council supports redefining “overfished” to help distinguish between fisheries that are depleted as a result of fishing versus “depleted” as a result of factors other than fishing. This issue has been a point of contention for our Advisory Panel and fishing communities for many years, as numerous fisheries have been impacted by changes in habitat resulting from coastal development and other non-fishing activities. In particular, the Council looks forward to the NMFS reporting on the status of stocks as a result of this change.

#### **Section 6: Transparency of the Public Process for Scientific and Management Actions**

With regard to increasing transparency of the public process, to the extent practicable this Council has routinely provided for most of the public transparency elements identified in this section. However, requiring complete transcripts of both the Council and SSC will require additional resources to process this information within the 30-day time frame suggested. At this time, the Council makes available meeting minutes for all Council and SSC meetings on the web, among other documents.

#### **Sec. 314: Compliance with National Environmental Policy Act of 1969**

The Council supports a reauthorized MSA that would allow for MSA fishery management plans, plan amendments, and regulatory amendments to be stand-alone documents that satisfy the requirements of NEPA. This is because the existing MSA/Council process is analogous to the procedures of NEPA with respect to public participation and impact analysis. However, the Council suggests that minor technical modifications to be made to Section 303(a) of MSA to ensure consistency with NEPA such as requiring the consideration of alternatives to the proposed action and requiring a broader-level of environmental review in MSA documents.

#### **Section 7: Limitations on Future Catch Share Programs**

The Council suggests that the use of catch shares also consider regional flexibility in the need for its application to fisheries, particularly the non-commercial/recreational sector. Catch shares are not appropriate for the non-commercial/recreational fisheries sector as new entry opportunities and equal access to a public trust resource are imperative to effectively managing the Nation’s fisheries resources for the good of all.

#### **Section 8: Data Collection and Data Confidentiality**

Electronic monitoring should be one of many tools considered to facilitate data collection and monitoring when developing fishery management plans or amendments. We support developing objectives and performance standards for this new technology to ensure consistency in its application immediately after passage of the MSA reauthorization. However, mandating the development of regulations for electronic monitoring within this 6-month period is not appropriate. The implementation of such regulations should be promulgated through the standard regulatory process and not automatically mandated through this top-down approach.

We also have serious concerns regarding prohibiting the use of electronic monitoring for enforcement which contradicts this Council’s existing regulations on the use of satellite-based vessel monitoring systems on Hawaii longline vessels to monitor area-based closures. These regulations have been in place for nearly 25 years. If Congress wishes to maintain this provision, we suggest defining electronic monitoring to not include VMS.

Regarding the new provision to supported “*Increased Data Collection and Action to Address Data-Poor Fisheries*,” the Council supports directing a portion of the fisheries enforcement penalties received by the United States to assess data-poor fisheries and cooperative research to improve fishery independent data in stock assessments. However, while this provision is good, it will be important to ensure that it does not conflict with the existing provisions in the MSA that directs enforcement fines and penalties in the Pacific Remote Island Areas to the Sustainable Fisheries Fund or those occurring in the U.S. EEZs surrounding American Samoa, Guam and Commonwealth of the Northern Mariana Islands to their respective local treasuries.

This Council supports the proposed definition for “data-poor fishery” which would include many of the reef fisheries managed in the Pacific Island region.

**Section 9: Council Jurisdiction for Overlapping Fisheries**

[No comments]

**Section 10: Gulf of Mexico Cooperative Research and Red Snapper Management**

[No comments]

**Section 11: North Pacific Fishery Management Clarification**

[No comments]

**Section 12: Authorization of Appropriations**

[No comments]

**Section 13: Ensuring Consistent Management for Fisheries Through Their Range**

The Council strongly supports this section recognizing the MSA as the controlling authority over promulgating fishing regulations. In addition to the National Marine Sanctuaries Act and Antiquities Act of 1906, other Acts impacting fisheries should be included such as the Marine Mammal Protection Act, Migratory Bird Treaty Act and the Endangered Species Act.

This Council also strongly supports the provision related to “*Fisheries Restrictions Under the Endangered Species Act of 1973*,” but recommends that the text, “. . . that is necessary to implement a recovery plan . . .” be removed. While Section 4 of the ESA relates to rules that may be result from recovery plans, Section 9 of ESA may also result in fishery restrictions through take prohibitions for ESA-listed species. Further, the Council recommends that the text “(1) using authority under this Act; and (2) in accordance with processes and time schedules required under this Act” be modified to read “in accordance with processes established under Section 302 of this Act”. Currently, fishery management measures deemed necessary to protect ESA-listed species are promulgated under Section 305 of the MSA, which bypasses transparent public process intended under MSA.

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[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE’S OFFICIAL FILES]

- Allison, David L., JD, LL.M, Shelton, WA, Letter dated December 22, 2013
- Association of Northwest Steelheaders, Russell Bassett, Executive Director, Letter dated January 27, 2014
- Bunny Clark Corp., Tim Tower, President, Letter dated January 28, 2014
- Center for Sustainable Fisheries, Discussion Draft Review dated January 14, 2014
- Center for Sustainable Fisheries, Policy Paper dated November 20, 2013, also available online at <http://centerforsustainablefisheries.org/wp-content/uploads/MSA-Reauthorization-Policy-Paper.pdf>
- Charleston Area Hospitality Association, Fisheries Management statement
- Combined Governing Bodies of Shishmaref, Alaska, Joint Resolution 2013–02 dated April 17, 2013
- Council for Sustainable Fishing, Tom Swatzel, Executive Director, Letter dated January 14, 2014
- Davis Wright Tremaine, LLP, James P. Walsh, Letter dated January 31, 2014
- Hawaii Longline Association, Prepared statement dated January 29, 2014
- Maine Rivers, Landis Hudson, Executive Director, Letter dated January 8, 2014

- Mirarchi, Frank, F/V Barbara L. Peters, Scituate, MA, Letter dated January 23, 2014
- Natural Resources Defense Council, Bradford H. Sewell, Senior Attorney, Letter dated January 30, 2014
- PEW Charitable Trusts, Lee R. Crockett, Director, U.S. Oceans, Letter dated January 27, 2014
- Platt, Darren, Commercial Fisherman from Kodiak, AK, Comments
- Prime Seafood, James R. Chambers, Founder/Owner, Letter dated February 6, 2014
- Recreational Fishing and Boating Community, Discussion Draft Review
- Tsongas, Niki, a Representative in Congress from the State of Massachusetts, Prepared statement

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**LEGISLATIVE HEARING ON H.R. 4742, TO  
AMEND THE MAGNUSON-STEVENSON FISHERY  
CONSERVATION AND MANAGEMENT ACT TO  
PROVIDE FLEXIBILITY FOR FISHERY MAN-  
AGERS AND STABILITY FOR FISHERMEN,  
AND FOR OTHER PURPOSES, “STRENGTH-  
ENING FISHING COMMUNITIES AND  
INCREASING FLEXIBILITY IN FISHERIES  
MANAGEMENT ACT”—PART 2**

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**Friday, February 28, 2014  
U.S. House of Representatives  
Committee on Natural Resources  
Washington, DC**

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The committee met, pursuant to notice, at 9:32 a.m., in room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, DeFazio, Sablan, Tsongas, Hanabusa, Huffman, Shea-Porter, and Garcia.

The CHAIRMAN. I want to call our witnesses. We have Mr. Samuel Pooley, who is the Director of NOAA Pacific Islands Fisheries Science Center; Ms. Dorothy Lowman, Chair of the Pacific Fishery Management Council; Mr. Bob Rees, the North Coast Chapter President of the Association of Northwest Steelheaders—I will get it right; Mr. Peter Shelley, Vice President at Conservation Law Foundation; and Mr. Zeke Grader, Jr., Executive Director of the Pacific Coast Federation of Fishermen’s Associations.

I want to thank all of you for being here. If you have not had an opportunity to testify in front of the committee, you will note that the little machine in front of you has a 5-minute timeframe there. And the way that works is when the green light is on, that means that you are doing very, very well in your testimony. And when the yellow light comes on, it is like going through a stoplight. It means you have to hurry up so you can finish before the red light comes on.

Now, I say that because that gives you 5 minutes for your oral testimony, but your full written testimony will appear in the record. So it is not confined just to your oral testimony.

So, with that, we will start with Mr. Samuel Pooley, Director of NOAA Fisheries—Pacific Islands Fisheries Science Center, and you are recognized for 5 minutes.

**STATEMENT OF SAMUEL POOLEY, DIRECTOR, NOAA PACIFIC  
ISLANDS FISHERIES SCIENCE CENTER**

Dr. POOLEY. Good morning, and aloha, Mr. Chairman, and members of the committee. Thank you for the opportunity to speak with

you today. I am pleased to represent the Pacific Islands region of NOAA fisheries. When the Pacific Islands region was established in 2003, the agency was committed to enhancing our relationships with stakeholders and local communities. I believe this is increasingly the case, and I hope to demonstrate that this morning.

I came to Hawaii for graduate school in 1970 as an international trade and development economist, and I stayed because of the people and vibrant cultures of the region. Fisheries have been an important part of that culture and the development of our communities. I will be revisiting Guam and Saipan in 2 weeks. Much has changed in 30 years since my first trips there, but much of the important cultural aspects of those fisheries remain.

NOAA Fisheries is committed to conducting high-quality marine science. We have worked with local resource agencies on fisheries statistics through our WestPac FIN program since 1981, and we have conducted research missions on NOAA ships in the Marianas since the 1980s. And now, for the first time, we have permanent local scientific staff in Pago Pago, Saipan, and Guam. We work closely with local resource agencies to coordinate and improve the relevance of our work, including inviting their participation in and planning two research missions in the Marianas this year.

Last year the agency announced a territorial science initiative of \$250,000 to enhance our fisheries science work in the U.S. territories in the Pacific and the Caribbean. The final 2014 appropriation will allow us to further expand the territorial science initiative to enhance the agency's and local fisheries' capacity within these territories. In addition, the NOAA Fisheries Saltonstall-Kennedy grant program also identified cooperative research in U.S. island territories and commonwealths as a priority.

But perhaps more important than these fiscal resources, this initiative provides us increased opportunity for our scientists to engage with the agencies, fishermen, and communities in these areas to a greater extent than before. With these partners, we are developing alternative assessment approaches for our reef fisheries. These alternative approaches integrate new life history information into data-poor assessments.

We are also using human dimension studies from these communities to conduct socioeconomic analysis for annual catch limit determinations. Innovations like these allow us to continue to make progress toward meeting the mandate of the Magnuson-Stevens Act by adding more detailed information that addresses the special characteristics of our region.

We made significant progress in the Pacific Islands, but much remains to be done. Objective continues to be to provide high-quality scientific information, to continue the agency's and the fishery management councils' ability to prevent overfishing, and achieve optimal yield.

As an economist and social scientist, I am particularly interested in providing meaningful information on the industries and communities of our area for conservation and management decision-making. Thank you for the opportunity to discuss with you Pacific Islands fishery science in the context of the progress we have made under the Magnuson-Stevens Act. Mahalo.

[The prepared statement of Dr. Pooley follows:]

PREPARED STATEMENT OF DR. SAMUEL POOLEY, PACIFIC ISLANDS FISHERIES SCIENCE  
 CENTER DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC  
 AND ATMOSPHERIC ADMINISTRATION

INTRODUCTION

Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to testify before you today. I am Samuel Pooley, the Pacific Islands Fisheries Science Center Director for the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS). NMFS is dedicated to the stewardship of living marine resources through science-based conservation and management. Much of this work occurs under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which sets forth standards for conservation, management, and sustainable use of our Nation's fisheries resources.

NMFS is an acknowledged international leader in fishery science, rebuilding overfished stocks, and preventing overfishing. Today, we know more about our fish stocks than ever before, although there is much yet to accomplish in our region. Nationally and locally, it is vital that our science not regress, as this would inevitably lead to declines in our stocks and a loss in the economic and social values they provide. Our progress in making fisheries management more effective is based on the principle that management is based on sound science. National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) mandates that all fisheries conservation and management measures must be based upon "the best scientific information available" (16 U.S.C. 1851(a)(2)). While we face challenges to securing accurate, precise, and timely data for stock assessments, on balance, our science-based management has consistently proven to provide better resource management than without this advice. This has, in turn, led to improved productivity and sustainability of fisheries and fishery-dependent businesses and communities.

NMFS continues to make substantial progress toward improving the quality of the science available to effectively manage commercial and recreational fisheries, benefiting coastal communities and the United States (U.S.) economy both today and for generations to come. We greatly appreciate the increased funding that Congress has provided to make U.S. fishery management, and its preeminence worldwide, possible.

My testimony today will focus on how fisheries science in the Pacific Islands is conducted and how this science underpins and provides for good management. We represent a diverse region with locally and internationally important fisheries, fisheries that are important both commercially and recreationally but also culturally. We provide scientific information for fishery management decisionmaking to the Western Pacific Fishery Management Council through its Scientific and Statistical Committee and to the Western and Central Pacific Fisheries Commission through its Scientific Committee and the independent International Scientific Committee on Tuna and Tuna-like Species (ISC) in the North Pacific.

FISHERIES SCIENCE IN THE PACIFIC ISLANDS

Without high-quality fishery science, we cannot be confident the Nation is attaining optimum yield from its fisheries, or that we're preventing overfishing and harm to ecosystems and fishing communities. Attaining optimum yield requires investing in information about fish stocks, marine habitats, and ecosystems and the people, industries, and communities that rely upon fishing. To achieve the goals of the Magnuson-Stevens Act, we must conduct the research and analyses necessary to understand the underlying life histories and population dynamics of our fisheries as well as the environmental and habitat factors affecting the sustainability of fish populations. We must continue to increase what we know about our fish stocks in order to reduce uncertainty in our estimates of fishery population status and to avoid reduced annual catch limits, resulting in lost economic and community opportunities.

The importance of increasing the frequency of stock assessments, improving the quality of fisheries science with a better understanding of ecosystem factors, and enhancing our engagement with fishermen cannot be stressed enough. Collecting adequate data in our region, including the State of Hawaii, the Territories of American Samoa and Guam, and the Commonwealth of the Northern Mariana Islands as well as the high-seas fisheries, presents unique challenges and requires additional investments in personnel and resources to be successful. These historically have relied on fishery dependent data rather than the NOAA and cooperative research surveys that typify fisheries research in the continental United States.

To address these challenges, NMFS announced on June 22, 2013, a Territorial Fisheries Science Initiative. This initiative involves the Pacific Islands and Southeast fisheries science centers to specifically expand fisheries science capacity, including fisheries information, from the Territories of American Samoa and Guam, and the Commonwealth of the Northern Mariana Islands, as well as the Territories of the U.S. Virgin Islands and the Commonwealth of Puerto Rico. The Territorial Fisheries Science Initiative is an effort to overcome the lack of data collection capacity in the U.S. territories that has resulted in a paucity of scientific information to guide management actions. The small size of the territory governments with their modest budgets; the relatively low commercial value of diverse and small-scale fisheries; and the limited NMFS presence in the territories have all contributed to the current shortcomings. This initiative is intended to address this situation, increase our engagement with territorial government agencies and academic institutions, improve the quality and reliability of Pacific Islands fishery stock assessments, and increase stakeholder and community participation in and understanding of our scientific work.

Funds from this Territorial Fisheries Science Initiative will be spent in the territories to support locally-based science, build scientific and monitoring capabilities, and enhance capacity and relationships with each of these U.S. territories. This initiative will include grants to and contracts with the territorial fisheries agencies as well as to local academic institutions and cooperative research partners to help build local scientific capacity. In FY13 under this Territorial Fisheries Science Initiative, \$125,000 was issued to each of the Pacific Islands and Southeast fisheries science centers to expand fisheries science capacity, including fisheries information, from the Territories of American Samoa and Guam, and the Commonwealth of the Northern Mariana Islands, as well as the Territories of the U.S. Virgin Islands and the Commonwealth of Puerto Rico.

In fiscal year 2014, NOAA will expand the Territorial Fisheries Science Initiative to enhance the agency's and local fisheries' science capacity in the territories at a level of \$1 million. Additionally, this year the Federal Funding Opportunity (FFO) for proposals under the FY13 Saltonstall-Kennedy (S-K) Grant Program, issued on July 31, 2013, identified "Cooperative Research in U.S. island territories and commonwealths" as a priority. This is the first year that Territorial Fisheries Science is included as a priority in this FFO to indicate an increased emphasis on these geographies within the S-K competition.

In addition, as part of our fisheries science portfolio, the Pacific Islands Fisheries Science Center is conducting two NOAA ship-based surveys to the Mariana Archipelago this year. The NOAA ship *Oscar Elton Sette* will conduct fisheries science surveys (e.g., supporting resource assessments), cetacean surveys in support of our protected species mandates, and support for local agency projects, and the NOAA ship *Hi'ialakai* will focus on coral reef ecosystem surveys and, in the last leg, ocean acidification and vents work with our partners in the Marianas Trench Marine National Monument.

#### LOOKING TO THE FUTURE

##### *Remaining Challenges*

It is critical that we maintain progress toward meeting the mandate of the Magnuson-Stevens Act to prevent and end overfishing and rebuild overfished stocks. Annual catch limits have been an effective tool in improving the sustainability of fisheries around the Nation, but managing fisheries using annual catch limits and accountability measures was a major change for some fisheries, and the initial implementation has identified some areas where we can improve that process. We continue to work with the fishery management councils to achieve the best possible alignment of science and management for each fishery to attain the goals of the Magnuson-Stevens Act. We will continue to develop our science and management tools, improve our stock assessments and monitoring efforts, and create more effective annual catch limits and accountability measures. In doing so, we must continue to ensure solid, science-based determinations of stock status and better linkages to biological, socioeconomic, and ecosystem conditions.

A primary goal in the Pacific Islands Region is to bring more data to the table and ensure the fishery management response to annual catch trends is appropriate. Many fish stocks in the Pacific Islands are managed in mixed stock complexes to make the best use of scarce data. The majority of fisheries in the region are extremely data limited, making it challenging to manage and monitor annual catch limits in the way Congress envisioned. These small-scale commercial, non-commercial, and subsistence fisheries are nonetheless critically important to the island communities. Our work, both under our normal operations and under the new

Territorial Fisheries Science Initiative, involves basic life history studies as well as improving collection and compilation of fishery statistics. Of particular interest in our region is the development of alternative assessment approaches in our coral reef fisheries, integrating this new life history information into these otherwise data-poor assessments, and using human dimensions research in these communities. Collectively, these contribute to the Western Pacific Fishery Management Council's Social, Economic, Ecological, and Management uncertainty (SEEM) analysis used in annual catch limit determinations. Aspects of the SEEM dimensions include the importance of the fishery, both socially and economically, consideration of the ecological importance of the stock or stock complex targeted by the fishery, and whether managers can effectively constrain catch to planned levels.

We value the important partnerships we have formed with the States, territories, fishermen, and other interest groups in helping address these challenges. These partnerships are critical to developing successful management strategies. Together with our partners, we continue to explore alternative and innovative approaches that will produce the best available information to incorporate into management.

It is also increasingly important that we better understand ecosystem and habitat factors, such as the effects of climate change, interannual and interdecadal climate shifts, ocean acidification, and other environmental regime shifts and natural disasters, and incorporate this information into our stock assessments and management decisions. Resilient ecosystems and habitats form the foundation for robust fisheries and fishing jobs. The Magnuson-Stevens Act currently provides flexibility for bringing ecosystem considerations into fisheries management. One example is the use of oceanographic information to identify overlaps between swordfish and loggerhead turtles in the North Pacific to provide advice on avoiding fishery interactions. Another is identifying the impact of ocean acidification on the vital coral reef ecosystems of this region.

#### CONCLUSION

Because of the Magnuson-Stevens Act, the United States has made great progress toward sustainably and responsibly managing U.S. fisheries to ensure that stocks are maintained at healthy levels, fishing is conducted in a way that minimizes impacts on the marine ecosystem, and fishing communities' needs are considered in management decisions. Fisheries harvested in the United States are scientifically monitored, regionally managed, and consistent with 10 National Standards for fishery conservation and management. But we did not get here overnight. Our Nation's journey toward sustainable fisheries has evolved over the course of 38 years.

This progress has been made possible by the collaborative involvement of our U.S. commercial and recreational fishing fleets and their commitment to science-based management, improving gear-technologies, and application of best stewardship practices. NOAA Fisheries has established strong partnerships with States, territories, tribes in the continental United States, fishery management councils, fishing industries, including recreational and non-commercial fisheries, and fishing and shoreline communities. By working together through the highly participatory process established in the Magnuson-Stevens Act, we will continue to address management challenges in a changing environment.

To understand where we are, it is important to reflect on where we've been. We have made great progress but our achievements have not come easily, nor will they be sustained without continued attention. This is a critical time in the history of Federal fisheries management, and we must move forward in a thoughtful and disciplined way to ensure our Nation's fisheries are able to meet the needs of both current and future generations.

Thank you again for the opportunity to discuss Pacific Islands fisheries science in the context of the progress we have made under the Magnuson-Stevens Act. I am available to answer any questions you may have. *Mahalo* (thank you).

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QUESTIONS SUBMITTED FOR THE RECORD BY REPRESENTATIVE HANABUSA TO DR. SAMUEL POOLEY, DIRECTOR OF THE NOAA PACIFIC ISLANDS FISHERIES SCIENCE CENTER

*Question.* During the hearing, you mentioned that ACLs for reef fish around Hawaii are currently being updated, and you mentioned that the updated figures will include the fish in the Northern Hawaiian Islands. How will data from the Northern Hawaiian Islands be incorporated into updated ACLs? Given that the Northern Hawaiian Islands cover a vast area with large fish populations, is it rea-

sonable to expect that the inclusion of Northern Hawaiian Islands fish populations will lead to higher ACLs?

Answer. The updated annual catch limits for reef fish around Hawaii do not rely on data from the Northwestern Hawaiian Islands, although earlier assessments of bottomfish did (bottomfish assessments now rely entirely on main Hawaiian Islands information). The Northwestern Hawaiian Islands have been closed to any commercial fishing since 2006. Thus, the Hawaii annual catch limits are based only on main Hawaiian Islands information: catch data from State of Hawaii commercial statistics on the main Hawaiian Islands fisheries and biomass data from NOAA's Pacific Reef Assessment and Monitoring Program (Pacific RAMP) surveys in the main Hawaiian Islands. The annual catch limits for reef fish around Hawaii were developed by the Western Pacific Fishery Management Council based on fishery dependent and bio-sampling data and reef fish survey information provided by Pacific Islands Fisheries Science Center.

*Question.* Is the Pacific Island Fisheries Science Center (PIFSC) doing any work to provide the data and models necessary for effective ecosystem-based management? What tools have been developed so far and what tools are under development?

Answer. The Pacific Islands Fisheries Science Center has been a leader in ecosystem modeling since the development of one of the first ecosystem models, Ecopath, by its lead ecosystem scientist Dr. Jeffrey J. Polovina in 1983. Dr. Polovina continues to lead the Ecosystem and Oceanography Division within the Pacific Islands Fisheries Science Center whose purpose is to explore such approaches, including leading the current integrated ecosystem assessment surveys in Kona, Hawaii. Recent ecosystem modeling developments within this division include research on fishery-induced and climate changes in the subtropical Pacific pelagic ecosystem size structure and analysis of ecosystem effects related to longline interactions with sea turtles (Turtle Watch) in addition to Kona ecosystem modeling.

The Pacific Islands Fisheries Science Center Coral Reef Ecosystem Division has been deeply involved in developing ecosystem-based management approaches relevant to the Pacific's small scale and reef fisheries through collaboration with the U.S. Agency for International Development, the United Nations Food and Agricultural Organization, and the Asia-Pacific Fisheries Commission in the Coral Triangle Initiative in the Philippines, Indonesia and other southeast Asian countries. This work informs our approach to ecosystem fisheries management in the U.S. Pacific islands and the specific curriculum developed for these international clients may be ported to work with the State of Hawaii in the forthcoming year. We are also developing an Atlantis ecosystem model as a decision support tool for ecosystem-based management of near shore fisheries around Guam.

*Question.* Over the years, your office has not fared well when competing for funding against other science centers. In some cases, PIFSC did not even initiate requests for funds. What steps will you take to ensure that PIFSC will make better use of funding opportunities such as cooperative research, stock assessments, Recreational Fisheries Information Network, and Saltonstall-Kennedy programs?

Answer. Since the establishment of the Pacific Islands Fisheries Science Center in 2003, the fisheries portion of the Center's funding has increased from less than \$4 million in 2005 to approximately \$10 million in 2013 and NOAA has been actively ensuring the use of funding opportunities. In addition, we benefit via collaboration and support from other programs and conservation efforts such as Marine National Monuments and NOAA's Coral Reef Conservation Program, to achieve multiple objectives.

In NOAA Fisheries Cooperative Research funding initiatives, the Pacific Islands Fisheries Science Center has successfully competed for, and received, approximately \$400K annually since 2010. Those funds have been used to develop an industry-based, cooperative fishery-independent survey for bottomfish stocks in Hawaii through the Pacific Islands Fisheries Group and other partners. This year we will also be able to conduct cooperative research in both Saipan and Guam. The Pacific Islands Fisheries Science Center has integrated its cooperative research with other NOAA Fisheries science initiatives, such as Advanced Sampling Technology initiatives that will contribute to stock assessment advancements in the Pacific islands.

We are also involved in testing new approaches for estimating non-commercial (recreational and subsistence) landings in Hawaii under NOAA Fisheries' Marine Recreational Information Program. In 2013, NOAA Fisheries added "territorial science" as a new priority under the Saltonstall-Kennedy grant program. Two projects are being recommended for funding under the territorial science initiative:

- A grant to the Bishop Museum in Hawaii to collect reproductive information for exploited reef fishes in the Pacific Islands. Amount: \$161,482.00
- A grant to University of Guam for fishery biological sampling in Guam and the Commonwealth of the Northern Mariana Islands. Amount: \$196,112

NOAA Fisheries has also allocated \$500K in FY 2014 to the Pacific Islands Fisheries Science Center (following \$125K in FY 2013) in a Territorial Science Initiative that is focused on enhancing the information required for fishery stock assessments throughout this region. This initiative includes placement of permanent staff in American Samoa, Guam, and the Northern Mariana Islands to conduct new bio-sampling and stock assessment research in each jurisdiction as well as to enhance our Western Pacific Fishery Information Network (WPacFIN). Further, both NOAA ships currently stationed in Hawaii, the Hi'ialakai and the Oscar Elton Sette are conducting extensive research surveys in the Marianas archipelago this year.

We believe that the Pacific Islands Fisheries Science Center competes well for internal funding within NOM Fisheries.

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The CHAIRMAN. Thank you very much, Dr. Pooley, for your testimony. And now I will recognize Ms. Dorothy Lowman, who is the Chair of the Pacific Fishery Management Council.

**STATEMENT OF DOROTHY LOWMAN, CHAIR, PACIFIC FISHERY MANAGEMENT COUNCIL**

Ms. LOWMAN. Thank you, Chairman Hastings, Ranking Member DeFazio, and members of the committee. Thank you again for the opportunity to testify before you today regarding reauthorization of the Magnuson-Stevens Fisheries Conservation and Management Act. My name is Dorothy Lowman and I serve as the Chair of the Pacific Fishery Management Council. It is from our experiences of managing over 160 fish stocks off the West Coast that I offer the Pacific Council's perspective regarding refinement of this important legislation.

The Pacific Council has not yet had an opportunity to review the discussion draft put forth by Chairman Hastings, but we will be doing so in just a few days at our March Council meeting. So my comments today are based on council discussions regarding priorities through our November Council meeting.

First, I would like to be clear that the Pacific Council believes that the current MSA is a success and, in fact, has been a key driver of a number of Pacific Council successes, including ending over-fishing of any and all stocks within 1 year of detection; rebuilding seven depleted stocks, and being on track to rebuild eight long-lived stocks that remain depleted, three of which are projected to be rebuilt in the next year; implementing a successful catch share program for the trawl fishery that has been held up as a model for its ability to reduce by-catch and increase economic yield; and our recent developments of an ecosystem management plan.

While we believe that large-scale changes in the MSA are not warranted, after 7 years of managing under the 2006 reauthorized bill, we have identified a few refinements to enhance marine fishery management. I am going to highlight just a few of these, and refer you to our written testimony for the full list in greater detail.

With respect to rebuilding, we ask for some clarification and focused flexibility. First, address the discontinuity associated with a 10-year rebuilding requirement. We agree with the National Academy of Sciences: a strict requirement to rebuild within 10

years may eliminate some management responses that could lead to greater social and economic benefits, while still assuring that stocks are rebuilt.

Second, we have experienced situations where assessment uncertainty leads to results that vary in either direction, without changes in true status over time, yet currently can demand expensive revisions and rebuilding plans. Clarification is needed to provide a reasonable threshold for stock status changes before significant changes in management approaches are required.

Third, the MSA requirement to rebuild as soon as possible, taking into account the needs of fishing communities has, unfortunately, been subject to court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. But, as we know, the road to disaster starts long before a community or fishery arrives at that state. It may be possible that a solution is as simple as changing the word "possible" to "practicable." However, at any rate, some clarity is needed to allow Councils to properly take into account important social and economic impacts, while reducing catches in a rational stock rebuilding plan.

For some situations where improved science and subsequent stock assessments show that the stock was never overfished, continuation of rebuilding restrictions may not be necessary. However, the MSA does not explicitly allow for such a course of action, and so we would like to have some clarification on that point.

Finally, a few words regarding better alignment of NEPA and MSA. It is not our desire to be exempt from the important environmental protections of NEPA. Rather, we are advocating for more effective reconciliation of the requirements of NEPA and MSA.

The Councils, along with our partners at NOAA Fisheries have been working to find ways to front-load some of the required analyses as much as possible. But efficiencies do remain in the current process, requiring substantial additional work and process to satisfy duplicate requirements and mandates. This unnecessarily delays implementation of regulation, causes obsolescence of scientific information, and burdens management resources that could be used more efficiently. In some cases, a mismatch of MSA and NEPA timelines also results in alternatives being developed under NEPA after the Council has taken final action.

In short, we believe the 2006 mandate to streamline NEPA and MSA has not yet been effectively addressed, and look forward to working with you to achieve this goal. It may be possible to craft revisions to the MSA to include explicit requirements that would result in essential MSA consistency with NEPA, and address current challenges without sacrificing the environmental protections of NEPA, and efficiently taking advantage of the public process provisions of MSA.

Thank you again for the opportunity to provide testimony today.  
[The prepared statement of Ms. Lowman follows:]

PREPARED STATEMENT OF DOROTHY LOWMAN, CHAIR OF THE PACIFIC FISHERY  
MANAGEMENT COUNCIL

Chairman Hastings, Ranking Member DeFazio, and members of the committee, thank you for the opportunity to testify before you today regarding the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

My name is Dorothy Lowman and I serve as the Chair of the Pacific Fishery Management Council (Pacific Council). It is from our experiences of managing over 160 fish stocks off the States of Washington, Oregon, and California under the mandates of the MSA that I offer the Pacific Council's perspective regarding refinement of this important legislation.

First I would like to be clear that the Pacific Council believes that the MSA as reauthorized in 1996 and again in 2006 has been a success. The Act has worked well to ensure a science-based management process that ensures long-term sustainable fisheries while preventing overfishing and mandating rebuilding of depleted stocks. As a result, the Pacific Council has ended overfishing of any and all stocks within 1 year of detection, has rebuilt seven depleted stocks, and is in the process of successfully rebuilding eight long-lived stocks that remain depleted—three of which are projected to be rebuilt in the next year. We have implemented a successful groundfish trawl catch share program that has been held up as a model for programs in other regions for its ability to reduce bycatch and increase economic yield. We annually craft ocean salmon fisheries that accomplish stock-specific conservation goals for a multitude of individual salmon stocks, including many listed under the Endangered Species Act. We have created an ecosystem fishery management plan, which we are now in the process of implementing, along with protections for unmanaged forage fish. We are successfully participating in international fisheries organizations to protect highly migratory tuna-like species and the West Coast fisheries that rely on them. The current MSA has been a key driver of these successes. We believe large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

That said, after 7 years of managing under the 2006 reauthorized bill, we believe that a few refinements would enhance marine fishery management in the United States and internationally. A number of the Pacific Council priorities for reauthorizations were echoed by others at the Management Our Nation's Fisheries 3 (MONF3) conference which was held in May of 2013. The Pacific Council was the primary organization responsible for planning the MONF3 conference. Findings from the conference can be found on our Web site, and the final report should be available within a few weeks. At subsequent Pacific Council meetings we have continued to discuss reauthorization of the MSA, and the priorities outlined in this testimony represent the results of our discussions through our last Pacific Council meeting in November. The Pacific Council has not yet had the opportunity to review the discussion draft bill put forth by Chairman Hastings but will do so at our March Council meeting and intends to provide the results of this review to the committee as soon as possible thereafter.

The Pacific Council's priorities for MSA reauthorization are as follows. These represent notable priorities identified at this time, with the reservation for additional priorities and refinement of positions as the reauthorization process moves forward.

#### HIGHER-PRIORITY MATTERS

##### *Revise rebuilding time requirements.*

- Address the discontinuity associated with the 10-year rebuilding requirement.
- Don't "chase noise" in rebuilding plans (in other words, temper immediate reactions to changes in stock assessments that may merely be statistical "noise," rather than a true signal of significant status change).
- Address problems associated with "rebuilding as soon as possible" in order to properly take into account the needs of fishing communities.

We agree with the National Academy of Science that a strict requirement to rebuild within 10 years may eliminate some management responses that could lead to greater social and economic benefits while still assuring that stocks are rebuilt. Focusing on rebuilding in a certain amount of time can result in overly restrictive fishery management that is illogically and unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. At the same time, care must be taken when providing focused flexibility to assure that we continue our recent successes in rebuilding the stocks upon which our fisheries and fishing communities depend.

The current MSA requires that rebuilding must take place in as short a time as possible, with a maximum of 10 years if biologically possible. This "10-year rule" can grossly disrupt fisheries for little conservation gain. If a stock can rebuild in 9 years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild (11 years plus the length of one generation of the species), with obviously less

economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

In addition, uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to expensive revisions in rebuilding plans and unwarranted consequences to fisheries and fishing communities (“chasing noise”). This disruption is especially problematic when analytical results vary by small amounts due to assessment uncertainty, and vary both up and down without changes in true status over time. The current process needs to be revised such that a reasonable threshold exists for stock status changes before significant changes in management approaches are required.

The MSA requirement to rebuild as soon as possible, taking into account the needs of the fishery communities, has been subject to court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. Current administration of this requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. It has been said that a solution may be as simple as changing the word “possible” to “practical.” At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. It is important to note the purpose that rebuilding programs are designed for is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery-dependent communities negatively impacted (and may even be required to endure a disaster) by the rebuilding program.

*Explore more flexibility for fishery impacts on data-poor species when the current precautionary approach becomes the bottleneck for healthy mixed-stock fisheries.*

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, current requirements call for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. While this is a logical approach in some regards, there is concern it may be overly conservative in some situations. It can lead to severe economic consequences when a rarely caught stock about which little is known appears occasionally in a healthy mixed-stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in the catch of healthy species; this situation essentially creates a bottleneck species that closes or substantially reduces an otherwise healthy fishery.

There are times when the best available science is not sound enough for active fishery management decisionmaking; the current approach for data-poor species may occasionally fall into this situation. Further, the current approach may limit obtaining scientific information on stock performance under higher catch rates.

*Better-align and streamline the National Environmental Policy Act (NEPA) & MSA section 304(i).*

The Councils have a long history of advocating for more effective reconciliation of the requirements of NEPA and the MSA. We appreciate the opportunity to work with National Marine Fisheries Service in developing a recently completed policy directive that accurately describes our current roles and responsibilities in complying with NEPA process and requirements.

However, inefficiencies remain in the current process, requiring substantial additional work and process to satisfy duplicative NEPA and MSA mandates. This unnecessarily delays implementation of regulations, causes obsolescence of scientific information, and burdens management resources that could be used more efficiently. In some cases, the mismatch of MSA and NEPA timelines also results in alternatives being developed under NEPA after final action has been taken by the Council.

In short, we believe that the mandate to streamline NEPA and MSA processes that was included in § 304(i) of the 2006 reauthorization of the MSA has not yet been effectively addressed.

A defining characteristic of fishery management under the MSA is the mandated transparent and participatory process. Given the Council expertise that can be applied in the near future toward revising the MSA to include explicit requirements for a robust environmental impact analysis of a full range of reasonable alter-

natives, I personally believe it is possible to achieve essential compliance with the intent and purpose of NEPA. If this can be accomplished, making MSA consistent with NEPA in this manner could address current challenges without sacrificing any environmental protections of NEPA and efficiently taking full advantage of the public process provisions of MSA.

*Include a carryover exception to allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the Scientific and Statistical Committee (SSC) that such a carryover provision will have negligible biological impacts.*

As part of their business planning, fishermen in catch share programs need to know whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past, there has not been a consistent policy application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.

*Stocks later determined never overfished should not be held to rebuilding provisions.*

The data and scientific approaches used to determine stock status evolve and improve, and revisions to past stock statuses are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.

For example, in 2000, a stock assessment indicated that widow rockfish on the West Coast were below the minimum stock size threshold (MSST) that triggers an overfished status designation. Accordingly, the stock was declared overfished and a rebuilding plan put in place. However, subsequent assessments in 2005 and 2007 estimated that the biomass had never dropped below the MSST, and thus the stock had never been overfished. Despite the best available science, uncertainty regarding MSA requirements and the assessment results caused the fishery to remain under a restrictive rebuilding plan until 2013. Continuing to manage widow rockfish under a rebuilding plan, even though the stock was never overfished, resulted in negative social and economic impacts to fishing communities and industry. It also represented a significant expenditure of Pacific Council resources to construct and maintain a rebuilding plan, and the new catch share program was unnecessarily complicated by the overfished declaration of widow rockfish and its subsequent rebuilding plan.

*Provide flexibility in requirements and qualifications for observers.*

Current requirements and qualifications for National Marine Fisheries Service certified observers may be too restrictive regarding formal education and full independence provisions. There have been difficulties in providing a sufficient pool of observers.

#### LOWER-PRIORITY MATTERS

The Pacific Council has also identified the following lower-priority areas that we ask you to take into consideration in drafting new legislation.

- Designate one Commissioner seat on the Inter-American Tropical Tuna Commission to represent the Pacific Council.
- Provide flexibility to address rebuilding requirements when environmental conditions may be a predominant factor in a stock's decline.
- Include a viable mixed-stock exception.
- Replace the term "overfished" with "depleted" to account for non-fishing causes of stock size below MSST.
- Consider a national standard for habitat that can more effectively minimize adverse impacts on essential fish habitat.
- Implement stricter imported seafood labeling requirements in the U.S. market.
- Enhance enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity.
- Improve access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis.
- Amend MSA language to change "vessels" to "vessel" in the illegal, unreported, and unregulated certification section.
- Make a consistent distinction between "overfishing" (a measure of fishing rate) and "overfished" (a measure of abundance).

Thank you again for the opportunity to testify before this committee. We look forward to continuing to work with you during the reauthorization of the MSA to make what we believe to be one of the strongest and most effective pieces of legislation governing fishery management in the world even better.

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QUESTIONS SUBMITTED FOR THE RECORD FOR DOROTHY LOWMAN, CHAIR, PACIFIC FISHERY MANAGEMENT COUNCIL

**Questions Submitted by Republican Committee Members**

*Question.* You note that there is a duplicative aspect to the Magnuson and NEPA statutes and you note that the Magnuson Act already includes a “mandated transparent and participatory process” which is one of the key aspects of NEPA. Are there provisions within NEPA that are not also included in the Magnuson Act that the committee should consider putting in the Act to make Magnuson more consistent with NEPA?

*Answer.* We thank the committee for recognizing that the mandate for NEPA streamlining and process efficiencies in the current MSA remains unfulfilled. However, in order to assure consistency with NEPA, we believe that there are other aspects of NEPA that should be explicitly recognized in the Act. In particular, we recommend including language specifically requiring a reasonable range of alternatives and thorough assessment of environmental impacts prior to final Council decisionmaking to help assure that process efficiencies are achieved while also maintaining robust compliance with the essence of NEPA. We understand the Council Coordination Committee (CCC) is preparing specific language suggestions that can accomplish this goal, and are happy to forward any forthcoming recommendation after the May 13–15, 2014 CCC meeting.

*Question.* You note that the Council recommends a change to the rebuilding provisions currently in the Act and note that one possible change could be to change the word “possible” to “practicable”. Mr. Rees believes that change this would give Councils the ability to “put off rebuilding indefinitely”. What would be your response to this claim?

*Answer.* In suggesting that changing the requirement to rebuild as soon as practicable rather than the current “as soon as possible” language, it was not our intent that Councils be able to put off rebuilding indefinitely. In fact, Congress has used the term “practicable” deliberately and effectively when they amended the Act in 1996 with respect to National Standard 9 and associated requirements for conservation and management measures to minimize bycatch and associated mortality to the maximum extent practicable. In the Congressional Record there is recognition that this term was chosen deliberately and requires an analysis of the costs associated with the action but does not allow Councils to ignore their responsibility relative to minimizing bycatch. Similarly, we believe that such a change would not allow Councils to ignore their responsibility to develop reasonable and effective rebuilding plans within the maximum time allowed in the Discussion Draft (tied to scientific advice on the mean generation time of the fish stock involved), but would allow the Council to exercise flexibility within that timeframe to account for the needs of communities. It may, however, be useful to include discussion in the Congressional Record as was done in 1996 to provide clarity with respect to congressional intent with the use of the word “practicable”.

*Question.* The Discussion Draft includes language that would allow a Council to terminate a rebuilding plan if, after a new stock assessment is completed, it is determined that the stock was not overfished. Some have argued that this provision would give Councils unlimited authority to negate rebuilding plans whenever they want. This provision was included in the Discussion Draft specifically due to a situation in the Pacific Region where NOAA determined that a fishery was overfished, later determined that it had not really been overfished, but told the Council that the rebuilding plan had to remain in effect once it had been adopted. Is that correct? Do you view that provision as giving Councils unlimited authority to negate rebuilding plans?

*Answer.* There was a case with widow rockfish in the Pacific Council area, whereby a new stock assessment showed a stock status below the overfished level and the Pacific Council developed a rebuilding plan that restricted fisheries so as to rebuild the stock to the maximum sustained yield biomass. During a subsequent stock assessment, the best available science was revised and showed that the widow rockfish stock had never fallen to the overfished level threshold. Based on discussions

at the Pacific Council table that included policy and legal NOAA representatives, the Pacific Council continued with the rebuilding plan and associated fishery restrictions through the balance of the rebuilding plan, until they were officially rebuilt in 2012.

The Discussion Draft language could be subject to different interpretations, and in our view does not specifically address what happens when a new stock assessment shows a stock was NEVER overfished. We recommend language be explicit in specifying that stocks later determined never depleted (overfished) should not be held to rebuilding provisions. The current draft could be read to say that you could suspend the rebuilding plan once the stock is not technically depleted even though it is not fully rebuilt. In these cases, the Pacific Council is in favor of continuing rebuilding plans until the stock reaches its maximum sustained yield biomass level, which is typically significantly higher than the depleted threshold.

*Question.* There has been much discussion about how well the council process works including providing a transparent public process. Do you believe that process should also be used when restrictions to fisheries which are managed under fishery management plans are required as a result of the Endangered Species Act?

*Answer.* We believe that involving the Council, with its transparent public process and advisory body expertise, when developing management responses to ESA-related issues leads to better decisionmaking. The Pacific Council is currently comfortable with the kind of ESA integration with MSA that has recently been occurring in the Pacific Council forum for Pacific salmon in terms of enhanced transparency of the scientific and policy basis for determining appropriate fishery restrictions. This process has included the Council making recommendations that the Secretary has taken seriously. However, it is not clear that this is currently the practice in other Councils.

*Question.* You note that your Council has created an ecosystem fishery management plan and have already implemented protections for forage fish. Do you believe it is necessary to mandate that all Councils create ecosystem plans and protect forage fish?

*Answer.* While we think that creating ecosystem plans should be encouraged and that forage fish are an important part of the ecosystem, the Pacific Council has not taken the position that it is necessary have a mandate in the Act requiring such action.

#### **Question Submitted by the Hon. Joe Garcia**

*Question.* We have heard a great deal about the importance of socioeconomic considerations in the reauthorization of this Act. Assessing the impacts of fisheries management decisions on fishermen and their communities requires the collection and analysis of very specific economic data—data that would be shielded by very strict confidentiality rules under this draft legislation. Would this limited access to data inhibit the Councils and others from evaluating economic impacts? Could these restrictions also hamper attempts to institute cooperative research and management programs?

*Answer.* Under the interpretation of current confidentiality requirements of MSA, we are sometimes challenged in fully analyzing the impacts of management alternatives. Therefore, we do not wish to see further tightening of confidentiality rules but instead recommend improving access to currently confidential harvest or processing information *for purposes of enhanced socioeconomic analysis*. There are instances where the Pacific Council has struggled with balancing the needs of fishing communities with proper conservation of fish stocks, and assessing how much an additional increment of conservation affects community business activity cannot be determined because the necessary socioeconomic data is not available.

Additionally, interpretation of current confidentiality requirements have also challenged the development of cooperative partnerships. On the West Coast, as part of the trawl groundfish catch share program, a number of voluntary industry partnerships have developed to collectively better manage the constraining species held in order to most effectively access healthy target stocks. Cooperative or risk pool members' ability to voluntarily share data among fishery participants in order to facilitate these co-management partnerships have been hindered at times by agency concerns that requests by fishermen to share their own data would violate confidentiality rules. For this reason, further tightening of confidentiality rules under MSA could inadvertently hamper important co-management arrangements.

**Question Submitted by Congresswoman Hanabusa**

*Question.* I understand that regional fishery management council budgets have fluctuated significantly since 2012. What is the current budgetary situation for the Councils and how do you see this affecting your operations?

*Answer:* The current budget situation (FY 2014) for Regional Fishery Management Councils (RFMC) remains unclear, pending congressional approval of a spending plan submitted by the National Marine Fisheries Service (NMFS). On February 25, 2014 the Council Coordinating Committee requested NMFS reconsider its initial plan to reduce funding from what had been expected (see attached letter), but were informed on March 18, 2014 that while calculation corrections would be made to allocations, the policy decision had been made to forward a spending plan to Congress that called for \$1M less funding to the Regional Fishery Management Councils (RFMCs) than expected.

From the Pacific Council perspective, we feel it is important to receive adequate funding to accomplish the important obligations under the MSA. The amount to be received under the NMFS proposed spending plan is inadequate for the kind of operational activity needed at the Pacific Council. We feel the FY 2012 level of funding—which was stable at the 2011 level is the minimally adequate level that should be allocated by the NMFS for FY 2014, given the circumstances at hand. We also note that the total funding provided to the NMFS in FY 2014 is greater than FY 2012.

The effect of any funding shortage on Council operations will be determined after a final congressional decision is made and the Pacific Council’s Budget Committee considers alternatives. As the MSA reauthorization process proceeds, a new way of providing the proper appropriation to RFMC should be considered.

REGIONAL FISHERY MANAGEMENT COUNCILS,  
COORDINATION COMMITTEE,  
FEBRUARY 25, 2014.

Ms. Eileen Sobeck, Assistant Administrator,  
*National Marine Fisheries Service,  
Silver Spring, MD 20910.*

Re: FY 2014 Funding Allocation to Regional Fishery Management Councils

DEAR MS. SOBECK,

Thank you for the presentation of Mr. Paul Doremus February 19, 2014 on the status of FY 2014 National Marine Fisheries Service (NMFS) budget and current thinking on the allocation to Regional Fishery Management Councils (RFMC) at this time. As we understand the current state of spending plan development at this time, key information is as follows in terms of spendable dollars.

Funding Category	FY 2012	FY 2014
NMFS Total Budget .....	\$895.0 M .....	\$992.3 M (\$917.3 absent the \$75 M Disaster Fund)
NMFS ORF Budget .....	\$804.7 M .....	\$812.6 M
RFMC Allocation (all PPAs) .....	\$ 28.2 M .....	\$ 26.5 M

Preparatory to this meeting, the RFMC were under the impression that a reasonable allocation in terms of spendable dollars would be approximately at the FY 2012 level and that agency management and administration user-costs would not be charged to RFMC in FY 2014, contingent to an in-depth discussion of the relevant issues at this meeting that was to be preparatory to FY 2015 decisionmaking. There are several components and ramifications of the described approach to resolve agency management and administration user-cost charges that remain unclear at this point.

The RFMC view the best barometer of congressional intent for an RFMC allocation of traditional line items to be the Regional Councils and Commissions line item, which was \$31.8 M in FY 2012 and \$32.0 M in FY 2014. Given this, the key partnership role the RFMC play in the NMFS core mission, and the status of the NMFS budget, the RFMC request that you reconsider the current state of spending plan-

ning to reflect an allocation of \$28.2 M in spendable dollars, reflecting stability with the FY 2012 status of funding.

On behalf of the eight RFMC,

RICK ROBBINS,  
2014 CCC Chairman.

The CHAIRMAN. Thank you very much. And I look forward to getting some feedback from the Council, obviously, when you do meet. So thank you very much for your testimony.

Next we will recognize Mr. Bob Rees, the North Coast Chapter President of the Association of Northwest Steelheaders.

**STATEMENT OF BOB REES, NORTH COAST CHAPTER  
PRESIDENT, ASSOCIATION OF NORTHWEST STEELHEADERS**

Mr. REES. Good morning, Chairman Hastings, Ranking Member DeFazio, members of the committee. Thank you for the opportunity to provide comments on the Magnuson-Stevens Act reauthorization. My name is Bob Rees, and I am a sixth-generation Oregonian. I have been fishing Oregon's rivers and Pacific Oceans since 1978. In 1996 I started a fishing guide business, and considered myself fortunate enough to spend time with beginners and expert fishermen, catching salmon, steelhead, sturgeon, and bottomfish. My business and livelihood depend on healthy fish populations.

I have been both the beneficiary of sound, science-based management practices, and the victim of poor management decisions. I can tell you now we are on the right path for recovery, and can't afford to turn back the clock on the progress we have already secured, thanks in large part to the Magnuson-Stevens Act.

Today I am privileged to provide testimony on behalf of the Association of Northwest Steelheaders. Founded in 1960, the Steelheaders is one of the oldest and most cherished sport fishing organizations in the Pacific Northwest. The Steelheaders mission is anglers dedicated to enhancing and protecting fisheries and their habitats for today and for the future.

Before sharing my concerns with the draft proposal, I would like to present some overarching thoughts on fishery management. The United States has one of the most advanced fisheries management programs in the world, because it is based on science, and includes strong, clear accountability measures to prevent overfishing of recreationally and commercially important stocks. Changes to the Magnuson-Stevens Act in 1996 and 2006, including timeline targets to rebuild depleted fish populations and requirements to set science-based annual catch limits that prevent overfishing, are working to ensure we enjoy more sustainable fisheries.

Ending overfishing and rebuilding fisheries is not easy. But West Coast fishermen and coastal stakeholders have made the hard choices to end overfishing and steer us toward a more sustainable future. Unfortunately, other regions of the country put off the hard choices in the 1980s and the 1990s, and face difficult challenges rebuilding important fish stocks. The proposal to reauthorize the Magnuson-Stevens Act that is under consideration today would take us back to the old days, where politics, not science, drove management decisions, and resulted in many of the overfishing problems that we are still trying to fix today.

Some specific concerns with the proposal include the proposal would allow overfishing to continue on depleted populations for at least 5, and possibly up to 7 years. When you have an overfishing problem, the last thing you want to do is allow more overfishing on vulnerable stocks that will make recovery more difficult, costly, and delay the achievement of a rebuilt population.

The proposal would allow a suite of new broad exemptions for establishing a rebuilding timeline target, and delay the ultimate goal of rebuilding depleted fish populations. And the proposal would exclude many forage fish from requirements to set science-based annual catch limits, establishing a dangerous precedent that will likely compromise these volatile, economically important coastal fisheries.

Instead of weakening the Magnuson-Stevens Act, we should build on our record of achievement. The Pacific Fishery Management Council is moving forward with initiatives to improve management by incorporating more ecosystem factors into conservation decisions. Specifically, the Council is leading the way in protecting small prey fish, called forage fish, that support a healthy ecosystem, and advancing ecosystem plans that consider factors beyond single species management.

Forage fish and the habitats that support them are critical to the health of all ocean species, especially our commercially harvested fish that fuel our coastal communities. The Steelheaders have been very actively involved in these changes, and are proud of the work we have done to get these important changes in place.

The next reauthorization of Magnuson-Stevens Act should help further advance ecosystem-based fishery management by focusing on protecting habitats, avoiding non-target species, accounting for the important role of forage fish in the ocean food web, and requiring ecosystem-level fishery management plans. Unfortunately, the proposal under consideration does not take that step forward, but jeopardizes the progress we are currently seeing under Magnuson-Stevens.

Our goal, as consumptive users, is to continue to utilize this valuable natural resource for future generations to come. The best way to do that is to manage our Nation's fisheries proactively and conservatively. We already know that we have the capability to easily overfish this resource.

In the late 1980s and 1990s, as a Department of Fish and Wildlife employee, and a Federal fisheries observer in the Bering Sea, I witnessed firsthand the hardships our ports experienced and suffered, due to the over-exploitation of this resource. Our fragile coastal communities cannot afford to relive the overfishing problems we experienced during these times. We can't again downsize a fleet that already operates on a shoestring.

Thank you very much for considering these comments.

[The prepared statement of Mr. Rees follows:]

PREPARED STATEMENT OF BOB REES, PRESIDENT, NORTH COAST CHAPTER,  
ASSOCIATION OF NORTHWEST STEELHEADERS

Chairman Hastings, Ranking Member DeFazio and members of the committee, thank you for the opportunity to provide comments on Magnuson-Stevens Act reauthorization.

I am a sixth generation native Oregonian. I have been fishing Oregon's rivers and Pacific Ocean since 1978. In 1996, I started a fishing guide business and consider myself fortunate to spend time with beginners and expert fishermen catching salmon, steelhead and sturgeon and bottomfish. My business and livelihood depend on healthy fish populations and sensible, science-based management of fish and coastal waters is essential to me, my family, my clients, my colleagues and my community. I've been both the beneficiary of sound management practices and the victim of poor management decisions. I can tell you now; we are on the right path for recovery and can't afford to turn back the clock on the progress that we've already secured.

Today, I am privileged to provide testimony on behalf of the Association of Northwest Steelheaders (ANWS). Founded in 1960, the Association of Northwest Steelheaders is one of the oldest and most-cherished sportfishing organizations in the Pacific Northwest. ANWS currently has 1,600 active members and 12 chapters in Oregon and southwest Washington. The Steelheaders mission is "anglers dedicated to enhancing and protecting fisheries and their habitats for today and the future," and our vision is "responsible and enjoyable sport angling with good access to healthy, abundant and sustainable fisheries in the Northwest's healthy watersheds."

Steelheaders respectfully submit the following comments regarding the reauthorization of the Magnuson-Stevens Act. Before highlighting several concerns with the draft proposal that is the subject of today's hearing, I would like to present some overarching thoughts on fishery management:

- The United States has one of the most advanced fisheries management programs in the world because it is based on science and includes strong, clear accountability measures that will prevent overfishing of recreationally and commercially important stocks. The Magnuson-Stevens Act provides the solid foundation for our management system and our Nation's commitment to support the long-term health of our ocean ecosystem, coastal economies and communities.
- Changes to the Magnuson-Stevens Act in 1996 and 2006—including timeline targets to rebuild depleted fish populations and recent requirements to set annual science-based catch limits that prevent overfishing—are working and are helping the United States achieve its reputation as a global leader. We are turning the corner to end overfishing and rebuild depleted fish populations in U.S. ocean waters.
- In large part due to these requirements and the hard work of fishery managers, fishermen, scientists and others, 34 depleted fish populations have been restored to healthy levels since 2000, including Pacific lingcod off the Pacific Coast.
- According to the NOAA Fisheries, the number of fish populations subject to overfishing has declined from 72 stocks in 2000 to just 28 in December 2013. We credit the combination of sound management practices and a rebounding ocean environment.
- Ending overfishing and rebuilding fisheries is not easy, but West Coast fishermen and coastal stakeholders have already made the hard choices to end overfishing and steer us toward a more sustainable future. Unfortunately, other regions of the country like New England put off the hard choices in the 1980s and 1990s, and are still paying the price with significantly depleted fish stocks and a Federal disaster declaration. It is time for the rest of the country to follow the lead of the West Coast and embrace science-based management, end overfishing and move fisheries management forward. This step requires a firm commitment and patience. It means we need to make some difficult sacrifices in the short-term to conserve and rebuild stocks to realize the long-term benefits of healthier fish populations and coastal environments.

The recently released discussion draft of the MSA reauthorization bill would take us back to the old days where politics, not science, drove management decisions and resulted in many of the overfishing problems that we are still trying to fix today.

- Some specific concerns with the discussion draft proposal include:
  - The proposal would allow overfishing to continue on depleted populations for at least 5, and possibly up to 7 years. When you have an overfishing problem, the last thing you want to do is to allow more overfishing on vulnerable stocks that will make recovery more difficult, costly, and delay the

achievement of a rebuilt population. We need to stick to the current law that requires managers to end overfishing “immediately”.

- The proposal would allow a whole suite of new exemptions for establishing a rebuilding timeline target. These new exemptions are broad, are not in line with science and would allow managers to avoid rebuilding depleted fish populations. In addition, the proposal would allow managers to rebuild “as soon as practicable”, instead of the current goal to rebuild “as soon as possible.” In practice, this means they could allow economic and political reasons to put off rebuilding indefinitely, denying coastal communities, businesses and stakeholders of the benefits that would come with fully rebuilt fisheries.
- The proposal would restrict the public’s ability to access fisheries data through changes to the law’s confidentiality rules, including data that is collected with taxpayer dollars.
- Finally, the proposal would undercut the ability of the public to assess and mitigate the impacts of fishery management decisions by exempting key provisions of the National Environmental Policy Act and the Endangered Species Act from applying to the MSA.

Instead of weakening the Magnuson-Stevens Act, we believe we should use this opportunity to build on a record of achievement. In many ways, the Pacific Fishery Management Council provides a solid example of what direction we should be taking. For example, the Council is moving forward with initiatives meant to improve management by incorporating more ecosystem factors into management decisions. Specifically, the Council is leading the way in protecting small prey fish, called forage fish, that support a healthy ecosystem and advancing ecosystem plans that consider factors beyond single-species management. These forage fish, and the habitats that support them, are critical to the health of ALL ocean species, especially our commercially harvested fish that fuel our coastal communities. *Proposed modifications to Annual Catch Limits that exclude forage fish, sets an extremely dangerous precedent that will likely severely compromise these volatile, economically important coastal fisheries.* The Steelheaders have been very involved with these changes and are proud of the work we have done to get these important changes enacted.

In summary, we believe the Magnuson-Stevens Act is working. Sure, there is more work that needs to be done. But, we need to roll up our sleeves and continue the hard work to better ground fishery management in science, prevent overfishing, and rebuild stocks. It is time to build upon the successes of the 1996 and 2006 reauthorizations and move forward with ecosystem-based fishery management. We need to protect habitats, avoid non-target species, account for the important role of forage fish in the ocean food web, and require ecosystem-level fishery management plans.

Unfortunately, the proposal under consideration jeopardizes the progress we are currently seeing under the Magnuson-Stevens Act. Our goal, as consumptive users, is to continue to utilize this valuable natural resource for future generations to come. The best way to do that is to manage our Nation’s fisheries proactively and conservatively; we already know we have the capability to easily overfish this resource. In the late 1980s and 1990s, as a department of fish and wildlife employee and Federal fisheries observer in the Bering Sea, I witnessed first-hand the hardships our ports and fishermen suffered due to over-exploitation of this resource. Our fragile coastal communities cannot afford to relive the overfishing problems we experienced during these times. We can’t **again** downsize a fleet that *already* operates on a shoestring.

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QUESTION SUBMITTED FOR THE RECORD BY CHAIRMAN HASTINGS TO BOB REES,  
PRESIDENT, NORTH COAST CHAPTER, ASSOCIATION OF NORTHWEST STEELHEADERS

*Question.* How, in your testimony, did you come up with the potential for allowing up to an additional 7 years of fishing on already declared “overfished” stocks of fish?

*Answer.* Thank you for the opportunity to respond to the question about how the draft proposal could allow overfishing to continue once a rebuilding plan is needed. The Magnuson-Stevens Act requires an immediate end to overfishing, but there are numerous examples of stocks still subject to overfishing. The act gives Councils 2 years to prepare and implement a rebuilding plan to end overfishing. The proposal would allow rebuilding plans to be phased-in over an additional 3-year period, providing up to 5 years to begin fully implementing a rebuilding plan. Finally, the proposal extends the time period Councils may use interim measures that would reduce—rather than end—overfishing from 1 year to 2. I am concerned that a Council

will push to use these provisions to potentially delay ending overfishing for up to 7 years. In the past, when Councils have had the discretion to allow overfishing to continue in a rebuilding plan, many have used it and would likely do so again.

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The CHAIRMAN. Thank you very much for your testimony. And I will now recognize Mr. Peter Shelley, Vice President of the Conservation Law Foundation.

**STATEMENT OF PETER SHELLEY, VICE PRESIDENT,  
CONSERVATION LAW FOUNDATION**

Mr. SHELLEY. Thank you. Good morning, Chairman Hastings, Ranking Member DeFazio, and members of the Natural Resources Committee. My name is Peter Shelley. I am senior counsel at the Conservation Law Foundation in Boston. I am not here this morning to talk about the economic disaster that some New England cod fishermen face. Congress has provided 32.8 million public taxpayer dollars in disaster relief to these fishermen, and the New England delegation deserves great credit for the work they did getting that funding.

I am here to challenge the notion that the Magnuson Act's rebuilding requirements, quota accountability provisions, or the science-based quotas are in any way to blame for the loss of the Nation's oldest fishery on Atlantic cod. If the 2006 amendments had been in place in New England in the 1990s, that \$32.8 million could have been appropriated elsewhere in this recent appropriation. Over-fishing—not the environment, not sun spots, not seals, not ocean temperatures—overfishing fully explains why there are no cod to catch any more in New England. New England's fishermen were allowed to catch all the cod, because short-term economic needs and flexibility with even the minimum management goals overrode long-term economic benefits and sustainabilities.

The fisheries that are in trouble in New England are in trouble because rebuilding was improvidently delayed, and ineffectually pursued. The future was sacrificed to the present. Even today there is still a directed commercial and recreational fishery on Atlantic cod in New England. Existing law allows managers to adjust rebuilding times to account for environmental factors or biological circumstances. New stock assessments allow managers to reset the rebuilding clock. And rebuilding control rules allowed fisheries to continue, even if the rebuilding is not accomplished on schedule. The law allows rebuilding quotas that have no better than a 50 percent chance of accomplishing their purpose. And quotas for cod and other groundfish in New England are always set at the highest level and at the highest risk level that can be legally allowed.

As a result, overfishing on cod has been persisting, even after the 2006 amendments have come into place, and we have the disaster that we have with cod fishermen. This committee must not advance legislation that would recreate the very factors that led to the cod disaster in New England in the first place. Magnuson has not destroyed the New England groundfish fleet.

What the industry representatives don't tell you when they argue that the law should be weakened so that they can continue to overfish cod is that groundfish permit holders have doubled their gross revenues from \$226 million to \$550 million from 1996 to

2011, in constant dollars. Since the Magnuson Act has been strengthened, gross vessel revenues for fish and shellfish landed in New England have doubled, from \$779 million to over \$1.4 billion in constant dollars.

Most, if not all, of the issues being debated in the discussion draft are the subject of active debate in science circles, at the management councils, and at NMFS. The committee should let those processes play out.

At the same time, the discussion draft fails to address the real oncoming fisheries tsunami, and that is the ecological shifts and instabilities associated with climate change, already documented in New England, with ocean temperature increases, dropping pH levels, major fluctuations in plankton blooms, and shifts in species abundance and productivity. More than 74 percent of the gross revenues in New England in 2010 came from shell-forming animals like scallops and lobsters, that are likely to be affected by climate change.

Congress needs to reach bipartisan agreement on measures that push fishery management councils and NOAA to develop more comprehensive and dynamic management approaches, based on ecosystem-based fisheries management, expanded habitat refuges and reference sites, protection of forage fish, and other approaches that have been strongly recommended by the scientific community in anticipation of these oncoming ecological shifts. The discussion draft's preoccupation with weakening Magnuson provisions that are working now, as Congress intended, is a distraction from the real needs of this Nation's fisheries and ocean resources.

The future of our fishing communities and the health of our oceans relies on Congress taking a sober, bipartisan view of what is really at stake in the legislative choices it makes. The committee should approach Magnuson reauthorization based on hard fact, and a firm commitment to the best welfare of future generations of fishermen.

Thank you for your consideration of my comments.

[The prepared statement of Mr. Shelley follows:]

PREPARED STATEMENT OF PETER SHELLEY, ESQ., VICE PRESIDENT, CONSERVATION  
LAW FOUNDATION, INC.

Chairman Hastings and members of the Committee on Natural Resources, thank you for your invitation to participate in today's hearing on the discussion draft developed by the committee, currently identified as H.R. 4742, *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act* ("Reauthorization Discussion Draft"), for purposes of considering potential reauthorization amendments to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.*

My name is Peter Shelley and I am a vice president and senior counsel with the Conservation Law Foundation, Inc. (CLF), on whose behalf I am testifying today. I have worked on a range of marine conservation issues during my professional career and have been in charge of fisheries management efforts at CLF since 1989. I represent CLF on the Marine Fish Conservation Network, based in Washington, DC, an umbrella network comprised of fishermen, conservationists, scientists and private citizens. I have also been an avid recreational freshwater and marine fisherman my entire life.

My testimony today is based on my direct, personal experiences with fisheries management in New England over the past 25 years, particularly with the management of the iconic and historic groundfish fishery in New England. This fishery includes such economically and ecologically important fish as Atlantic cod, haddock,

a number of flounder species, Acadian redfish, and others, a number of which have supported the New England fishery since the 1600s.

Almost 40 years after Congress adopted the first comprehensive fishery management law to stop overfishing and produce optimum yield in the Nation's fisheries, this fishery and its dependent fishing communities continue to struggle with the economic and social instability produced by decades of chronic overfishing and mismanagement. The unfortunate and totally avoidable state of this historic fishery is reflected directly in the recent disaster funding that Congress directed toward New England in the FY 2014 Omnibus Appropriations.

I will focus my testimony today on two aspects of the reauthorization discussion draft because of their potential direct and negative impacts on these troubled groundfish fisheries in New England: first, the proposed provisions to provide additional so-called "flexibility" and delays in the management responses to overfished fish populations, and second, the proposed provisions to allow fishery management councils to ignore the catch advice of their respective science and statistical committees.<sup>1</sup>

From our perspective and the experience in New England, Chairman Hastings, the reauthorization discussion draft proposes re-opening the regulatory door to management approaches that have repeatedly failed in New England, that have put fisheries managers in impossible positions that overweighed short-term economic perspectives, and that have cost New England coastal communities jobs and economic opportunity. CLF strongly believes that it is important to New England's fishing future that Congress acts in ways that build on the success of the 2006 MSA reauthorization and avoid drastic revisions that would diminish the accountability and science-based management prescriptions that have finally started to produce healthier fish populations and more successful fishing businesses in New England.

The Federal fisheries in New England that are currently still in trouble are not failing because the Magnuson-Stevens Act is too rigid, but rather because the law prior to 2006 was too flexible; the law failed to hold managers accountable for their results and allowed them to ignore science-based fishing limits. These were fundamental structural flaws in Magnuson-Stevens before 2006. I have studied many fisheries during my career, both in the United States and abroad. Without exception, the successful fisheries are founded on good science, accountability for results, healthy fish and shellfish populations, and an execution of long-term and sustainable economic strategies by fishery managers.

Congress fixed those flaws in Magnuson-Stevens in 2006 and must continue its bipartisan support of the Magnuson-Stevens Act. In our view and notwithstanding the committee's best intentions, many of the provisions of the Reauthorization Discussion Draft re-introduce failed management approaches, approaches that have been documented in New England to hurt, not help, fishing communities and fishermen.<sup>2</sup>

At the same time, we believe strongly that there are some critical and time-sensitive changes to the Magnuson-Stevens Act that are appropriate for reauthorization debate that are not in the Reauthorization Discussion Draft and need to be. Among the strongest recommendations to come from the recent National Research Council report entitled *Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States* were the recommendations to advance the application of ecosystem-based fisheries management (EBFM) principles to U.S. fisheries. EBFM principles are the bridge between the limitations and challenges of single-species management that the NRC report identifies and the dynamic and adaptive requirements of fisheries management in the modern era that the NRC report points to. While we would share the report's view that EBFM is "still only conceptually defined,"<sup>3</sup> it is the direction that fisheries management science is headed and could

<sup>1</sup> These measures are found in Sections 3 and 4 of the Reauthorization Discussion Draft. CLF is also very troubled by the Section 6 provisions related to the Endangered Species Act, the National Environmental Policy Act, the National Marine Sanctuaries Act, and the Antiquities Act and believes that Section 6 is fundamentally flawed and would be destructive Federal policy if enacted. We will provide separate comments on those measures as the reauthorization process evolves.

<sup>2</sup> Among the factors that kept fish populations from rebuilding despite fishing rates being set at low levels identified in the NRC Report entitled *Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States*, (NRC 2013) were: "ineffective input controls [gear restrictions, closed areas and the like] and lack of accountability measures, difficulties of reducing fishing mortality of species caught as bycatch in other fisheries, or errors in the estimates of stock size that led to catch limits that were too high." *Id.* at 6. The 2006 Magnuson-Stevens Act amendments were designed to address many of those documented problems.

<sup>3</sup> NRC Report, *supra*, page 180.

supply robust management responses to many of the concerns raised in other testimony to this committee.

CLF believes that any reauthorization of the Magnuson-Stevens Reauthorization Act should recognize this growing body of science and include measures designed to force the consideration and implementation of ecosystem-based fisheries management approaches including, in particular, an expanded approach to spatial controls and habitat-based approaches to achieve healthy and diverse fish populations, special protection of forage fish populations, and continued progress in bycatch reduction. The importance of this focus is heightened by the ecological instability and changes that are already being observed and felt in New England from sea temperature rises, increased ocean acidification, and changes in plankton bloom timing and abundance.

With that as introduction, I would now like to turn to a discussion of what I would call the three myths about New England groundfishermen that I sometimes hear circulating around Washington in discussions about fisheries and the Magnuson-Stevens Act.

*The Three Myths About the New England Groundfishery*

New England's groundfish fishery has suffered ups and downs since the 1600s. It has been in sustained trouble since the mid-1980s and cod, haddock and yellowtail flounder were officially declared to be overfished in a management plan as long ago as 1990. Cod, coastal haddock, and yellowtail flounder are *still* overfished, 24 years later. This fact has costs hundreds if not thousands of fishing captains, crew and boat owners their livelihoods, at least to the extent they were solely dependent on those species. But the notion that the *current* provisions of the Magnuson-Stevens Act are somehow behind this problem is false.

The **first myth** is that the rigidity of the Magnuson-Stevens Act has devastated New England's groundfish boats. There *is* a fisheries crisis in New England in the groundfish fishery but only with respect to a number of the once plentiful fish species in that fishery that have been wantonly and chronically overfished and mismanaged for decades under prior "flexible" management rules. The truth is that most of our fisheries are healthy and sustainable.

From 1996 when the Sustainable Fisheries Act went into effect through 2011,<sup>4</sup> gross boat revenues for all fish and shellfish landed in New England grew from \$779 million to over \$1.4 billion (2010 dollars). Massachusetts' fishermen increased their gross revenues from \$316 million to \$531 million (2010 dollars). Groundfish permit holders in New England have increased their gross revenues from \$226 million to \$550 million, primarily by diversifying their catch to alternative, more abundant and better-managed fish species. There are also positive signs in the groundfish fishery for many stocks and a number of quotas increased last year. With continued rebuilding achieved by effectively lowering fishing mortality below levels recommended by the scientists, these groundfish stocks should recover and support new opportunities to grow and diversify fisheries in New England.

These are some of the first promising economic signs seen in New England groundfishery in decades and they are the largely the result of the steps that Congress took in 2006 to force fisheries managers to prevent overfishing, to rebuild overfished stocks quickly, and to use science-based quota setting. Fishermen and fishing communities across New England paid a terrible price because those same actions were not taken earlier when the law allowed more "flexibility" in setting harvest levels. For many fishermen who face economic challenges, short-term economic returns are almost always the most important objective. For a healthy fishery, a focus on short-term economic returns is almost always the wrong basis for fisheries management.

The new provisions in the Magnuson-Stevens Act are beginning to work, and in many cases working well for many New England fishermen, particularly those fishermen who have decided for a variety of reasons to stop fishing on the depleted groundfish species and who now target more abundant and better-managed stocks. Increased "flexibility" to extend overfishing in Magnuson-Stevens Act is not necessary for these fishermen; indeed, it will put their successful fisheries at increased risk of future failure. There are few areas of human endeavor where the law of unintended consequences operates with such enthusiasm as fisheries management and CLF believes that many of the provisions of the Reauthorization Discussion Draft will have the exact opposite result of the one they are intended to achieve.

This point of this testimony is not to suggest that individual groundfishermen have not suffered significant economic or social harms over the past several decades.

<sup>4</sup>These are the latest NMFS economic data to which CLF has access. We are currently updating those numbers to include 2012, which data are now available to CLF.

As indicated above, the management failure to set catch levels on cod and haddock and other groundfish at appropriate levels in the 1990s virtually guaranteed that a number of the groundfish populations would fail to rebuild and, indeed, would likely plummet even further. Fishermen who did not anticipate this reality and stayed focused on harvesting some of the most heavily targeted species like cod and yellowtail flounder saw their opportunities disappear in the first decade of this century along with the fish. There is nothing that relaxing the Magnuson-Stevens Act might do to provide a different future for these fishermen; the fish simply aren't there. But if there is to be a future cod fishery, then the answer in New England—as it was in Atlantic Canada—is to close the fishery and protect the large spawning female cod in order to give this fish every chance possible, not to create a legislative loopholes to allow any more overfishing of a fully depleted stock.

The **second myth** is that the problems with depleted stocks like Atlantic cod have nothing to do with fishing effort, or that fishing levels have nothing to do with stock abundance. According to this myth, fishermen in New England are in compliance with their catch limits and Atlantic cod are still depleted and not rebuilding so the fishermen are not to blame.

The myth is false because it suggests the catch levels in New England have always been within their biological limits. It is true that the fishing industry is not to blame for these damaging catch limits because they don't set the fishing levels, although they have always pushed hard through the council system and through political channels for the highest levels the managers would give them. Even though the MSA was revised in 2006, New England's groundfish fishery did not institute hard catch limits until May 2010. Moreover, in the last 2 years, the groundfish fleet hasn't even caught most of the fish it was been authorized to catch because they can't find the fish anymore. Through the mid-2000s, though, the industry often caught more fish than the quota—sometimes even several multiples of the quota. Only the 2006 amendments to the Magnuson-Stevens Act forced the catch levels to be treated as hard limits, not aspirations. Aspirational limits were not kind to fishermen; they put many, many New England fishermen out of work.

More importantly, based on the NMFS stock status reports, groundfish stocks continue to be overfished and experiencing overfishing to the current day.<sup>5</sup> I will use the two stocks of Atlantic cod to illustrate this fact. Gulf of Maine Cod is reported as overfished in 15 out of the last 17 years<sup>6</sup> and Georges Bank cod was overfished for 13 out of the last 17 years. Overfishing was happening with Gulf of Maine cod 13 out of the 14 years reported to Congress through 2013, and 12 out of 14 years with Georges Bank cod. Atlantic cod are depleted as a direct result of overfishing.

This illogic of this persistent overfishing of Atlantic cod—how can fishermen be fishing within their limits and still have overfishing occurring?—introduces the **third myth**, the myth that the Magnuson-Stevens Act imposes rigid, unrealistic rebuilding schedules that arbitrarily require rebuilding to a fixed biomass by a fixed time. The truth is that while the law sets a 10-year time limit as the default maximum rebuilding period, that limit is hardly rigid and neither the managers nor the fish obey it.

The current requirement is that overfished stocks of fish should be rebuilt in a time “as short as possible,” 16 U.S.C.A. § 1854(e)(4), and, in any event, within 10 years of being declared to be overfished “except where the biology of the stock of fish, other environmental conditions, or management measures under international agreement in which the United States participates dictate otherwise.” 16 U.S.C.A. § 1854(e)(4)(ii). The language of the law already allows exemptions to that 10-year period if exemptions are justified by considerations that are independent of current fishing effort.

Many of New England's groundfish have rebuilding plans that are based on terms exceeding 10 years. As noted above, Georges Bank cod has been formally determined to be overfished since 1990 and still has 12 years left in their projected rebuilding program. If that timeline is not met for any possible number of reasons, the rebuilding framework will be extended based on a control rule adopted by NMFS and the New England Fishery Management Council. Numerous stocks of Federal managed fish have rebuilding requirements that exceed 10 years and, in some regions, we understand that the majority of a Council's stocks exceed the 10 years under existing law.

<sup>5</sup>2013 Status of U.S. Fisheries (NMFS) Table A at 4–6 (<http://www.nmfs.noaa.gov/sfa/statusoffisheries/2013/fourth/Q4%202013%20Stock%20Status%20Tables.pdf>).

<sup>6</sup>Moreover, the 2 years when Gulf of Maine cod were not considered to be overfished was the result of science error in the assessment; they were determined later to be overfished in fact both years.

Rebuilding catch limits that are prescribed for an overfished stock are hardly even prescriptive; they don't have to have produce any higher than a 50 percent probability of succeeding in accomplished the projected rebuilding within the stipulated time period. The current law allows the rebuilding probability for the stocks in the worst trouble, the stocks in a rebuilding program, to have the same odds as a coin toss. And if circumstances change during that rebuilding that are identified in the periodic stock assessments, that rebuilding framework itself can be and is revisited by managers.

In New England, with only one or two exceptions that I can remember over the past two decades, managers have *always* opted to take the highest risk rebuilding strategy to protect short-term economic objectives, that is, the longest time allowed for rebuilding at the highest level of catch. These levels often end up being too high in retrospect, which is why fisherman can point to their compliance with fishing quotas in New England—as with the Atlantic cod example above—while scientists continue to conclude after each new stock assessment that overfishing is still taking place. There was a built-in 50 percent chance that the levels would be too high to begin with, that overfishing would occur under that harvest cap in the first place. The current law already allows fishery managers to take risks with their fundamental inventories that private business managers would consider reckless.

*Congress Got It Right: Successful Fisheries Require Accountability, Science-Based Quotas, and Healthy Fish Populations.*

In 2006, Congress passed the Magnuson-Stevens Fishery Conservation and Reauthorization Act of 2006, Pub. L. 109–479, 120 Stat. 3575 (2007) with strong bipartisan support. Mindful of the situation in New England and in other troubled fisheries around the Nation and after receiving extensive testimony and material, Congress used this reauthorization to make some significant changes to the Magnuson-Stevens Act to fix critical structural problems in the law. Specifically, the reauthorization prohibited overfishing during the rebuilding period of a fish stock; it imposed accountability measures on the managers in the form of requiring annual catch limits; and it required accountability management measures if a fishery exceeded its annual catch limit. The 2006 reauthorization also emphasized the importance of science-based fishery management plans in U.S. fisheries, requiring, for example, that all fishery management councils have a standing committee of science experts to advise the Council on setting fishery specifications and having the authority to set maximum harvest rates that a fishery could not exceed. These are reasonable and well-grounded requirements that are used by all successful fisheries in industrialized nations around the world.

The 2006 reauthorization addressed an explicit congressional conclusion with respect to the Nation's fisheries that had come at a high price: the historic flexibility, discretion, and latitude associated with many—but not all—of fishery management plans being developed by the regional councils was doing harm to the Nation's interests by delaying the achievement of optimum yield on a continuing basis for the Nation's fisheries. In too many fisheries, overfishing had become a way of life; it had become institutionalized in the system. Nowhere were the economic, social, and ecological costs of this delay in stopping overfishing more apparent and more devastating than in New England's groundfish fishery. Those were important and necessary legislative changes. Nothing has changed to support departing from the current provisions of the law.

While a set of 2006 amendments may seem like ancient history in Washington, DC in 2014, it is important to recognize that the positive productivity changes and economic benefits associated with these new management requirements are only now beginning to be observed around the country. The New England Council's first groundfish plan under the 2006-reauthorized Magnuson-Stevens Act did not take effect until May 1, 2010, less than 4 years ago. At the time the new provisions took effect, economic analysts indicated that the potential economic losses associated with this fishery management plan (known as Amendment 16) in the first year could be on the order of 15.2 percent, or \$15 million, as a result of the scientific recommendation of cutting back groundfish landings by over 47,000 metric tons of fish. The new accountability and science-based quota setting provisions in New England did not, in fact, produce those dire predictions in New England's groundfish fleet.

In fishing year 2010, when large quota cutbacks to stop overfishing and rebuild cod stocks were finally required, gross groundfish revenues stayed relatively flat with a decline of only \$0.209 million or  $-0.002$  percent, while the gross total revenues earned by those same groundfish boats (including the revenues from the other species they landed) grew \$28.110 million, or a 10.6 percent increase over 2009

(2010 dollars).<sup>7</sup> In the 2011 fishing year, groundfish revenues increased \$5.272 million, +6.3 percent, over 2009 groundfish revenues and total gross revenues increased \$58.554 million, a 22 percent increase over 2009 revenues (2010 dollars). In the 2012 fishing year, when even further heavy groundfish quota cuts were required, total groundfish revenues declined \$16.134 million from 2009 groundfish revenues but total revenues remained \$28.750 million above 2009 levels (2010 dollars).<sup>8</sup>

Total gross revenues to groundfish boats in 2012 were roughly twice the average gross revenues to the groundfish fleet averaged over the 2005–2007 fishing years (nominal dollars).<sup>9</sup> The New England groundfish fleet has demonstrated on the water that it can accommodate full accountability to science-based quotas while growing the value of the fleet’s landings through species diversification.

The New England groundfishery as well as the other New England fisheries are performing better as a result of implementation of the 2006 amendments to the Magnuson-Stevens Act. Congress should stay the course with responsible rebuilding requirements and science-based quota setting to ensure economic opportunity for the region’s fishermen.

Thank you for inviting us to testify in this hearing and for considering our testimony.

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The CHAIRMAN. Thank you very much, Mr. Shelley. And now we will recognize Mr. Zeke Grader, Executive Director of the Pacific Coast Federation of Fishermen’s Associations.

You are recognized for 5 minutes.

**STATEMENT OF W.F. “ZEKE” GRADER, JR., EXECUTIVE DIRECTOR, PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS**

Mr. GRADER. Thank you, Chairman Hastings and Mr. DeFazio. Thank you for the opportunity to testify here this morning. The Pacific Coast Federation of Fishermen’s Associations represents working men and women in the West Coast commercial fishing fleet, and this will be our fourth reauthorization that we have participated in. And we have watched the Act as it has evolved since first passage in 1976.

I should say, Chairman Hastings, that we have gone through the committee’s draft, the “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.” The first thing I would say is that you probably ought to change the name. It is too long. And I can tell you, from an organization, just trying to say it in testimony, it is too long. Come up with something shorter. But there are a number of provisions that we really want to commend the committee that we do like in your draft.

First of all, I think it is long overdue that we recognize that not all depleted fish stocks are overfished. We have certainly seen that with coho on the West Coast, where in some cases we have had no fishing for 20 years. The stocks are depleted, but not because of

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<sup>7</sup>The data in this paragraph is derived from the Murphy *et al.*, 2012 Final Report on the performance of the Northeast Multispecies (Groundfish) Fishery (May 2012–April 2013), Table A. It can be found online at <http://www.nefmc.org/index.html>.

<sup>8</sup>This analysis does not include any changes in the net revenues for groundfish boats during those years and there were some increased quota leasing costs. The analysis also does not explore the distributional aspects of those increased total gross revenues, i.e. whether the Council succeeded in fairly distributing this fleet’s access to New England fish populations, either by boat size or by State. Much of that data, unfortunately, is not available to the public.

<sup>9</sup>This analysis was derived by comparing the revenues set forth in the report identified in fn. 7 with economic analysis from Amendment 16 to the Northeast Multispecies (Groundfish) Fishery Management Plan, Table 255 on p. 691. Amendment 16 can be found online at <http://www.nefmc.org/nemulti/index.html>.

fishing, but because of habitat degradation. And that needs to be recognized. And I think certainly in the future, as Mr. Shelley mentioned with climate change, we are probably going to be looking at more stocks that are going to be at risk, not because of fishing, but because of climate change, or even pollution. So I think changing the term is long overdue. That is not to say, however, that we would condone any overfishing.

I also think your suggestion in the draft to look at alternatives to annual catch limits makes sense, not that annual catch limits are not a good thing, but they don't work for every fishery, particularly those where we don't use quota management.

Two good examples are Pacific salmon, where, at least along the West Coast, we use quotas only sparingly. Yet, at the same time, we have protected against overfishing, and these are managed sustainably. Another example, of course—but it is a State-managed fishery—is our Dungeness crab, which are not managed by quota. But, in fact, we use a different form of management, but they are well managed and not overfished. So, I think looking at alternatives where appropriate to ACLs may be good, where the particular fishery does not lend itself to quota management.

I also really want to applaud the committee draft in promoting electronic monitoring. We believe very much that monitoring of our catches has to take place. The problem is onboard monitors, particularly on small boats and small fisheries does really very little, other than make it so cost-prohibitive for fishermen to operate, that we need to have some other alternative to that.

And finally, on the referendum on catch shares, this is needed. But it is also needed on the West Coast. West Coast fishermen deserve a vote on the fisheries that they are to be managed under.

We do, however, have some problems with the draft. And our biggest problem is in the attempt to address flexibility. Indeed, we think flexibility already exists in the Magnuson Act. But I think we really do need to stay the course on strict adherence to prohibiting overfishing, strict adherence to rebuilding plans, and strict adherence to good science.

I just spent the last couple days in Half Moon Bay at the World Oceans Conference, and there was all kind of talk there about overfishing. We fishermen were not invited to speak, but we could have told them that in the United States we are making progress on eliminating overfishing. I would like to be able to go back to that conference 2 years from now and tell them we have eliminated overfishing in the United States. And I think we can do that by adhering to the current law.

We also have a number of changes that we think need to be made in Magnuson that are not part of the draft bill, most specifically addressing community fishing associations, the need for Congress to do something. Because, to date, both the National Marine Fisheries Service and the Councils have been derelict in carrying out the charge by Congress in the 2006 reauthorization to establish community fishing associations. And I would be glad to address that, or talk to the committee further about it.

One final note. We have to finally start looking at how do we fund our fisheries. We have come up with some ideas in the past where there would be establishing a trust fund, say, funded by an

ad valorem fee on all fish sold in the United States. There have been alternative proposals, such as looking at the Saltonstall-Kennedy Act. But we really do have to find the funds necessary to pay for the science and other needs we have for our fisheries. Otherwise, we are going to continue to be in crisis every 10 years we come back to see you on reauthorization. Thank you.

[The prepared statement of Mr. Grader follows:]

PREPARED STATEMENT OF W.F. "ZEKE" GRADER, JR., EXECUTIVE DIRECTOR, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS

Good morning Mr. Chairman and members of the Natural Resources Committee. My name is Zeke Grader and I am the Executive Director for the Pacific Coast Federation of Fishermen's Associations (PCFFA). I wish to thank the committee for its kind invitation to testify here today.

By way of introduction, I grew up on California's north coast where my father was a fish processor and I worked in fish processing plants through law school and until I was hired by the PCFFA in 1976.

PCFFA was incorporated the same year as the passage of the Fishery Conservation & Management Act; prior to that, a number of PCFFA's 14 member organizations supported establishment of a "200 mile fisheries act." That campaign, as you know, culminated in the passage and signing of H.R. 200 in 1976, creating a 200-mile fishery conservation zone and establishing the eight regional fishery management councils to develop management measures within these newly established Federal waters. PCFFA, thus, has considerable experience with the law and this upcoming reauthorization of the MSFCMA will be the fourth now that PCFFA and I have participated in.

In addition to my position with PCFFA, I also serve as Executive Director for PCFFA's sister organization, the Institute for Fisheries Resources (IFR), a 501(c)(3) non-profit engaged in research, outreach and education on behalf of working men and women in the commercial fishing fleet. I should also add that I am the vice-chairman of the Golden Gate Salmon Association, a member of the executive committee of the Marine Fish Conservation Network and am currently working with the Pew Charitable Trusts, principally on funding issues related to our fisheries. My testimony here today, however, is on behalf of the PCFFA and no other organization.

I have attached two PCFFA columns from the *Fishermen's News*, one from last year and one from this month, of our ideas on the upcoming reauthorization of the Magnuson-Stevens Act (MSA), including in the February some thoughts on the Natural Resource Committee's draft legislation, the "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act".

SOME CONTEXT

To provide the committee the rationale behind our position, it is useful to review PCFFA's involvement in the past three reauthorizations. In the 1980's reauthorization, PCFFA, based on its experience with salmon and the Pacific Fishery Management Council, worked to include fishery habitat language in the FCMA, where the impacts of habitat degradation on Pacific salmon stocks was being largely ignored by the Pacific Council. PCFFA also worked to get report language on the need for a commercial salmon fisherman representative on that Council. The most regulated fishery under the Pacific Council at that time, commercial salmon trollers were treated as poor stepchildren by the Pacific Council and National Marine Fisheries Service until passage of that first reauthorization.

The Pacific Council and NMFS aggressively regulated the ocean salmon fishery from the beginning, heeding the FCMA's prohibition on overfishing. That was not the case with other fisheries, however, particularly mixed stock fisheries. By the 1990s it was becoming evident that some stocks were being overfished, such as some of the groundfish complex. In the 1995-96 reauthorization, PCFFA, as a commercial fishing member of the Marine Fish Conservation Network, a broad coalition of organizations working for sustainable fisheries, supported language aimed at ending overfishing. We recognized that overfishing was not in the best long-term economic interest of the fleet and had to be ended if we hoped to have robust fisheries again.

In 2006, PCFFA supported further amendments to the Magnuson-Stevens Act—beyond the explicit language to end overfishing—requiring strict stock rebuilding plans and adherence by the Council's to the fishery science. Based on the past 2

years' status of U.S. fishing stocks reports, the 1996 and 2006 amendments to the MSA—on overfishing, stock rebuilding, and adherence to science—are working.

We also recognized the problems with much of our fishery science; it sometimes did not cover the total range of a stock, in other instances the stock assessments were too infrequent and not accurately reflecting the condition of the current population, and sometimes those doing the stock assessments simply didn't know how to fish to be able to accurately assess fish stock abundance. The problem we saw, that still exists today, is not with the MSA, but that there never have been sufficient resources appropriated for the research and stock assessments needed to sustainably manage our fisheries.

In recognition of the problem of funds for fishery science, PCFFA in its August 2003 the *Fishermen's News* column (<http://www.pcffa.org/fn-aug03.htm>) called for establishment of a national fisheries trust fund, with its own financial support source(s) and outside of the annual congressional appropriations process, to pay for fishery science, as well as other fishery needs, including development of more selective fishing gear, disaster relief, even underwriting a catch insurance program. In the 2006 reauthorization, language by Senators Stevens and Boxer to establish a fishery trust fund was incorporated in the reauthorization bill. Identifying a financial source, or sources, to provide the support needed for the fund, however, was left until another day. And, it is establishing a stable and ample funding source for fishery science and other fishery needs is what is really needed now, not weakening the existing MSA.

SOME THOUGHTS ON THE "STRENGTHENING FISHING COMMUNITIES AND INCREASING FLEXIBILITY IN FISHERIES MANAGEMENT ACT"

Given the history PCFFA has with the Magnuson-Stevens Act, we have the following recommendations regarding provisions of the draft "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act":

*"Flexibility," Overfishing, and Rebuilding Periods.* PCFFA is not insensitive to the plight of fishermen in other parts of the Nation, particularly New England. We have felt the pain. Our members have gone through highly restricted seasons, when stocks were down—and through no fault of our own. In the early 1990s we were forced to seek disaster relief, as a result of the impacts of a multi-year drought on salmon stocks. In this century our salmon fisheries were all but closed for a 2-year period in 2004–2005 because of Federal water policy impacts on salmon in the Klamath Basin. Our salmon fishery was totally closed in 2008–2009 due to impacts from earlier State and Federal water operations in the Sacramento-San Joaquin Delta estuary that decimated juvenile salmon populations.

The problem is, we don't see what will be gained by continuing to fish down stocks or put-off rebuilding—which is exactly what would happen under the "flexibility" that is being proposed by some fishing groups and incorporated in the draft bill. What is to be gained by overfishing for an additional 5 or 7 years? It simply puts off the day of reckoning, with the fleet trying to survive in the short term on depleted stocks when it could be thriving in the long term fishing on rebuilt stocks.

In fact, the MSA already has a great deal of flexibility in how long those plans should be. As you know, the law's 10-year target for rebuilding can be exceeded due to the biology of the species, other environmental conditions or if the stock is managed under an international agreement. In addition, the Councils have amended a rebuilding plan when new scientific information indicates conditions have changed. The existing flexibility in the law is clear when you consider that more than half of the current rebuilding plans (23 of 43) are longer than 10 years.

For example, the rebuilding time for ocean perch off the Pacific coast was recently extended for an additional 3 years based on a new stock assessment. Other stocks, like cowcod, have had their rebuilding times modified based on updated scientific information, and have rebuilding timelines that far exceed the 10-year limit—in the case of cowcod the rebuilding period is 67 years.

There is significant flexibility in the MSA, and we need to use the Pacific as an example of how the existing flexibility can produce results in rebuilding and advance sustainable fisheries and coastal communities.

The better answer it would seem would be to provide some form of interim financial help to the affected fleets, allowing stocks to rebuild, while working to improve our fishery science to know when to allow higher catch levels and/or to develop more selective fishing practices, where possible, to allow targeting on abundant species while avoiding those still undergoing rebuilding.

We urge the committee, therefore, not to change the existing law regarding overfishing and stock rebuilding.

*National Environmental Policy Act (NEPA) Compliance.* PCFFA recognizes that many of the regional councils would like to do away with the NEPA requirements for fishery management plans and amendments. NEPA, however, requires a full analysis of an agency action and for a range of options to be considered. These two provisions of NEPA are very important for our fishermen and fishing communities. Considering the Councils do not always act in the best interests of fish stocks, fishermen or fishing communities, we think it would be a very bad idea to do away with NEPA compliance and we strongly oppose any reauthorization language to weaken or do away with NEPA compliance by the regional councils.

*Delegating Endangered Species Act (ESA) Authority to the Regional Fishery Councils.* PCFFA, probably more than any other commercial fishing organization in the Nation, has worked extensively with the ESA, since the first salmon runs were proposed for listing in 1985. The ESA has prevented the extinction of the unique Sacramento winter-run chinook salmon, and may have prevented the extinction of subpopulations of species of other salmon runs and certainly stopped the extirpation of salmon from numerous watersheds. The ESA works when it's given a chance, particularly where there is agency resolve and there are the resources necessary—personnel and funding—to do the job.

Handing over authority for protecting and recovering ESA-listed fish to the regional councils is a bad idea. Trying to superimpose the MSA process over the needs of ESA-listed species would be disastrous. Moreover, the regional councils are already strapped under their existing workloads. They have neither the resources, nor the expertise, to carry-out ESA responsibility for protecting and recovering listed fish species. If Congress is concerned with the implementation of the ESA and its successes, then it should provide the responsible agencies the resources they need to carry out their charge and leave them alone thereafter.

*Changing the term from "Overfished" to "Depleted."* PCFFA, in its salmon experience, has long argued against the broad categorization of every depleted fish stock being defined as "overfished." We support, therefore, the proposal in the draft to change the term. This would more accurately describe the condition of many salmon stocks, some of which have had no fishing on them in nearly two decades. Also considering the progress being made in ending overfishing, while looking at numerous threats now and in the future to fish stocks from non-fishing impacts, a better term than "overfishing" is needed to describe stocks that are depleted. This is not to say, however, that a change in terminology should be used to allow overfishing. A strict adherence to the existing law to stop and prevent overfishing remains essential.

*Referendums on New Catch Share Programs.* PCFFA supports the draft's language to require a referendum on any new catch share program, but we *cannot* support an exemption from this requirement for the Pacific and North Pacific. The referendum requirement must apply to all the Nation's fisheries, not just those along the Atlantic seaboard and in the Gulf of Mexico. Fishing men and women on the West Coast also deserve a vote on their fisheries.

*Strengthening Fishing Communities.* PCFFA was heartened by part of the title in the committee's draft reauthorization bill. We were disappointed, however, to find little of substance in the draft that will actually strengthen fishing communities. Based on our experience, the best way now to strengthen our Nation's fishing communities is to ensure they have access over the long term to rebuild abundant fish stocks and the financial resources available to carry out the science and other needs essential for sustainable fisheries.

#### THE CHANGES NEEDED TO THE MAGNUSON-STEVENS ACT

*Investment in Fisheries.* In the 2006 reauthorization language was adopted creating a national fishery trust fund. In this reauthorization Congress needs to now identify a financial source or sources for such a fund and spell out how the fund would be operated and the purposes for which monies from the fund may be used. Some years ago, PCFFA crafted a discussion draft for a national fishery trust fund, including a revenue source and uses for monies deposited into the fund. If it is useful, we will provide that to the committee for the purposes of starting the discussion. Moreover, the committee may want to revisit the legislation proposed in 2012 to use Saltonstall-Kennedy Act monies to support vital fisheries science.

*Protecting Fishing Communities.* In the 2006 reauthorization, Congress provided in the Limited Access Privilege Program (LAPPs) provisions of the Act for the creation of community fishing associations (CFAs) to receive initial quota allocation and hold quota on behalf of a fishing community however that was defined. This language was extremely important, since NOAA/NMFS promoted individual fishing quotas (IFQs) and other forms of catch shares, to ensure fishing communities continued to have access to those fishery resources they traditionally relied on to support

their fleets and economies. Moreover, CFAs are a means for avoiding “stranded assets” for fish processors—a common complaint when quota is issued to individual fishermen or boat owners—without the need for issuing quota to processors directly raising anti-trust concerns, among others. CFAs may prove important, as well, for protecting our fishing communities, if provisions in catch share fisheries, such as restricting quota ownership to U.S. citizens or limiting quota accumulation by a single entity, are struck down by current or future U.S. trade agreements, such as the Trans-Pacific Partnership now being negotiated.

While NOAA/NMFS and many of the Council’s continue to push IFQ or catch share management, nothing has been done since that last reauthorization to fully define what constitutes a CFA or their operation. As a result, we have community groups here on the West Coast that have formed or are forming what they believe would constitute a CFA, but are left in limbo due to NOAA/NMFS and Council action to put over work on CFA development. Indeed, the Pacific Council considers CFAs a “trailing action” in its implementation of its trawl groundfish IFQ scheme. That is outrageous. What they are in essence doing is circumventing Congress by issuing all of the quota to individuals leaving nothing for CFAs. Congress needs to set forth standards for CFAs and implement a moratorium on any new IFQ or catch share programs until such time as CFA language is fully developed in regulation and CFAs are formed to accept and hold quota.

*Ecosystem Services.* PCFFA has argued since the first reauthorization of the FCMA for consideration of habitat impacts on fish abundance and the need for habitat protection. Our organization has also recognized predator-prey relationships and the importance of forage fish considerations in fish management when it initiated in California successful legislation to ban the harvest of krill (at the base of the ocean food chain) and the catch of white sharks (an apex predator in the ocean food chain). In the succeeding reauthorizations Congress has added language for the identification and protection of essential fish habitat and development of ecosystem-based fishery management plans. What we ask in this reauthorization round is that the discussion on ecosystem fishery management continue, including consideration of small pelagic fish that are an important food source for many of our Nation’s major commercial and recreational fish stocks.

*Addressing Non-Fishing Impacts.* Finally, given the actions taken by other agencies that can affect the health of fish stocks managed by a regional fishery council, the Councils need to do more than simply regulate fishermen, if we hope to successfully conserve many of our Nation’s fish stocks. The regional councils cannot sit by quietly when some other agency acts in a way that damages the very fish stocks a regional fishery council is charged with managing. To that end, PCFFA believes it important that in this reauthorization round of the MSA, Congress charge the regional councils with an affirmative duty to notify, when they become aware of, any agency whose actions or planned actions will adversely affect the health of a fish stock that Council is charged with managing. Further, the regional councils should be given the duty to consult with another agency whose action is or may affect a fish stock or stocks and to recommend measures to either prevent damage to the fish or mitigate for any damage. Giving the regional councils this charge could help prevent non-fishing related damage to fish stocks in the future.

#### CONCLUSION

I’d be pleased to answer any questions you or committee members may have. Thank you again for this opportunity to testify.



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**Pacific Coast Federation of Fishermen's Associations***The following article is the opinion of the writers and does not reflect the opinions of Fishermen's News or Phillips Publishing Group.*

## Fixing Magnuson – Again

*By Zeke Grater and Glen Spain*

At the end of this federal fiscal year the Magnuson-Stevens Act (MSA) is set to expire. Congress is unlikely to let it, but this “sunset” date has set in motion discussions and hearings on what changes are needed in the reauthorization of the nation’s primary fishery law.

The first Congressional MSA reauthorization hearings this year began before the Fisheries, Wildlife, Oceans & Insular Affairs Subcommittee of the House Natural Resources Committee on 13 March, and a week later (16 March) by the Senate Commerce Committee’s Subcommittee on Oceans, Atmosphere, Fisheries & Coast Guard, in what has become a decadal event since passage of H.R. 200, the Fishery Conservation & Management Act, in 1976.

This month (7-9 May), in fact, a major conference is being held in DC, “Managing Our Nation’s Fisheries – Advancing Sustainability” that is expected to explore MSA reauthorization issues.

The March hearings for the upcoming reauthorization included issues dealing with stock allocation between states and shifting of stocks due to climate change, state management of stocks within 20 fathoms of shore, the cost of observer coverage and who would pay, and implementation of “catch share” programs.

Most of the clamor, however, is around “flexibility” in the MSA. The complaints are mainly from groundfish fishery representatives in New England and the West Coast and recreational groups in the Gulf of Mexico. At issue is adherence to strict catch limits (total allowable catch or “TAC”) and stock rebuilding plans, as mandated in the last reauthorization.

The original Fishery Conservation & Management Act (FCMA), now called the “Magnuson-Stevens Act (MSA)” after two of its late Senate sponsors, included language prohibiting overfishing, but it was not until the 1996 reauthorization that Congress inserted explicit language on ending overfishing. In 2006, Congress was even more explicit by requiring rebuilding plans for overfished stocks and mandating management be science-based.

The MSA had succeeded in ending foreign fishing and “Americanized” fishing within the US 200-mile fishing zone, and prevented overfishing in some fisheries such as salmon. However, it had allowed overfishing to occur in other fisheries, most notably groundfish, as a result of perverse interpretations of “optimum yield,” shoddy science and denial.

Fishermen rallies were held in DC in 2010 and 2012 protesting the law, and various bills have been introduced in the

past three years aimed at undermining the MSA’s explicit language on ending overfishing, stock rebuilding and adherence to science. None of these measures have gone anywhere, although there is a chance some of the language from these bills could be packaged up as reauthorization amendments, especially in the House.

The complaints coming from the fishing groups mentioned above is that the 2006 language is “too rigid” – both in its prohibition on overfishing and requirement for 10-year stock rebuilding plans. At the same time that language – prohibiting overfishing, stock rebuilding timelines, and science-based management – has resulted in a fair amount of success for American fisheries in the past few years with all of the nation’s federally-regulated fisheries now either at, or nearing, sustainable levels.

Moreover, the complaints about an inflexible law are by no means universal. There is, in fact, a fair degree of flexibility in the current MSA. The bigger problem seems to be with the agencies – the National Marine Fisheries Service (NMFS) and its meddling “mother,” the National Oceanic & Atmospheric Administration (NOAA) – and the regional councils.

Let’s also be clear that some of these complaints are bogus. Recreational fishing groups in the Gulf of Mexico fought



licensing and now they're incensed that they have to fish under any limits. Their typical solution has been to either take quota from the commercials or just ignore any science that sportfishing, too, can impact fish stocks.

There is a legitimate problem coming out of the Northeast, however, that is not so much about "flexibility" as it is the quality of the science upon which management must base its decisions. Inadequate funding has thwarted the extensive and frequent stock surveys needed to manage fisheries for optimum yield. And, at times, equipment or personnel have not been up to the task of accurately measuring fish populations. Science – whether it's research or on-going stock assessments – costs money. Despite its largesse elsewhere, the US has been cheap when it comes to funding fishery science, and both fish and fishermen have suffered as a result.

The problem of inadequate fishery science funding is by no means unique to the Northeast or to groundfish. This year salmon trollers and anglers along the California and Oregon coast will be constrained over concern for ESA-listed coastal fall-run chinook. Although there is anecdotal information that coastal fall numbers have increased, lack of funding has prevented NMFS from conducting spawning counts to develop current population estimates for these fish, never mind developing legally required recovery plans. Indeed, the problem could have worsened had a Senate Continuing Resolution (S. 933) rider eliminating the Pacific Coast Salmon Recovery Fund (PCSRF) passed in March. NOAA/NMFS funding cutbacks as a result of the sequester will impact fishery science as well.

The first significant fix in reauthorization, therefore, is secure funding for fisheries science. But financial support for observer programs (to avoid putting a financial squeeze on small boat operators), development and utilization of cleaner fishing gear, and even disaster relief, require funding as well. The necessity for fishery science funding has been written about extensively in this column over the past decade (see for example, "Planning and Paying for

Future Fisheries Research" FN Aug 2003. [www.pcfa.org/fn-aug03.htm](http://www.pcfa.org/fn-aug03.htm)) and this reauthorization may present an opportunity to finally act.

An overlooked provision of the 2006 MSA reauthorization is language inserted by Senators Stevens and Boxer creating a "national fisheries trust fund." The Stevens-Boxer provision established that trust fund, but identifying a substantive funding source was left for later. Later is now here.

PCFPA's recommendation of a nominal ad valorem fee on all seafood sold in the US to support the trust fund never gained traction. In the last Congressional session, the Pew Environmental Group proposed a more modest solution, which PCFPA supported, of using existing Saltonstall-Kennedy (S-K) Act funds to support federal fisheries research. Former Senators John Kerrey and Olympia Snowe introduced a Senate bill, and a companion measure was introduced in the House, but the lateness of the last session and other national issues prevented action on this legislation.

Legislation to earmark S-K monies for fishery science or to underwrite a national fishery trust fund could be introduced again in this Congress, or included in a reauthorization amendments package. There may be two problems, however. First, others are clamoring for S-K funds – for fishery disaster relief and seafood marketing, for instance. Second there is opposition from NMFS which claims it is already using up all the S-K funds – although the agency continues to refuse to give an accounting for its use of S-K.

Whether S-K monies will support better fishery science, or a seafood sale fee to underwrite a fishery trust fund is passed, or some other funding mechanism is advanced, money for better fisheries management has to be at the top of MSA fixes. Fishermen have to be emphatic with Congress on this matter and not allow minor or non-issues to distract us in this reauthorization season. It's the funding, stupid!

As mentioned, great strides have been made rebuilding the nation's fish stocks over the past decade or so. The

same cannot be said for the allocation of those fish stocks and the protection of fishing fleets and fishing communities.

Although promising greater flexibility for fishermen, increased safety, and even a conservation incentive, the individual fishing quota (IFQ) systems promoted in the Bush Administration and, now, "catch shares" under Obama (with a lot of meddling by NOAA leadership and the liberal Environmental Defense Fund) these schemes for allocating quota to individuals or sectors have proven problematic and need to be fixed or scrapped. Consolidation of quota among fewer owners and vessels, third party ownership/control of fish quota, potential loss of access of fishing communities to supporting fish stocks, and privatization of a public trust resource are all at the top of the problems with this allocation method, all needing to be addressed in this reauthorization.

In the 1996 reauthorization, Congress put in place a moratorium on new IFQ systems, charging NMFS with developing standards and guidelines for this allocation system. Instead, NMFS deliberately defied Congress, sat on its hands, and did nothing until the moratorium expired and then went back to business as usual, handing out almost totally unrestricted quota through the regional councils. Congress, in response, did nothing.

In the 2006 reauthorization, Congress inserted language in the Limited Access Privilege Programs (LAPPs) section allowing for the creation of community fishing associations (CFAs) and providing these groups with an initial allocation of quota. This language was developed as an alternative to processor quotas and intended to ensure fishing communities could protect their interest in fish stocks they relied upon from vessels holding quota moving elsewhere or simply selling their quota elsewhere.

NMFS, again, did nothing. And the councils, to date, have done nothing to facilitate formation of CFAs, such as establishing standards and guidelines. But they have continued developing catch share programs and giving out quota. Indeed, the Pacific Council has made CFAs a "trailing action." In other



words the PFMC will give away all the quota first and then, maybe, consider CFAs. CFAs will then be left scrambling for funds to buy-up quota from private owners – quota that was originally a public trust resource given out for free.

Congress cannot ignore the insubordination of NOAA/NMFS and the regional fishery councils following the 1996 and 2006 reauthorizations. In this reauthorization Congress should consider a moratorium on any IFQ/catch share programs – proposed or under development, require an independent review of programs now in place, and develop a set of standards and guidelines for IFQ/catch share programs and CFAs that NMFS and the councils will be required to follow.

Those standards and guidelines should be aimed at ensuring that: 1) the need for an IFQ/catch share program in a particular fishery is identified after all other management alternatives have been thoroughly explored; 2) there is a fair allocation of the resource, eliminating arbitrarily imposed qualifying dates and minimum landing requirements; 3) the ownership of quota/share is restricted to either (a) an individual employed

on or personally operating a vessel for which the take of the quota is to occur; or (b) a community fishing association or sector approved to hold quota on behalf of fishing men/women in a given port or locale; 4) the percentage of quota/shares held by individuals/sectors and CFAs is limited through an enforceable cap facilitating the greatest opportunity for employment and use of vessels consistent with the biological limits of the stocks, while encouraging investment and providing for reasonable middle income living standards; and 5) development of a mechanism facilitating an affordable entry for new participants in the fishery.

Such a moratorium should expire only when NOAA/NMFS and the regional councils are prepared to develop IFQ/catch share programs consistent with such standards and guidelines, and when existing programs, following review, are modified as may be necessary to comply with the new standards and guidelines, or be eliminated.

If these two fixes – funding and allocation – can be achieved in this reauthorization, then some real improvements will be made in our fisheries, at least

from the standpoint of management. There are other uncertainties on the horizon, including climate change and related ocean acidification, but at least making these first two fixes will be forward progress.

Finally, there are other fixes that should be considered including improvements to council management and doing away with the “overfishing” designation for stocks depleted by factors other than fishing (a problem already for salmon, but which could be significant in the future for other stocks as a result of climate change). But what is important is that we keep our focus on the funding and allocation fixes, and not allow ourselves to be distracted by extraneous issues. 🐟

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# FISHERMEN'S

*The Advocate for the Commercial Fisherman* NEWS



Pacific Coast Federation of Fishermen's Associations

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## Four Fixes for Magnuson-Stevens

By Zeke Grader, Glen Spain, Larry Collins

"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.
- On the plus side, 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 clatter 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 pimpling 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 clatter 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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The CHAIRMAN. Thank you very much, Mr. Grader, and thank all the witnesses for their testimony.

As a programming note here, we are going to be coming up with votes here very shortly, so I am going to be very brief on what I say.

But, Mr. Rees, I do want to ask you. In your testimony and your oral remarks you said that overfishing in the draft would be allowed for 5 to 7 years. Where, specifically, in the draft are you referring, or where do you get those figures?

Mr. REES. Well, I don't know if I could fully answer that question, Mr. Chairman. A lot of it has to do with just initial 2 years before an assessment is done. Also, the flexibility that is being allowed in the draft, there is a minimum of a 5-year lapse that can happen between a full assessment being done and whether there are any management actions taken.

The CHAIRMAN. Well, I will just simply say we are trying to deal with facts here. And in your testimony, you said 5 to 7 years. The draft does say, however, that there should be consideration taken for those that make a living from fisheries. But that is not a "shall," it is "may" in the draft, meaning—when you are drafting a law, "shall" and "may" are very, very big words. And this says "may," but it does not suggest that there should be overfishing. I mean we want to base the reauthorization on the best facts we have. In your testimony you said 5 to 7 years. That is why I asked specifically wherein.

So, if you want to go back and look at that again and respond in writing, we will very much accept that, if you would want to do that. But we are trying to get to a position where we can reauthorize it, based on the facts. You said 5 to 7 years, and you couldn't tell me specifically. So I will give you an opportunity to write back to the committee and tell us exactly how that happens. OK?

Mr. REES. Yes, I appreciate that. Thank you, Mr. Chair.

The CHAIRMAN. OK, good. I recognize Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. I recently, just this week, met with some trawlers from Oregon, Washington, and we were discussing the need that Mr. Grader mentioned to move beyond observers, get to electronic monitoring, and I am frustrated that we are not moving more quickly with that. And you mentioned that the bill encouraged it, but I saw in the bill that it said it encourages electronic monitoring, but it can't be used for enforcement. Do you—

Mr. GRADER. Yes, I—

Mr. DEFAZIO. Doesn't that cause a concern? That—

Mr. GRADER. I understood that, too. The issue here—I didn't look so much at the enforcement as just providing the observer coverage. And right now, where we have with the small boat fleet, particularly the small trawlers, is that it is very expensive, because each boat is required to pay for its own observer, rather than sharing the observer cost among the fleet.

So, if you are a vessel that, say, catches, hypothetically—

Mr. DEFAZIO. Right. No, I get that. I understand the burden, the expense—

Mr. GRADER. Yes.

Mr. DEFAZIO [continuing]. And they educated me more on the problems sometimes with the people provided by the contractors, you know, as observers. But my point is if we say let's move and mandate that we move ahead with electronic monitoring, but say it can't be used for enforcement, that doesn't seem to me that that is going to meet the objectives here.

Mr. GRADER. Yes, and we did not mean to—we really did not focus on the enforcement aspect, it was mostly just on the observers. And I would tend to agree. I think that perhaps use of that clause, "except for enforcement," probably should be deleted and leave it up to the Councils to decide how—

Mr. DEFAZIO. OK. Ms. Lowman, would you address that, too? Because this is a big concern for the Pacific region.

Ms. LOWMAN. Sure. Thank you, Congressman DeFazio. You know, that doesn't work for us, to not have it be able to be used for enforcement. We are in the process of trying to make that tool available, be able to use EM when it meets to maintain our objective, 100 percent monitoring, but allow for some different tools to be used, like EM, to reach that.

One of the alternatives to do it is actually a kind of an audit approach. This is the way it is done in Canada, where you are actually using the fishermen's logbook information to understand what the catch has been, but the camera is used to audit those. And so, kind of by definition, if you don't have law enforcement, then if the audit shows that it is not working, that there has been a violation,

then that would preclude this way, which is probably one of the most cost-effective ways to use EM from being used.

Mr. DEFAZIO. OK, thank you. You also briefly mentioned in the beginning this morning that you are looking toward some success on some of the longer-lived stocks. Yet you also expressed concerns about the 10-year guideline—or 10-year mandate. Can you get into that a little bit more? Because you are calling for a little more flexibility there. It is an issue where some people's flexibility would kind of remove any rebuilding goals, and other people's would perhaps provide a little more leeway, but keeping the goal strong. Can you address that a little bit?

Ms. LOWMAN. Well, you know, I think our Council has a history of trying to do this as soon as possible, you know? But you can come to a situation where, OK, the biology says it could be done in 9 years, but you would have a lot easier time and a lot less social and economic impacts if you were able to do it at 11. And so, it just seems like you should sort of balance those a little better.

Mr. DEFAZIO. Right. And you don't think the current law allows that flexibility.

Ms. LOWMAN. I think that there is some work to be done there, and I think we agree with the National Science Academy on that.

Mr. DEFAZIO. OK, thanks. Anybody else have a comment on that issue, the idea of sort of the hard goal of 10 years versus how you build in some flexibility? Yes, sir?

Mr. SHELLEY. In New England, which is the area that I know, having a hard goal as the basis for crafting the rebuilding program has been very important. And there may be circumstances with particular stocks or fisheries that would be unique.

But to change the law so that all fisheries would be able to re-entertain those sorts of arguments would throw New England back to where it was in the early 1990s. And for our purposes, the stocks have a whole variety of rebuilding timeframes under the current statute. And we think that there has been more than adequate accommodation of economic—in fact, there has been over-accommodation, frankly, of some of the short-term economic and social goals.

Mr. DEFAZIO. OK, thank you. Thank you. My time has expired.

The CHAIRMAN. Ms. Tsongas.

Ms. TSONGAS. Thank you, Mr. Chairman. And I want to thank all of our witnesses for being here today. I am a Member from Massachusetts, but I don't represent a district that has fishing as a part of the backbone of its economy. But I very much appreciate how much our fishing families are a cornerstone of our State's economic and cultural foundation, with the grit and determination so reflective of the New England spirit.

And yesterday we did get word that NOAA will be allocating nearly \$33 million in Federal aid for New England fishermen. This much-needed assistance will support the hard-working men and women and their local economies that were hard hit in the wake of a federally declared economic disaster. And we are grateful for that much-needed assistance.

As I have attended these hearings, though, I know we all have similar goals for the Magnuson-Stevens reauthorization. We all want to implement a regulatory framework that results in healthy,

sustainable fish stocks, vibrant fishing communities that can support our fishing families. And I know in Massachusetts there are a variety of views as to how best to proceed.

I have serious concerns that the draft bill we are discussing today, however, overwhelmingly favors short-term economic management decisions over long-term economic and environmental sustainability. And from what you all are saying, I think we have different views, depending on what part of the country you come from. More success on the West Coast; the East Coast has greater challenges to overcome.

So, in your opinion—and I would like to start with Mr. Shelley—what provisions should be included in any reauthorization so that we can best improve—and you may have different opinions—the sustainability and long-term optimum yield? And I would like to start with you. And if you could just come up with two or three that you think are key.

Mr. SHELLEY. Thank you, Representative. I think the key thing that the reauthorization has to focus on is climate change, and the fact that it is going to disrupt virtually every fishery in the United States in the near term. And it is already showing up in New England. Long-term sustainability is going to require us to confront the fact that this is coming, that it will affect fisheries. Some of them will become more profitable, some will become less. There will be all sorts of changes. But the reauthorization could really benefit that critical debate by laying out some provisions that would advance ecosystem-based fisheries management, push the management system in the direction that the scientists are recommending. It needs to be pushed to make it more robust to withstand these ecological forces that are coming our way.

Ms. TSONGAS. Others, can others comment?

Mr. GRADER. If I can just comment quickly, Representative Tsongas, and I don't disagree at all with what Mr. Shelley said. But I think one of the things that is critical to us, and I think, actually, if you drill down and look at the problems in New England—I have many friends in the fishing fleet from there—is that a big part of our problem is we have never adequately provided for the science that we need. We have been trying to manage on science that is outdated at times. Other times it just isn't comprehensive enough, it doesn't look at the total range of a stock, not to mention the problem you have that people then choose to ignore the science.

So, I think, really, we are going to have to figure out—and, from your State, Senator Kerry, when he was in the Senate, and Senator Snowe, basically started to tackle that issue when they were looking at earmarking Saltonstall-Kennedy Act funds specifically for fishery research. We have to find a funding source that can be outside of the normal appropriations, and that is why we have suggested perhaps looking at a trust fund.

But to come up with a separate funding source, and not just for the science, that could help underwrite such things as helping fishermen develop more selective gear. It could help with—say, even helping underwrite such things as catch insurance. And finally, looking at providing the money for disaster relief, because I watched and read the Gloucester papers and all the others in New

England, and watched how long it took before that—and it was shaky, how long it took to get that disaster money to fishermen. If we had a fund that was there when we needed it, I think it would make a lot more sense.

Ms. TSONGAS. Comments from others?

Mr. REES. I might just add there are two important key components that may not have enough emphasis in the current Act.

One is paying attention to critical forage species, which is really all forage fish. These are the species that provide the basic beginnings of the food web. And if we don't pay attention to those stocks, we risk jeopardizing many, many commercially and sport fishing important species.

Also, the concept of ecosystem-based management, which is taking root, and ever so critical that we understand all the inner workings of ecosystem-based management is probably underemphasized in the current Act, and may need strengthening.

The CHAIRMAN. The time of the gentlelady has expired.

Ms. TSONGAS. Thank you.

The CHAIRMAN. I recognize the gentlelady from Hawaii, Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chair. My question is for Dr. Pooley.

Aloha. I think we can all agree that the purpose of the science-based fishery management is to ensure that we make management decisions that provide sustainable fisheries and protect the vulnerable species, basically. If this is the goal, then management decisions should reflect the actual status of the fish stock, based on adequate data and accurate scientific models. Otherwise, I think we are forced to set catch levels based on what I would consider to be uninformative measures like past catch levels, which are also, I think, unrelated to the health of a fish stock.

So, as far as I am aware, the Pacific Islands Fisheries Science Center has only produced two stock assessments for bottomfish in the region, in addition to collective work that is done in connection with the pelagic species, while nearly all of the 2,000 coral reef species under Federal management are categorized as data-poor.

Given the importance—and I think everyone here has testified that science is the necessary underpinning of all of the information—why are so many stocks categorized as data-poor, and what is being done to improve that situation?

Dr. POOLEY. Good morning, and aloha, Representative Hanabusa. It is good to see you again. You are factually absolutely correct. And the reason that fisheries in the Pacific Islands, including Hawaii, are data-poor ranges from a variety of reasons. And if we focus on Hawaii, it really relates to the complex relationship between commercial and non-commercial fisheries.

The State of Hawaii has a quite robust commercial fisheries data collection system that we utilize in our stock assessments, and used for the bottomfish assessments. But reef fish are caught not entirely by commercial fisheries at all. In fact, the fish auction no longer sells reef fish. That means that we have to rely on recreational surveys and other methods of trying to get a handle on that.

The way that we have approached it—and we have worked with the Fishery Management Council staff closely on this, who have identified a number of innovative methods—is to try to bring in some of our coral reef diver surveys, as well as new life history information to come up with alternative assessment approaches.

All of the species have ACLs and the reef fish ACLs are all being revised this year. And we need to give tremendous credit to the Fishery Management Council for the work that they have taken in initiating that. Our role has been primarily to provide the information by which the ACLs can be revised.

Ms. HANABUSA. Now, let's follow up on that. The issue of the ACLs, of course, is what, as you probably know, most of our fishermen take great issue with. Now, when you say that they are being revised, what is the basis of that revision? In other words, what science, given the fact that we are data-poor on all of these species, basically, what science is being relied upon to justify the change in the ACLs, whichever way it may change, up or down?

Dr. POOLEY. Yes, and we don't know which way it will go, whether it is up or down. Basically, it is this approach of moving from measures that were based on previous catch, which I think we all felt was inadequate, but was the best that could be done at the time, to these alternative biomass measures that bring in multiple sources of information within our modeling framework that provides at least a proxy approach toward it.

Our expectation is—although we can't guarantee it—is that these will not be binding on the existing fisheries, because of the breadth of the reef fisheries throughout the Hawaiian archipelago, and the closure of the Northwestern Hawaiian Islands to fishing.

Ms. HANABUSA. So I don't understand what you just said. What do you mean by they will not be binding?

Dr. POOLEY. They won't be binding, because the biomass available for reef fisheries is very broad when you include the Northwestern Hawaiian Islands as part of your biomass estimates.

The other thing is that fishing pressure, although substantial on reef fish, is very localized. And without the heavy levels of commercial exploitation that occur in some other parts of the world, it is less likely to lead to restrictions on fishing activities. That is really something that is yet to be determined, and it is something the Council will be discussing at its scientific and statistical committee next week and the Council meeting the following weeks in Guam and Saipan.

Ms. HANABUSA. Thank you. I yield back.

The CHAIRMAN. The time of the gentlelady has expired. The Chair recognizes the gentleman from the Northern Marianas, Mr. Sablan.

Mr. SABLAN. Yes, thank you very much, Mr. Chairman. And good morning. And it is good to hear that Dr. Pooley will be visiting in Northern Marianas and Guam very soon.

What I have caught earlier in some of the statements is—and I appreciate very much that the issue of climate change must be taken into consideration in the management of sustainable fishing for the future, because, from where I come from, climate change is not just making changes to the ocean, it is actually making changes to the land, the small land areas of where some of us

live—where it is our home. Some of those signs we see very much, and I have always invited people who don't believe in the signs of climate change and global warming to come to my place of the world and I will show them the physical evidence of what it is doing.

And while we discuss the fisheries, the reauthorization of the Magnuson-Stevens Fisheries Act, and we discussed sustainable fishing in terms of volumes and fish and how we sustain this, and it is a huge economic—it is important to the commerce and everything. But from where I come from, there are actually people who, when we are talking about fishing, they actually fish for what they eat, almost on a daily basis. So it is that small, but it is also that important to us. Fishing is a very important part and a critical source of food for many of us. And we are so much tied to the ocean.

So, I am going to ask, and I am going to start with Dr. Pooley. Can you tell us how NOAA, sir, your new territorial science initiative, is providing support to assess the health of our fish stocks, particular to the Northern Mariana Islands? I know there has been very little in the past, and you have new initiatives. I wanted to see where we are headed with that.

Dr. POOLEY. Sure, I would be happy to. The territorial science initiative that began last fiscal year and is continuing this fiscal year has helped, along with marine national monument funding, for us to station permanent scientific staff in each of the three island areas, including Saipan. It has allowed us to develop a bio-sampling program that reaches around the islands to provide new life history information on reef fish, which are the most important, and it will provide a way to integrate improved fishery statistics systems into the assessment methods that we use.

We are also using some of this funding to do what we call human dimensions work, or sociological work in each area, where our staff work with anthropologists and archaeologists in the Marianas to look at the cultural and historic social role of fisheries in the region. And this information is used by the Fishery Management Council in adjusting its annual catch limits.

Mr. SABLAN. With all due respect, Dr. Pooley, you don't need to get scientists to do that. You can come sit down, and I will tell you how much fish I eat a week. And I am not a fisherman, so—

Dr. POOLEY. I appreciate that. Next time I'm in Saipan, I will visit.

Mr. SABLAN. But, you know, again, I have taken a one-on-one on the Magnuson, and you know, this is an important issue, very much, and achieving the balance, striking the balance between what is sustainable—and, of course, we have the commercial side of the Magnuson. NOAA is under Commerce.

But one thing also that affects us in the territories, in the Northern Marianas—and the distinguished lady from Guam is not here, she will tell you—is illegal fishing. And because we have the U.S. Coast Guard that thwarts off—keeps an eye out against pirates that fish illegally, but then you have a Coast Guard that takes care of the distance that is just about the size of the entire United States. And when you have one small boat and a smaller

boat looking over all of that area, it is very hard to catch illegal fishing.

And not just—you know, it takes fish that we don't account for, but it also takes the value of some of the fish. And, from where I come from, I think the smallest in—NOAA reported that fish value is only at \$581,000 in 2012, but I am sure there is much more, it is just that we haven't reported.

And my time is up, Mr. Chairman.

The CHAIRMAN. I just want to advise Members that we are very close to having votes here. And I see two Members that came in, and I want to give them the opportunity.

Mr. Huffman, you are recognized for 5 minutes.

Mr. HUFFMAN. Thank you very much, Mr. Chair. I know that Mr. DeFazio asked a little bit earlier about the observer cost issue. I wanted to, in addition to that, ask about the loan refinance legislation that Congresswoman Herrera Beutler and I and several members of this committee are supporting.

We know that we have work to do on the Magnuson-Stevens Act. But as we do that, I wonder if any of the witnesses could comment on the importance of also addressing issues like that loan refinance challenge we face with the Pacific groundfish fleet, especially in light of these additional observer costs that are being foisted on the industry.

Mr. GRADER. Well, if I can, Mr. Huffman, I think that legislation is going to be important. Our big concern with the whole way that the Pacific Council has gone about its rationalization is it appears that it is putting the squeeze on the small boat operators. Any type of assistance we can have so that they are not squeezed out of the fishery and we have even more consolidation of the fleet, I think is a good thing.

And the observer coverage is one issue, and the idea of lengthening out that loan repayment program, so it is not such a financial burden on the small operators would be helpful. So I think the two of them would help a lot, and ensure that our groundfish fishery is a community-based fishery, and not just a few large boats from a super trawl port.

Mr. HUFFMAN. Thank you, Mr. Grader. Would any of the other witnesses care to comment?

Ms. LOWMAN. Thanks. I just wanted to emphasize the Council is really interested and really supportive of getting that refinancing done as soon as possible.

You know, I sort of view some of the costs in the fleet as sort of three legs. One is the loan, you know, which they have already paid over \$20 million in interest, yet they have barely touched the capital. And, you know, like anything, should more reflect today's interest rates, et cetera. The other piece is that cost recovery for this catch share program that has some real potential to provide some great benefits to the fleet, but we do need to also realize that, as we are building up to all those benefits, we have these costs coming online fairly rapidly.

So, a 3 percent cost recovery fee just started this year, as well as an ever-increasing amount of the cost of the observers to the fleet. So, in my mind, it is extremely important to find the fastest way to do this refinance.

Mr. HUFFMAN. Thank you. Anyone else?

[No response.]

Mr. HUFFMAN. Well, I want to thank the witnesses. Thank you, Mr. Chair. I will yield the balance of my time.

The CHAIRMAN. I am sorry, thank you, Mr. Huffman. I recognize Mr. Garcia from Florida for 5 minutes, and he will be our last Member, because votes are imminent.

Mr. GARCIA. Thank you, Mr. Chairman. I won't take—

The CHAIRMAN. Wait, wait.

Mr. DEFAZIO. Mr. Chairman, the first vote will take 20 minutes, and I do have a quick second round, if I might be allowed.

The CHAIRMAN. We picked up some time with Mr. Huffman, we will try to work that in. Mr. Garcia?

Mr. GARCIA. Very good. I won't be too long, Mr. Chairman. My question is for Ms. Lowman. But, of course, if others want to comment, that is alright. We have heard a great deal about the importance of the social and economic considerations in reauthorizing this Act. Assessing the impacts to fisheries management, decisions on fishermen and their communities, and the collection of very specific analysis of economic data that would be shielded by very strict confidentiality rules under the draft legislation.

So, my question is, would limited access of this data inhibit the Councils and others from evaluating the economic impacts, one; and could these restrictions also hamper the attempts to institute cooperative research and management programs?

Ms. LOWMAN. Thank you for the question. We sometimes struggle to be able to fully demonstrate the economic and social impacts of different issues. And actually, in our written testimony, we identify this as one way that we actually think maybe a little greater access is important, rather than less access. You know, information is power, and I actually think it helps fishermen to have that data available.

Mr. GARCIA. Thank you.

Mr. SHELLEY. Thank you, Congressman. That is a really important question. We are tremendously frustrated, as interested members of the public, in getting access to social economic science data, even the data that is generated with public funding. Everything is protected.

And so, when small ports in Massachusetts say they are being crushed, relative to the larger ports, there is no way we can actually understand what is going on with those ports, because the data won't be released to us, because it might reveal some confidential business information in a small port. We really need to get both better data and better access to data, and I think we would make better policy decisions to the degree we did that.

Mr. GARCIA. Thank you, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. I thank the gentleman from Florida, and I recognize the Ranking Member, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. And I think this would be probably both to Ms. Lowman and Mr. Grader. There is a provision in the bill that says fisheries data—and perhaps the gentleman who just spoke addressed this in a different way—but from being used in coastal and marine spatial planning, meaning this

data could not be used when we are having discussions of, in particular right now, wind farms off Oregon and elsewhere. And I have had my fishermen express tremendous concern about their lack of meaningful input dealing with the Bureau of Ocean Energy Management as it relates to this. And it seems to me that this is an unnecessary prohibition, particularly if we want to try and put these things in places that aren't prime fishing grounds.

And it is not secret, where people fish any more. You know, I mean, everybody knows where you fish. And it is not like the old days, where you have your place to go, and you went over the horizon, and no one knew you were there. Could anybody address that?

Ms. LOWMAN. Thank you, Representative DeFazio. I think I sort of mentioned it in my last one, information is power. And we get fishermen coming to the Council, pleading for us to engage more and to be able to share that kind of information that we have collected across fisheries and different places, and have access to. So I think it is important to be able to use that information in those discussions with other users.

Mr. DEFAZIO. Mr. Grader?

Mr. GRADER. Yes. I think it is also important to have that information. In fact, when we were developing California's network of protected areas, the process was problematic. But I think one of the better aspects of it was the fact that we did try and get good economic data from the fleet, so we knew just what type of impact those protected areas would have, and try to avoid those as much as possible. And that is where there would be serious economic displacement.

Mr. DEFAZIO. Great. Ms. Lowman, on a point you raised—and you know, I have been focused a lot more on transportation over the last few years when I took over ranking. And one thing we have done in California is something called CEPA. And we have given them, actually, authority under Federal law for highway projects—strangely enough for transit projects, but highway projects—to use CEPA and not have to do CEPA and NEPA because it is generally regarded that CEPA is probably even more rigorous than NEPA.

You are raising the issue of MSA pretty much satisfying NEPA, but we really haven't aligned them yet. Do you think there is a way we could basically develop something that most people would agree is sufficient to meet NEPA requirements as some kind of—you know, a little bit different approach to the MSA work by the Council so we could have one process, but we are accomplishing both goals at the same time?

Ms. LOWMAN. That is really what we are looking for. We are not trying to get out of it, but I think that we would need to bring things in to MSA to be sure that we did have that robust environmental analysis, the full range of reasonable alternatives. But that is the kind of the goal, get it under the same timeline.

Mr. DEFAZIO. OK. Well, I would welcome any suggestions you have on that.

You have a suggestion on that, sir? Yes?

Mr. SHELLEY. Yes. Thank you, Representative. The issue for us is that the Council system is connected to the development and

achievement of optimum yield in fisheries. It is primarily focused on economic development, which it should be.

NEPA serves a much broader set of national interests in the ocean zone. And the Federal agency's unique and non-delegated role under NEPA is to make sure that the fishery-driven decision-making that is happening through the Magnuson Act is understood in a broader context of environmental impacts.

And so, while we agree with the 2006 amendments, where there are a lot of ways that these roles could be integrated better, the agency hasn't really moved that 2006 push from Congress to do so, and we would hope that they will in the future. We would keep the functions of those two statutes separate.

Mr. DEFAZIO. Well, again, I am saying we already have an example where we have delegated because we felt the State laws exceeded. And it has been very successful, no complaints. And I am just thinking there is some way we could meet both goals at once without parallel processes with different timelines. Because, as I understand it, sometimes the Council is done with its decisionmaking, and you are still in the NEPA process, which is supposed to inform the decisionmaking.

So, NEPA is supposed to inform decisionmakers, it is not just supposed to be a process. Anyway, I am open to any ideas anybody has about how we can meet this goal.

But thank you, Mr. Chairman.

Mr. GRADER. I just wanted to, if I could, just follow up on what Mr. DeFazio said. I think, from our standpoint, from representing commercial fishermen, we are very wary of any attempt to try and change the NEPA process. It has been very important to us for the reasons that Mr. Shelley said, as well as to ensure that we have thorough analysis and have a good range of options presented.

The other thing I should say is that ESA provisions in the draft are problematic to us. We have probably had the most experience of any fishing group in the Nation, dealing with the ESA. And it works when there is funding for it and support for it. But I don't think that the Councils really are set up, nor do they have the staff to be able to handle ESA issues. And I think, for that reason, ESA issues need to be kept where they are.

The CHAIRMAN. The time of the gentleman has expired. The votes have been called now. But Mr. Lowenthal, I know you were here earlier. Did you have a burning question? All right, good. Thank you very much.

I want to thank all of the panelists for their testimony today. As happens many times, something comes up and there may be a follow-up question to each of you. I would hope that, if that is the case, you would respond back to the committee in a very timely manner. Our intention is to take up the reauthorization of Magnuson-Stevens this spring, and we hope we are successful, because the law has expired.

So, if there is no further business to come before the committee, the committee stands adjourned.

[Whereupon, at 10:36 a.m., the committee was adjourned.]

## [ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

LETTER SUBMITTED FOR THE RECORD BY MEMBERS OF THE HOUSE NATIONAL MARINE  
SANCTUARY CAUCUS

CONGRESS OF THE UNITED STATES,  
WASHINGTON, DC,  
MAY 28, 2014.

Hon. DOC HASTINGS, *Chairman*,  
Hon. PETER DEFAZIO, *Ranking Member*,  
*House Committee on Natural Resources*,  
*Washington, DC 20515*.

DEAR CHAIRMAN HASTINGS AND RANKING MEMBER DEFAZIO:

As members of the House National Marine Sanctuary Caucus, we write to express our concern regarding the language in the Magnuson-Stevens Act (MSA) reauthorization discussion draft that would preempt key marine Sanctuary management authorities currently granted under the National Marine Sanctuaries Act (NMSA).

As you are aware, the National Marine Sanctuary System consists of 14 sites with unique cultural and natural resources throughout the Nation. These underwater treasures serve as a source of national pride in addition to providing numerous economic and recreational opportunities for surrounding communities.

While the primary mandate of the NMSA is marine resource protection, the Act allows for many compatible uses including recreational and commercial fishing, boating, diving, and whale watching. A determination of what is compatible is facilitated through a transparent, stakeholder-driven process. The NMSA ensures that sanctuary managers incorporate diverse community perspectives into policy via public comment and Sanctuary Advisory Councils. These Councils are composed of local representatives from industry, advocacy, and the public who use or value the resources of the Sanctuary. As such, the Sanctuary management system represents a comprehensive and balanced approach to decisionmaking.

We share an interest in promoting economically and ecologically sustainable fishing practices. A thriving fishing community both benefits local economies and encourages active stewardship of the resource. Marine Sanctuaries support healthy fisheries within the majority of their boundaries in a manner consistent with Magnuson-Stevens Act objectives. We believe the proposed preemption of the NMSA management system by Magnuson-Stevens Act reauthorization would, in practice, limit the ability of managers to make decisions that fully reflect the many uses of the Sanctuary by the local community.

As you move forward with the reauthorization process, we ask that you work closely with stakeholders to better preserve the current inclusive nature of sanctuary management.

Sincerely,

LOIS CAPPS, *California*,  
JAMES P. MORAN, *Virginia*,  
ALAN S. LOWENTHAL, *California*,  
SAM FARR, *California*,  
WILLIAM R. KEATING, *Massachusetts*,  
ENI F.H. FALEOMAVAEGA, *American Samoa*,  
HENRY A. WAXMAN, *California*,  
*Members of Congress.*

LETTER SUBMITTED FOR THE RECORD BY SENATORS REED AND WHITEHOUSE, AND  
REPRESENTATIVES LANGEVIN AND CICILLINE FROM THE STATE OF RHODE ISLAND

CONGRESS OF THE UNITED STATES,  
WASHINGTON, DC,  
APRIL 1, 2014.

Hon. DOC HASTINGS, *Chairman*,  
Hon. PETER DEFAZIO, *Ranking Member*,  
*House Committee on Natural Resources*,  
*Washington, DC 20515*.

Hon. MARK BEGICH, *Chairman*,  
Hon. MARCO RUBIO, *Ranking Member*,  
*Senate Committee on Commerce, Science, and Transportation*,  
*Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard*,  
*Washington, DC 20510*.

DEAR CHAIRMEN BEGICH AND HASTINGS, AND RANKING MEMBERS RUBIO AND DEFAZIO:

As you move forward reauthorizing the Magnuson-Stevens Fisheries Conservation and Management Act (MSA), we ask that you keep the priorities of the Rhode Island fishing industry and our coastal communities in mind. Rhode Island's fishing industry supports our coastal economy and is part of our heritage. Preserving this industry and the stocks it relies on is of utmost importance to us as we represent the Ocean State.

On February 14, 2014, we held a listening session on the reauthorization of the MSA. We have outlined below several priorities we heard and hope you take the views expressed by our stakeholders into consideration as the reauthorization is discussed.

**1. Seats on the Mid-Atlantic Fisheries Management Council (MAFMC) for Rhode Island.** This has been a long-standing priority for the State. Indeed, the 2006 MSA reauthorization authorized a report that examined adding Rhode Island to the MAFMC. There are compelling reasons and precedent for Rhode Island to have membership on this Council, as well as the New England Fishery Management Council (NEFMC). While the State continues to have significant participation in NEFMC-managed fisheries, approximately 63 percent of commercial landings in Rhode Island now come from species managed by the MAFMC, including squid, summer flounder, scup, black sea bass, butterfish, and mackerel. Many of the State's recreational fisheries, like summer flounder, scup, black sea bass, and blue fish, are also managed by the MAFMC. Having representation on more than one fishery management council is not without precedent. Florida and North Carolina, for example, have been granted voting representation via statute on the two regional fishery management councils from which their fishermen derive significant landings. It is worth noting that between 2007 and 2010 Rhode Island's landings of MAFMC-managed stocks were approximately six times those of North Carolina, which was granted voting representation on the MAFMC in 1996.

In order to ensure that Rhode Island's interests are adequately represented in the management of the fisheries our industry relies on, the State should have full representation on the MAFMC. A "liaison" from the NEFMC will not ensure that Rhode Island can fully participate in council decisions. Therefore, we urge you to include the Rhode Island Fishermen's Fairness Act (S. 713 and H.R. 1504) in the MSA Reauthorization, ensuring Rhode Island two voting seats on the MAFMC.

**2. Cooperative and Collaborative Fisheries Research.** Rhode Island recreational and commercial fishermen are eager to play a more active role prioritizing fisheries research objectives and participating in data collection that informs stock assessments and management strategies. The demands on State and Federal fisheries agencies to conduct surveys, monitor fishing activity, record environmental variables, and analyze data are more than their resources can match. To improve the quality of the "best available science," reduce scientific uncertainty in stock assessments, and hopefully improve optimum sustainable yield and annual catch limits, the National Marine Fisheries Service (NMFS) must see the fishing industry as a partner that can leverage resources and expertise to conduct research and collect data. Fishermen should have the opportunity to collaboratively identify research needs and priorities, assist in conducting research and collecting data cost-effectively, and share on-the-water observations and historical knowledge to add context for data analysis and informing assumptions being made in stock assessment models.

Expanding the use of research set-aside programs (RSAs), like the Monkfish RSA, and maintaining the Saltonstall-Kennedy Grant program are two ways to support cooperative research. However, it is also important to make sure these resources are used effectively. Rhode Island fishermen believe they should have a greater role determining how these resources, including those of the NMFS Northeast Fisheries Science Center Northeast Cooperative Research Program, are directed. This would include access to the information the research generates, and communication on how results are used. As a step toward addressing this issue, the Northeast Cooperative Research Program could be required to establish an oversight committee of industry representatives who would be involved in setting research priorities and evaluating outcomes on an annual basis. The current process of coordinating with the Councils does not sufficiently address concerns of those who depend on the results of this research. In addition, data generated from the research should be made available to the public within the parameters of confidentiality. To Rhode Island fishermen, this is essential. If NMFS is the only entity with access to all the data it collects and generates through cooperative research, it has a monopoly on analysis. Making all data collected as part of cooperative research available would build trust by allowing for additional or comparative analyses.

**3. Flexibility in rebuilding timelines.** The MSA has successfully reduced overfishing and rebuilt some stocks. In general, fishermen who attended our listening session did not express a desire to turn away from the law's provisions related to annual catch limits or promoting accountability. Many indicated that catch limits have reduced discards and created certainty in markets that benefit their businesses. However, some fishermen would like to increase flexibility in rebuilding timelines or catch limits under certain conditions, including for short-lived species, while being careful not to return to the boom-bust model of fishing that benefits no one.

The committee should consider addressing flexibility in certain situations without overhauling current law or providing blanket exemptions. For example, flexibility could be linked to demonstrated progress made rebuilding a stock. Many stakeholders have also noted that the terms "overfished" and "overfishing" do not capture the reality of what is happening to fish stocks and the many variables, including climate change and changing ecosystem dynamics, which can contribute to stock status. Updating these terms may be necessary at this time.

**4. Climate Change.** Climate change makes fisheries science increasingly uncertain and complex. Fishermen recognize that climate change, and the associated increase in water temperature and acidification, affects their bottom line. They see great need for all those involved in fisheries management to be better informed about how climate change affects fisheries at a regional scale so that timely response measures can be developed and economic opportunities realized. Lobster in Southern New England, for example, are moving out of State waters into colder Federal waters offshore. States manage the lobster fishery through the Atlantic States Marine Fisheries Commission in coordination with the National Oceanic and Atmospheric Administration (NOAA), yet NOAA does not share in the cost of existing lobster surveys, nor has it recognized the need to update survey methods in Federal waters. NOAA should invest in the surveys that can help evaluate how the changing ocean conditions affect the dynamics of lobster and other stocks.

**5. Transiting between Block Island and the Rhode Island mainland.** There is a narrow 2-mile band of Federal waters between State waters off Block Island and the mainland. State-licensed commercial and recreational fishermen fishing legally in State waters surrounding Block Island are subject to uncertainty, and legal risk, as they transit through Federal waters back to the mainland. Indeed, these fishermen could be found in violation if they are stopped while in Federal waters with fish on board that they are not allowed to possess pursuant to Federal law, even though they were legally caught and are allowed to possess the fish in State waters. Although the Rhode Island Department of Environmental Management is not aware of any enforcement action occurring against vessels making this trip, it would provide fishermen peace of mind to know that they would not be in any legal jeopardy. An exemption currently exists for fishermen transiting between Block Island and the mainland with striped bass. To provide greater certainty, a broader exemption or other measures should be considered.

**6. Differences between Commercial and Recreational Fishing Sector.** The Marine Fisheries Advisory Committee's Recreational Fisheries Working Group (RFBWG) has prepared recommendations for updating the MSA. The paper highlights the difficulty in managing recreational fisheries when there is a lack of recognition about how differently they function from commercial fisheries. As noted in those comments, "[c]harter for hire captains are operating in commerce like commercial fishermen, but are handicapped by a derby fishery that does not allow them to fish

when they have customers available. It is important that the charter for hire and recreational sectors both are able to maximize full economic benefit for their respective sides of the fishery.” We hope that recreational interests can be adequately addressed in the reauthorization.

**7. Short-lived specks and bycatch.** More adaptive management of short-lived species, like butterfish, is particularly important to Rhode Island. The variability in these short-lived species can defy typical surveys and stock assessments, leaving them hopelessly out-of-date. The absence of up-to-date data can result in more cautious management controls, and short-lived species can become “choke stocks” for other targeted species when their population growth is not reflected or predicted in models. Our fishermen have reported this experience with respect to butterfish, which can be a “choke stock” for squid. The committee should consider requiring NMFS to adopt a pilot program for short-lived species that would more quickly incorporate valid on-the water observations into management measures. As part of this effort, there should be a concerted investment in reducing bycatch of short-lived species through gear innovation or other management measures.

Due to the high mortality and waste associated with discards, measures should also be considered that will reduce or eliminate discarding. While this may be difficult to balance with other controls, like catch limits, the committee should encourage innovative management approaches to address this issue. One possibility discussed at the meeting is the adoption of trawl limits, supported by modern geolocation technology.

**8. MSA interaction with other laws.** Stakeholders have also expressed concern with attempts to have the MSA take precedence over other Federal laws like the National Environmental Protection Act, National Marine Sanctuaries Act, the Antiquities Act of 1906, and the Endangered Species Act. These statutes also have an important role to play managing natural resources and we would not support these kinds of provisions.

We hope any reauthorization of the MSA can address these priorities and we look forward to working with you on these and other ideas and concerns that may arise during this process.

Sincerely,

JACK REED,  
SHELDON WHITEHOUSE,  
*United States Senators.*

JAMES R. LANGEVIN,  
DAVID N. CICILLINE,  
*Members of Congress.*

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PREPARED STATEMENT OF TROY C.D. FRADY, OWNER/OPERATOR, DISTRACTION CHARTERS

Chairman Hastings, Ranking Member DeFazio, and members of the committee, I wanted to offer my thoughts on the legislative hearing on the “Strengthening Fisheries Communities and Increasing Flexibility in Fisheries Management Act” draft as it relates to the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, or MSA.

My name is Troy Frady and I am a full time charter boat owner and operator, from Orange Beach, Alabama. I use light tackle gear that allows my customers to feel the bite while providing a lot of rod bending action. I am a family fishing specialist that places emphasis on education and conservation on all of my trips. My business trademarks include: “Experience fishing,” “Keep the best and release the rest” and “Why kill it, if you’re not going to grill it.” Currently, I am the co-chair of the Data Collection Advisory Panel and a member of the Red Snapper Advisory Panel of the Gulf of Mexico Fishery Management Council (GMFMC). I am also serving a 2-year appointment on the Recreational Fisheries Working Group (RFWG) of the Marine Fisheries Advisory Committee (MAFAC). I am a steering committee member of the Marine Recreational Education Program (MREP), which is tasked with educating anglers on fishery management and science issues. Finally, I am a member of the board of directors of the Orange Beach Fishing Association and a member the Professional Outdoor Media Association (POMA).

After almost two decades in the corporate world of banking and transportation management, I returned to the Alabama Gulf Coast to take care of my elderly, sick parents. Upon my father’s passing in 2002, I hung up my coat, removed my tie and decided to fulfill a lifelong dream of becoming self employed as a charter fishing

guide. I figured I could make a living on the water because I knew how to catch fish, as I grew up fishing near Galveston, Texas, along the Alabama Gulf Coast and in Destin, Florida. I purchased a 1962 model Hatteras 41-foot convertible, restored it, and went into the charter fishing business in July 2002.

When I began chartering, I was shocked to find that the once abundant reef fish populations that I was used to seeing in the '70s and '80s were severely overfished and in some cases, almost completely gone. I found it extremely hard to catch legal reef fish for my customers in areas that were once pristine.

When I started my business, I noticed that all of the other charter boats had huge coolers on their decks because the larger the cooler, the more fish there were for the customers. As innocent as it may sound, there was a competition to fill the cooler every day. A full cooler was an indicator that a captain had done his job and satisfied their customers' needs. I also learned that if you published a picture of a large catch hanging on nails, your customers expected to catch that size and amount of fish. It was after these realizations that I changed my marketing strategy and began photographing customers holding mostly live fish and used them on my Web site. By doing so, I began attracting customers that were more interested in the fishing experience overall, which meant a great day spent on the water with friends and family catching fish. Some captains thought I had gone insane. Many did not understand how I could fish all day and come to the dock with only a couple of fish for dinner. They had no idea that I was asking my customers to tell me what they expected to get out of the day's fishing trip. To my amazement, many of my customers simply wanted to experience fishing or keep a few for dinner.

Just when I got my business growing and was trying to separate myself from the competition, the Gulf Coast experienced two hurricanes within a year of each other. These storms wiped out 90 percent of my lesser known artificial reefs off the Alabama coastline preferred by fishing captains. Other captains were saying that they too had lost most of their private reefs. The only reefs that survived the storms were the larger ones that were mostly public knowledge. Some of the newer private reefs survived and some were found a few seasons later. The reported 40-knot undersea current not only toppled and destroyed the reefs, but it washed away most all of our reef fish, like red snapper, out of our fishing area to other parts of the Gulf. Needless to say, 2006 was the toughest year I had ever seen. However, I soon realized that the two hurricanes actually leveled the playing field among the competitive captains. Nobody was bringing in red snapper to the dock like they used to because there were only a few fish to catch. If and when the fish did come back, there were not nearly as many reefs as there once were to attract the fish.

In 2008, when the bag limit was reduced to two red snapper per person, we really started to notice a change and the positive effects that MSA was having on the fishery. We began to see red snapper growing at a rate of about 2 inches per year. With the decrease in bag limit, I soon noticed many other captains followed my lead and began reducing the size of their coolers because it was obvious that filling the cooler was not an option anymore.

However, selling a fishing trip was tough in 2008 and 2009 because the economy failed and all of those corporations, who used to spend money entertaining their clients by taking them fishing, were no longer booking trips. I often hear that it was the MSA that caused economic hardship in the region, but I believe the recession had the biggest impact on our fishing industry. We saw a difference when the economy picked up, there were more fish in the water thanks to the requirements of the MSA.

Since that time, the Gulf of Mexico red snapper fishery has made historical progress in its rebuilding. Unfortunately, what most people don't realize is what we are witnessing is 3 strong year classes moving through the fishery. 2011, 2012 and 2013 were banner years for red snapper, but we are not out of the woods yet. We are seeing a localized depletion of the stock each year close to shore and it's getting worse. There are quite a few 2- and 3-pound red snapper near the shore, but nobody wants to keep them. Everyone keeps fishing and tossing the little ones back in hopes of catching something larger. That's because with the bag limit at two fish, everyone wants the big fish. Back before MSA was reauthorized, anglers were happy to catch four red snapper at 3 pounds each. Now everyone wants two 10-pound fish or larger.

Even though the red snapper fishery in the Gulf of Mexico is rebuilding and fishing is somewhat getting better, now is not the time to change course. Being a former corporate guy myself, I understand why these captains and the communities are feeling frustrated. In order to stay in business, you must have growth and profits—not unlike our fisheries. We need diversity in our fisheries just as a tackle shop needs a variety of rods and reels. We need to leave fish in the water as a buffer against catastrophic events like the BP disaster, just as a business needs reserves

to weather tough economic times. The draft bill would water down the MSA by adding more flexibility without adding any accountability. This may seem like a good short time idea for the industry, but it is a poor decision for the long-term health of the fishery and the coastal communities and businesses that depend on a sustainable resource. We need to ensure we continue the progress that is being made and protect the conservation provisions of the MSA. Based on my 12 years experience in the fishing industry as a Charter Boat Captain and Gulf Resident, I offer the following suggestions and solutions on how to improve fisheries management.

#### *Annual Catch Limits*

When Councils were required to adhere to the scientific advice of the Science and Statistical Committee, it actually helped restore our fisheries to what they are today. However, the discussion draft proposed by Chairman Hastings would seek to roll back this progress by providing Councils with the opportunity to marginalize the scientific advice and simply not set Annual Catch Limits (ACLs) based on several exemptions. Without science-based rules and a commitment to managing our Nation's fisheries sustainably, short-term gain can undermine long-term sustainability. This shortsightedness caused the very problems we are now trying to fix. Rolling back these provisions would impede our progress as we move toward the economic and social benefits of having a fully restored fishery.

There is no doubt that by requiring strict ACLs, some fishermen and communities have experienced economic hardship. In the past 7 years however, the stock has been rebuilding, Captains have changed tactics with many adopting my business model, and they are still in business and some are even thriving.

When it comes to adhering to science-based ACLs or using the best available science, I believe we can do much better by having increased funding for more frequent stock assessments. Furthermore, by investing in cooperative research, fishermen and scientists can continue to work together to provide managers with the best information. One suggestion to improve the process of setting catch limits would be to fund and incorporate real time data derived from electronic monitoring of the recreational fishery.

#### *Flexibility in Rebuilding the Fishery Timelines*

There is much controversy over giving more flexibility to the Councils when it comes to rebuilding requirements. If the Gulf Council approached rebuilding the way they approached ACLs, we would never have made the progress that we are seeing on the water. It's amazing to me to see the Gulf Council has all the flexibility they want when it comes to allowing anglers to go over the ACL each year on red snapper. The recreational sector has exceeded their quota 5 of the past 6 years with the one exception being the summer of the Deepwater Horizon disaster. However, the Council continues to allow overages and has taken little if any steps to improve accountability in the recreational sector despite the pleas of fishermen. If the Councils were allowed to be more flexible when rebuilding a stock, nothing would change.

The requirement to end overfishing immediately, to some degree, has hurt our coastal fishing communities' economies but not for the reasons you may think. Our economy failed in mid to late 2008, which was the same year the bag limits were reduced. Corporations stopped spending money entertaining and families stopped discretionary spending by not taking vacations while they rode out hard times. In the charter fishing industry, we changed from taking corporations and individuals wanting to fill their cooler, to taking mostly tourists and families fishing. The failed economy actually did me a favor, in that it allowed me to drill down and get focused on the tourism market that has grown each year. Even though charters that focused on mostly corporate trips lost their core business, they were like every other company in America who had to tighten their belts and redefine who their customers were.

However, if we hadn't overfished in the first place, we wouldn't need rebuilding plans or the need to set low ACLs. Currently, Councils are able to set rebuilding timelines over the 10-year requirement if the stock is unable to rebuild in that time due to international treaties, environmental conditions, or the biology of the stock doesn't allow for it. As of the end of 2013, four species in the Gulf of Mexico are under rebuilding plans and over 90 stocks are of unknown or undefined population status.<sup>1</sup> The rebuilding plan for red snapper is not scheduled to be completed until 2032 because of past fishing pressure and the long lifespan of the species. According to SEDAR 31, even if there was no fishing allowed at all, red snapper would still take 12 years to rebuild. However, while anglers are seeing a lot of red snapper out

<sup>1</sup> <http://www.nrdc.org/oceans/files/rebuilding-fisheries-gulf.pdf>, <http://www.nmfs.noaa.gov/sfa/statusoffisheries/2013/forth/Q4%202013%20Stock%20Status%20Tables.pdf>.

on the water, what we really have is an abundance of 5-, 8- and 9-year-old with no older or younger fish. I understand that some stocks may warrant shorter rebuilding times based on the life cycle of the fish, but nobody logically believes that the red snapper fishery, where the fish live for five decades can be restored and become sustainable in just 6 short years.

While I would agree that some of the hard 10-year rebuilding timelines that were put in place to rebuild a particular fishery can seem restrictive and cause short-term economic challenges to the community, the rebuilding timelines set out in MSA are working and will ensure long-term success of our Nation's fisheries. By requiring Councils to keep some kind of hard number in the form of years, we are far better off than allowing a particular fishery to hang in limbo while rebuilding stretches out for years denying communities the economic benefits of a rebuilt stock.

The draft bill would allow overfishing to continue for at least 3 years if not more. By allowing a fishery to continue to undergo overfishing, it reminds me of the banking industry where we had someone who failed to pay their note which likely was going to result in a charge off. We always said, "It doesn't make sense to put good money after bad money." This means if you recognize you have a loss, it's best to deal with it now because a loser today will be a loser tomorrow.

#### *Economic Impacts of MSA*

Many charter boat operators, bait and tackle stores, marine industry partners, lodging companies, and restaurants all say that the recent series of short red snapper seasons have hurt our coastal economies. In my opinion, the economy failing in late 2008 and continuing for almost 3 years, had more of an impact on fishing than the supposed "lack of flexibility" in fisheries management did.

According to a recent article in the Biloxi Sun Herald, the National Marine Manufacturers Association reported a 10 percent increase in new powerboat sales in 2012, 5 percent increase in 2013, and is predicting a 5-7 percent spike this coming year. Even with the restricted seasons of red snapper, sales are up because the fishery is rebuilding and there are big fish to catch. There are fish in the water due to the success of the rebuilding plan. In order for all coastal communities and businesses to continue to grow their businesses and make a profit, they must have abundant marine resources. There is flexibility in the current law and instead of allowing loopholes for establishing rebuilding requirements or eliminating ACLs, there should be more accountability.

#### *Electronic Reporting/Accountability*

Section 8 of the discussion draft requires the Councils to work with the fishing industry and to develop regulations on the use of electronic monitoring and reporting. We all know that we must have the best tools to gather real time catch and effort data in order to have the best science. In the Gulf of Mexico for example, the approximate 1,300 federally permitted charter boats prior to MSA being reauthorized in 2007, harvested as much as 60 percent of all recreationally caught red snapper. Since NOAA knows who these Federal permit holders are, this would be the easiest group of fishermen to control by requiring mandatory Vessel Monitoring Systems (VMS) be installed on their boats to capture real time catch and effort data.

At recent Gulf Council outreach meetings held along the Gulf Coast, recreational anglers were asking to become accountable so they could do their part. By ensuring that charter boats are more accountable for the amount of fish they are harvesting, the Council would be taking steps to ensuring that the recreational sector could better stay within their ACL.

#### *Regional Fishery Management Councils Makeup*

Even though the language in MSA has expired, I feel it is important to have balance on the Regional Fishery Management Councils. I would urge you to add the requirement to Section 302(b)(2)(d)(i) that requires governors from States who participate in the Council process to include at least one nominee each from the commercial, recreational, and charter fishing sectors and one other individual who is knowledgeable regarding conservation and management of our marine resources. This requirement should be added and made permanent.

#### *Conflict of Interest between State and Federal Management*

Because fishing licenses are sold by coastal States to generate much needed revenue and the marine industry generates sales tax from saltwater fishing, it is important that MSA include language that requires State directors to abstain from voting on all allocation issues between Commercial, Recreational and Charter for Hire sectors.

*Extending the 3-Mile Boundary Line to 9 Miles*

Section 10(f) of the discussion draft would extend State boundaries to 9 miles in all Gulf States for the purpose of managing red snapper.

As I mentioned earlier, fish stocks close to shore are seeing localized depletion and we have to go farther offshore to catch quality fish. Even if we extended State boundaries to 9 miles and built artificial reefs to attract and hold fish, they too would be fished out sooner with the amount of fishing pressure in these areas. Currently, the larger 7 to 10-pound fish within the proposed 9-mile territory are mostly harvested by the second week of red snapper season each year. Because anglers want to catch larger fish, there will be temptation to go beyond the State boundary into the Exclusive Economic Zone (EEZ) where fishing pressure may be less but could lead to enforcement issues. If all Gulf States had 9 miles of State territorial waters, States would be encouraged to ignore the laws of our Nation and go non-compliant with Federal regulations causing even shorter Federal seasons for federally permitted charter boats and undue hardships on charter fishing families and further reduce non-boat owning Americans access to the fishery.

In my professional opinion, since only Texas and the Gulf side of Florida have 9 miles of State waters, it makes sense (for the purposes of fishery management only), to revert their waters to be the same as every other coastal State in the union, which is 3 nautical miles. Why should Texas and Florida's anglers get preferential treatment and cause economic hardships on other Gulf Coast fishing communities because of the user conflict they create each year by going inconsistent with Federal fishing laws? Since National Standard 4 prohibits discrimination between residents of different States, I believe it is imperative that we make all coastal States natural resources boundaries, for the purpose of fisheries management only, equal. Florida and Texas set their red snapper seasons outside of the Federal seasons, which results in their private recreational anglers being able to fish when the other three Gulf States are unable to access the fishery. Their inconsistencies with Federal law and keeping seasons open longer than Federal seasons cause the rest of us to have fewer days to fish because their overages are taken off the top of the ACL for the next year. Furthermore, their overages of almost 4 million pounds per year are not being remanded as the Gulf Council has yet to put in any form of payback provision.

Another reason to make all State waters only extend to 3 miles is that National Standard 3 requires that individual fish stocks shall be managed as a single unit throughout its range. By making all Gulf States boundaries consistent, this would make all States equal, none of the National Standards would be violated, and enforcement could be consistent. I believe these standards were put in place to protect us, so why are we allowing a Texas and Florida to violate them while causing economic hardship to the rest of the Nation's fishermen. To further complicate matters, the State of Louisiana who has a 3-mile boundary, has opened their red snapper season to an 88 weekend day weekends only format to private recreational angling.

Because federally permitted charter boats must adhere to the stricter of the regulations because of Gulf Council Amendment 30b, Texas, Florida, and now Louisiana are causing an unnecessary economic hardship on other States fishing communities. If 30b was rescinded and the charter for hire sector was allowed to harvest red snapper in State waters outside of the Federal season, they would ultimately decimate the reef fish populations in those areas within a short period of time and create another violation of National Standard 8's conservation measures. Once those fish close to shore were harvested each year, we would see anglers venturing into Federal waters in search of fish, which would hurt the rebuilding of the fishery and causing an enforcement nightmare.

*Charter for Hire Industry Designation*

Finally, we must amend section 407(c) that requires a referendum of a vote from recreational participants who held a permit during the time period of 1993 to 1996. This does not accurately reflect our current make up of the charter fishing industry. Section 407(d) needs to be amended so that separate ACLs can be established for both private recreational fisherman and the charter for hire fishermen. This way, when one sector is approaching their ACL, the other sector can continue fishing until their quota is met. Currently, recreational anglers are exceeding their ACL on red snapper in the Gulf by almost 4 million pounds per year. Through separate allocations, one sector would not get punished by the other sector's overages. The charter/for hire industry wants to become accountable and do their part to help rebuild our Nation's fisheries while maximizing non-boat owning America's angling opportunities. If you move State boundaries out to 9 miles, to 120 fathoms or out to 200 nm, fishing communities would suffer while Gulf States argue over their individual allocations.

With that respect, I request that language be added to MSA that recognizes, allocates, strengthens and protects the federally permitted charter for hire industry by requiring us to become accountable and adhere to an allocation based on historical landings. This way, we can stay within our ACL and not lose days to fish because of another user groups overages. By doing so, will ensure the non-boat owning public have equal access to America's public trust resources.

In sum, growing up fishing on the Gulf Coast, I was fortunate to experience plentiful reef fisheries and pristine reefs. But two decades later, that fishing experience I knew was gone because of rampant overfishing and poor management of our fisheries resources. However today, with the reauthorizations of MSA in 1996 and 2006, we have begun to experience a turnaround in our fisheries. MSA's foundations of science-based catch limits, commitment to ending overfishing, and the incorporation of co-operative research have led to stocks like red snapper rebuilding at a rate faster than we expected. This success, however, does not mean our fight to recovery is over. Congress has the opportunity to build on the progress we have made in the last 20 years. While I understand the frustrations of communities who have experienced some economic consequences and that the 10-year timeline seems restrictive in some fisheries, the short-term gain that would result from the Hasting's draft should not outweigh the long-term sustainability of our Nation's fisheries.

