Testimony of Mr. Dan Hull, Chairman
North Pacific Fishery Management Council

Before the
U.S. Senate Commerce Committee's Subcommittee on Oceans, Atmosphere, Fisheries & Coast Guard

"Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight of Fisheries Management Successes and Challenges"

August 23, 2017

Good afternoon Chairman Sullivan, ranking member Peters, and members of the Committee. Thank you for the opportunity to testify on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, or MSA). My name is Dan Hull, and I am the Chairman of the North Pacific Fishery Management Council. I have served as one of Alaska's representatives on the Council for eight years and as Chairman for the last three, and I am honored to participate in this hearing and offer our perspectives on reauthorization.

Because the North Pacific Council has not met in session since receiving the invitation to testify and to provide suggestions for improving the MSA, my comments are confined primarily to previous discussions we've had about issues raised in current and prior draft legislation. My comments also include examples that highlight important elements of the MSA and illustrate the success of the law in the North Pacific as written. As this subcommittee and Congress work to reauthorize the law and request further review and comment from us, we stand ready to share our perspectives independently and in concert with the other Regional Fishery Management Councils to improve and strengthen the MSA.

Fisheries in the North Pacific

The North Pacific Fishery Management Council, through its partnerships with NOAA Fisheries (NMFS) and other agencies, develops regulations for groundfish in the Gulf of Alaska, Bering Sea, and Aleutian Islands. Groundfish include cod, pollock, flatfish, Atka mackerel, sablefish, and rockfish species harvested by trawl, longline, jig, and pot gear. The Council also makes domestic allocation decisions and establishes domestic management programs for halibut, as part of our coordinated management of the halibut resource with the International Pacific Halibut Commission, which sets directed fishery catch limits and season dates, and manages biological aspects of the resource for U.S.-Canada waters. Other large Alaska fisheries such as salmon, crab, scallops and herring are managed jointly with the State of Alaska.

Fisheries are extremely important to the economies, coastal communities and cultures in Alaska and the Pacific Northwest. More than 50% of the seafood harvested in the United States comes from Alaska. The fisheries provide tens of thousands of jobs for commercial fishermen, processing workers, sport fishing guides, gear suppliers and other support industries. There are over 1,500 vessels fishing commercially in the federally managed groundfish fisheries, hundreds of other vessels participating in State managed commercial fisheries, another 1,000 or so charter vessels participating in the halibut sport fishery, and a large number of privately owned boats that participate in recreational fisheries for halibut, groundfish, and salmon. The commercial fisheries annually catch is about 3 million metric tons of fish off Alaska, which generates approximately $2 billion in ex-vessel revenue (the amount paid to fishermen at delivery, prior to value added processing). The groundfish fisheries account for a majority of the catch and value, but the halibut, salmon and crab fisheries also contribute substantially.

The Council recognizes that its management of marine resources in the North Pacific is also critical to subsistence uses of fish, shellfish and marine mammals throughout Alaska's coastal communities, whether directly or indirectly.

We have developed a very successful fisheries management program in the North Pacific, resulting in profitable and sustainable fisheries. For the past 40 years, annual groundfish catches have ranged from 3 to 5 billion pounds, with no stocks overfished or undergoing overfishing. There is no question that sustainable, science based conservation and management of the living marine resources in the North Pacific is critically important to the economies and communities in our region.

Views on MSA Reauthorization

The North Pacific Council believes that the current MSA already provides a very successful framework for sustainable fisheries management, and major changes are not necessary at this time. Nevertheless, we also recognize the potential benefits of increased flexibility in some circumstances, and amending the Act to provide for such flexibility could provide all the regional councils additional opportunities to optimize their fishery management programs, with appropriate cautionary notes. In short, any changes to the law providing additional flexibility must continue to ensure that fundamental conservation and management tenets are upheld, and should not create incentives or justifications to overlook them.

We agree with and support the Council Coordinating Committee's consensus positions on issues, which were detailed in the testimony provided by John Quinn at the hearing earlier this month. As your subcommittee and Congress works to reauthorize the MSA, we encourage you to take advantage of the collective wisdom of the Council Coordination Committee, as well as individual Councils, to assess how best to navigate challenging issues. We believe that the CCC is well positioned to review and understand regional differences and complexities in management, and if requested, offer guidance as well potential solutions to new challenges and proposed changes to the MSA. The following are the North Pacific Council's views and comments on some specific issues and provisions raised in various proposed amendments to the MSA, and in separate discussions with NMFS.

Modifications to the ACL requirement

Regarding annual catch limits (ACLs), ACLs have been used in the North Pacific for the past 40 years, and we believe that such limits are a cornerstone of sustainable fisheries management. We also believe there are situations where some flexibility in the establishment of ACLs is warranted, particularly in the case of data poor stocks. Consideration of the economic needs of fishing communities is critical in the ACL setting process, and while the current MSA allows for such consideration, we recognize the desire for a more explicit allowance for these considerations. We must be careful however, not to jeopardize long term fisheries sustainability, and associated community vitality and resiliency, for the sake of short term preservation of all economic activity associated with a fishery. Accounting for uncertainty, articulating policies for acceptable risk, and establishing the necessary precautionary buffers, are all explicit outcomes of the ACL process, and we believe that the Councils' Scientific and Statistical Committees (SSCs) are the appropriate gatekeepers to establish the upper limits of 'safe' fishing mortality, which we believe to be at the Acceptable Biological Catch level. We also believe that authorization for multi-species stock complexes and multiyear ACLs, as well as the provisions regarding ecosystem component species, will also provide the Councils greater flexibility to apply ACLs consistent with other aspects of management for a given species.

Alternative management measures for recreational fisheries (or other fisheries, such as subsistence) such as extraction rates, mortality targets, and harvest control rules could provide additional tools and flexibility to fisheries managers in all U.S. regions. It is unclear, however, whether such alternative measures are intended to be *in lieu of* ACL requirements, or in some other context. This is one example where maintaining accountability to scientific principles is appropriate, and I believe the CCC's comments to this Subcommittee reflect this, stating "ideally such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines".

Stock Assessment Science

Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the Council believes the requirements for the Secretary to develop plans and schedules for stock assessment will enhance fisheries management nationally. However, we have some serious concerns with the provision to incorporate information from a wide variety of non-governmental sources, and potentially require that information to be considered 'best information available'. In the North Pacific Council the public has opportunity to provide input into the science and scientific peer review of all issues through testimony and discussions at the SSC and Plan Team meetings, and these bodies regularly hear the views of stakeholder groups, oftentimes in detailed data-based presentations. And we are working to incorporate traditional knowledge into our understanding of the ecosystem. We are concerned that complying with this provision will increase burdens on our staff and our Scientific and Statistical Committee, and invite potential litigation. This makes it especially difficult for the Council to fulfill its responsibilities under MSA. The implementing guidelines for when such information would be utilized will be critical to its veracity and usefulness to managers.

Rebuilding Plans

Regarding potential changes and increased flexibility for stock rebuilding plans, our Council believes that further flexibility, particularly in cases where the 10-year rule does not make sense due to the particular aspects of the stock in question, would appropriately increase the ability to maximize harvest opportunities while still effecting rebuilding of fish stocks. In some cases, the somewhat arbitrary 10-year requirement can result in overly restrictive management measures, with unnecessary, negative economic impacts, with little or no conservation gain. Allowing for rebuilding to occur in as short a time as "practicable", as opposed to as short a time as "possible", appears to be an appropriate mechanism for additional flexibility. The use of alternative rebuilding strategies such as harvest control rules and fishing mortality targets is consistent with this increased flexibility. Finally, allowing the Councils' SSCs to determine whether a rebuilding plan is no longer necessary seems an appropriate role for the SSCs.

Distinguishing between overfished and depleted

When a fish stock abundance drops below a certain threshold, it is deemed 'overfished', regardless of whether or not fishing caused the change in abundance. In the North Pacific the example of Pribilof Island Blue King Crab, a fishery for which there has been no allowable fishing for decades, and a species which is only occasionally taken as bycatch in other fisheries, highlights the need to differentiate stocks for which an "overfished" status has no relation to fishing activities. Replacing the term "overfished" with the term "depleted" may be an effective way to address this problem. Additionally, legislation should consider exempting depleted fisheries from development of a rebuilding plan in cases where fishery management actions would not effect, or substantially affect, stock rebuilding.

Transparency

All decisions made by the Council and its advisory bodies are done through a transparent, open public process. Meeting materials, agenda and schedule, and public comment letters are all posted in advance of the meeting on a 'live agenda' on the Council website. During the meeting, this 'live agenda' is continuously updated with minutes that are drafted by the SSC, AP and Committees, motions on which the Council has acted, and new material that is pertinent to the agenda items.

Regarding the requirements to provide website access to audio, video, or written transcripts of all Council and SSC meetings, this is already provided for meetings of the Council, including live webcast (to the extent possible) and full searchable audio transcripts. While SSC meetings are not live webcast or recorded, they are open to all the public and very detailed meeting minutes are developed and are accessible on our website. Requiring live webcast or full audio transcriptions of SSC meetings would impose added costs to the Council, with both monetary and personnel commitments, with minimal benefit to the public. Additionally, our Council meetings are sometimes held in remote Alaska coastal communities that may have less than ideal internet connectivity necessary for audio (or video) webcasting. The Council agrees with the Council Coordinating Committee recommendation to require the use of webcasts "to the extent practicable" will achieve greater transparency within budget and operational constraints.

In addition to openness and transparency, it is worth noting the evolution of representation on the North Pacific Council and its subsidiary bodies over time. As new challenges arise, management programs become more complex and intertwined, and stakeholder interests broaden, the composition of the North Pacific Council and its subsidiary bodies has arguably become more representative of the diverse commercial, subsistence and recreational fisheries, communities, environmental and other stakeholder interests than in the past.

NEPA Compliance

Incorporating the National Environmental Protection Act (NEPA) requirements into the Magnuson-Stevens Act, and realizing a single guiding statute for fishery management actions, is consistent with long-standing intent of the Council and the Council Coordinating Committee generally. However, we are concerned that the ultimate result will be contingent upon implementing regulations, and the realized benefit could be marginal relative to creation of new complexities and challenges. These new complexities and challenges include the development of potentially complex and contentious regulations, and creation of a new body of litigation relative to fishery management actions. Our specific concerns are as follows:

- Proposed new requirements would not alter the current breadth and scope of environmental, economic, and social impact analysis requirements, so we would not anticipate any decrease in the overall resources necessary to satisfy the new requirements.

- Councils, subject to approval by the Secretary, would be required to "prepare procedures" to comply with the new fishery impact statement requirements – as with many recent MSA amendments, this means development of potentially complex, controversial, interpretive regulations, or at least 'guidelines', which would in essence be subject to approval by NMFS and NOAA GC.

- Presently the onus for completion of NEPA requirements technically lies with NMFS (even though our current process attempts to incorporate most of that within the Council process). Under a revised process all of the onus for compliance with the new provisions will lie with the Councils under the MSA process, except for NMFS' final review and approval authority. Shifting this responsibility could require substantial realignment of resources.

- We have become quite proficient at the NEPA process (albeit cumbersome), and we have an established track record with regard to litigation of fisheries actions under NEPA. While this section could streamline the process in the longer term, it could also create grounds for a new body of litigation and case law on fisheries management actions, based on an as-yet-unwritten set of implementing regulations, and/or attempting to extend previous NEPA case law to the new MSA process.

- To the extent Councils are experiencing timing/delay issues between the time of final Council action and actual transmittal of the package for Secretarial review, incorporating NEPA requirements into the MSA will not directly address or rectify that problem; i.e., the

determination of 'adequacy' of the amendment package for transmittal will still be determined by the agency.

Catch Share Programs

The North Pacific Council has several catch share programs. Programs for some fisheries were mandated by Congress (American Fisheries Act pollock cooperatives, BSAI Crab fisheries cooperatives) and others were developed and implemented by the Council (Halibut and Sablefish IFQ program, Gulf of Alaska Rockfish Cooperative Program, BSAI Amendment 80 groundfish trawl cooperative program). These programs were aimed at eliminating the race for fish and minimizing the associated negative impacts to fisheries resources, as well as to the social and economic well-being of the industry and fishing communities. The objectives originally established for all catch share and IFQ programs are largely being met (reduced bycatch and waste, extended the fishing seasons, increased efficiency, increased utilization, improved safety at sea, etc.).

Full program performance reviews for all catch share and IFQ programs are conducted on a regular periodic basis (every 7 years). The Council also annually reviews the performance of the cooperatives, and considers adjustments to the programs as needed to better meet program objectives. As these catch share programs mature and the original social and economic contexts change, these full performance reviews and annual cooperative reports provide the Council with the assessments needed to address new problems and challenges that may not have been initially anticipated, as well as improve our understanding of how additional catch share programs might be structured. This continues to be an area of ongoing work by the Council.

Exempted Fishing Permits

The North Pacific fisheries management program has greatly benefited from the use of exempted fishing permits (EFPs), including multi-year EFPs, to test (under field conditions) solutions to management problems. In recent years, for example, fishermen have successfully tested different trawl gear configurations to allow escapement of salmon in the pollock fishery, tested and quantified reductions in mortality of halibut sorted on deck and discarded alive from vessels trawling for flatfish, and tested the efficiency and effectiveness of different electronic monitoring devices on longline vessels. Each EFP proposal undergoes scientific peer review by the Alaska Fisheries Science Center and the Council's SSC to ensure that it is scientifically sound, and each proposal is also evaluated by the Council prior to approval by NMFS. A multi-year EFP allows testing across seasons to evaluate inter- and intra-annual impacts. A NEPA Categorical Exclusion may be issued in cases where no additional catches are requested. The Council is concerned that language requiring EFP applications to provide information on the economic effects of the EFP "in dollars" and in terms of lost fishing opportunities for all sectors would elevate the analysis to a full Environmental Analysis just to examine the effects on all sectors. This would greatly reduce the industry's ability to get EFPs developed and approved in a timely manner. The Council also believes that multi-year EFPs can be critical to testing some solutions to fishery management problems.

The current EFP process is working well for the Council, with a minimum of paperwork and process requirements, and the Council does not see a need for changes or new requirements. If there are problems with the current EFP process in particular regions of the country, then proposed legislation should be applicable only to those regions.

In addition, it is worth noting significant voluntary efforts by the fishing industry to improve management outside the formal EFP process. These include efforts by the fixed gear pot fleet to conduct EM pilot projects; projects by the GOA trawl fleet and shore-side processors to account for incidentally caught Chinook salmon for sampling by NMFS/AFSC to improve stock of origin data collection and analysis; and halibut bycatch reduction efforts by the Amendment 80 trawl cooperatives to increase harvest levels by the directed longline fleets in the BSAI.

Alaska-Specific Issues

North Pacific Management Clarification

MSA Section 306(a)(3)(C) contains provisions related to State jurisdiction to manage fishing activity in the absence of a federal fishery management plan. Removal of the August 1, 1996 date in this paragraph would ensure that the delegation of salmon in EEZ to the State of Alaska would include vessels not registered with the State of Alaska. The Council strongly believes this change, thereby allowing regulation of fishing in these areas by the State of Alaska, would better align the Council with its management authorities and responsibilities under MSA and is essential to the responsible and effective management and enforcement of these fisheries.

Limitation on harvest in North Pacific Pollock Fishery

Proposed legislation in the House (HR 200) would provide allowance for the Council to change the pollock harvest cap as stipulated in the American Fisheries Act (currently 17.5%), but not to exceed 24%. NMFS has raised the issue of whether the Council or NMFS might already have the authority under the American Fisheries Act to revisit the harvest cap. The Council has taken no position on this provision at this time, but may in the future upon a better understanding of the intent, need, and potential impacts of such action.

Subsistence fishing

The Council believes that providing a definition for subsistence fishing is a proper addition to the MSA to reflect the full range of marine resource uses in the EEZ. Additionally, adding subsistence as an appointment qualification for Council membership is a beneficial clarification to the MSA, with the understanding that it would not require or direct the appointment of a subsistence representative as a Council member.

Arctic Community Development Quota

Proposed legislation in the House (HR200) would require that if the Council establishes annual catch limits for Arctic fishing, a minimum of 10% Community Development Quota to be available for coastal villages north and east of the Bering Strait. The Council has no opinion on this issue, but notes that it may be useful to the Council if Congress provided more specificity with regard to eligible villages.

Council member recusal determinations

An area of concern to the North Pacific Council that we bring to your attention, but that has not been discussed in draft legislation to reauthorize MSA, is the process that NOAA General Counsel employs to determine whether Council members have a financial conflict of interest on a particular action and must therefore recuse themselves. We have communicated with NOAA over various aspects of this process in recent years, and have resolved some issues, but question whether the specific interpretations are consistent with the intent of conflict of interest statute and regulations. The current interpretations make it challenging for the Council to fully exercise its collective voice as intended under the MSA.

The MSA was designed to allow people who actively participate in the fisheries to be voting members of regional fishery management councils. To address concerns about members voting to improve their own financial situation, the MSA has long required Council members to disclose financial interests. Prior to 1996, as long as council members disclosed their financial interests, there was no prohibition on voting on any matter. In 1996, Congress added the recusal provision, which required not only disclosure but also that an affected individual not be allowed to vote on council decisions that would have a significant and predictable effect on a member's financial interest. The MSA language left the issues of significant and predictable effect open for interpretation, so NMFS developed a regulation that set a 10% threshold for a significant effect, which is the basis for determining whether a recusal is required. The primary problem is the way in which NOAA General Counsel (NOAA GC) calculates a member's financial interests in determining whether the 10% thresholds are exceeded. The NMFS policy is to attribute all fishing activities of a company -- even partially owned by an associated company -- in calculating an individual Council member's interests. The North Pacific Council believes that this attribution policy is inconsistent with the intent of the conflict of interest statute and regulations.

The following example helps to explain this issue: Joe Councilman works for Fishing Company A, which owns 50% of Fishing Company B, which in turn owns 3% of Fishing Company C. NOAA GC uses ALL harvesting and processing activity by ALL three of these companies in determining whether Joe Councilman exceeds any of the 10% thresholds. The North Pacific Council believes that this is an unfair and illogical interpretation of the recusal regulations, and results in unintended recusals of Council members. The North Pacific Council believes that NOAA GC should use only the amount of harvesting or processing activity equivalent to the Council member's percentage of ownership. Using this proportional share approach, NOAA GC would use 100% of the harvesting and processing activity of Fishing Company A, 50% of the harvesting and processing activity of Fishing Company B, and 1.5% of the harvesting and processing activity of Fishing Company C to determine whether Joe Councilman exceeds any of the thresholds. At our request, NOAA GC revisited the attribution policy, but declined to make changes.

The full attribution policy causes particular problems for the North Pacific council members who represent the Community Development Quota groups because they have been prohibited from voting on many very critically important management issues. The MSA established the CDQ program to allocate up to 10.7% of fish quotas to the groups, with the intent the groups invest broadly in the fishery. These CDQ groups have been very successful over the past 25 years, and have become full or partial owners of many fishing companies, and participate in virtually all of the Bering Sea groundfish, halibut, and crab fisheries and sectors. Hence a CDQ representative is very knowledgeable about the fisheries, so their input and vote is extremely important for a fully effective and participatory fishery management program as envisioned by the MSA. Under the full attribution policy however, all of the various ownership structures are additively applied, resulting in NOAA GC determining that the CDQ representative is recused from voting. The CDQ representative on our Council has been recused far more frequently in the last two years than any other Council member, resulting in what we believe is a frustration of Congressional intent for this program.

We have not decided on a specific fix through MSA to suggest and will continue to review the recusal determination process with NOAA General Counsel.

Council Resources

We agree wholeheartedly with the CCC's comments regarding the challenges that Councils face to meet important new NMFS policy directives without adequate resources, and CCC concern over adequate funding to continue at-sea surveys and stock assessments. In the North Pacific, the high quality and coverage levels of fishery independent trawl surveys and stock assessments have been essential to achieving sustainable fisheries for so long. The Alaska Fishery Science Center (AFSC) recently alerted the Council that reductions to the Gulf Of Alaska groundfish survey efforts are planned for 2017, and possibly for the Eastern Bering Sea Slope survey in 2018 as a result of budgetary concerns ("Implications of reducing and eliminating AFSC groundfish survey effort in 2017 and 2018", AFSC, April 7, 2017). Reductions in groundfish surveys increase the uncertainty in stock assessment estimates, diminishes the quantity and quality of data needed to track changing environmental conditions in the ocean and the effects on species abundance and distribution, and affects the quality of information in a variety of documents critical to the Council process, such as EA and EIS documents, Biological Opinions and Fishery Ecosystem Plans. For the Council, a very direct consequence is that it becomes harder to achieve Optimum Yield in the fisheries as defined under National Standard 1, during the annual process of setting harvest specifications. It also introduces greater uncertainty and variability from year to year. Greater uncertainty in the estimates of stock abundance typically result in more conservative approaches to management and lower harvest levels to buffer against the potential for error. There is the potential for real and direct economic losses to the fishing fleets and communities associated with survey reductions over time.

Examples of Management Actions and Programs Relevant to the Success of the MSA

We understand that there are several contentious management issues in other regions that have initiated development of draft legislation to revise MSA. It is our hope that any modifications to the MSA would avoid across the board mandates, designed to address a problem in another region that could negatively affect the successful management program in the North Pacific.

Below is a description of several management programs and actions that illustrate how we have addressed some of these major contentious issues (bycatch, observer monitoring, commercial/sport allocations, and ecosystem-based management) using the existing authorities already provided by the MSA.

Minimizing Bycatch

The Council has worked diligently to minimize bycatch in the groundfish fisheries. With implementation of catch share programs in the Bering Sea, the percent of catch discarded was reduced from 14% in 1999 to only 3% in 2016. The Council has also made great strides in minimizing the bycatch of halibut and salmon, which are important species taken as subsistence, recreational, and directed commercial fisheries. Halibut bycatch limits for most gear types were recently reduced in the Gulf of Alaska by 15% and in the Bering Sea by 25%. The Council is currently evaluating ways to index the annual bycatch limits in the Bering Sea and Aleutian Islands based on halibut abundance. Chinook salmon bycatch, which primarily occurs in the pollock fishery, has been greatly reduced since the early 2000s. In the Bering Sea and Aleutian Islands, overall limits and performance standards have been established which provides incentives for each pollock fishery cooperative to minimize its salmon bycatch at all levels of salmon abundance. Limits are further reduced when salmon returns are projected to be low, based on an index of 3-rivers in Western Alaska that support critical subsistence and commercial fisheries for rural coastal communities. Individual vessels and Pollock cooperatives are accountable for maintaining low bycatch levels through Incentive Plan Agreements developed in accordance with objectives established by the Council. The pollock fleet works cooperatively to avoid salmon by establishing short term closure areas in hotspot areas, and developing and using pollock excluders in the trawl nets.

Amendment 91 which established the Chinook salmon bycatch management program for the pollock fleet in the BSAI is an excellent example of the successful management that is possible through MSA, when the Council, fishing industry, agencies, and other affected stakeholders work together using sound science in an open and transparent process. While reducing Chinook salmon bycatch is the primary goal and the most visible outcome to the public, it is important to highlight other key elements and factors that make this a successful program. It includes a census and strict monitoring of all salmon taken as bycatch in the Pollock fishery. It includes sampling of those salmon by fisheries observers on the Pollock vessels to conduct a genetic stock identification of the composition of bycatch and thus determine the river drainage of origin. It entails assessments of the impact of that bycatch on Chinook populations and on the subsistence and small commercial fisheries in rural western Alaska communities, for whom Chinook salmon is a corner stone of culture and a source of much needed income in a region of very limited economic opportunities. And it requires detailed annual reporting by the Pollock cooperatives on the performance of the

IPAs and the effectiveness of incentive measures in terms of Chinook avoided as well as the harvest of Pollock. The Pollock industry's willingness to explore an innovative approach that provides some delegation of accountability and responsibility under strict Council and NMFS guidance, and to effectively apply the Experimental Fishing Permit process (EFP) to test salmon excluders in the field is notable. All of this has been possible under the policy framework of MSA and guidance under the ten National Standards. None of this is possible without the cooperative efforts and trust required from diverse interests in the Council process, including scientists, managers, policy makers, the pollock industry and the subsistence and commercial salmon fishermen. And none of this is possible without adequate funding for the science and research and analyses conducted by the many outstanding members of the AFSC, the ADF&G, Council staff, and other partners in our Council process.

Observer Program

In Alaska, the at-sea observer program is almost entirely funded directly by industry, and for the majority of groundfish fishing activity in Alaska, an observer is onboard the vessel at all times. In 2016, 89% of the total groundfish and halibut catch of almost 2.3 million mt was caught on vessels with an observer onboard. In the Gulf of Alaska, there are vessels that are subject to partial coverage observer requirements to accommodate the challenges of deploying observers on thousands of smaller vessels. In 2013, the Council and NMFS restructured this component of the observer program to address sampling issues associated with non-random observer deployment on some vessels and fisheries, and cost inequality among fishery participants. The scientific sampling plans implemented since 2013 result in better spatial and temporal distribution of observer coverage across all fisheries, greatly improving the quality of data collected in Federal fisheries off Alaska and NMFS' ability to estimate catch and bycatch, and to evaluate and improve catch estimation procedures. The Council, with input from the Observer Advisory Committee, continues to work with the NMFS Observer Program to maintain robust coverage levels for all sectors and gear types at a time when fishing industry revenues and thus observer fee funds collected for the partial coverage fleet have decreased. In addition, Observer Program fees collected from industry have also been subject to annual sequestration, which makes achievement of coverage levels more problematic.

In addition, the Alaska fisheries incorporate extensive electronic reporting, and in some fisheries, electronic monitoring (EM) for compliance. The Council and NMFS have also just recently implemented a groundbreaking amendment to allow use of electronic monitoring as an alternative tool for the fixed gear groundfish and halibut fisheries, in which there are operational and logistical challenges deploying human observers on smaller vessels. In these fisheries, the EM data will be used instead of human observers to collect catch and discard information that is critical in accounting for total removals of each species under ACLs and for the purpose of conducting stock assessments. The development of EM for the fixed gear halibut and groundfish fisheries is another excellent example of the collaborative efforts of the fishing industry and agencies within the Council process to address challenging issues. The fixed gear longline and pot fleets in communities across the Gulf of Alaska have initiated pilot projects and secured funding over several years in cooperative research efforts with NMFS Observer Program and EM providers to develop a data collection and fishery monitoring program that is a model for other regions in the nation.

Allocation of Commercial and Charter Halibut

Halibut is a very important target species for commercial and recreational fisheries. Following a decade of efforts to control catch of halibut taken by the charter fleet, the Council established a limited entry permit program for charter vessels and established a catch sharing plan. The catch sharing plan defines an annual process for allocating halibut between the charter and commercial halibut fisheries in IPHC regulatory Areas 2C and 3A (Eastern and Central GOA), and establishes sector allocations that vary in proportion with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries over a wide range of halibut abundance. The catch sharing plan describes a public process by which the Council develops recommendations for charter angler harvest restrictions (annual management measures) that are intended to limit harvest to the annual charter halibut fishery catch limit in each area. Charter permit holders can also lease commercial halibut annual fishing quotas for use by anglers on their boat, thereby compensating the commercial sector for increased harvest in the charter sector. The Council recently approved a Recreational Quota Entity (RQE) program to allow purchase of commercial halibut quota share to increase the entire charter allowance in each area. Under this market-based approach, a Recreational Quota Entity is authorized to purchase and hold a limited amount of commercial halibut quota share on behalf of guided recreational halibut anglers that may result in less restrictive annual harvest measures for guided recreational anglers in times of low halibut abundance. The Council is currently evaluating refinements to the charter halibut permit program.

Ecosystem-based Fishery Management

The North Pacific Council has utilized an ecosystem approach to fisheries management for many years. The Council considers the impacts of its actions to the ecosystem by establishing conservative catch limits; establishing sweeping closures to protect habitat, considering the impacts of fisheries on marine mammals and seabirds, minimizing bycatch, and precluding fishing on forage fish populations that support many species. These ecosystem-based fishery management protections are built into the fishery management plans and periodically evaluated and updated. The Council has articulated an ecosystem vision statement and comprehensive ecosystem-based goals and objectives for the groundfish fishery management plans. These ecosystem considerations are taken into account annually during harvest specifications, and the Council pioneered one of the first Fishery Ecosystem Plans in 2007 for the Aleutian Islands, and is currently developing a Fishery Ecosystem Plan for the Bering Sea that builds on the lessons learned from the first plans and other national experience.

These examples illustrate the variety of successful management programs and approaches that the North Pacific Council has taken to manage fisheries resources within the existing structure of the MSA. This is not to suggest that development of these programs has been easy or non-controversial; on the contrary, each one has gone through periods of contention and controversy. No management program is perfect upon implementation, and all of them require review and revision over time; that is the nature of marine resource management. But they are all working successfully or poised to become effective additions to the North Pacific management system.

And I want to highlight several important underlying themes in all of these examples for Congress to keep in mind as it works to reauthorize MSA and considers possible changes;

- A well-structured national policy framework that provides broad objectives with sound guidance, recognizing regional differences and allowing for the development of regionally based solutions.
- The critical importance of science and analysis - in stock surveys, assessments, fisheries dependent data collection and monitoring, research and other aspects - conducted by the many members of the NMFS/AFSC, ADF&G and other partner agencies to conserve and manage marine resources and to provide for sustainable fisheries.
- Ensuring accountability through monitoring and data collection in the fisheries, catch share and other management program reviews, and broad stakeholder participation.
- A process that fosters and encourages the cooperative efforts of diverse and often contentious interests that exist in the North Pacific, as in every region.

General comments

Finally, I would like to reiterate the Council Coordinating Committee's general thoughts regarding the reauthorization process, which were presented to the Senate Commerce Subcommittee by John Quinn three weeks ago on behalf of all of the regional councils. These represent some general tenets that we believe should be considered relative to any change in the MSA:

- Avoid across the board mandates which could negatively affect one region in order to address a problem in another region. Ensure that we have the ability to develop regional solutions to regional problems. Make provisions region-specific where necessary, or couch them as optional tools in the management toolbox rather than mandates.
- Legislation should allow for flexibility in achieving conservation objectives, but be specific enough to avoid lengthy, complex implementing regulations or 'guidelines'.
- Legislation should be in the form of intended outcomes, rather than prescriptive management or scientific parameters.
- Legislation should avoid unrealistic/expensive analytical mandates relative to implementing fishery closures or other management actions.
- Legislation should avoid constraints that limit the flexibility of Councils and NMFS to respond to changing climates and shifting ecosystems.
- Avoid unfunded mandates, and/or ensure that Councils and NMFS have the resources to respond to provisions of legislation.
- Preservation and enhancement of stock assessments and surveys should be among the highest priorities when considering any changes to the Act.

Once again, thank you for the opportunity to provide these comments on behalf of the North Pacific Fishery Management Council, and I look forward to our continued dialogue on reauthorization of the Magnuson-Stevens Fisheries Conservation and Management Act that is so vitally important for our nation's marine resources and to the people and communities that depend on them.

WRITTEN TESTIMONY BY
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U.S. DEPARTMENT OF COMMERCE

HEARING ON
MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST GUARD
U.S. SENATE

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Introduction

Good afternoon, Chairman Sullivan, Ranking Member Peters, and Members of the Subcommittee. I appreciate the opportunity to speak with you today about the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). My name is Chris Oliver and I am the Assistant Administrator for the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) in the Department of Commerce. From daily weather forecasts, severe storm warnings, and climate monitoring to fishery management, coastal restoration, and supporting marine commerce, NOAA's products and services support economic vitality and affect more than one-third of America's gross domestic product. NOAA's dedicated scientists use cutting-edge research and high-tech instrumentation to provide citizens, planners, emergency managers, and other decision makers with reliable information they need when they need it.

Today, I will describe the agency's work under the Magnuson-Stevens Act, which sets forth standards for conservation, management, and sustainable use of our Nation's fisheries resources.

Progress under the Magnuson-Stevens Act

The Magnuson-Stevens Act provides the Nation with a very successful fisheries management construct. U.S. fisheries are among the world's largest and most sustainable. For forty years, Magnuson-Stevens has demonstrated that a dynamic science-based management process is fundamental for sustainably managing fisheries. The goal of fisheries management is to achieve fisheries that are environmentally, economically, and recreationally sustainable. In partnership with the regional fishery management councils, interstate fishery commissions, and our

stakeholders, and driven by the Magnuson-Stevens Act, the agency has effectively ended overfishing and is rebuilding domestic fish stocks. As of December 31, 2016, 91 percent of stocks for which we have assessments are not subject to overfishing, and 84 percent are not overfished.[i] By preventing overfishing and rebuilding stocks, we are strengthening the value of fisheries to the economy and communities that depend on them, and also ensuring a sustainable supply of seafood for the Nation in the future.

Our most recent data show that after adjusting for inflation the landed volume and the value of commercial U.S. wild-caught fisheries remained near record highs. U.S. commercial fishermen landed more than 9.7 billion pounds of seafood valued at $5.2 billion in 2015.[ii] The seafood industry—harvesters, seafood processors and dealers, seafood wholesalers and seafood retailers, including imports and multiplier effects—generated an estimated $208 billion in sales impacts and supported 1.6 million jobs in 2015, the most recent year for which economic impact numbers are available.

Saltwater recreational fishing is among the nation's favorite pastimes and is a major contributor to the U.S. economy at all levels. In 2015, the nation's nine million saltwater recreational anglers took more than 60 million fising trips and spent $28.7 billion on fishing trips ($4.5 billion) and durable fishing related equipment ($24 billion) while spending time with friends and family. Their expenditures drove $63 billion in sales impacts, a 5 percent increase from 2014, supported 439,000 jobs, and contributed $36 billion to the U.S. gross domestic product.[iii] In partnership with the recreational fishing community, NOAA Fisheries is committed to ensuring abundant and enduring saltwater recreational fishing opportunities now and into the future. To this end, I am pleased to announce that NOAA Fisheries is partnering with the Atlantic States Marine Fisheries Commission to host a national summit on saltwater recreational fisheries in March 2018 to chart a course toward future success.

Marine aquaculture production totaled 90 million pounds valued at $3.8 million in 2014, with the largest regional producer being the Atlantic, which represents almost 50% of the total value.[iv] Aquaculture production has tremendous untapped potential, and under Secretary Ross' direction NMFS will be working expand aquaculture opportunities.

Marine fish and fisheries—such as tropical tunas in the Western and Central Pacific, salmon in the Pacific Northwest, halibut and groundfish 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. In Alaska, where I have lived for the last 27 years, Dutch Harbor leads the Nation for the 19th consecutive year as the port with the highest volume of seafood landed (787 million pounds valued at $218 million).[v]

Around the country, commercial fishing supports fishermen, contributes to coastal communities and businesses, and provides Americans with a valuable source of local, sustainable, and healthy food. Recreational and subsistence fishing provides food for many individuals, families, and communities; is an important family 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 also 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.

The advancement of our science, management, and enforcement tools has resulted in improved sustainability of fisheries and greater stability for industry. The 2007 Magnuson Stevens Act 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. Limited Access Privilege Programs, while not appropriate for all fisheries, are an important tool in our collective tool box, and the current Act allows for development of such programs to be tailored to the specific needs of each fishery.

Under the Magnuson-Stevens Act, the U.S. has many other effective tools to apply in marine fisheries management. Yet, as we look to the future, we must continue seeking opportunities to further improve our management system. Our progress has not come without costs, including reductions in near term harvests for both commercial and recreational fisheries in some cases, and challenges remain. Fishermen, fishing communities, and the Councils have had to make difficult decisions and absorb the near-term costs of conservation in exchange for long-term economic and biological sustainability.

Magnuson-Stevens Act Flexibility and Regional Approach

The Magnuson-Stevens Act created broad goals for U.S. fisheries management and a unique, highly participatory management structure centered on the Councils. Given my past work as the Executive Director of the North Pacific Fishery Management Council, I can attest to the value of the regional fishery management council system established through the Magnuson-Stevens Act. This structure encourages a collaborative, “bottom up” process where input and decisions about how to manage U.S. fisheries include fishermen, other fishery stakeholders, affected states, tribal governments, and the Federal Government.

The Councils can choose from a variety of approaches and tools to manage fish stocks and meet the mandates of the Magnuson-Stevens Act—e.g., catch limits, catch shares or other allocation mechanisms, area closures for habitat or protected species considerations, and gear restrictions. These measures are submitted to the Secretary of Commerce for approval and are implemented by NMFS.

Effects on fishing communities are central to many fishery management 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 around our Nation. Communities, fishermen, processors, and various fishing dependent 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 the Nation has 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.

Regional Successes

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.

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, gross revenues in New England increased more than six-fold from $44 million in 1998 to $287 million in 2015, making New Bedford the Nation's top port by value of landings since 2000.[vi]

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, widow rockfish, canary rockfish, and petrale sole. 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 gag, red grouper and king mackerel in the Gulf of Mexico, and black sea bass in the South Atlantic. 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.

I'm most proud of the accomplishments in Alaska where our management decisions have led us to be widely recognized as one of the most successfully managed fisheries in the world. In 2015, landings revenue totaled about $1.7 billion, a 32% increase from 2006 (a 25% increase in real terms after adjusting for inflation).[vii]

Remaining Challenges - Looking to the Future

Amid these successes, some critical challenges remain. For example, while our West Coast groundfish fisheries have rebuilt several important stocks, in recent years fishermen are leaving a substantial amount of the available harvest of some groundfish species in the water, due to regulatory or bycatch species constraints. We must find ways to maximize allowable harvests that are still protective of non-target species in all of our fisheries. Solving difficult management issues will require us to reexamine our own stock assessment and data collection systems, which we are doing independent of Magnuson-Stevens Act reauthorization, and will require the close cooperation of the states, the regional fisheries management Councils, and all involved stakeholder groups.

Annual catch limits are a cornerstone of sustainable fisheries management around the Nation, but managing fisheries using annual catch limits and accountability measures was a major change and has been challenging in certain fisheries, particularly recreational fisheries where total harvest data can be much more difficult to collect and timely report than in most commercial fisheries. This is particularly true where data is scarce, which is the case for many of the stocks in the Pacific Islands region and the Caribbean, especially those species being fished in the coral reef ecosystem. I believe there are opportunities to have it both ways – to maximize our domestic harvest potential, without compromising the long-term sustainability of the resources we manage. We are committed to working with Congress throughout the Magnuson-Stevens reauthorization process with regards to annual catch limits, accountability measures, stock rebuilding, or other aspects of our management construct, while still protecting the overall, long-term conservation and sustainability of the Nation's fishery resources.

Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. Preservation and enhancement of the science used to inform fisheries management is imperative as we look to the future of U.S fisheries and the seafood they provide the Nation. NMFS has made a substantial effort to monitor recreational fisheries and incorporate data from these fisheries into stock assessments. We are applying new and improved methods for estimating total catch by the millions of recreational saltwater anglers, but more needs to be done. Strengthening our partnerships with the coastal states, regional fisheries management Councils, and affected stakeholders to conduct efficient and cost-effective monitoring will be an important component of that effort.

As NMFS assesses the most effective and efficient ways to support sustainable fisheries management and fishing communities, there may be a need to refocus limited monetary and staff resources on core, mission critical activities such as basic stock assessment and catch accounting.

We face formidable challenges managing recovering stocks to benefit both commercial and recreational user groups with fundamentally different goals and objectives. Together with our partners, it is essential that we continue to explore innovative management approaches appropriate to solve regional problems with regional management tools. We must remain dedicated to exploring ways to maximize economic opportunities from wild-caught fisheries for commercial and recreational fishermen, processors, and communities. Some improvements in our regulatory processes may be possible, not only in the number of specific regulations we promulgate, but in the more general regulatory processes under which we operate. The Magnuson-Stevens Act intersects with a number of other important statutes including National Enivormental Protection Act, the Endangered Species Act, and the Marine Mammal Protection Act, and these various statutes impose important responsibilities upon the agency. There may be opportunities for more efficiency and consistency in how we interact with those other statutes and, to that end, NMFS is currently inviting public comment on the efficacy and effectiveness of the current regulatory process, including the application of federal regulations under these statutes and to aquaculture.

We also need to expand U.S. seafood production and exports. America's seafood industry is world-renowned and our fisheries set a global gold standard for sustainability. However, the majority of the seafood we consume is impor ted. Through maintenance or enhancement of wild-stock harvests and expanded aquaculture production, we can position the Nation to make inroads on that seafood trade deficit. We need to stay true to our essential conservation mission, while taking advantage of opportunities to streamline regulatory processes and maximize the National benefit of our fisheries resources.

Conclusion

We all share the common goal of healthy fisheries that can be sustained for future 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. There are opportunities to provide flexibility in applying annual catch limits and in using sound science and innovative management approaches to rebuild more fish stocks. Although challenges remain in some fisheries, overall, the benefits for the resource, the industries it supports, and the economy can be seen as fish populations grow and catch limits increase.

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 strategic way to ensure our Nation's fisheries are able to meet the needs of both current and future generations. We also need to remember that practicality and common sense are important as we engage strategically. We look forward to working with Congress on fisheries management issues in a holistic, comprehensive way that builds on its success and considers the needs of the fish, fishermen, ecosystems, and communities.

Thank you again for the opportunity to discuss the Magnuson-Stevens Act. I am available to answer any questions you may have.

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[i] See Status of the Stocks 2016. NMFS Office of Sustainable Fisheries, available at: http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2016/status-of-stocks-2016-web.pdf

[ii] See NOAA Annual Commercial Fisheries Landings Database, available at http://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/annual-landings/index

[iii] See Fisheries Economics of the U.S. 2015. NMFS Office of Science & Technology, available at: https://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries_economics_2015/index

[iv] See Fisheries of the United States, 2015. NMFS Office of Science & Technology, available at: http://www.st.nmfs.noaa.gov/commercial-fisheries/fus/fus15/index

[v] See Fisheries of the United States, 2015. NMFS Office of Science & Technology, available at: http://www.st.nmfs.noaa.gov/commercial-fisheries/fus/fus15/index

[vi] See Fisheries Economics of the U.S. 2015. NMFS Office of Science & Technology, available at: https://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries_economics_2015/index

[vii] See Fisheries Economics of the U.S. 2015. NMFS Office of Science & Technology, available at: https://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries_economics_2015/index

Dr. John M. Quinn

Chair, New England Fishery Management Council

Testimony for

The Senate Commerce Committee's

Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

"Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act:

NOAA and Council Perspectives"

Chairman Sullivan and Ranking Member Peters, my name is John Quinn and I am here today to testify on behalf of the Council Coordination Committee (CCC), which is made up of the chairs, vice chairs, and executive directors of the eight Regional Fishery Management Councils that were created under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA).

By way of background, I am currently the Director of Public Interest Law programs at the University of Massachusetts School of Law, which is located near the port of New Bedford. New Bedford has been the highest grossing port in the United States for 16 consecutive years. I have been involved in fisheries issues for the last 30 years as a lawyer, a state legislator, and, for the last five years, as a member of the New England Fishery Management Council.

Thank you for inviting me here today to speak to the reauthorization of the Magnuson-Stevens Act. Without a doubt, this statute established the United States as the world's premier manager of fisheries resources. One of the major strengths of the Act is its support of a regional approach to fisheries management that is guided by an overarching federal framework. The eight Regional Fishery Management Councils are the cornerstone of that system.

The Councils fill a unique fishery management role. Our members include representatives from state, federal, and tribal fishery management agencies, as well as appointed members selected for their fisheries knowledge and expertise. We prepare the management plans that guide fishing in federal waters. The National Marine Fisheries Service (NMFS), on behalf of the Secretary of Commerce, reviews our proposals and implements them if the actions are consistent with the law. While I am the current chair of the New England Fishery Management Council, today I speak to you as the representative of all eight regional councils. We meet regularly as the Council Coordination Committee to discuss cross-regional issues and collaborate with NMFS on strategic planning and policy development.

As a group, we are strong believers in the Magnuson-Stevens Act – and not just because it established the Councils. The outcome of our management success is clear: commercial, recreational, and subsistence fisheries are key contributors to our coastal communities and the nation's economy. In large measure this is because the Act structured a very successful approach to sustainable fisheries management. Central to the Act are the 10 National Standards that guide our management process. National Standard 1, which is the most important, requires that conservation and management measures shall prevent overfishing while achieving optimum yield from each U.S. fishery.

Let me acknowledge the many successes of the MSA and the Council system. While some stakeholders have expressed frustration with decisions made by individual Councils – and some of those give your offices calls when they don't like Council decisions – I think it is important to note that the MSA actually gives stakeholders seats at the table when fishery management decisions are made. The MSA created these Councils to provide a public forum for fishery management decisions to be made. This public forum allows fishery managers, state officials, fishermen, academics, environmental groups, federal officials, and other interested parties to have a say in the management of our public resources. The decisions made through this public process are based on the best scientific information available and use stock assessments that have been conducted in a public manner and peer reviewed.

Finally, the decisions made by the Council are then again reviewed by the Secretary of Commerce and published in the Federal Register for an additional public comment period. While this is a time-consuming and sometimes duplicative process, it ensures that decisions are fair, informed, and science-based. The process also is fully transparent.

We should not be content to rest on our laurels. We believe that, going forward, we can improve our efforts. Today I would like to highlight some of the issues that we believe need to be addressed. As will be no surprise, our regional approach to management means that the Councils each face different challenges. Despite these differences, there are a number of areas where our opinions on needed improvements are consistent. I will limit my comments to the consensus statements that all eight Councils support. I've structured my statement around broad issues that have been identified.

Management Flexibility

<u>Rebuilding Plans</u>

One of the important provisions of the MSA is its focus on sustainable fisheries. To that end, in 1996 the Sustainable Fisheries Act amended the MSA and established strict requirements for ending overfishing and rebuilding fish stocks. A key requirement is that, in most cases, a stock must be rebuilt within a fixed time period, usually no more than ten years. Over the last twenty years, significant progress has been made, improving the status of many stocks. But we also have learned that there may be a need to improve the rebuilding provisions of the MSA so that the nation fully realizes the benefits of its resources. I want to make it clear that we do not seek to eliminate rebuilding requirements, but we think our experiences can be used to improve the existing provisions.

In general, the CCC believes that the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would improve the ability of Councils to

achieve management objectives. We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished stocks while mitigating the social and economic impacts. For example, increased flexibility in rebuilding timelines would allow for a better balance between the biology of the fish and the socioeconomic needs of fishermen. A narrow exception for mixed-stock fisheries also could be considered.

We agree that exceptions to rebuilding requirements should be limited in scope and carefully defined. Ideally, such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines.

Management of Mixed Stocks

Many fishermen catch a mix of species on a trip. While in some cases selective fishing practices can effectively target some species and reduce the number or amount of non-target species caught, this is not always an adequate solution. Some of the Act's more prescriptive requirements pose particular challenges for the management of mixed stock fisheries and may not integrate well with ecosystem approaches. While the current National Standard guidelines allow for a mixed-stock exception to the requirements to prevent overfishing, the statutory basis for this is unclear and would benefit from clarification in the reauthorized Act. In addition, provisions for mixed-stock fisheries are more consistent with the concepts of ecosystem-based fishery management.

Transboundary Stocks

The addition of language that would allow the Councils to develop annual and in-season quota trading programs for international and national transboundary stocks will improve the ability of the Councils to achieve harvest and management objectives. The CCC also recognizes the potential for increased enforcement from recommendations of the Presidential Task Force Combating Illegal, Unreported, and Unregulated (IUU) Fishing.

Data Limited Fisheries

Further consideration of exemptions or alternatives to the existing Annual Catch Limit (ACL) requirements for data-limited species could improve the Councils' ability to provide stability in setting harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. While ACLs and Accountability Measures (AMs) have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms or utilize ecosystem-based fishery management approaches (e.g., seasons, area-based management) for data-limited stocks.

Definition of "Overfished"

At present, when a stock falls below a minimum biomass, it is described as "overfished" and a rebuilding plan is required. While fishing can be the cause of a reduced stock, there may be other reasons as well, such has warming ocean waters or degraded habitat. An alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors. The current MSY-based definition can be problematic when applied to data-limited fisheries or mixed-stock complexes. Furthermore, the term "overfished" can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other (perhaps unknown) factors. Not all of the Councils agree that "depleted" is the appropriate term to replace "overfished" since it has specific meanings in a number of other statutes. Care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.

Transparency

Clearly, a transparent public process is critical to maintaining public trust when managing a public resource. This need can be met in a variety of ways, but identifying specific requirements to meet this need can be problematic. Budget problems are very real, and written transcripts are costly. Video recordings of large meetings may not add substantive content, as they will not capture presentations and motions, which are the most critical visual aspects of meetings. Streaming video also may degrade the quality of webcast audio. While the technology for webcasts is rapidly evolving, live broadcasts generally require strong internet connections to be effective. In the context of Council meetings, which often are held in remote locations near fishing ports, the Councils have little ability to predict or control the quality and cost of the internet connection. Consequently, requiring the use of webcasts "to the extent practicable" (rather than in all cases) will allow Councils to achieve greater transparency within budget and operational constraints.

NEPA Compliance

Fishery management involves fairly rapid cycles of adaptive management in which information about changing conditions is addressed through adjustments to the management program and regulations. The necessity for National Environmental Policy Act (NEPA) analysis of these actions results in requirements that duplicate those in the MSA and other applicable law, including additional comment periods that delay implementation of these actions, which were developed through the open and transparent MSA process. Ensuring NEPA compliance for marine fishery management actions has been costly and time-consuming for Council and NMFS staff and has limited the Councils' abilities to pursue other regulatory activities. In addition, the CCC notes that there have been instances where compliance with NEPA has hindered adequate compliance with the MSA in terms of providing comprehensive analysis to Councils prior to their taking final action due to the difficulty and time required to complete NEPA analyses.

Although the 2007 MSA reauthorization attempted to align the requirements of the two laws more closely through the addition of Section 304(i), the CCC does not believe what has been called for in the Act has been accomplished. There haven't been any substantive changes in the way NEPA is used to support management actions or in the steps needed to complete those analyses. Clearly, proposed management actions should be thoroughly analyzed before decisions

are made. We believe that such analyses should be done within the framework of the MSA rather than NEPA.

Catch Share Programs

Catch share programs allocate part of a harvest to an individual or group of permit holders. Much has been written about their strengths and weaknesses. On the one hand, supporters believe the programs reduce the "race for fish," creating more rational harvest plans. Opponents argue that they privatize a public resource and lead to consolidation in the fishing industry.

One thing we have learned in forty years of the Council process: fishery management is complex, and no single solution will work in all fisheries. Councils should have the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive requirements for conducting a referendum before a catch share program can be adopted is likely to increase the administrative burden for the Councils. It may reduce the Councils' ability to implement the appropriate management program for their fisheries that could include modification of existing catch share measures or adoption of new catch share measures. Councils should be able to consider the use of all fishery management tools without burdensome requirements.

Collection and Use of Fishery Data

In general, Councils should be granted a reasonable degree of flexibility in the development and implementation of monitoring programs (electronic and otherwise) so that those programs may be tailored appropriately for each fishery and the needs of each region.

Electronic Monitoring

Our ability to manage fisheries effectively depends on having access to timely and accurate data. The development of electronic monitoring technologies and the utilization of other emerging technologies could be beneficial to U.S. fisheries – in terms of data collection and in terms of the potential to reduce the cost to fishermen and governmental entities. However, introducing additional national-level regulations to govern the use of electronic monitoring beyond the current constraints of the Act (e.g., the National Standards) may be counterproductive due to a number of factors, including funding and resource constraints, variability among fisheries, and the rapid evolution of technology. In addition, the costs of new technologies should be taken into account when implementing new programs or technologies.

Recreational Fisheries

Data quality and availability continue to be among the greatest challenges for the management of recreational fisheries. Given the importance of accountability, effective monitoring is critical for the successful management of recreational fisheries. Comprehensive recreational data also contribute to improved stock assessments that benefit all fishery sectors. While NOAA's Marine Recreational Information Program (MRIP) has provided some improved statistical methodologies to reduce sampling bias, the program has been only partially implemented, and it has done little to increase the precision of catch estimates. Addressing this problem will require increased sampling rates, which only can occur with increased funding. The Councils are examining additional technologies that should be encouraged to get better data.

Other Federal Statutes

With forty years of experience, the Councils have extensive expertise in managing federal fisheries. The Council process, tailored for each region, provides a well-known, effective forum for resolving fisheries issues. When other statutes are used to develop fishery regulations, that public process is often side-stepped. The CCC believes that an amendment to the MSA that ensures all federal fishery regulations are promulgated under the Council or Secretarial process established under MSA section 302 would ensure rational management of our fishery resources throughout their range. Under the MSA, the Councils are charged with managing, conserving, and utilizing the Nation's fishery resources, as well as protecting essential fishery habitat, minimizing bycatch, and protecting listed species within the United States Exclusive Economic Zone. This is done through a transparent public process that requires decisions be based on the best scientific information available. This time-tested approach has made U.S. fisheries management highly successful and admired throughout the world.

If changes to Council-managed fisheries (for example, changes to the level, timing, method, allowable gear, or areas for harvesting management unit species) are required under other statutory authorities such as the Antiquities Act of 1906, the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the National Marine Sanctuaries Act of 1972, such restrictions or modifications to those fisheries should be debated and developed under the existing MSA process. In addition, all actions by the Councils are currently subject to review by the Secretary of Commerce to determine consistency with MSA and all other applicable laws. This current review ensures that Council actions – including those that could be made as a result of requirements of other statutes – will continue to be consistent with all relevant laws. Making modifications to fisheries through the MSA process would ensure a transparent, public, and science-based process. When fishery restrictions are put in place through other statutes, frequently the fishing industry and stakeholders are not consulted, analyses of impacts to fishery dependent communities are not considered, and regulations are duplicative, unenforceable, or contradictory.

Climate Change

Fishery resources have evolved to make the best use of their habitats. Fish distribution can depend on many factors, including water temperatures. In many of our regions, warming sea water temperatures are leading to significant changes in the distribution of fish species. For example, in New England we are seeing species of fish in the Gulf of Maine that historically only were harvested off Long Island and New Jersey; at the same time, cold water species like lobster are leaving warming waters to the south. Other changes are occurring as well. Increased acidification of sea water is a threat to many shellfish species, both in nearshore aquaculture and offshore wild-caught fisheries.

The sustainability and performance of our fisheries are at stake, and while fishery managers are unable to address the underlying causes of climate change, they are nonetheless tasked with meeting our conservation and management mandates in a changing environment. These changes will impact entire marine ecosystems, and a single-species management approach likely will not be sufficient to understand and account for these changes. Addressing climate change will

require establishing the support to enable fishery managers to develop creative solutions to new challenges.

Fishery managers also will need a strong scientific foundation to support climate-ready fisheries management. Managing climate-ready fisheries is a long-term endeavor that will require investing in the information needed to support informed decision-making, along with a commensurate shift in resources and attention. Successful management already depends on the availability of timely and accurate information at all points in the decision-making process. In a changing environment, this will become even more critical.

Resources

The Councils are concerned that important policy directives issued by the National Marine Fisheries Service (e.g., forage fish, allocation review, and ecosystem-based fishery management) frequently create unfunded mandates. The demands on Councils to fulfill existing regulatory and management requirements are significant, and these should be met before any new tasks are imposed. New mandates can be addressed only if adequate resources are provided.

We also want to make it clear that we rely heavily on data and analyses provided by NMFS. At-sea surveys of fish populations are the 'bread and butter' of the sustainable management that is the hallmark of U.S. fisheries under the MSA. Reducing stock assessment funds will reduce harvests by U.S. fishermen, which will increase imports of foreign seafood. Increasing stock assessment funding is one of the best investments an administration can make in U.S. fisheries.

Exempted Fishing Permits

Exempted fishing permits (EFPs) are an extremely important and useful mechanism to conduct scientific research. For instance, EFPs have been used in different regions of the U.S. to conduct surveys, test monitoring devices under field conditions, investigate invasive species, and develop fishing gear that reduces bycatch, reduces habitat impacts, and reduces impacts on protected species. These studies are frequently done by the fishing community at no cost to the public and have provided enormous benefits for the conservation and management of marine resources and habitats.

The existing regulations already provide a good framework for developing a regional process of issuing and reviewing EFPs. The EFP applications undergo a regional scientific peer review and are evaluated through a public process by the respective Councils. The public and affected states have an opportunity to comment to NMFS and the Councils during this process. Any new requirements for the EFP process, such as additional social and economic analysis or further consultation with the state governors, would greatly reduce the ability to get EFPs developed and approved in a timely manner.

The CCC further believes that multi-year EFPs provide the necessary flexibility to scientifically test gear across different years and seasons. New regulations that limit EFPs to a 12-month period will severely limit the usefulness of the data collected, as well as the type and quality of research that can be done.

General comments

I would like to close with a few general tenets that we think are important.

- Modifications to the Act should be national in scope but with reasonable flexibility to address region-specific issues. Avoid across-the-board mandates that could negatively affect one region to address a problem in another. Modifications to the Act that are specific to one region or one Council undermine the national scope of the Act and should be carefully considered, especially with respect to how these modifications might affect operations in other regions.
- Legislation should allow for flexibility in achieving conservation objectives but be specific enough to avoid lengthy, complex implementing regulations or guidelines.
- Legislation should be in the form of intended outcomes, rather than prescriptive management or scientific parameters.
- Legislation should avoid unrealistic/expensive analytical mandates relative to implementing fishery management actions.
- Legislation should avoid constraints that limit the flexibility of Councils and NMFS to respond to changing climates and shifting ecosystems.
- Avoid unfunded mandates and/or ensure that Councils and NMFS have the resources to respond to provisions of legislation.
- Preservation and enhancement of stock assessments and surveys should be among the highest priorities when considering any changes to the Act.

Finally, I believe it important to acknowledge the supportive relationship between the Councils and the National Marine Fisheries Service. Our management successes would not be possible without our close partnership. The Service is a key participant in the Council process and a key provider of the information we need. The regional offices and science centers are critical to our process. The healthy exchange of ideas and opinions between our groups leads to better solutions. We are thrilled that Mr. Oliver is heading the agency, and we look forward to working with him in his new role.

Thank you for the opportunity to address the Committee.