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The Honorable Doc Hastings
United States House of Representatives
1203 Longworth House Office Building
Washington, D.C. 20515-4704

Subject: MAFMC Comments on Magnuson-Stevens Act Reauthorization Discussion Draft

Dear Chairman Hastings:

The Mid-Atlantic Fishery Management Council ("The Council") appreciates the opportunity to comment on the Magnuson-Stevens Fishery Conservation and Management Act discussion draft released by the Natural Resource Committee in December 2013¹. The following comments are based on discussion of the draft by the Council's Executive Committee and subsequent review by the full Council at its most recent meeting. These comments are intended to convey the points of general Council agreement, but they do not necessarily reflect the perspectives of all members.

MAFMC Comments on MSA Reauthorization Discussion Draft

It is the position of the Mid-Atlantic Fishery Management Council that the Act has been highly effective at preventing overfishing and rebuilding overfished stocks and that the current version of the MSA provides a strong framework for successful fisheries management. However, we recognize that some aspects of the law could be improved. In some cases, overly prescriptive management requirements have limited the fishery management councils' flexibility to mitigate adverse social and economic impacts, resulting in losses of productivity and unnecessary instability for fishing communities. Some of these issues can be addressed with careful, targeted changes to the law, but we urge you to undertake these changes carefully so as not to compromise the integrity or ambition of the U.S. fishery management standards.

Section 3: Flexibility in rebuilding fish stocks.

In general, we support the draft's stated aim to provide flexibility for fishery managers and stability for fishermen, but we recommend the addition of a more explicit definition and explanation of statutory flexibility. Clarification on this matter would enable us to provide more specific comments about the provisions of the bill.

Rebuilding Timeframe

In general, the Council supports the replacement of the ten-year rebuilding time limit with a more biologically-derived time requirement, provided that such a requirement has a reasonable chance of

¹ H.R. _____ *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act*, 113th Cong. (2013)

resulting in successful stock rebuilding. We feel it is important to emphasize that 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 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. We believe that basing rebuilding time requirements on the biological characteristics of the stocks will result in a more even application of the law across fisheries.

Highly dynamic fisheries

Section 3 proposes to allow rebuilding plans to be phased in over a 3-year period for highly dynamic fisheries. In the absence of a definition for "highly dynamic fishery," we cannot comment on this measure, although we do have some concerns about its potential for abuse. While the majority of Council members have indicated that they endorse greater flexibility in rebuilding timeframes, many have also expressed concern that this exemption would allow for a protracted period of overfishing. We recommend that it be revised to include a definition for "highly dynamic fisheries" and additional details about how the exemption would be applied.

Exemptions to rebuilding requirements

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 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.

Alternative Rebuilding Strategies

We cautiously support the draft's allowance of "alternative rebuilding strategies, including harvest control rules and fishing mortality targets," but we request that this section be expanded to provide clarification regarding the purpose and application of this provision. Alternative strategies still need to be evaluated for their potential to successfully rebuild a stock.

Mixed Stock Exception

We support an improved mixed stock exception, but we recommend that the exception be crafted in a manner that ensures adequate protection for weak stocks within a mixed stock fishery, to ensure their long term sustainability.

Termination of Rebuilding Plans

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 or eliminated.

Emergency Measures

We support 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. 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.

Section 4: Modifications to the annual catch limit requirement.

ACL Exemptions and Requirements

Council members had mixed positions on the proposed exemptions from ACL requirements. Roughly one third of members supported the exemption for ecosystem component species, whereas two thirds supported an exemption for short-lived species, and half supported exempting stocks for which more than half of a single-year class will complete their life cycle in less than 18 months and fishing mortality will have little impact on the stock. Overall, this section would benefit from clarification about the rationale for these exemptions. We strongly support the proposed language which would authorize the use of multi-year specifications.

Annual Catch Limit Cap

We do not support 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). 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.

Section 5: Distinguishing between overfished and depleted.

We support the proposal to replace the term *overfished* with the term *depleted* but request that this section 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 support 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 support 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

Section 6: Transparency and public process for scientific and management actions.

Meetings

Providing a transparent and open public process is of utmost importance to the Council. We are constantly striving to improve the ways we communicate with stakeholders, as evidenced by the continued development of our communication and outreach program. However, we cannot offer an across-the-board endorsement of the proposed language in Section 6(b). These requirements are overly prescriptive, impracticable, costly, and would hinder the councils' abilities to tailor their communication strategies to meet the needs of their stakeholders.

We encourage you to review the methods already being employed by each council and consider both the need for, and feasibility of, the requirements proposed in the discussion draft. For example, our experience has shown that broadcasting live video from Council meetings does not significantly increase remote users' access to meetings and can often degrade the audio quality significantly. We have had much greater success with our current method of streaming webinars that display presentations and

Council motions together with live audio. These webinars are available to the public for the entirety of the meeting, and the recordings are posted on our website for later viewing. We make briefing materials and presentations available prior to the meeting and post detailed meeting summaries, meeting motions, and additional follow-up items promptly after the meeting.

SSC meetings are also open to the public, and audio recordings from the meetings are available upon request. Briefing documents are available online prior to SSC meetings, and detailed meeting summaries are posted afterward. We are currently exploring the feasibility of providing webinar access to SSC meetings.

We specifically suggest considering the following requirements to enhance and ensure public access and transparency in Council and SSC meetings: live webinar broadcasts, online briefing materials, online meeting summaries, and online audio archives. The live broadcast requirement should be subject to a venue's technical capacity, to ensure that communities are not disqualified as potential meeting venues due to bandwidth or technical limitations.

Compliance with National Environmental Policy Act of 1969

The Council has long been a vocal advocate for streamlining the implementation of NEPA in the fishery management process, but we cannot endorse the proposed language in Section 6(c)(1), which would essentially eliminate, or significantly reduce, the role of NEPA in the fishery management process. We feel that there are many opportunities to streamline the fishery management process and enhance coordination between MSA, NEPA, and other statutes without eliminating or reducing the role of NEPA. While we strongly support efforts to address the interaction of the MSA with other federal statutes, we recommend that the specific provisions in Section 6(c)(1) be reconsidered.

Section 7: Limitation on Future Catch share programs.

The Council does not have a position on the potential requirement that new catch share programs be approved by a majority of eligible permit holders in a referendum. However, if this requirement is included in the final reauthorization, we recommend that the councils be given significant control to determine how the referendum program is developed and implemented.

Section 9: Council jurisdiction for overlapping fisheries.

We support the proposed language in Section 9 which would allow a liaison from the Mid-Atlantic and New England Councils to vote on the other Council. This section would benefit from additional clarification specifying that the liaison will be a member of the respective Council, designated by the Chairman of that Council.

Additional Comments

A number of important issues were not addressed in the discussion draft, despite being mentioned on several occasions during committee hearings. We encourage you to consider addressing these as part of the reauthorization process:

Forage Fisheries

The draft is also silent on the management of forage fish stocks, which play an important role in the structure and function of marine ecosystems. The optimum yield (OY) definition in the current Act

provides for reductions below maximum sustainable yield for ecological considerations, and the National Standard 1 guidelines include references to managing forage stocks at levels above BMSY. Adequate consideration of the importance of forage stocks within regional ecosystems is an important consideration in the implementation of ecosystem principles in fisheries management and should be included in the Act.

Allocation Reviews

The majority of Council members support a requirement to review allocations periodically.

Sustainable Seafood Certification

In an increasingly global market, the sustainability of U.S. fisheries needs to be affirmed. Our standards for sustainable management are the strongest in the world, and an affirmation of this sustainability would be an important step to facilitate education, awareness and marketing for the benefit of U.S. fisheries. We believe there are many ways that a certification or branding program could be implemented without exorbitant cost or staffing requirements, and should be provided for in the reauthorization.

Highly Migratory Species

We recommend that the draft be revised to include measures that would improve the transparency and consistency of management for highly migratory species. There are several ways this could be accomplished. We would strongly support establishment of an independent Scientific and Statistical Committee (SSC) to provide scientific advice for HMS management. We also recommend that the reauthorized MSA require that a study be conducted to evaluate the potential benefits of establishing a HMS Council for the purposes of HMS management in the Atlantic, Gulf, and Caribbean regions.

Thank you again for the opportunity to comment on this draft legislation. Please don't hesitate to contact me if you have any questions or would like clarification on any of the comments above. We appreciate your continued interest in our perspective and look forward to future involvement in the MSA reauthorization process.

Sincerely,

Richard B. Robins, Jr.
Chairman

Cc: Dr. Christopher M. Moore
Mid-Atlantic Fishery Management Council
Council Coordination Committee
Mr. Dave Whaley
Mr. Jeff Lewis
Ms. Eileen Sobeck