

March 16, 2018

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The Honorable Don Young
Congressman for All Alaska
2314 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Young,

Thank you for your request (email to CCC Chairman Dan Hull from Martha Newell dated 3/8/2018) for the views of the Council Coordination Committee on H.R. 200, the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, as it was amended and ordered to be reported by the House Committee on Natural Resources on December 13, 2017.

As you are aware, the Nation’s eight Regional Fishery Management Councils (Councils) are charged under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) with managing, conserving, and utilizing fishery resources throughout the entire Exclusive Economic Zone of the United States. In implementing this charge, the Councils are required to take into account the effects of management actions on United States fishermen and fishing communities.

Under the requirements of the MSA, the Councils protect essential fish habitat, minimize bycatch, and comply with protections for species listed under the Endangered Species Act, marine mammals, and seabirds within the U.S. Exclusive Economic Zone (EEZ). Through implementation of the MSA, the United States is the global leader in the successful conservation and management of fishery resources and associated ecosystems in a proactive sustainable manner. The Councils use a public process, in a transparent and inclusive manner, and rely on the best scientific information available as required by the MSA.

As a result, we not only meet conservation objectives but also ensure sustainable seafood for U.S. consumers, promote the economies of coastal communities, and maintain the social-cultural fabric of our Nation’s recreational, commercial and subsistence fishing communities.

The Council Coordination Committee—which consists of the senior leaders of these Councils— has developed a working paper to describe consensus positions and the range of Regional Fishery Management Council perspectives on key issues being considered as part of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) reauthorization process. This working paper can be found at: <http://www.fisherycouncils.org/msa-reauthorization/>

Your request asked the CCC for their comments on H.R. 200, as amended by the House Committee on Natural Resources. The comments below are specific to that legislation and reflect, where possible, consensus positions of the CCC.

Section 103 – Amendments to Definitions. *This section would add a number of new definitions to the Act including a definition of “depleted” and would modify the existing definitions (34) of “overfishing”*

and “overfished” to clarify that the definition for the term “overfishing” means “a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield on a continuing basis.” This section would also replace the term “overfished” with the term “depleted” throughout the Act and would require the Secretary when issuing the annual report on the status of fisheries note if a stock was “depleted” as a result of something other than fishing.

The CCC believes that 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 factors. Not all of the Councils agree that "depleted" is an appropriate term to replace "overfished" with. Some have noted that "depleted" has specific meanings in a number of other statutes, including the Endangered Species Act and the Marine Mammal Protection Act, and that care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.

Section 202 – Process for Allocation Review for South Atlantic and Gulf of Mexico Mixed-Use Fisheries. *This section would have the National Academy of Sciences (NAS) conduct a study of the mixed-use fisheries of the South Atlantic and Gulf of Mexico to provide guidance to each of the applicable Councils (South Atlantic and Gulf of Mexico) on criteria that could be used for allocating fishing privileges, and other provisions. This section would require the applicable Councils (South Atlantic and Gulf of Mexico Councils) to perform – within 2 years – a review of allocations among the commercial and recreational sectors in all mixed-use fisheries within their jurisdiction and perform a similar review every 5 years thereafter. This section would require the Councils, in conducting the reviews, to consider in each allocation decision the conservation and socioeconomic benefits the commercial fishing sector and the recreational fishing sector.*

While the CCC has not formed a consensus position on this provision, the South Atlantic Fishery Management Council, one of the two Councils required to take action under this provision, recently commented to Senator Graham on a similar provision in S. 1520, the Modernizing Recreational Fisheries Management Act of 2017. “The South Atlantic Council does not believe a National Academy of Sciences study of allocations is necessary because we have adequate guidance/procedures and it would be an unnecessary expenditure of limited National Marine Fisheries Service (NMFS) funding (estimated cost is about \$1M). The CCC worked with NMFS to define a process for looking at triggers that could be used to reevaluate allocations, and the CCC approved the criteria for initiating fishery allocation reviews at their May 2016 meeting. The recommendation from the CCC was that all Councils establish, within three years or as soon as practicable, the triggers that they are going to be using for allocation review. The South Atlantic Council will be working on this during 2018. The South Atlantic Council does not feel a legislated timeframe for review of allocations is necessary. The triggers identified will determine when a review is needed, and the Council concluded this was sufficient. “

Section 203 – Alternative Fishery Management Measures. *This section would allow Councils to use alternative fishery management measures in a recreational fishery or for the recreational component of a mixed-use fishery including the use of extraction rates, fishing mortality targets, and harvest control rules in developing fishery management plans, plan amendments, or proposed regulations.*

The CCC does not have a consensus position on this provision. Some Councils have noted that they believe there is currently flexibility in the authority that Councils have to use alternative fishery management measures for recreational fisheries; however, additional clarification of this flexibility in the statute may be warranted.

Section 204 – Modifications to the Annual Catch Limit Requirement. *The language in the amended bill would allow a Council, after notifying the Secretary, to maintain the current annual catch limit for a stock of fish until a peer-reviewed stock survey and stock assessment are conducted and the results are considered by the Council and its SSC for fisheries for which: the total allowable catch limit is 25 percent or more below the overfishing limit; a peer-reviewed stock survey and stock assessment have not been performed during the preceding 5 years; and the stock is not subject to overfishing.*

While the CCC has not taken a position on this specific provision, the CCC believes that further consideration of exemptions or alternatives to the existing 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. Collecting the necessary data is critical to moving from such ad hoc methods to more traditional assessment methods. While ACLs and 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 such as ecosystem-based fishery management approaches for data-limited stocks.

Section 205 – Limitation on Future Catch Share Programs. *This section would define the term "catch share" and create a pilot program for four Councils - the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils - which would prohibit those Councils from submitting or implementing any new catch share program unless the final program has been approved in a referendum by a majority of the permit holders eligible to participate in the fishery. This section would clarify that for multispecies permits in the Gulf of Mexico, any permit holder with landings within the last five years from within the sector being considered for the catch share program and who is still active in the fishery shall be eligible to participate in the referendum. This section would allow the Secretary, at the request of the New England Council, to include crew members who derive a significant portion of their livelihood from fishing to participate in a referendum for any fishery within that Council's jurisdiction. This section would also require that prior to the referendum, the Secretary must provide all eligible permit holders with a copy of the proposed program, an estimate of the costs of the program (including the costs to participants), an estimate of the amount of fish or percentage of the quota each permit holder would be allocated, and information on the schedule, procedures and eligibility criteria for the referendum.*

The CCC believes that Councils should maintain the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive requirements for conducting a referendum is likely to increase the administrative burden for the Councils and may reduce the Councils' ability to implement the appropriate management program for their fisheries that could include modification of existing catch share measures or new catch share measures.

Catch shares is a management tool that should be available to the Councils, but the design, timing, and development should be left to individual Councils if they choose to use this tool for a specific fishery.

Section 208 – Recreational Fishing Data. *The provision in the amended H.R. 200 would require the Secretary to establish partnerships with States to develop best practices for implementing State recreational fisheries programs and to develop guidance, in cooperation with the States, that detail best practices for administering State programs and to provide the guidance to the States.*

The CCC believes MRIP was not designed to provide data for in-season ACL management. The current MRIP methodology cannot be modified nor can sufficient funding be provided such that in-season ACL management will work. The CCC believes alternative methods (e.g., state electronic logbook programs, federal for-hire electronic logbook programs, and electronic logbook programs for private recreational anglers) should be fully implemented where they are available and developed, then evaluated where they do not yet exist. Once evaluated, MRIP should work to quickly certify these alternative methods for use in monitoring recreational catches.

There does not appear to be a plan for the systematic collection of the necessary biological data from recreational fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as they move from one region to another due to changes in the environment. The CCC believes additional funding is required for successful implementation of such a data collection program.

The CCC believes more timely and accurate catch estimates that will be accepted by the recreational community (since they are providing the data) will go a long way to improve stock assessments, improve voluntary compliance, and improve accountability within the recreational fishing community.

Section 301 – Healthy Fisheries Through Better Science. *This section would add a definition of “stock assessment” to the Act and would require the Secretary to develop and publish in the Federal Register a plan to conduct stock assessments for all stocks of fish under a fishery management plan and use the same schedule as is already required for the strategic plan. The plan must establish a schedule for updating stock assessments – for each stock of fish for which a stock assessment has already been conducted - that is reasonable based on the biology and characteristics of the stock. Subject to the availability of appropriations, these new stock assessments or update of the most recent stock assessment must be completed every five years or within a time period specified and justified by the Secretary.*

The CCC believes that stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the CCC believes that it would be beneficial for the MSA to include a requirement for the Secretary to develop a comprehensive plan and schedule to address stock assessment needs on a national basis. Increasing stock assessment frequencies and improving stock assessment methods to reduce the uncertainty in setting harvest limits and achieving management objectives will also improve the ability of Councils to establish scientifically-based ACLs, including for those fisheries that are currently considered data limited.

In addition, the CCC believes that baseline funding for sustainable management such as at-sea surveys of fish populations are the “bread and butter” of 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 the best investment an administration can make in U.S. fisheries.

The CCC notes that the language requires stock assessments for all stocks of fish under a fishery management plan and would require the Secretary to complete initial stock assessments of all unassessed stocks within 3 years. While the provision does allow the Secretary some flexibility in meeting these requirements, this provision could require significant new financial resources or require changes to existing stock assessment schedules which could impact future fishery management decisions by Councils.

Section 302 – Transparency and Public Process. This section would require that each Council, to the extent practicable, provide a Webcast, an audio recording, or a live broadcast of each Council meeting and for the Council Coordination Committee meetings. In addition, the bill would require audio, video, searchable audio or written transcript for each Council and SSC meeting on the Council’s website not more than 30 days after the conclusion of the meeting.

The CCC believes that a transparent public process is critical to maintaining public trust, so that decisions of the Council and the SSC are clearly documented. This need can be met in a variety of ways, such as by webcasting meetings, audio recording of meetings, or detailed minutes of meeting discussions. However, 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 may also 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 are often 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” will allow Councils to achieve greater transparency within budget and operational constraints.

In addition, this section would require that each fishery management plan, plan amendment, or proposed regulation contain a fishery impact statement to assess, specify, and analyze the likely effects and impacts of the proposed action on the quality of the human environment.

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 Magnuson-Stevens Act (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 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.

The intent of this provision appears to require Councils to include all relevant requirements of the National Environmental Policy Act of 1969 into the Council's review of fishery conservation and management actions under the MSA.

Previous versions of this legislation included the phrase "Actions taken in accordance with this section are deemed to fulfill the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all related implementing regulations.". Without this phrase, the provision appears to require significant new work for the Councils without any benefit in streamlining the current process. It is unclear whether this omission was intentional or a drafting error.

Section 303 – Flexibility in Rebuilding Fish Stocks. *This section would remove the term "possible" and replace it with "practicable" in the requirement in section 304 of the Act that a rebuilding period "be as short as possible". This section would remove the language requiring a 10-year time frame for rebuilding overfished/depleted fisheries and replace it with a requirement that the rebuilding timeframe be the time it would take for the fishery to rebuild without any fishing occurring plus one mean generation time except in the case that: the biology of the stock, other environmental conditions, or other listed exemptions. This section would allow a fishery management plan for any fishery that is considered overfished/depleted to use alternative rebuilding strategies including harvest control rules and fishing mortality rate targets. This section would allow a Council to terminate any rebuilding plan for a fishery that was initially determined to be overfished/depleted and then found not to be overfished/depleted within two years or within 90 days after the completion of the next stock assessment. Finally, current law allows the Secretary to implement emergency interim measures for fisheries in which overfishing is taking place.*

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 we believe that 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. In addition, 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.

Section 304 – Exempted Fishing Permits. *This section would require the Secretary, prior to an exempted fishing permit to be approved or issued, to: direct a joint peer review of the EFP application by the appropriate regional fisheries science center and State marine fisheries commission; certify that the Council or federal agency has determined that the fishing activity to be conducted under the EFP will not negatively impact any conservation or management objectives in existing FMPs; certify the Council or federal agency has determined that the social and economic impacts and loss of fishing opportunities on all participants in each sector of the fishery will be minimal; certify the Council or federal agency has determined that the information collected under the EFP will have a positive and direct impact on conservation and management; and certify that the Council or federal agency has determined the Governor of each coastal state potentially impacted by the EFP has been consulted on the fishing activity to be conducted under the EFP. This section would prohibit any EFP that establishes a limited access system or establishes a catch share program.*

The CCC believes that exempted fishing permits (EFPs) are an extremely important and useful mechanism to conduct scientific research. For example, 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 and reduces impacts on habitat and protected species. These studies are frequently done by the fishing community at no cost to the public and have provided enormous benefits to the conservation and management of marine resources and habitats.

The CCC believes that the existing regulations already provide a good framework for developing regional processes for issuing and reviewing EFPs. The EFP applications undergo a regional scientific peer review and are evaluated through a public process by the respective regional Councils. The public and affected states have opportunities 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.

In addition, the CCC 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 restrict the type and quality of research that can be done, thus limiting the usefulness of the data collected.

Section 307 – Ensuring Consistent Management for Fisheries Throughout Their Range. *This section would clarify that the Magnuson-Stevens Fishery Conservation and Management Act would be the controlling fishery management authority in the case of any conflict within a national marine sanctuary or an area designated under the Antiquities Act of 1906. In addition, this section would require that if any restrictions on the management of fish in the exclusive economic zone are required to implement a recovery plan under the Endangered Species Act, the restrictions would be implemented under the authorities, processes, and timelines of the Magnuson-Stevens Fishery Conservation and Management Act.*

The CCC believes that all federal fishery regulations should be promulgated under the Council or Secretarial process established under MSA section 302 to 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 to 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 (NMSA), such restrictions or modifications to those fisheries should be debated and developed under the existing MSA process, unless a Council cedes this responsibility to another 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, the fishing industry and stakeholders are often not consulted, analyses of impacts to fishery-dependent communities are not considered, and regulations are either duplicative, unenforceable, or contradictory.

The legislation also contains a number of region or fishery-specific provisions which the CCC has not taken a position. For specific comments on those provisions, we suggest contacting the appropriate Council for their views.

Finally, the CCC believes that the following general tenets should be considered relative to any change in the MSA, in order for the Councils to fulfill their responsibilities:

- Avoid across the board mandates that could negatively affect one region to address a problem in another region. In addition, modifications to the Act should be national in scope with reasonable flexibility to address region-specific issues. Modifications to the Act which 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.

Thank you for the opportunity to provide comments on this important legislation.

Sincerely,