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# Regional Fishery Management Council Positions on Magnuson-Stevens Act Reauthorization Issues

Working Paper – prepared by Legislative Workgroup

April 26, 2017

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## INTRODUCTION !

### Purpose

The purpose of this working paper is to describe the range of regional fishery management council positions on key issues being considered as part of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) reauthorization process. Development of this paper was initiated at the May 2014 meeting of the Council Coordination Committee (CCC). During this meeting, the CCC, which is composed of leaders from each of the eight regional fishery management councils, developed consensus statements on a number of issues that had been identified for potential revision in the reauthorized MSA. In addition, the CCC proposed to develop a working paper to further explore several issues in greater detail. This effort resulted in a Working Paper: Regional Fishery Management Council Positions on Magnuson-Stevens Act Reauthorization Issues dated January 2015.

The CCC established a Legislative Workgroup at the May 2016 meeting with the dual purpose of preparing draft reauthorization comments for CCC review/approval and updating the working paper in preparation for review and approval by the CCC at the May 16-18, 2017 meeting.

### Background

Since 2012, the regional fishery management councils ("councils") of the United States have been engaged in discussions about the reauthorization of the MSA. A wide range of issues have been identified for potential consideration in the revised Act by fishery managers, law makers, fishing groups, environmental organizations, and others. While some proposed changes would primarily affect specific regions, others would have a broad impact on fisheries management across the United States. Congress has sought input from the councils on numerous occasions. Council leadership has provided written and oral testimonies at Congressional hearings, and most of the councils have provided feedback on draft legislation circulated by House and Senate Committees. Copies of past letters and other materials are contained on the Regional Council website on the MSA Reauthorization page: <http://www.fisherycouncils.org/msa-reauthorization/>.

At the May 2014 CCC meeting, the eight councils worked to draft consensus positions on many of the issues being considered as part of MSA reauthorization. The committee developed consensus positions on a portion of the issues considered. These positions were outlined in a subsequent letter to the Chairmen of the Congressional Committees involved in reauthorization. The CCC did not develop a consensus position on a number of issues that were discussed. As a result, the committee agreed to develop a working paper to further explore the following topics:

- Stock Rebuilding (Specifically, delayed implementation of rebuilding plans)
- Ending overfishing
- Annual Catch Limit (ACL) Requirements and Exemptions

This working paper synthesizes many of the perspectives that have been shared thus far and is intended to serve as a resource throughout the duration of the MSA reauthorization process. As such, it was designed to be modified and updated as positions change and new issues come to light.

The Legislative Workgroup met in January 2017 to begin work on drafting consensus positions for review and approval by the CCC in February 2017. More recently, two bills have been introduced:

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(1) H.R. 200 - The “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”; Sponsor – Congressman Young (R-Alaska); Introduced on January 3, 2017; Referred to the House Natural Resources Committee

(2) H.R. 2023 - The “Modern Fishing Act of 2017”; Sponsor – Congressman Graves (R-Louisiana); Introduced on April 6, 2017; Referred to the House Natural Resources Committee

## Current Positions

At the February 2017 CCC meeting, the CCC approved general comments on MSA reauthorization:

### Management Flexibility

#### Rebuilding Plans

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.

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

Some of the Act’s more prescriptive management 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 “overfished” definition, the statutory basis for this is unclear and would benefit from clarification in the reauthorized Act.

#### Transboundary Stocks

The CCC believes that 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; however, we are awaiting implementation of regulations to determine their effectiveness.

#### Data Limited Fisheries

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 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 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

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should have discretion to determine alternative control mechanisms or utilize ecosystem-based fishery management approaches for data-limited stocks.

#### **Definition of “Overfished”**

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.

#### **Transparency**

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.

Additional approaches to improving on the public transparent process described in MSA include defining more specifically how it is achieved in Councils’ Standard Operating Procedures.

#### **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 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.

#### **Catch Share Programs**

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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.

#### **Collection and Use of Fishery Data**

In general, the CCC believes that 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 CCC believes 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. New technologies may be an additional method of collecting and analyzing timely fisheries data at a reduced cost. 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. While NOAA's Marine Recreational Information Program (MRIP) has provided some improved statistical methodologies to reduce sampling bias, the program has only been partially implemented, and it has done little to increase the precision of catch estimates. Addressing this problem will require increased sampling rates, which can only occur with increased funding. The Councils are examining additional technologies that should be encouraged to get better data.

#### **Other Federal Statutes**

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 either duplicative, unenforceable, or contradictory.

#### **General comments**

The following general tenets that 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.

**Note:** The above wording/positions have been approved by the CCC. There are additional topics for which the CCC has not approved a consensus position. These topics are presented in the following section with individual Council regional perspectives and in some cases with suggested wording for a Consensus CCC Position.

The Legislative Working Group recommends that this format be continued and the working paper can be used as a source document

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when the CCC is responding to a request for comments. The working paper can also be attached to a letter to provide more details. The regional perspectives and examples are an excellent way to describe how requirements could affect Councils differentially. New topics will be added as they are identified. The working paper will be updated as needed and will be used to inform individuals new to the Council process.

The items below in yellow are suggested additions and draft wording is provided. They have been added as Topics 11 through 15.

#### Topic 11: Recreational Data

The CCC believes the current data collection program (MRIP) for the private recreational fishery is inappropriate for in-season monitoring/management. The data are not available in a timely manner for in-season management.

#### Topic 12: Commercial Data

The CCC believes the current commercial dealer reporting programs are not as timely as needed for in-season management. They are also not providing the accuracy that could be achieved. Increased enforcement of reporting requirements/deadlines and permit sanctions/non-renewal would greatly assist.

#### Topic 13: Expiration of EFPs after 12 Month

The CCC believes...

#### Topic 14 Data to be used in Stock Assessments

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#### Topic 15 Deeming/Transmittal Process

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## Topic 1:

# STOCK REBUILDING

Several modifications to the MSA have been proposed relative to the law's rebuilding requirements. Three of the primary issues that have been discussed are:

- Rebuilding timeline requirements (i.e., the duration of time allowed to achieve stock rebuilding)
- Exceptions to rebuilding requirements
- Overfished definition

## Rebuilding Timeframes

The MSA currently mandates that the time to rebuild depleted fish populations be "as short as possible," but no more than 10 years. Some have argued that this time requirement results in inconsistent management approaches depending on the life history of the stock. For example, a stock that is expected to rebuild in slightly less than 10 years in the absence of fishing mortality could require much more restrictive management than a stock that is expected to rebuild in slightly more than ten years. This results from the fact that the maximum rebuilding timeframe ( $T_{MAX}$ ) for a stock that cannot be rebuilt within 10 years is the minimum time that it would take to rebuild the stock in the absence of fishing plus one mean generation time.

In addition, councils and stakeholders have expressed concern that the 10-year rebuilding timeframe precludes the councils from adequately considering the social and economic needs of fishing communities.

Note: The Legislative WG agreed to go through the positions and make adjustments for words like "supports", "recommends", etc. to be in compliance with NOAA GC Guidance. Each Council representative agreed to go through and edit their respective sections and provide suggestions using track changes.

## Consensus Position

The CCC developed the following consensus position on rebuilding timelines:

*"Version 1: In general, the CCC believes the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would be beneficial. Version 2: In general, the CCC believes the addition of these measures would increase flexibility with respect to stock rebuilding for certain types of fisheries."*

*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 more effectively."*

## Regional Perspectives

### Mid-Atlantic:

The Mid-Atlantic Council believes the replacement of the ten-year rebuilding time limit with a more biologically-derived time requirement would be beneficial, provided that such a requirement has a reasonable chance of resulting in successful stock rebuilding.

Over the long term, statutory deadlines and rebuilding requirements have benefitted mid-Atlantic stocks, as well as many of the communities that rely on those fisheries for jobs, income, subsistence, and

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recreation. While these successes have often come at significant social and economic costs, we recognize that some adverse impacts are unavoidable during rebuilding periods. However, we feel that the 10-year rebuilding requirement has often exacerbated adverse impacts by limiting the Council's ability to fully incorporate social, economic, biological, ecological considerations into the development of rebuilding plans.

#### **New England:**

The New England Council believes the Magnuson-Stevens Act (MSA) should be amended to allow more rebuilding flexibility. The current emphasis on a fixed rebuilding time period assumes a level of stock assessment certainty that does not exist. We have little ability to predict, and no ability to control, the environmental changes that are key drivers in rebuilding progress. We think management should focus on ending overfishing and not arbitrary rebuilding time frames.

The requirement to define a fixed rebuilding period assumes that we know current stock size, stock size targets and rebuilding trajectories to a degree of certainty that is rarely met.

The New England Council also believes that if rebuilding timelines are retained, they should be designed in a way that avoids a discontinuity at the end of the targeted rebuilding period. This was not accomplished by recent changes to the NS1 Guidelines.

#### **South Atlantic:**

The South Atlantic Council believes that the rebuilding time requirement should be simplified, by eliminating the arbitrary 10 year requirement and using the current biologically-based rebuilding period alternative of Fishing Mortality (F)=0 + 1 generation time for all situations. The 10-year limit does not treat all stocks with varying life histories fairly and adequately. Short-lived stocks can experience several generations in that time, while long-lived stocks may only experience a small portion of a generation.

In the experience of the South Atlantic Council, the major impacts occur with the requirement to end overfishing immediately. While the impacts from this requirement have been severe and long-lasting, the impacts from rebuilding timeframes have not been a major issue because we adjust the annual ACLs based on the rebuilding projections.

#### **Gulf of Mexico:**

The Gulf Council agrees increased flexibility in stock rebuilding times creates a better balance between the biology of the fish and the socio-economic needs of fishermen. The Councils need greater flexibility to design rebuilding plans and respond to ending overfishing that are more appropriate for the life history of a particular stock. Greater flexibility would allow a Council to reduce severe social and economic impacts without jeopardizing the ability of a stock to rebuild to maximum sustainable yield (MSY). Congress can still provide appropriate guidance by requiring overfished stocks to be rebuilt to MSY or optimum yield (OY) as quickly as practicable, and in a manner that protects an overfished stock from further decline.

#### **North Pacific:**

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, allows for more appropriate management measures to be developed. 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", may be an appropriate mechanism for additional flexibility.

#### **Pacific:**

The Council believes replacing the 10-year rebuilding requirement with a timeframe reflecting life history, plus one mean generation s would result in more consistent application of rebuilding timeframes and

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*better balance between conservation and economic objectives of rebuilding strategies. While a strict 10-year rebuilding requirement may be appropriate in some situations, focusing on rebuilding in a certain amount of time can also result in overly-restrictive fishery management that is unnecessarily harmful to fishermen and fishing communities; it is apparent that more flexibility is needed to optimize multiple goals. The 10-year rule, where stock rebuilding must occur within 10 years if possible, can lead to a discontinuous policy that can grossly disrupt fisheries for little conservation gain. For example, if a stock can rebuild in 9 years at a cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g. one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild (11 years plus the length of one generation of the species), with obviously less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.*

The MSA requirement to rebuild as soon as possible, taking into account the needs of the fishery communities, has been subject to Court interpretation as nearly ignoring the needs of fishing communities until such time as they have demonstrated a disastrous state. Current administration of this requirement necessarily leads to large reductions in catch of directed fishery stocks that are being rebuilt, and can restrict mixed-stock fisheries when the rebuilding stock coexists with healthy stocks. It has been said that a solution may be as simple as changing the word "possible" to "practical." At any rate, there is a need for threshold clarity so as to allow Councils to properly take into account important social and economic impacts to communities when reducing catches in a rational stock rebuilding plan. It is important to note the purpose that rebuilding programs are designed for is to increase stock sizes to provide for biological stability and the attendant future economic benefits to the same fishery-dependent communities negatively impacted (and may even be required to endure a disaster) by the rebuilding program.

#### Western Pacific:

Overall, the Council *believes* language proposed to provide flexibility in rebuilding fish stocks *would be beneficial*. In particular, allowing for a phased-in approach over a three-year period is practical and takes into consideration impacts to affected communities. However, further guidance is needed in defining "highly dynamic fishery" as it applies to the use of this phased-in approach.

## Exceptions to Rebuilding Requirements

A number of exceptions to the MSA's rebuilding requirements have been proposed for certain categories of stocks, including data-limited stocks, internationally-managed stocks, multi-stock complexes, and terminating rebuilding plans if an overfished determination was found to be in error.

### Consensus Position

The CCC developed the following consensus position on exceptions to rebuilding requirements:

*"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."*

## Regional Perspectives

#### Mid-Atlantic:

Although we are not categorically opposed to exempting certain fisheries and circumstances from rebuilding requirements, we are concerned that the proposed exemptions are too far-reaching and that they lack sufficient detail to be implemented consistently. The proposed exemptions, as written in the current draft, could be used to justify continued overfishing in nearly any U.S. fishery. We are also concerned that the draft does not define an alternative management response that would be required in

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place of a rebuilding plan. We recommend that the language in this section be clarified and that the exemptions be more clearly defined to limit their potential for misuse.

We ~~believe~~ an improved mixed stock exception ~~would be beneficial~~, but we ~~feel~~ that the exception ~~should~~ be crafted in a manner that ensures adequate protection for weak stocks within a mixed stock fishery, to ensure their long-term sustainability.

We agree that a council should be able to terminate a rebuilding plan if a stock's status changes to not overfished. However, we believe that peer-reviewed stock assessments should be the basis for all status determinations and subsequent termination of rebuilding plans. Since the councils are not involved in making fishery status determinations, we recommend that the phrase if the Council determines that the fishery is not depleted, be either clarified eliminated.

#### South Atlantic:

~~Single stock moratoriums in multi-stock complexes are impractical, unrealistic, and result in unnecessary impacts on healthy stocks in the complex.~~

In the past, the Council spent considerable time developing an ABC/ACL for rock shrimp, a species that lives approximately 18 months. Such species cannot be assessed, and the Council cannot respond with management action, before all the assessed individuals are no longer alive. Similarly, dolphin (mahi) have not been assessed, as their life cycle of approximately three years would render traditional assessment outputs useless. Species with a life history of less than 3 years (choose) should be exempt from the rebuilding requirement. The Council can take independent action, similar to the Council's Penaeid Shrimp FMP (1991), to provide conditions supportive of a short-lived stock rebuilding after low abundance in any one year.

#### Pacific:

~~The Pacific Council agrees with exceptions due to changing environmental conditions, depletion due to international fisheries outside U.S. control, and a mixed stock exception that would rarely be instituted. Stocks later determined never to have been overfished should not be held to rebuilding provisions. The data and scientific approaches used to determine stock status evolve and improve, and revisions to past stock statuses are common. The best available science used to declare a stock overfished may later be improved and show that the stock was never overfished. In these cases, continuing to manage the fishery under rebuilding plan restrictions may no longer be necessary. However, the MSA does not explicitly exempt stocks from rebuilding plans when it is later determined the stock was never overfished.~~

~~The Pacific Council does not believe broad exceptions that might be exercised frequently or that might weaken incentives to conserve stocks for long-term sustainability would be consistent with the intent of the MSA.~~

## Overfished Definition

It has been suggested that the term "overfished" should be replaced with the term "depleted" or that a separate term should be added to the MSA to identify stocks that are depleted as a result of factors other than fishing, such as pollution or habitat loss/degradation.

## Consensus Position

The CCC developed the following consensus position on the MSA's definition of "overfished":

*"The CCC agrees 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*

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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."

## Regional Perspectives

### Mid-Atlantic:

The Mid-Atlantic Council believes the proposal to replace the term overfished with the term depleted would be beneficial and that this section should be expanded to provide the councils with a more explicit definition of depleted and clearer guidance on how to incorporate this change into the existing requirements of the Act. Several members have noted that although they prefer the use of the word depleted instead of overfished, they don't think this should affect the requirement to rebuild the fishery to sustainable levels. We also believe any measures that allow for distinction between causes of depletion, provided that this distinction does not affect the requirement to rebuild the fisheries in question would be beneficial.

### Gulf of Mexico:

We believe a change to clearly define "overfishing" and "overfished" as separate criteria for excessive fishing rate and poor stock health, respectively, would be beneficial. As currently defined in the Magnuson-Stevens Act, the two criteria are treated the same. Overfishing can occur on both a healthy and an overfished stock and is a transient condition (i.e., a rate) that can be corrected in a relatively short period of time. However, an overfished stock is the result of years of overfishing or environmental changes that typically can only be corrected gradually. The Magnuson-Stevens Act requirement to end overfishing immediately has likely contributed to the greatest undue economic hardships in the Gulf of Mexico. Temporary or short-term overfishing on a healthy non-overfished stock does not jeopardize the ability of a stock to achieve MSY or OY on a continuing basis.

### North Pacific:

Associated with the rebuilding issue is the definition of overfished. The Pribilof Island Blue King Crab example 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" or another term which denotes that stock status is not necessarily related to fishing activities may be an effective way to address this problem, noting however that the term "overfished" has definitive metrics associated with it. While more appropriate, any new term will need to be explicitly defined in order to be a measurable metric, and in order to avoid diluting the conservation goals associated with stock rebuilding. Allowing for an exemption from the rebuilding requirements, for any stock which is depleted with no relation to fishing activities, may be an appropriate addition to this section.

### Pacific:

The Pacific Council believes replacing the term "overfished" with "depleted" is appropriate because fishing may not be the primary factor resulting in a status change for a stock. The Council also recommends the definition of depleted and the definition currently used for "overfished" in the National Standard 1 guidelines should be consistent.

### Western Pacific:

The MSA should distinguish between fisheries that are depleted as a result of fishing and those that are depleted as a result of factors other than fishing. The Council believes redefining "overfished" to help distinguish between fisheries that are depleted as a result of fishing versus "depleted" as a result of factors other than fishing would be beneficial. This issue has been a point of contention for our Advisory

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Panel and fishing communities for many years, as numerous fisheries have been impacted by changes in habitat resulting from coastal development and other non-fishing activities. In particular, the Council looks forward to the NMFS reporting on the status of stocks as a result of this change.

#### South Atlantic:

The Council believes another term to separate stock declines from fishing (overfishing) and non-fishing reasons would be beneficial. However, the Council is concerned about using “depleted” as this has specific meaning under the MMPA and ESA.

## Topic 2:

### ENDING OVERFISHING

Several changes to the MSA have been proposed relative to the MSA’s requirement to end overfishing immediately. In general, the CCC agreed that some flexibility in this requirement is needed to account for unusual circumstances, such as when the status of a stock changes dramatically due to a new assessment and/or inclusion of new data into an assessment. The CCC also considered whether factors such as stock size, net present value, and uncertainty in the overfishing determination should affect the required response.

#### Consensus Position

The CCC did not develop a consensus position on this topic.

#### Regional Perspectives

##### Mid-Atlantic:

We believe the proposed language which would extend the duration of emergency measures from 180 days to 1 year, with the possibility of an additional 1 year extension would be beneficial. The current emergency action schedule was established in original act, and an extension of this schedule is appropriate given the additional process requirements that have been added since then.

##### New England:

The requirement to end overfishing immediately would benefit from a narrowly-defined exception when there is a dramatic change in the perception of stock status. This is the result of our recent experience with a cod stock, where two successive assessments presented a dramatically different view of stock size that was not due to fishing activity. A more flexible approach would allow a management reaction that would be responsive to the National Standard 8 requirement to consider the needs of fishing communities.

##### South Atlantic:

Problems in fisheries result from excess fishing, environmental changes, and a multitude of other factors that tend to develop over many years. Attempts to solve long-standing problems in a single year, especially in multi-species fish complexes, generally result in severe restrictions (with disastrous social and economic consequences). Implementing measures to immediately end overfishing on a single component stock of a complex may unnecessarily adversely impact other species in the complex.

The South Atlantic Council has used the approach of phasing in reductions necessary to end overfishing over a three-year period for two of our important species, black sea bass and snowy grouper. Both species were assessed in 2013. Black sea bass was completely rebuilt within the rebuilding schedule and the ABC was doubled; for snowy grouper, overfishing was no longer occurring and while still overfished, it was 10

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years ahead of its rebuilding schedule. The phasing in of catch restrictions allowed fishermen time to adjust their business plans to the catch reductions reducing the social and economic impacts that occur with the current situation of ending overfishing immediately. The South Atlantic Council believes that this is strong evidence to support the consideration of longer timeframes to end overfishing. Unfortunately, the recently issued modifications to the National Standard 1 guidelines that allow for a “phase-in” approach do not provide this flexibility, as they still require ACLs to be reduced to at least the OFL level immediately.

For red porgy, and more recently red snapper, the Council closed the fishery to end overfishing. This results in significant negative impacts to recreational and commercial fishermen and fishing communities. It also disrupts our fishery-dependent data collection, which inhibits our ability to monitor stock rebuilding. The Council recently completed an amendment that sets very restrictive regulations on hogfish to end overfishing based on limited data (greater than 60% reduction).

There are multiple definitions of overfishing. For example, recruitment and growth overfishing are basic measures that can be readily estimated for most stocks. Of these, recruitment overfishing is the most damaging to sustainability, as exceeding this level jeopardizes the ability of a stock to replace itself. At the other extreme is growth overfishing, where there is no risk to sustainability but a loss of potential harvest to the users. If the ultimate goal is to ensure long-term viability of a species, then recruitment overfishing should be the limit of exploitation (the OFL). This will allow managers to balance forgone yield (growth overfishing) against social, economic, and ecosystem concerns when establishing exploitation targets. Basing OFL on recruitment overfishing will provide a more meaningful standard to apply if overfishing must be eliminated immediately. The fishing public can understand the need to fish at or below a rate that allows a population to replace itself. Problems arise, however, when they are forced to endure the very low exploitation rates that are often necessary to achieve MSY on long-lived, slow growing stocks.

#### **Gulf of Mexico:**

In the Gulf of Mexico the greatest economic hardship has resulted from the requirement to end overfishing immediately. Temporary or short-term overfishing on a healthy stock does not jeopardize the ability of a stock to achieve MSY or OY on a continuing basis. For overfished stocks, the ability to end overfishing over a period of time provides the flexibility to implement a rebuilding plan with the least negative economic impacts. There are four species that are currently declared overfished in the Gulf of Mexico. Three of these species (i.e., gag, greater amberjack, and gray triggerfish) are under a 10-year rebuilding plan. Red snapper is under a much longer rebuilding time period. The primary concern is not the rebuilding timeline itself, but the requirement that Councils end overfishing immediately.

### Topic 3:

## ANNUAL CATCH LIMIT REQUIREMENTS AND EXCEPTIONS

### Issue 1: Role of the SSC

Under the current version of the MSA, councils are required to set catch limits at or below the Acceptable Biological Catch (ABC) limit set by the Scientific and Statistical Committee (SSC) for each stock. A discussion draft released by the House Natural Resource Committee (113<sup>TH</sup> Congress) included language that would constrain catch limits to the *overfishing limit (OFL)* instead of the ABC. This change would significantly modify the role of the SSCs in the quota-setting process.

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There were differing views on this issue and mixed support for the proposed change. Opposition to the proposed change centered on concern that fishing at or above the OFL would drive the stock into an overfished status. Conversely, support for the change was focused on the fact that the OFL is based on some distribution, and there is “buffering/potential double-buffering” between this OFL distribution and ABC (which incorporates scientific uncertainty). The CCC did not develop a consensus position on the role of the SSC in quota setting. However, the proposed language was removed from a subsequent draft released by the House NRC Committee.

### Issue 2: Incorporating Updated Stock Information

The Act requires that management decisions be based on the best available data. In some instances, such as Widow rockfish, managed by the Pacific Fishery Management Council, the councils have been required to continue rebuilding to a biomass target after new stock assessments indicate that the stock was never overfished. Rebuilding plans should not be this inflexible, and councils should be able to set Annual Catch Limits (ACLs) derived from their Scientific and Statistical Committee's (SSC) catch recommendations based on current stock assessment results. Recent revisions to the National Standard 1 guidelines state that rebuilding plans can be discontinued based on new assessments that show the stock is no longer overfished.

### Issue 3: ACL Exemptions

The MSA currently requires councils to establish Annual Catch Limits (ACLs) and Accountability Measures (AMs) for all managed stocks. For many data-limited species, setting ACLs requires the use of ad-hoc methods that have spurious outcomes and can result in inadvertently lost yield. A number of modifications to the MSA have been proposed that would either exempt certain stocks from ACL requirements or create alternative requirements for those stocks.

### Consensus Position

The CCC developed the following consensus position:

*“The CCC believes further consideration of exemptions, or alternatives to, the existing ACL requirements for data-limited species would be beneficial. The ad hoc methods 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 AMs have been effective management tools for some 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 for data-limited stocks.”*

### Regional Perspectives

#### Mid-Atlantic:

The Mid-Atlantic Council does not think the proposed language in Section 4(b) which would allow the Allowable Biological Catch (ABC) limit to be set up to the Overfishing Limit (OFL) would be beneficial. This change would significantly undermine our current process which accounts for scientific uncertainty and establishes a clear connection between ABC and OFL in assessed stocks based on a harvest control rule.

#### New England:

The requirement for annual catch limits assumes that we can accurately identify the catch that will give us the biological and economic results that we want, yet there are numerous examples that demonstrate that this is often not the case.

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### South Atlantic:

Stocks in a complex will vary in abundance over time, and it is unlikely that all will be at high abundances at the same time. Therefore, Mixed-species fisheries cannot be adequately managed by applying single-stock principles. Desirable fishery yield should be specified for overall complexes, while allowing individual stocks to experience normal variability.

In addition, the South Atlantic Council believes that ACLs should not be required for unassessed stocks or for assessed species that have not been re-assessed in 5 years. Basing ACLs for unassessed stocks on a quantitative portion of historical landings in the context of the precautionary principle will result in ACLs with no scientific basis that are open to challenge. Such ACLs could be artificially low, decreasing fishery yield, or too high, posing risk to the stock. The simple fact is that, without a legitimate assessment, neither scientists nor managers can make good recommendations, because historical landings are uninformative for estimating stock abundance. Particularly for mixed-stock fisheries, such as the South Atlantic Snapper Grouper Complex, with a long history of missing and inaccurate landings at the species level. The attempt to use a "one size fits all" approach will not work.

### Gulf of Mexico:

The biggest ACL-related challenges encountered by the Gulf Council is establishing ACLs for its reef fish species that constitute incidental catches within the grouper and snapper targeted fisheries. For multi-species targeted fisheries, the mandate to establish ACLs for incidental species can lead to closures that cause unnecessary economic losses relative to the harvest of the targeted species and with minimal biological gain for either the targeted or incidental species. However, we recognize that in some instances, it may be very important to control incidental fishing mortality on a stock in a mixed fishery. The councils should have the ability to determine the appropriate measure to use depending on the particular characteristics of a fishery in order to achieve their management objectives. Undesirable closures of target fisheries due to ACLs established for incidental species usually result in unnecessary economic losses relative to the harvest of the targeted species and minimal biological benefits.

### North Pacific:

ACLs have been used in the North Pacific for over 30 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-limited stocks. I can cite the North Pacific example two years ago where we were compelled to set an artificially low ACL for Pacific octopus based upon very limited historical information, rather than a robust stock assessment, and this artificially low ACL resulted in closures of fisheries which take octopus incidentally. This example underscores the need for robust stock surveys and assessments, which we believe should be a priority focus of any MSA reauthorization.

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, for the sake of short-term job creation. Accounting for uncertainty, articulating policies for acceptable risk, and establishing the necessary precautionary buffers, is an explicit outcome 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 (i.e., ABC).

### Pacific:

The Pacific Council believes language specifying that a carryover exception allows annual catch limits to be exceeded in order to carry over surplus and deficit harvest from one year to the next would be beneficial, provided there is a finding from the Scientific and Statistical Committee (SSC) that such a

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carryover provision will have negligible biological impacts. However, it appears the Discussion Draft language goes beyond achieving this goal, and the Pacific Council did not discuss the additional language and its ramifications.

As part of their business planning, fishermen in catch share programs need to know whether they may carry over surplus harvest from one year to the next; deficits are now routinely paid back the next year. In the past, there has not been a consistent policy application on this matter. If the SSC finds that carryover will not adversely affect a fish stock, then it should be explicitly allowed.

One common management challenge is developing and implementing annual catch limits (ACLs) effectively when the requisite data are lacking, when no data collection program is in place, and/or when major natural fluctuations in stock abundance occur more rapidly than stock assessments can be updated. When less information about a stock is available, or the data are outdated, current requirements call for a Council to set a particularly low ACL compared to the theoretically maximum allowable catch, out of recognition of a higher level of scientific uncertainty. While this is a logical approach in some regards, there is concern it may be overly conservative in some situations. It can lead to severe economic consequences when a rarely-caught stock about which little is known appears occasionally in a healthy mixed-stock fishery, and a new, highly buffered ACL for this rare stock suddenly requires a large reduction in the catch of healthy species; this situation essentially creates a bottleneck species that closes or substantially reduces an otherwise healthy fishery.

There are times when the best available science is not sound enough for active fishery management decision-making; the current approach for data-limited species may occasionally fall into this situation. Further, the current approach may limit obtaining scientific information on stock performance under higher catch rates.

#### Western Pacific:

The Western Pacific Regional Fishery Management Council believes that it would be beneficial if the next revision of the MSA allows exemptions from the ACL requirement, provides more flexibility in evaluating fisheries that require an ACL, and offers incentives for cooperative ACL management between the federal and state governments.

The MSA should have exemptions from the ACL requirement for data-limited stocks and add provisions for a time frame for which reliable fishery information needs to be obtained in order to remove the stock from a data-limited situation.

The Western Pacific Region has more than 1,000 insular management unit species. The fisheries that harvest these species are small-scale with multiple gears and multiple landing sites. Scarce biological and demographic information limit conducting stock assessments to determine the status of the species. Without stock assessments for majority of these species, overfishing limits cannot be determined and thus annual catch limits (ACLs) are based on catch-only methods, which are also data limited. Because of the strict mandate for ACLs in the MSA, the Council is forced to comply and develop ACLs that may not meet the intent of the MSA.

More flexibility should be given in the situation where data-limited stocks exist. National Standard 1 is too stringent given the data-limited nature of the Western Pacific fisheries. Majority of the data limited stocks can be managed through non-ACL approach and better managed through ecosystem-based fishery management. Additionally, ACLs for transboundary stocks should not be mandatory but rather utilized on a case by case basis taking into account international management regimes, biological connectivity of stocks, and relative impact of US fisheries on transboundary stocks.

The proposed changes in the Annual Catch Limit (ACL) section of H.R. 200 addresses many of the problems faced in implementing ACLs in the Western Pacific Region. Providing the Council the authority and

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opportunity to consider ecosystem and economic needs of the fishing community in implementing ACLs is a beneficial change to the current MSA text. The Western Pacific Council provides for similar considerations through an analysis that considers social, economic, ecological, and management uncertainty. Consideration should be given to include social and management elements in this section as ecosystem and economic variations are already accounted for. Given the overall underutilized status of fisheries in the Western Pacific Region, this language could be revised to: "In evaluating the need to establish annual catch limits, a Council may consider changes in an ecosystem and the economic needs of the fishing community". This provides the Council flexibility in having to apply ACLs for in fisheries where it may not be appropriate.

## Topic 4: RESOURCES AVAILABLE FOR ADDITIONAL MANDATES

### Consensus Position

The CCC developed the following consensus position:

The CCC remains concerned that important policy directives issued by NMFS (e.g., forage fish, allocation review, and ecosystem-based fisheries management) frequently do not take into consideration the need for additional staffing and resources that Councils may need to implement them. The demands on Councils to fulfill existing regulatory and management requirements are significant, and these should be met before any new mandates are required.

Baseline funding for sustainable management – At-sea surveys of fish populations are the ‘bread and butter’ of the sustainable management that is the hallmark of US fisheries under the MSA. Reducing stock assessment funds will reduce harvests by US fishermen, which will increase imports of foreign seafood. Increasing stock assessment funding is the best investment an administration can make in US fisheries.

### Regional Perspectives

#### South Atlantic:

The South Atlantic Council has concerns regarding the resources available (for both the Council and the agency) to meet additional mandates when there are basic data needs in the region that have gone unmet for years. NMFS has produced several policy directives over the past 18 months related to climate science, ecosystem-based fisheries management, and bycatch reduction as well as catch share program review guidance and stock assessment prioritization tools, all of which include a significant number of tasks for Council staff and NMFS staff. While the Council understands that these efforts are intended to prioritize and coordinate the agency’s science products and management endeavors, we believe that the success of such initiatives is dependent on data that are either incomplete or do not exist in our region. Lack of resources at both the Science Center and Regional Office for such basic needs as collection and processing of biological samples, economic information, and data management ensures that the sophisticated approaches outlined in the above policy directives will be out of the Council’s reach. Currently, the Council does not receive SAFE reports for our managed species due to these very same resource concerns. While the Council believes strongly that many of these approaches are necessary, we do not believe that they are achievable within the proposed timeframe given current resource constraints now and in the foreseeable future.

#### Gulf of Mexico:

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**North Pacific:**

We think this is, or should be covered, under our general principles section, as we think we all agree that no additional mandates should be imposed, without additional resources.

**Pacific:**

PFMC agrees with CCC statement from letter to Wilbur Ross.

**Western Pacific:**

The SAFE report requirements were not met in the Western Pacific region until 2015 when the Council led the restructuring of its existing Fishery Ecosystem Plan (FEP) Annual Reports to incorporate required SAFE report elements under the National Standard 2 Guidelines. The Council continues to lead the coordination of the annual update of the SAFE reports in the region, as NMFS has not dedicated staff and resources to oversee the production of these reports which are critical for monitoring fishery performance.

## Topic 5: INCREASED COST FOR MEETING TRANSPARENCY REQUIREMENTS

### Consensus Position

The CCC developed the following consensus position:

The CCC.....

### Regional Perspectives

**South Atlantic:**

The South Atlantic Council strongly believes that transparency in the public process is paramount to accountability and good decision-making. The Council currently webcasts all council meetings, SSC meetings, and advisory panel meetings to provide additional access to the public and stakeholders unable to attend these meetings in person. Verbatim minutes of all Council meetings (which includes Council committees, as well as public comment sessions), SSC meetings, and advisory panel meetings are currently transcribed, while audio recordings of all such meetings are available to the public upon request. While searchable audio files are available immediately after the conclusion of all meetings, written transcriptions are contracted externally. Although generally available within 30 days of the conclusion of a meeting, some may take additional time due simply to the length of the meeting and other commitments by the transcriptionist. Because audio files are directly recorded and maintained by council staff, making these available within 30 days does not pose an additional burden on the Council. Requiring written transcriptions within 30 days could significantly increase costs due to competing availability of transcriptionist's time, which is outside the Council's direct control.

**Gulf of Mexico:**

We currently do enough recording and broadcasting of our meetings that this mandate will not affect our current operations.

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#### **North Pacific:**

Requirements for webcasting and providing accessible, audio transcripts for Council meetings are already being met. Requiring similar webcasting and/or audio transcripts for SSC meetings would impose unnecessary additional cost, given the public nature of SSC meetings and the detailed nature of SSC meeting minutes.

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#### **Pacific:**

The Pacific Council already provides a live webcast of its meetings, and recordings are available online. The Council does not support adding additional broadcast requirements, especially prescriptive timelines (we have two Council meetings less than 30 days apart, and producing an official meeting record in that time would detract from higher priority activities). The Council is particularly concerned about the workload associated with the SSC requirement. The SSC provisions seem unnecessary since the SSC is an advisory body to the Council, while the Council makes the final decisions. In addition, minutes of SSC meetings are included as part of the Council's administrative record and are available online. No further administrative record should be necessary.

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#### **New England:**

The Council supports a transparent public process. As such, all Council meetings are currently webcast and recordings of all Council and Scientific and Statistical Committee (SSC) meetings are readily available. Transcripts of Council meetings are not currently prepared due to the cost, but could be prepared with adequate funding. Video recordings of Council and SSC meetings seem unnecessary and expensive and would create issues related to storage of large data files, and collection of video release forms.

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#### **Western Pacific:**

Requirements for archiving audio, video or written transcripts of the Council and SSC meetings on the Council website would add significant costs in technology services, equipment, transcription and staff time. No other federal advisory bodies (i.e. Sanctuary Advisory Council, MAFAC, US Coral Reef Task Force, etc.) have these requirements. Federal Reserve Board does not provide original transcripts, rather they lightly edit the speakers' words to facilitate the reader's understanding. Under section (H) of H.R. 200, the requirement for the Secretary to maintain the records is duplicative of the Council's requirement in (G).

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**Comment [12]:** WPFMC perspective added

### **Topic 6:**

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## CLIMATE CHANGE & REGIONAL ACTION PLANS FOR CLIMATE SCIENCE

Background: At the recent House Natural Resources Committee hearing on H.R. 1411, the “Transparent Summer Flounder Quotas Act”, Congressman Beyer (D-Virginia) asked Bob Beal, Executive Director of the Atlantic States Marine Fisheries Commission, a question about climate change and fisheries management. This will likely be one of the issue areas that some Members of the Congress will have an interest in pursuing during the reauthorization of the MSA.

Most Councils are already taking some aspects of climate change (stock recruitment, distribution patterns, etc.) into account in their stock assessments and harvest levels, and it would be good for each of the Councils to describe what they are already doing with respect to climate change and harvest levels.

### Consensus Position

The CCC developed the following consensus position:

The CCC...

### Regional Perspectives

#### South Atlantic:

Data collected by the SEAMAP, MARMAP, and SERFS programs are critical for detecting trends and changes in abundance and distributions of managed species as they relate to environmental and climate changes in the South Atlantic. These programs provide baseline data and represent the foundation for our understanding of species distribution, use of habitat, productivity, and effects of environmental and climate variability on the assessment and understanding of species distribution and availability to recreational and commercial fisheries in the region.

The Council appreciates NMFS’ support of and contribution to the developing SAFMC Citizen Science program. This program will address critical data needs in the South Atlantic, and the statement included in the South Atlantic Regional Action Plan highlights this opportunity: “boosting partnerships with stakeholders in the region could lead to hypotheses by hearing from fishermen who have observed changes over their careers or new data by implementing a Citizen Science program.”

The South Atlantic Council believes that the regional action plans are an important and far-reaching initiative, given the potential impacts of ocean acidification and warming waters on future managed-species distributions. However, as noted above, we are concerned about the potential for negative impacts to the existing basic data collection programs in the region that are already underfunded. The Council believes that the priorities identified in the South Atlantic regional action plan are appropriate, but that there are opportunities to leverage ongoing work or existing guidance documents by current partners in the region to complete some of the proposed tasks. A better understanding of oceanographic characteristics in the region, in combination with additional resources for our current data-collection programs noted above and continued support of efforts such as the Council’s Citizen Science Program, will be critical to the success of those priorities.

Finally, catches of a number of species (e.g., king mackerel, Spanish mackerel, cobia, blueline tilefish) are increasing in the Mid-Atlantic Council’s area. The South Atlantic Council extended the management unit for Coastal Migratory Pelagics in 1997 to include the Mid-Atlantic Council in anticipation of potentially

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shifting distributions of these migratory species. The South Atlantic Council also provides two voting seats for Mid-Atlantic Council representatives on the Mackerel/Cobia Committee and the Snapper Grouper Committee. Several years ago, the South Atlantic Council considered extending the snapper grouper management unit to include the Mid-Atlantic but decided not to proceed based on advice from the SERO and NOAA GC about permit complications. The South Atlantic Council is working with the Mid-Atlantic Council and NMFS (Northeast and Southeast) to have a SEDAR stock assessment completed for blueline tilefish. We see more instances for this sort of joint work on managing species as they continue to move northwards.

**Gulf of Mexico:**

We fully support this effort and welcome any additional resources that can be made available to enhance our collective efforts.

**Pacific:**

The Pacific Council supports the NMFS Climate Science Strategy and the list of priority actions described in Chapter 3 of the document. The Pacific Council encourages NMFS to identify and obtain new funding and resources to implement the Strategy that does not impinge on funding to continue current levels of data collection, analyses, and stock assessments.

The Strategy is particularly relevant to the Pacific Council because of our Fishery Ecosystem Plan (FEP), which was finalized in 2013. The FEP identifies a range of initiatives to facilitate ecosystem-based fishery management by the Council. Under the Cross-FMP Effects of Climate Shift Initiative the Council would assess and articulate its questions about the longer-term effects of climate change on its managed species, so as to better direct public and private efforts to provide management-relevant science. Whereas individual fisheries management plans will likely examine the potential impacts of climate change on particular species, the focus of this initiative would be on the combined, long-term effects of such changes on multiple species across all management plans. The Council concluded that the intent of this initiative is aligned with the NMFS Climate Science Strategy and directed its Ecosystem Working Group to revise the description of this initiative to make it better-align with the objectives described in the Strategy document.

The NMFS Northwest Fisheries Science Center Integrated Ecosystem Assessment Team annually prepares a State of the California Current Ecosystem (CCE) Report for the Council. This Report contains a variety of indicators chosen to provide an update-to-date and synoptic view of ecosystem status. The Council has directed its advisory bodies to begin work on a new initiative to refine and improve the indicators included in the State of the CCE Report so that they better-support the Council's ecosystem-based management policies (Completed in 2016, incorporated into report for 2017).

This initiative aligns with Strategy Objective 6, Track trends in ecosystems, living marine resources (LMRs), and LMR-dependent human communities, and provides early warning of change. The State of the CCE Report could evolve over time to include reference points to incorporate ecosystem considerations into management decision-making as described in Strategy Objective 1, Identify appropriate, climate-informed reference points for managing LMRs.

As discussed in the Strategy, the climate and oceans are changing, and managers will require the information necessary to address our marine resource stewardship mission under these changing conditions. The Pacific Council strongly agrees with the Strategy as one element supporting this mission.

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*The North Pacific Council has been actively involved in regional action plans for climate change, and establishing a process to prepare for, and address ecosystem changes as they occur. The Council has received presentations on and hosted an evening workshop on the Alaska Climate Integrated Modeling Project (ACLIM), which is a collaboration of diverse researchers aimed at giving decision makers critical information regarding the far-reaching impacts of environmental changes in the Bering Sea. Council members and staff also participated in a Resilience and Adaptive Capacity of Arctic marine systems under a changing climate stakeholder meeting, which is an international Arctic collaboration synthesizing stakeholder perspectives and scientific studies. At the same time, the Council is developing its own Bering Sea Fishery Ecosystem Plan, which is being designed to help the Council with proactive planning for the impacts of climate change. In conjunction with the FEP, the Council is planning an ecosystem research workshop for October 2017, to stay current with the most recent ecosystem and climate change research.*

#### **Western Pacific:**

*Regional Action Plans provide an opportunity for NMFS science centers and regional offices to meet with the Councils to address the impacts of a changing climate on fisheries. It is imperative that the Councils are represented on the Regional Action Plan working groups and that the group meets at least annually to facilitate communication and coordination. It is especially important for the Councils to be fairly represented on these working groups to ensure that sustainable fisheries are provided their due weight balancing out the NMFS concerns with protected species and habitat. The Council also believes that the Action Plans should address the stocks that are of economic, social and cultural importance.*

## Topic 7: FORAGE FISH

Background: Most Councils are already taking some actions to address forage fish, and it would be good for each of the Councils to describe what they are already doing.

### Consensus Position

The CCC developed the following consensus position:

**PFMC straw-man for discussion purposes, from our transmittal letter on forage fish protection amendment:** *The CCC supports prohibiting new directed commercial fishing in Federal waters on unmanaged, unfished forage fish species until a Council(s) has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. This is appropriate to proactively protect unmanaged, unfished forage fish of the U.S. Exclusive Economic Zone (EEZ) in recognition of the importance of these forage fish to the species managed under the Councils' FMPs and to the larger ecosystems functions. This action is not intended to supersede tribal or state fishery management for these species, and coordination would still occur through the existing Council processes.*

### Regional Perspectives

#### **South Atlantic:**

*As part of its Fishery Ecosystem Plan (FEP) II revision, the Council is working with a variety of partners in the region to expand upon previous modeling efforts to help us better understand the relationships between predator and prey species in the region. The importance of these relationships is highlighted in a*

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chapter specifically focused on food web dynamics in the FEP II. It is the Council's intent to use these tools to more appropriately manage the species within our jurisdiction.

If the Council had adequate information (e.g., gut content analyses, modeling results, etc.) it could set the ACL below the ABC to account for predator/prey interactions. This can be done under the current MSA once we have adequate data.

#### Gulf of Mexico:

At this time we think forage fish harvest is a non-issue.

#### Pacific:

The Pacific Council has amended its four FMPs (Coastal Pelagic Species, Groundfish, Highly Migratory Species, and Salmon to provide adequate protection for forage fish. The amendments prohibit the development of new directed fisheries on forage species that are not currently managed by the Council, or the States, until the Council has had an adequate opportunity to assess the science relating to any proposed fishery and any potential impacts to our existing fisheries and communities. This is not a permanent moratorium on fishing for forage fish. Instead, the Council adopted a review process for any proposed fishery.

#### New England:

The New England Council is considering an ABC control rule for Atlantic herring that will take into account its role as a key forage fish. In addition, since the mid-1980s the management measures for the Gulf of Maine and Georges Bank have prevented the development of a small-mesh fishery to target forage fish without seeking Council approval. The Council also adopted bycatch caps for river herring and shad that were implemented through its Atlantic herring FMP.

#### North Pacific:

In 1997, the North Pacific Council to action to protect forage fish by prohibiting a directed fishery and the sale and barter of small forage fish. The regulations reduce waste by allowing retention (up to a maximum retainable bycatch amount of 2%) and processing (into fishmeal) those forage fish caught incidentally in groundfish fisheries. Bycatch estimates of forage fish in all fisheries are calculated by observer sampling of catch through the North Pacific Groundfish and Halibut Observer Program. The forage fish species category includes all species of fish in defined families that includes smelts, lanternfish, sandlance, gunnels, pricklebacks, other small fish species, as well as euphausiids (krill). Although most (if not all) larger fish species are important prey at juvenile stages, they support important commercial fisheries, and as such, are appropriately regulated through FMPs (e.g., pollock) or through State of Alaska fishing regulations (e.g., herring).

#### Western Pacific

Forage fish species are included in the WP Council's Fishery Ecosystem Plans. ACLs have been specified for species such as big eye scads, mackerel scads, and deep water shrimp. The Council is also working with its partners in developing ecosystem models for the near-shore ecosystem that consider the biomass and productivity of the forage fish species as drivers for the ecosystem model. This is a non-issue at this time.

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Topic 8:

## FUTURE CATCH SHARE/IFQ PROGRAMS

### Consensus Position

The CCC developed the following consensus position:

*"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.**

### Regional Perspectives

#### South Atlantic:

*The South Atlantic Council has one long-standing IFQ program in the region (wreckfish) that was established in 1992. Since that time, the Council has considered the use of catch shares in the snapper grouper mixed-use fishery (2007-2008) and the golden crab fishery (100% commercial) (2012), but did not move forward with programs for either fishery. The topic of catch shares has lately been controversial in the South Atlantic and the Council is not currently considering additional catch share programs. The Council does have concerns regarding the recent agency guidance for review of catch share programs with respect to the resources needed to conduct such a review, and the potential impacts on the existing wreckfish ITQ program. This program experienced significant changes because of the 2007 MSA reauthorization that were very destabilizing to the fishery.*

*Prior to the requirement for ACLs, the Council managed the wreckfish fishery with a Total Allowable Catch (TAC) of 2 million pounds under an ITQ program. The fishery was landing considerably less than 2 million pounds, around 250,000 pounds, and if the Council reduced the TAC, individuals would have to purchase/lease additional shares to continue harvesting at existing levels. The Council concluded the management program in place was adequately protecting the wreckfish resource, and there was no need to reduce the TAC and cause unnecessary economic impacts to the participants.*

*With the requirement to establish ABC Control Rules and ABC/ACL for all species, the Council requested NMFS provide an updated stock assessment for wreckfish. NMFS responded that they could not provide an updated assessment and suggested the Council work with its SSC to develop a catch-based ABC. The following material is taken directly from the Council's Comprehensive ACL Amendment dated October 2011:*

*"The South Atlantic Council's SSC met in April 2010 to discuss ABC Control Rules for unassessed species. After extensive discussion of wreckfish issues, the SSC established that ABC was unknown and the South Atlantic Council should consider an ACL that did not exceed 200,000 lbs. One of the issues discussed was whether the management system of individual quotas tied to portions of the allowable harvest level potentially alters the relation between the recommended harvest and the realized harvest. Effort is reduced in the fishery, to the extent that recent landings are confidential because fewer than 3 harvesters have been in operation in recent years. Landings are reduced and recent trends in landings,*

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even if such landings could be publicly disseminated, are possibly not representative of fishery productivity.

The SSC discussed setting an ABC for wreckfish during their August 2010 meeting. The SSC stated that the 2001 assessment (Vaughan et al. 2001) indicated depletion at higher historical levels of effort and that the catch reductions appeared to have come mainly from gear restrictions, spawning season closure, and individual transferable quota (ITQ) implementation. Since stock size cannot be projected, an estimate of overfishing limit from the 2001 assessment could not be produced. A Depletion-Based Stock Reduction Analysis (DBSRA) or Depletion-Corrected Average Catch DCAC estimate (Table 2-14) could be calculated, but recent landings are confidential, therefore the SSC was not able to perform the calculations to produce these estimates. The SSC agreed the 2001 assessment was dated and did not apply to current landings and conditions. The SSC concluded that a control rule based on catch-only data should be used even though a stock assessment exists for wreckfish.

At the Second National SSC Meeting, Dr. Rick Methot (NMFS/SFD) presented a framework for dealing with data-poor stocks. Under this framework, a stock is categorized based on the status of the stock relative to its fishery. The framework includes a category that labels a catch as “moderate.” In these cases, it is possible that any increase in catch could result in overfishing.

In the absence of a current assessment and using a catch-only scenario at “moderate” historical catch, the SSC reached consensus that it was inappropriate to use an old assessment applied to new catch data for catches coming from potentially different fishing conditions than at the time of the assessment. Although an estimate of FMSY exists, it cannot be applied to current stock biomass. A recent estimate of F is close to FMSY, so increasing F could lead to overfishing if there were increases in catch. Even though BMSY is unknown, fishing at FMSY on a stock that is below BMSY is acceptable for a stock that is not overfished and this will allow rebuilding. Therefore, in September 2010, the SSC recommended setting the ABC at the average historical catch (1997-recent) of 250,000 lbs whole weight. Due to confidentiality of data, a more precise level could not be set. This level of harvest would cap fishery where it is, consistent with the —moderate level of historical catch in Methot’s table for catch-only scenarios. The SSC also recommended conducting DCAC or DBSRA analysis in the next year to compare with the current catch-only recommendation.”

Reducing the quota from 2 million pounds to 250,000 pounds whole weight imposed significant costs on participants and destabilized the fishery. Since then, industry funded a third-party stock assessment that was reviewed and approved by the SSC in 2014, with a resulting ABC determination of just over 400,000 pounds. This sequence of event has had a negative impact on stakeholder interest in IFQ programs. As noted previously, participants continue to have difficulty obtaining sufficient shares to meet current business needs.

#### **Gulf of Mexico:**

*Requiring referenda for initial catch share programs seems reasonable but future changes to a catch share program should be allowed without the requirement for additional referenda.*

#### **North Pacific:**

*The North Pacific Council has several Catch Share and IFQ 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. Full program performance reviews for all catch share and IFQ programs are conducted on a regular periodic basis. The Council also annually reviews the performance of the cooperatives, and*

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*provides adjustments to the programs as needed to better meet program objectives. The objectives 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.).*

#### **New England:**

*The draft language in this section continues to hamper the Council's ability to use all of the fishery management tools that are available by extending the referendum requirement before implementing any catch share program in New England and other regions. While the Council would prefer this requirement be removed, the discussion draft does reduce the requirement for approval to a majority of permit holders (rather than 2/3), and the Council supports this change. It is not clear if the draft language would prohibit allowing crew members to participate in the vote, and the language on which permit holders could participate lacks clarity.*

#### **Pacific:**

*The Pacific Council has two catch share programs, the first is a groundfish fixed gear sablefish program using tier limits. The Second is a groundfish trawl rationalization program using IFQs for the shoreside fishery and co-ops for the whiting mothership and catcher-processor sectors. The Pacific Council is not considering any additional catch share programs at this time. We have completed the first periodic review of the sablefish program and are currently engaged in the first periodic review of the trawl program. The Council did not conduct referendums for either program.*

#### **Western Pacific:**

*The Council continues to explore the potential application of catch share programs to limited access fisheries in the Western Pacific region through workshops and database projects, but has not implemented it as a management tool at this time. The Council believes that it is important to maintain flexibility so that each Council may decide whether and how to implement catch share programs in their region where appropriate.*

## **Topic 9:**

### **NEPA**

Background: If the Councils want changes to the current NEPA process, more reasons/examples that we can show why a change is needed would be helpful. Specific examples of delays would be helpful (e.g., the 14 day requirement before public hearings (HR 2023) would delay the process). One impact of such a change is that we would lose case history if removed from NEPA and insert into MSA.

### **Consensus Position**

The CCC developed the following consensus position:

*"The CCC notes that 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*

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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.”

## Regional Perspectives

### **Gulf of Mexico:**

Status Quo NEPA application to Council actions is ok.

### **North Pacific:**

Incorporating 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 NPFMC and the CCC generally. The provisions of HR200 accomplish that intent, and represent a unique opportunity to streamline our regulatory process. 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.

### **South Atlantic:**

The Council believes that if the analyses and process required by MSA are followed, the intent of NEPA would be met. In the past, the Council has experienced delays in amendment development when an initial EA determination was later changed to an EIS with a longer public comment period and document approval process. More recently, the Council has worked closely with the NMFS and NOAA GC to prepare consolidated documents that meet both MSA and NEPA requirements. The EA/EIS determination is made early in the process to avoid any delays. We have adapted to work within the current requirements.

The Council recently completed a regulatory amendment allowing harvest of black sea bass with pot gear for the 32 permitted fishermen, with a maximum number of 35 pots per permitted fisherman, a requirement to tend the pots, and a requirement to bring the pots back to shore at the end of a trip. The way NEPA was applied resulted in a delay in development, review, and implementation. This resulted in fishermen losing income from the 2-month delay in the start of the season.

### **Pacific:**

The Pacific Council believes integrating the policy objectives and key requirements of National Environmental Policy Act (NEPA) directly into the MSA, including the requirement to prepare “a detailed statement” on “the environmental impact of the proposed action.” could streamline and expedite the regulatory process. The Council developed proposed procedures as an approach to address the requirements in the existing MSA section 304(i)(1)(B) ENVIRONMENTAL REVIEW PROCESS; the Council does not believe what has been called for in the MSA has been accomplished. The Council believes the objective of these changes is not to circumvent the intent of NEPA, but to incorporate important aspects of the NEPA analysis and process directly into the MSA.

Developing compliance procedures for ensuring a Fishery Impact Statement meets the intent of the MSA provision will require substantial effort from Council and NOAA staff, and will likely result in FIS that are similar in scope and content to NEPA analyses and documents. The primary benefit to this process would be to reduce or eliminate National Marine Fisheries Service (NMFS) review of NEPA documents after a Council takes final action and before the regulations are transmitted to NMFS, thus starting the MSA review period. However, a similar lengthy review period for the FIS could also

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*occur unless there was an explicit time limit for transmittal after Council final action. Otherwise there is no guarantee that the intended benefits of this provision would be realized. Shortening the review period would also benefit the Council process by encouraging earlier Secretarial review of the "substantially complete" FIS provided to the Council prior to final action. A substantially complete FIS would provide an opportunity for more informed public comment and Council decision-making. This language could result in a more efficient fishery regulatory process, while ensuring that the NEPA objectives of informed decision-making and public comment opportunity are fully met.*

▲ Example 1: The Council took final action in March 2016 on a relatively simple gear regulation affecting only the recreational groundfish fishery in one state. Thirteen months later, NMFS has yet to request transmittal of the regulations, which starts the MSA clock and dictates an implementation date. Part of this particular situation is a staff shortage, but part is also due to review or preparation of the NEPA documents prior to initiating the rule making process.

Example 2. The Council used to take final action on groundfish annual management measures in early November to ensure implementation by January 1. Now, because of lengthy internal NEPA review and public comment periods after Council final action, the Council takes final action in June, and NMFS wasn't able to implement the regulations until January 7, which necessitated some emergency action, further delaying the process for other regulatory activities. The problem is largely because of the time spent by NMFS and NOAA GC on NEPA preparation/review before drafting the rules for deeming, delaying Council transmittal.

▲ **New England:**

*The Council supports streamlining the M-S Act and National Environmental Policy Act (NEPA) processes. The goal of NEPA is to provide the information needed for decision makers and the public to evaluate policy choices, but unfortunately this goal has been subsumed by a rigid adherence to bureaucratic requirements in order to withstand any potential legal challenge. The proposed language in the discussion draft would streamline the fishery management process while still ensuring that decisions are based on careful analyses.*

**Western Pacific:**

*The Council believes that the provision deeming that a fishery impact statement would fulfill NEPA requirements will be beneficial. Existing MSA requirements to prepare analyses for public review are largely duplicative of NEPA, but the new provisions would ensure that all NEPA requirements would be included in the new fishery impact statement process. The proposed MSA provisions would avoid analytical duplication and streamline public review processes.*

▲▲

## Topic 10:

## OTHER FEDERAL STATUTES

Background: **Changes** have been proposed to the MSA to ensure consistent fisheries management under certain federal laws. The proposals specifically address consistency with the National Marine Sanctuaries Act, Antiquities Act and actions necessary to implement recovery plans under the Endangered Species Act. Federal fishing regulations may also be promulgated under other federal laws such as the Marine Mammal Protection Act and through means under the MSA that circumvents the

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transparent and public Council process. Additionally, restrictions on fisheries may also be deemed necessary to implement requirements under the Endangered Species Act beyond species recovery plans, such as implementing Reasonable and Prudent Alternatives resulting from Section 7 consultation Biological Opinions.

## Consensus Position

The CCC developed the following consensus position:

*"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 (ESA), the Marine Mammal Protection Act of 1972 (MMPA), 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. 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 either duplicative, unenforceable, or contradictory."*

## Regional Perspectives

### **South Atlantic:**

*In the past, the Council has experienced delays in amendment development when a reasonable management alternative was identified by Protected Resources staff after the public hearing process. More recently, the Council has worked closely with the NMFS and NOAA GC to identify any alternatives that should be considered early in the process. We prepare consolidated documents that meet both MSA and ESA requirements. At times the Southeast Protected Resources interpretation of potential impacts to species has been much more restrictive than other region's determinations. This has caused significant delays and additional analyses with little to no data (e.g., black sea bass pot fishery). A clear independent and transparent peer review process for Protected Resource assessments, analyses, and determinations would be extremely beneficial to the Councils, the affected fishermen, and the public.*

*The Council recently completed a regulatory amendment allowing harvest of black sea bass with pot gear for the 32 permitted fishermen, with a maximum number of 35 pots per permitted fisherman, a requirement to tend the pots, and a requirement to bring the pots back to shore at the end of a trip. The way ESA/MMPA was applied resulted in a delay in development, review, and implementation. This resulted in fishermen unnecessarily losing income from the 2-month delay in the start of the season.*

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**New England:**

Management measures were adopted through the Antiquities Act that affect fishing in a recently adopted National Marine Monument.

**Pacific:**

The Regional Fishery Management Council (RFMC) process was created by the MSA in 1976 to provide transparent, public, regional management of fisheries resources. All meetings of the Pacific Council and its advisory bodies are open to the public, and all materials used to make management decisions are publicly available and posted to our website. In addition, the Pacific Council process adheres to the provisions of the National Environmental Policy Act, the Marine Mammal Protection Act, the Endangered Species Act, the Federal Advisory Committee Act, and other applicable laws. In June 2016, the RFMC's Council Coordination Committee unanimously adopted a resolution recommending that fishery management actions in the U.S. Exclusive Economic Zone should continue to be developed, analyzed, and implemented via the RFMC process, rather than being addressed by authorities such as the Antiquities Act of 1906.

The Pacific Council's transparent system provides all stakeholders an opportunity to express their opinions, share their knowledge, and be involved in the fishery management process, thereby improving Pacific Council decision-making and natural resource management. The Pacific Council believes that informed decision-making should involve an open process where impacts to the natural and human environment are disclosed and diverse viewpoints can be considered.

**Western Pacific:**

The Council believes that it is important to recognize the MMPA as one of the statutes that affect federal fisheries management in addition to the other federal statutes identified in H.R. 200. Measures to implement the MMPA False Killer Whale Take Reduction Plan modified gear requirements and fishing areas for a fishery that is otherwise managed under the MSA. Importantly, modification of the longline exclusion zone originally established under the Council process was modified through MSA section 305(d) (pertaining to responsibility of the Secretary), circumventing the process established under MSA section 302. The Council believes that developing federal fishery regulations to meet requirements of other federal statutes such as MMPA and ESA under the MSA section 302 process will ensure greater consistency and transparency in fisheries management as well as full consideration of impacts to fishing communities.

**Topic 11:**

**RECREATIONAL DATA**

Background: MRIP was not designed to track the recreational catch for monitoring recreational ACLs. In addition, the current MRIP survey is not providing useful estimates for many EEZ-caught species.

**Consensus Position**

The CCC developed the following consensus position:

"The CCC believes....."

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## Regional Perspectives

### **South Atlantic:**

Requirements to manage fisheries with specific Annual Catch Limits (ACLs) under the Reauthorized Magnuson-Stevens Act have significantly increased the importance of recreational catch estimates provided by the Marine Recreational Information Program (MRIP). This has led to closer scrutiny of MRIP methods, which has in turn led to a number of changes in those methods over the last few years. While many knowledgeable experts and scientific reviewers agree that these changes have reduced bias and improved the statistical properties of the estimates, there remains considerable skepticism among the fishing public, state managers, and Council members that the MRIP program accurately reflects recreational catch and effort. This skepticism is particularly acute among those who fish in the Exclusive Economic Zone (EEZ) in the South Atlantic and pursue species managed by the South Atlantic Fishery Management Council (SAFMC), as many of these species fall into the category of “rare events”, exhibiting catch estimates that are prone to outliers and high uncertainty. One success from increased efforts to promote awareness and understanding of MRIP is a more knowledgeable fishing public. The flip side of this success is that same public now becoming more aware of shortcomings and challenges, and more prone to let their dissatisfaction be heard, particularly when estimates that seem “wrong” to them lead to closures of favored fisheries.

Recreational fishing is incredibly important to the Southeast Region, including those areas managed by the South Atlantic and Gulf of Mexico Fishery Management Councils. Nearly 31 million recreational fishing trips are reported by MRIP for the South Atlantic and Gulf of Mexico Regions in 2016, representing 60% of the trips measured by the program. Over 2.7 million of these trips were taken in the EEZ, representing over two-thirds of all EEZ trips reported by MRIP. These values for 2016 are by no means anomalous; the Gulf and South Atlantic areas have accounted for over 60% of all trips over the entire MRIP survey period. Nor do these values represent the full importance of recreational fishing in the Region, as trips taken on headboats, or in Texas, are not included in these values.

Prior to requirements to manage by ACLs, large increases or “spikes” in MRIP estimates did not exert much effect on the management program, as the “MRFSS” program (as it was then called) was widely accepted as meeting its stated goal of providing accurate information on overall trends of recreational fishing, with less accuracy and precision expected of individual estimates. That is no longer the case, as management programs must now prevent landings from exceeding the ACL. Within the South Atlantic Region, a number of recent, high-profile, unexpected spikes have led to recreational fishery closures that, to many observers, are simply the result of outlier values within the MRIP estimation process, and not indicative of actual landings or fishery trends.

In 2015, NOAA Fisheries closed the **recreational hogfish fishery** in the South Atlantic on August 24 due to landings exceeding the ACL. This was triggered by an estimate for Wave 2 (March and April) of 228,494 pounds, a value that was 3.8 times the entire annual ACL of 85,355 pounds. Given that average annual hogfish landings reported by MRIP from 1986 to 2014 were only 75,126 pounds, and landings exceeded 100,000 pounds in only 4 of those years, the 2015 Wave 2 seems an outlier – far out of line with the normal and expected values. Moreover, in most recent years landings are highest in Waves 3 and 4. Nonetheless, the fishery was closed. The Council raised this issue in 2015, and the response from Dr. Dave Van Voorhees is attached. Percent standard errors were frequently well over 50% for hogfish. The response noted: “This level of imprecision could result in highly variable changes in the time series, particularly at the 2-month wave level, and may continue to be a source of concern moving forward.” We agree with this conclusion and want to work with NOAA Fisheries to address this problem across our fisheries.

In 2015, NOAA Fisheries closed the recreational blueline tilefish fishery on April 7 due to landings exceeding the ACL. MRIP reported 162,483 pounds of blueline tilefish landed in 2016, with 155,293 pounds (96%) taken in Wave 4. Total annual landings exceeded this single wave estimate in only 3 of the prior 20 years of estimates, and the 2015 landings for Wave 3 was only 373 pounds. Blueline tilefish appears particularly resistant to MRIP sampling efforts. No values are reported for 1986-1992, 1994, 1998-1999, and estimates are only reported in 1 or 2 waves for the 10 years from 1993 through 2005 that provide any estimate.

Impacts and consequences of abnormal and outlier catch estimates extend beyond the immediate effects of annual fishery closures, because such estimates become part of the databases that provide Best Scientific Information. Management action evaluations required for Council FMPs rely upon time series data, so the impact of an outlier value will be felt every time the dataset is used to evaluate an action. Stock assessments also depend upon the time series of past estimates. Unusual and outlier values, whether unusually high spikes or missing values effectively treated as zeros, add to the uncertainty of assessment estimates. As these values never 'go away', their impact on the assessment never goes away. In addition, nearly all Southeast Data, Assessment and Review (SEDAR) workshops devote considerable effort to evaluating outlier MRIP values. Even more importantly, the lack of public confidence in such values undermines confidence in the entire assessment product.

The Council recognizes that fishing effort in the EEZ is not a large component of the overall effort surveyed by MRIP, only representing about 8% of the trips observed in recent years in the South Atlantic Region. Given that total EEZ trips includes effort directed at common South Atlantic targets such as dolphin, billfish, tuna, and mackerels, the number of observed trips interacting, much less directing on, the species in our snapper grouper complex will be even lower. As a result, most, if not all, of the species in our snapper grouper complex can likely be considered 'rare events' when it comes to the MRIP sampling effort. The Council further recognizes that no generalized survey, such as MRIP, is likely capable of providing accurate, robust estimates of rare events in a cost effective manner. Unfortunately, there is nothing in the Magnuson Act that relaxes the requirements for management by ACLs when the only accepted monitoring program is simply incapable of providing estimates that meet the accuracy standards demanded for management by ACLs.

To address these important data issues, the Council is working with the NMFS SERO, Snook and Gamefish Foundation, state partners, and ACCSP on a project to pilot an electronic permit and logbook for the private recreational fishery. We will work closely with MRIP and the NMFS SEFSC during this project to ensure proper design, methods, and verification/validation. Validation would be greatly improved if the MRIP interviewers would ask if the person being interviewed has the electronic permit and record the permit number. The Council is also working on another project with the NMFS SERO, SEFSC, state partners, and Harbor Light Software, Inc. to conduct outreach for electronic reporting in the charter and headboat fisheries. This would greatly improve reporting in the for-hire fisheries.

#### Pacific Council:

The Council is concerned that [provisions described above] would necessitate more staff time and funding, require use of particular sources of data a priori, establish time-consuming--and in some cases duplicative--reporting requirements on what and how data are or are not used, and decrease flexibility of individual Councils. For example, stock assessments would be required for every stock of fish that has not already been assessed, subject to appropriations. The MSA already requires the use of the best scientific information available, and the prescriptive nature of HR 200 provisions

seem to duplicate existing Council processes and could divert staff efforts from other productive work.

## Topic 12:

### COMMERCIAL DATA

Background: Commercial data are not always available in a timely manner for monitoring commercial ACLs. Late reports continue to be a problem and this is an enforcement issue.

#### Consensus Position

The CCC developed the following consensus position:

“The CCC believes.....

#### Regional Perspectives

##### **South Atlantic:**

There have been considerable improvements in tracking the landings from dealers since implementation of the **Generic Dealer Reporting Amendment that requires weekly electronic reporting**. Some problems remain in a few commercial fisheries with a high rate of landings that affect the projection methodology and the resulting closure data to prevent exceeding the ACL. The Council remains concerned about the lack of law enforcement on delinquent dealers and commercial logbooks. Commercial fishermen are still allowed to not provide any reports during a fishing year and to then provide their logbook data at the time of permit renewal. The Council has repeatedly stated that **it wants this practice to stop**. If commercial logbooks are not provided during the fishing year, that permit should not be eligible for renewal.

##### **New England:**

Commercial dealer data is not available as quickly as needed for quota tracking. In addition, we are increasingly prevented from sharing relevant information with decision makers because of overly stringent interpretation of data confidentiality rules.

There is a need for more flexibility in the design of industry-funded monitoring programs. All Councils should have the discretionary authority to fund industry-funded monitoring programs using mechanisms similar to those granted to the North Pacific Council by the North Pacific Council by MSA Section 3133(b)(2).

## Topic 13:

### EXPIRATION OF EFP’S AFTER 12 MONTHS

Background: A number of Councils have used the Exempted/Experimental Fishing Permit (EFP) with success. In the Southeast, EFPs have come under increased scrutiny. HR 2023 proposes some significant changes to the current EFP process.

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## Consensus Position

The CCC developed the following consensus position:

*"The CCC believes....."*

## Regional Perspectives

### Topic 14:

## DATA TO BE USED IN STOCK ASSESSMENTS

Background: States and fishermen have collected and provided data for stock assessments. There is some dissatisfaction with how/if the data were used in a stock assessment. HR 2023 proposes some changes to address this issue.

## Consensus Position

The CCC developed the following consensus position:

*"The CCC believes....."*

## Regional Perspectives

### **Pacific Council:**

The Council is concerned that [provisions described above] would necessitate more staff time and funding, require use of particular sources of data a priori, establish time-consuming--and in some cases duplicative—reporting requirements on what and how data are or are not used, and decrease flexibility of individual Councils. For example, stock assessments would be required for every stock of fish that has not already been assessed, subject to appropriations. The MSA already requires the use of the best scientific information available, and the prescriptive nature of HR 200 provisions seem to duplicate existing Council processes and could divert staff efforts from other productive work.

### **Western Pacific:**

*The Council does not believe that all available information would necessarily constitute the Best Scientific Information Available. Available information (ranging from anecdotal evidence, unpublished data, gray literature to peer-reviewed articles) from various sources are at different levels of credibility. Published information from non-government sources may be considered credible but should be considered in the process of generating the stock assessments and incorporated in the analysis for evaluating management recommendation. The incorporation of such information from non-government sources should be done by the science provider generating the stock assessments rather than burdening the SSC with the responsibility of determining whether each piece of information constitutes Best Scientific Information Available. The Western Pacific region developed its regional peer-review process called the Western Pacific Stock Assessment Review (WPSAR). This process guides the review of stock assessment-based and non-stock assessment scientific information used for fishery management. The regional peer-review*

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process is a very tedious and involved process. Additional requirements to review information that is readily available will reduce the efficiency of the WPSAR process. While the Council supports the concept improving the effectiveness of fisheries management, adding this layer on the National Standard 2 definition of Best Scientific Information Available is problematic.

## Topic 15:

### DEEMING/TRANSMITTAL PROCESS

Background: The Councils/Regions use different processes to complete an FMP/Amendment and handle the transmittal process from the Council to NMFS for formal review. The MSA provides the following language:

SEC. 304. ACTION BY THE SECRETARY 16 U.S.C. 1854  
104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term “immediately” means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as

final.

### Consensus Position

The CCC developed the following consensus position:

*"The CCC believes....."*

### Regional Perspectives

## RESOURCES & DOCUMENTS !

Copies of past letters and other materials are contained on the Regional Council website on the MSA Reauthorization page:  
<http://www.fisherycouncils.org/msa-reauthorization/>.

NOTE: NEED TO FIX LINKS TO GO TO REGIONAL COUNCIL WEBSITE. CURRENT LINKS GO TO MAFMC LEGISLATIVE PAGE. ALL THE INFORMATION FROM THE MAFMC LEGISLATIVE PAGE HAS BEEN COPIED TO THE REGIONAL COUNCIL WEBSITE.

### Comment Letters

- [CCC Comments on MSA Reauthorization](#), June 2014
- [Council Coordination Committee Statement](#), November 2013
- [Mid-Atlantic Council Leadership Comments on Senate Working Draft](#), May 2014
- [Mid-Atlantic Council Comments on House Discussion Draft](#), May 2014
- [North Pacific Council](#), April 2014
- [Pacific Council](#), March 2014
- [New England Council](#), February 2014
- [West Pacific Council](#), January 2014

### Congressional Hearings

Click on any of the links below for additional information about each hearing, including background documents, complete witness lists, written testimonies, and archived video webcasts.

[North Pacific Perspectives on Magnuson-Stevens Act Reauthorization](#), February 27, 2014

U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

- [Statement of Mr. Chris Oliver](#), ~~Executive Director~~ of the North Pacific Fishery Management Council

[Legislative Hearing on H.R. \\_\\_\\_\\_\\_ \(Hastings of WA\), "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act"](#), February 4 and February 28, 2014

U.S. House of Representatives, Natural Resources Committee

- [Testimony of Mr. Richard B. Robins, Jr.](#), Chairman, Mid-Atlantic Fishery Management Council
- [Testimony of Ms. Dorothy Lowman](#), Chairman, Pacific Fishery Management Council

[West Coast and Western Pacific Perspectives on Magnuson-Stevens Act Reauthorization](#), January 30, 2014

U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

- [Testimony of Dr. Donald McIssac](#), Executive Director, Pacific Fishery Management Council
- [Testimony of Mr. Arnold Palacios](#), Chairman, Western Pacific Fishery Management Council

[Senate Hearing on Southeast Regional Perspectives on MSA Reauthorization](#), November 14, 2013

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*U.S. Senate Committee on Commerce, Science and Transportation*

- [Testimony of Mr. Douglass W. Boyd](#), Chairman, Gulf of Mexico Fishery Management Council
- [Testimony of Mr. Ben C. Hartig](#), Chairman, South Atlantic Fishery Management Council
- [Testimony of Mr. Carlos Farchette](#), Chairman, Caribbean Fishery Management Council

[Oversight Hearing on "Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act"](#), Sep 11, 2013

*U.S. House of Representatives, Natural Resources Committee*

- [Testimony of Mr. Richard B. Robins, Jr.](#), Chairman, Mid-Atlantic Fishery Management Council

[Senate Hearing on Magnuson-Stevens Act – Northeast and Mid-Atlantic Regional Perspectives](#), July 23, 2013

*U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard*

- [Testimony of Mr. Richard B. Robins](#), Chairman, Mid-Atlantic Fishery Management Council
- [Testimony of Mr. John Boreman](#), Scientific and Statistical Committee Chairman, Mid-Atlantic Fishery Management Council
- [Testimony of Mr. C.M. "Rip" Cunningham Jr.](#), Chairman, New England Fishery Management Council

[Oversight Hearing on "The Management of Red Snapper in the Gulf of Mexico under the Magnuson-Stevens Fishery Conservation and Management Act"](#), July 27, 2013

*U.S. House of Representatives, Natural Resources Committee*

- [Testimony of Mr. Kevin Anson](#), Vice-Chairman, Gulf of Mexico Fishery Management Council

[Oversight Hearing on "Data collection issues in relation to the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act"](#), May 21, 2013

*U.S. House of Representatives, Natural Resources Committee. Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs*

[Oversight Hearing on "The reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act"](#), March 13, 2013

*U.S. House of Representatives, Natural Resources Committee*

[Oversight Field Hearing on "Fishing = Jobs: How Strengthening America's Fisheries Strengthens Our Economy"](#), August 25, 2012

*U.S. House of Representatives, Natural Resources Committee*

[Oversight Hearing on "Empty Hooks: The National Ocean Policy is the Latest Threat to Access for Recreational and Commercial Fishermen"](#), March 22, 2012

*U.S. House of Representatives, Natural Resources Committee, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs*

[Legislative Hearing on H.R. 594, H.R. 1013, H.R. 1646, H.R. 2304, H.R. 2610, H.R. 2753, H.R. 2772, and H.R. 3061](#), December 1, 2011

*U.S. House of Representatives, Natural Resources Committee*

[Oversight Hearing on "NOAA's Fishery Science: Is the Lack of Basic Science Costing Jobs?"](#), July 26, 2011



U.S. House of Representatives, Natural Resources Committee, Subcommittee on Fisheries, Wildlife,  
Oceans and Insular Affairs

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