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Subcommittee on Water, Oceans, and Wildlife
Legislative Hearing on H.R. 4690, H.R. 59, and H.R. 5770
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Chairman Huffman and Congressman Young, my name is Marc Gorelnik and I am here today to testify on behalf of the Council Coordination Committee (CCC), which is made up of the chairs, vice chairs, and executive directors of the eight Regional Fishery Management Councils that were created under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA).

Thank you for inviting me here today to speak to the reauthorization of the Magnuson-Stevens Act.

Let me start by saying that Magnuson-Stevens Act works. The Act requires that fisheries management be science-based, be conducted in a transparent manner, and be done with fishermen, scientists and other stakeholders at the table and involved in the management decisions that affect their livelihoods, their communities (including disadvantaged communities), and their futures. The Act requires fishery managers to balance the long-term environmental needs of the fisheries with the goal of maximizing the use of a natural resource to provide a healthy, renewable source of protein for the Nation. The Act includes a number of checks and balances to ensure that these sometimes competing goals can be met while maintaining the health of our fishery resources and the oceans that the fish rely on.

Without a doubt, this statute established the United States as the world's premier manager of fisheries resources. One of the major strengths of the Act is its support of a regional approach to fisheries management that is guided by an overarching federal framework. The eight Regional Fishery Management Councils are the cornerstone of that system.

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

As a group, we are strong believers in the Magnuson-Stevens Act – and not just because it established the Councils. The outcome of our management success is clear: commercial, recreational, and subsistence fisheries are key contributors to our coastal communities and the nation's economy. In large measure this is because the Act structured a very successful approach to sustainable fisheries

management. Central to the Act are the 10 National Standards that guide our management process. National Standard 1, which is the most important, requires that conservation and management measures shall prevent overfishing while achieving optimum yield from each U.S. fishery.

Let me emphasize the many successes of the MSA and the Council system. While some stakeholders have expressed frustration with specific Council decisions – and no doubt your phones ring when that happens – I think it is important to note that the MSA actually gives stakeholders seats at the table. The MSA created these Councils to provide a public forum for fishery management decisions to be made. This public forum allows fishery managers, state officials, fishermen, academics, environmental groups, federal officials, and other interested parties to have a say in the management of our public resources. The decisions made through this public process are based on the best scientific information available and use stock assessments that have been conducted in a public manner and peer reviewed. Finally, the decisions made by the Council are then again reviewed by the Secretary of Commerce and published in the Federal Register for an additional public comment period.

While this is a time-consuming and sometimes duplicative process, it ensures that decisions are fair, informed, and science-based. The process also is fully transparent.

We should not be content to rest on our laurels. We believe that, going forward, we can improve our efforts. Today I would like to highlight some of the issues that we believe need to be addressed. As will be no surprise, our regional approach to management means that the Councils each face different challenges. Despite these differences, there are a number of areas where our opinions on needed improvements are consistent. On a number of issues raised by the bills before us today such as the protection of forage fish, managing fisheries in the face of climate change, protecting important fisheries habitat, managing on an ecosystem level, etc., the Councils are already incorporating these important themes into fishery management decisions. However, to adequately address these issues, increased science and increased data are necessary. I will limit my comments to the consensus statements that all eight Councils support. I've structured my statement around broad issues that have been identified.

For more detail on these issues, the Council Coordination Committee has developed a Working Paper to describe consensus positions and the range of Regional Fishery Management Council perspectives on key issues being considered as part of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) reauthorization process. This working paper can be found at:

<http://www.fisherycouncils.org/msa-reauthorization/>

Before I get to specific issues in the bills, let me present a number of basic tenets that the CCC has agreed upon and we believe are important to any reauthorization of the Magnuson-Stevens Act in order for the Councils to fulfill their responsibilities under the Act:

- Across the board mandates that address a problem in one region can negatively impact another. As a result, 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 might 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 that allows for flexibility in achieving conservation objectives, but is specific enough to avoid lengthy, complex implementing regulations or “guidelines” would facilitate Council’s efforts to conserve and manage our nation’s living marine resources.

(Because of regional differences, legislation that identifies intended outcomes is easier for Councils to follow than prescriptive management or scientific parameters.)

- Legislation that avoids unrealistic/expensive analytical mandates relative to implementing fishery management actions allows for a manageable Council process. (Analytical mandates relative to implementing fishery managements are sometimes unrealistic or expensive to adopt.)
- Legislation that imposes constraints can interfere with the flexibility of Councils and NMFS to respond to changing climates and shifting ecosystems. (Some constraints can 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. (Mandates that are not supported by the necessary resources make it difficult for the Councils to implement them).
- The Councils are already pressed to meet the current requirements of the MSA and additional mandates will likely hinder existing activities.
- Preservation and enhancement of stock assessments and surveys should be among the highest priorities when considering any changes to the Act.

The two bills that reauthorize and amend the MSA, H.R. 4690, the “Sustaining America’s Fisheries for the Future Act of 2021” and H.R. 59, the “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”, have a number of areas of agreement: the need for more and better science for fishery managers; the need for better data collection – in particular for data poor stocks and recreational fisheries; the need for transparency in decision-making; an increased recognition of subsistence fishing; a change in definition for “overfished”; the need for Council coordination for shifting or transboundary stocks; the need for cooperative research; and the recognition that electronic monitoring presents opportunities for monitoring and enforcement.

Let me make a few general statements about H.R. 4690:

The CCC believes that some sections of H.R. 4690, as drafted, will increase the workload on the Councils and the agency, create demands for data and analyses that in many cases cannot be supported, could increase the risk of litigation on several important topics, appears to reduce the flexibility and the role of the Councils, and does not appear to authorize sufficient funding to meet its requirements.

H.R. 4690 proposes many new requirements that would be the responsibility of the Councils or NMFS. These include at least 25 periodic reports specific to fisheries management, additional elements that must be included in a fishery management plan, formal plans for managing stocks vulnerable to climate change, emergency operations plans, additional training to comply with revised ethics guidelines, etc. Each of these requirements increases the workload on an already saturated and stressed management

system. Some must be accomplished within a short timeline. When added to the demanding pace of routine management actions and adjustments to fishery management plans (FMPs), the CCC is concerned that these new requirements will interfere with completing the routine, but critical, work necessary to keep fisheries operating. The objectives and potential benefits of many of these requirements (particularly the reports) are difficult to discern. In many cases, some of the proposed deadlines associated with these new requirements do not reflect the time it takes to complete Council actions in a thoughtful manner that provides for extensive public involvement.

The workload created by the new requirements is exacerbated by the fact that many cannot be supported by available data and analytic capabilities. For example, H.R. 4690 would require estimating maximum sustainable yield (MSY) under current and future conditions. In many of our fisheries, estimating MSY under current conditions is difficult or impossible, so it is not likely it could be done for future conditions, either. Where MSY can be estimated, doing so under possible future conditions would be a complex challenge. It is not clear how such information would be used to inform current management. Similarly, the bill would require Councils to identify as Habitat Areas of Particular Concern areas that "...are or may become important to the health of managed species" (*emphasis added*). This would require Councils to predict the future in a dynamic, highly variable system. These are just two of many examples of the bill placing unrealistic demands on the available scientific information.

Another possible impact of H.R. 4690 is that it may increase litigation risk with respect to minimizing adverse effects of fishing on habitat and minimizing bycatch. This bill would remove the current standard that minimization must be accomplished "to the extent practicable." This phrase currently provides Councils the ability to develop measures that take into account all of the National Standards. However, removal of "to the extent practicable." will create questions and uncertainty over what meets the standard of "minimize."

The CCC is concerned that the changes proposed in H.R. 4690 would divert limited resources from current needs unless there are increases in funding. In many regions, the basic surveys and monitoring programs, data and analyses, and frequency of stock assessments needed to meet the current requirements of the MSA are not available. The increased requirements of H.R. 4690 could only be met if additional resources are provided to the agency. The CCC notes that the administration's FY 2022 request for Fisheries Programs and Services, which is based on current requirements, exceeds the bill's proposed appropriations for 2022. It is unclear how the additional activities required by H.R. 4690 could be carried out without a substantial increase in funding.

Let me touch on a number of key issues that have been raised by one or both bills:

Climate Change & Regional Action Plans for Climate Science:

The CCC believes that climate change demands a response that is commensurate with the magnitude of the threat. The sustainability and performance of our fisheries are at stake, and while fishery managers are unable to address the underlying causes of climate change, they are nonetheless tasked with meeting our conservation and management mandates in a changing environment. Climate change will impact entire marine ecosystems, and a single-species management approach will likely not be sufficient

to understand and account for these changes. Addressing climate change will require establishing the support to enable fishery managers to develop creative solutions to new challenges.

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

The ability of Councils to successfully manage fisheries in the face of climate change will require the ability to adapt to changing species distributions and productivity. However, many regions currently lack the robust baseline of fish and habitat surveys necessary to understand and quantify changes in abundance, distribution, diversity, and status clearly attributable to climate change, which will also make it more difficult to account for the impacts of climate change in analyses. It will also make it more difficult to comply with new legislative requirements, such as determining the impacts of climate change on future conditions of stocks and fishery participants. It will also be more difficult to account for the impacts of climate change in analyses. As the Councils continue to balance increasing competition for the ocean space – whether from protected areas, offshore energy development, or other users – these conflicts will inhibit the ability of fishermen and the Councils to be flexible.

Council Jurisdiction:

Regional Fishery Management Councils (RFMCs) are facing unprecedented management issues as a result of climate change. The changing environment is affecting the productivity, abundance, and distribution of some fish stocks, and it is becoming increasingly clear that all those involved in fisheries need to prepare for different, unpredictable futures. As stocks move, the RFMCs are grappling with how to adapt their management approaches to ensure fair and effective management of the stocks under their authority. Many regional Councils lack a robust baseline index of fish and habitat distribution, with rigorous temporal and spatial monitoring and surveys to assess the changes in abundance, diversity, and health to quantitatively attribute these fluctuations to climate change. Without this spatial survey data, the Council actions may result in overly precautionary harvest opportunities due to these uncertainties in assessment of climate impacts on stocks.

While a need to formalize a process for revising Council authority as a result of changes in fishery distribution may seem necessary, many of these issues are already addressed by the Councils themselves. This has been a particular area of focus on the Atlantic coast, where fisheries management authority in federal waters is divided between the New England, Mid-Atlantic, and South Atlantic Councils. These Councils have recognized this challenge and are working closely with each other to adapt to changing conditions. For example, the three East coast Councils are currently collaborating with the Atlantic States Marine Fisheries Commission and NOAA Fisheries on a climate change scenario planning initiative. Through this structured process, fishery scientists and managers are exploring how to best adapt and respond to jurisdictional and governance issues related to shifting fishery stocks.

A number of fishery management plans already account for overlap between Council management areas. For example, the New England Fishery Management Council and Mid-Atlantic Fishery Management Council manage two fisheries under joint fishery management plans and cooperate on the

management of several other fisheries that overlap the geographic areas of both Councils. Similar arrangements exist between the Mid-Atlantic and South Atlantic Councils and the South Atlantic and Gulf Councils.

Frequent reassignments of management authority could cause disruptions in Council operations, duplications of effort, Science Center workload bottlenecks, and losses of institutional knowledge among the staff, Council and SSC members, and others who have acquired specialized knowledge about the management or biology of a stock through years of involvement with the fishery. While major changes in management regimes may be warranted in certain cases, the CCC believes that less disruptive methods of adapting to climate change should be pursued first.

I note that in a recently-released report by NOAA titled “Governance Case Studies on Marine Fisheries that Cross Jurisdictional Boundaries in the United States”, the issue of transboundary fisheries management was studied. One of the conclusions reached was:

“In conclusion, trans-boundary fisheries are not new and NMFS and the eight Councils have a strong record of managing such fisheries sustainably using existing authorities despite the scientific and governance complexities. The case studies presented here document multiple approaches for addressing cross-jurisdictional governance issues. There are a variety of ways to answer these governance questions, with pros and cons to the various approaches. Factors to consider include: the necessary time and resources, stakeholder interest, biological factors, and the need for coordination.”

Essential Fish Habitat:

The CCC believes that Essential Fish Habitat (EFH) can be a useful tool for fishery management and provides protection for the habitat of Council-managed fisheries. However, changes to EFH that remove practicability standards, include arbitrary terms such as “adverse effects,” and mandate Council inclusion on all consultations may be impractical. MSA’s current use of “to the extent practicable” allows the Councils the flexibility to define EFH and HAPC as necessary. A requirement to define EFH and HAPC without that flexibility may result in broad definitions that have unintended consequences such as designation of harbors and marinas that may not be essential. Using terms such as “adverse effects” can have similar negative consequences without further guidance on what constitutes adverse effects. This may result in unnecessary mitigation requirement for fisheries. The Councils currently work with NMFS and are included on consultations as necessary but inclusion in all consultations would be a burden on the Council’s time and resources and potentially delay the completion of the consultations.

Bycatch:

With very limited exceptions, all commercial and recreational fisheries in the U.S. have bycatch, which is defined by the MSA as “those fish which are harvested in a fishery, but which are not sold or kept for personal use”, i.e., fish that are discarded. All recreational and commercial fisheries discard fish that are of not of the preferred species or size, or are required by regulation to be discarded.

National Standard 9 of the MSA requires that “conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” The word “practicable” includes social and economic tradeoffs in policy

decision making regarding management measures to reduce bycatch. Without the practicability clause, the level of bycatch that could be considered to be minimized is very subjective with wide extremes, and thus open to litigation as to what is an acceptable level of bycatch. A practicability clause can be particularly important for minimizing bycatch in recreational fisheries, which are typically managed with size and bag limits, and as a result tend to have high rates of regulatory discard (i.e., bycatch). The RMC's think the inclusion of the phrase "to the extent practicable" provides the appropriate threshold for achieving the optimal degree of bycatch minimization.

The amount and type of bycatch in each fishery is monitored and assessed using a standardized bycatch methodology established within each region of the U.S. in compliance with 50 CFR 600.1600-1610 (82 FR 6317). The regulation requires that each Fishery Management Plan describe the standardized reporting methodology for each fishery, including procedures used to collect, record, and report bycatch data in a fishery. Consistent data collection, reporting, and assessment across fisheries is not possible given the differences between recreational and commercial fisheries, and the types of gear used in the fisheries. Additionally, data collection, reporting, and recording procedures can be expensive, logistically challenging to design and implement, involve new and cutting-edge technologies, and necessitate the consideration of the safety of human life at sea. Thus, flexibility is needed the implementation of a standardized bycatch reporting methodology for each fishery, as well as across fisheries and regions of the country.

Bycatch estimates for U.S. fisheries are compiled and reported and regularly updated in the NMFS National Bycatch Reports, which are publicly available on the agency's website. While improvements are being made across the country to improve the accuracy and precision of these bycatch estimates, generating statistically accurate and precise information regarding bycatch in each fishery may be cost prohibitive in many fisheries, as it may require that all fish caught and discarded would need to be observed and monitored. Although many U.S. commercial fisheries have human observers or cameras on vessels to monitor and collect discard information, this would not be cost effective or technically feasible for small commercial fisheries or socially acceptable aboard recreational fishing boats.

Forage Fish:

The issue of increasing the protection of forage fish has been addressed in a number of bills including H.R. 4690 and H.R. 5770 the "Forage Fish Conservation Act of 2021". While the CCC has not been asked to provide feedback on H.R. 5770, a number of Councils were asked to comment on similar legislation that was introduced in the 116th Congress (H.R. 2236). In addition, the CCC Working Paper has a consensus statement on the management and protection of forage fish.

Forage Fish (consensus statement):

The Councils recognize that forage fish cannot be defined with a one-size-fits-all description or criteria. Species identified as forage fish by the Councils tend to be small species with short lifespans and may have an important role in the marine ecosystem of the region. Some of these species may exhibit schooling behavior, highly variable stock sizes due to their short life spans, and sensitivity to environmental conditions. Some forage species may consume plankton, and some may be an important food source for marine mammals and seabirds. The term "forage fish" appears to imply a special importance of the species as prey, however nearly all fish species are prey to larger predators and thus all fish species provide energy transfer up the food chain.

Councils should have the authority to determine which species should be considered and managed as forage fish. Under existing MSA provisions, some Councils already recognize the importance of forage fish to the larger ecosystem functions and those species are regulated under the Council's FMPs where appropriate. The CCC is concerned that any legislative definition of forage fish, based on broad criteria -- such as all low trophic level fish (plankton consumers) that contribute to the diets of upper trophic levels -- will not include other important types of forage (e.g., squid), unintentionally include important target fish species (e.g., sockeye salmon), and allow for various interpretations by different interested parties and thus invite litigation.

Provisions that would require Councils to specify catch limits for forage fish species to account for the diet needs of marine mammals, birds, and other marine life would greatly impact the ability of Councils to fulfill their responsibilities under the MSA. Many predators are opportunistic feeders and shift their prey based on abundance and availability. As a result, determining the exact amount of individual prey needed each year would be an enormous undertaking, and would divert limited research monies away from other critical research such as surveys and stock assessments.

NOAA and the states do not currently have enough resources to survey target stocks, let alone prepare stocks assessments for forage species that would be needed to set scientifically based annual catch limits. In the absence of this critical information and necessary resources, catch limits would need to be restricted to account for this largely incalculable uncertainty. Prey needs for upper trophic predators are already accounted for as natural mortality removals in stock assessment models.

Councils should retain the authority to determine species requiring conservation and management through development of FMPs. Any legislation that directs the Secretary to prepare or amend fishery management plans (e.g., recent legislation to add shad and river herring as managed species) creates conflicts with current management under other existing authorities.”

Transparency Requirements

The CCC thinks 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 may not capture presentations and motions, which are the most critical visual aspects of meetings. 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.

With respect to proposed requirements related to meeting recordings, the CCC notes that audio and video files are typically very large and that requiring all Council and SSC meeting recordings to be available indefinitely on Council websites would pose some technological challenges. Requiring the Councils to make meeting recordings available on the website for a limited period (e.g., six months after the date of recording) and thereafter upon request would be easier to implement. The CCC also notes

that requiring both the Councils and the Secretary to maintain public archives of all meeting recordings seems like an unnecessary duplication of effort and resources.

The CCC believes that requiring roll call votes on all non-procedural matters is unnecessary and would be time consuming and disruptive to the Council process. The MSA already requires the Councils to hold roll call votes at the request of any voting Council member (a much lower threshold than the one fifth of a quorum required for roll call votes in the U.S. House or Senate). While the CCC does not believe that changes to voting requirements are warranted, the CCC notes that a less disruptive alternative would be to require roll call votes only on final approval of any fishery management plan or amendment to be submitted to the Secretary.

Ethics/Standards of Behavior:

Council staff are subject to Rules of Conduct established by the Department of Commerce. In addition, Councils expand on those requirements through their SOPPs and Operations Handbooks. Legislative initiatives to deem Council employees as Federal employees with respect to “any requirement that applies to federal employees”, is a broad action with potential consequences reaching far beyond ethics to every facet of Council operations. Currently, Council employees are non-federal employees; thus, without access to all of the information available to federal employees and agencies, it is impossible for the Councils to anticipate the magnitude of impacts these changes would cascade throughout the current administrative and operations practices and procedures. Administrative costs may increase due to the need to monitor compliance with requirements and provide staff benefits and training. SOPPs will likely need to be updated and expanded. It will likely become difficult for Councils to hire and retain staff who are subject to all of the requirements of Federal employees when those staff do not also receive all of the benefits of Federal employees. The broad language in such proposals could be viewed as an effort to make staff Federal employees, which is counter to a basic tenet of the MSA and the federal fisheries management system.

Many Councils already have policies, regarding harassment in their Handbooks or SOPPs. To fully evaluate proposals to subject Councils to agency policies additional information is needed to clarify how the Secretary of Commerce will investigate allegations to determine if violations have occurred and impose the penalties if necessary. The SOC would need also make available to Council, Committee, and advisory panel members annual training that is consistent with the training provided to federal employees.

Councils currently adhere to 15 CFR Part 28, “New Restrictions on Lobbying” and are currently prohibited from use of federal funds for lobbying activities. Additional specifications for lobbying prohibitions, including prohibition from overturning any Presidential order, proclamation, or similar Presidential decree, are sometimes suggested. Because these existing regulations often lead to questions about the ability of Council and AP Members to communicate with officials when not in any official Council capacity and not using any Council funds, clarifying language will be required in guidelines supporting any regulatory changes indicating that Council members and advisors are not prohibited from communicating with elected and executive branch officials as private citizens not using federal funds.

New reporting requirements for documenting all discussions of Council members, Council staff, and members of Council advisory bodies with federal or state legislators and Federal executive branch

officials will likely add costs and time burdens to Council staff, especially the requirements to document all verbal communication and maintain all copies of this documentation on the Council website. Specific guidance would be needed on the types of communication are allowed, what should be documented, and when information must be made available. Posting such documented requests to a Council's website may delay the response, and documenting verbal (in person or by phone) requests would be problematic to verify. Council members may be invited to speak directly with legislative staff or members of Congress while on other Council business, such as the annual CCC meeting in Washington D.C.; it is not clear if these types of interactions would be subject to this provision. The term "routine fishery management" is vague and may not provide enough guidance to ensure Councils and their members comply with the intent of these provisions. For example, routine might be interpreted as anything covered in the MSA, or only implementing existing provisions of FMPs, excluding amendments intended to improve management; and "in the region" could be interpreted to preclude discussion of national or multi-region issues, which the CCC is charged with. Extending these provisions to NOAA GC would potentially violate attorney-client privilege; NOAA GC are the Councils' legal counsel, and conversations should not have to be made public. This would also remove the Councils as a resource for NOAA GC and Department of Justice attorneys in litigation.

Secretarial Plans:

The MSA currently authorizes the Secretary to prepare FMPs or amendments for stocks requiring conservation and management if the appropriate Council fails to do so in a reasonable period of time or if the Council fails to submit the necessary revisions after an FMP has been disapproved or partially approved. Proposals have been suggested to modify this language to specify that the Secretary must prepare such plans or amendments if the Councils do not submit the required FMPs or amendments "after a reasonable period of time not to exceed 180 days." (emphasis added)

The 180-day timeframe suggested is unrealistic and likely could not be met while complying with the rigorous and time-consuming requirements of the MSA, the National Environmental Policy Act (NEPA), and other applicable laws (ESA, MMPA, etc.). It generally takes at least two years (but often longer) to develop and approve an FMP or major amendment. Most Councils meet 4-6 times per year, meaning that the proposed 180-day timeframe may only encompass two Council meetings. This does not allow nearly enough time to initiate an amendment, conduct scoping, form plan teams (varies by region), collect and analyze data, develop and refine alternatives, solicit input from scientific and statistical committees or other advisory bodies, draft decision documents, conduct public hearings, review public comments, take final action, and prepare the required documents for submission to NMFS.

The MSA already provides the Secretary appropriate discretion to assess whether a Council is making reasonable progress toward development of the required FMP or amendment. This flexibility is necessary to account for the variability in time needed to complete a management action, which can vary greatly depending on the complexity of the issue, availability of scientific information, Council workload on competing priorities, and other factors. The CCC is concerned that creating deadlines the Councils likely cannot meet will shift responsibility for development of FMPs from the Councils to the

Secretary, thus undermining the deliberative and transparent council process that was created by the MSA.

Any specific time requirements should be crafted carefully and should be based on a detailed understanding of the Councils' responsibilities and procedural requirements under the MSA, NEPA, and other applicable laws. Several Councils have developed fact sheets summarizing the process and timelines associated with development of an FMP or amendment.

Establishing a time requirement without taking steps to streamline the process is unlikely to produce meaningful change. If the intent is to improve the timeliness of Council actions, this could be accomplished by improving alignment between NEPA and the MSA. Compliance with NEPA requirements is often the most time-consuming aspect of FMP or amendment development. MSA Section 304(i), included as part of the 2007 Magnuson-Stevens Reauthorized Act, was intended to more closely align the requirements of the MSA and NEPA within NMFS's NEPA procedures. The resulting policy directive issued by NMFS on "National Environmental Policy Act Compliance for Council-initiated Fishery Management Actions under the Magnuson-Stevens Act," has not, in the opinion of the CCC, provided for a more timely alignment of MSA and NEPA processes, reduced extraneous paperwork, or streamlined the environmental review process. It has, however, shifted an increasing portion of the NEPA-related workload on to the Councils. The CCC's white paper on "Integrating National Environmental Policy Act Compliance into a Reauthorized Magnuson-Stevens Act"[2] explores this issue and discusses potential areas for improvement.

Overfished Definition:

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.

Rebuilding Requirements:

In general, the CCC believes 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.

Under the rebuilding requirements currently in the Act, Councils determine the rebuilding schedule based on scientific information supplied by NMFS. Rebuilding timeframes balance the biology of the fish and the economic needs of those involved in the fishery to rebuild the fishery within the time limits allowed in the Act. There is often considerable uncertainty involved in the calculation of the rebuilding timeframe and, with changing ocean conditions occurring in some regions, rebuilding success can be even more uncertain. That is why the Act already requires that Councils assess rebuilding progress at regular intervals.

Requiring that a rebuilding plan meet an artificial goal (75 percent probability of success) if a rebuilding plan is not meeting the expected progress by the first assessment would almost certainly result in significant adverse impacts to fishermen and fishing communities. The experience of several Councils shows that this requirement could lead to closing fisheries, with severe impacts on communities. The suggested language would take away the flexibility that Councils currently have in balancing the need to rebuild overfished fisheries with the need to minimize the economic effects on fishing communities.

Often, changes to an assessment model can lead to an unexpected change in the understanding of stock status. Limiting a Council's ability to adapt to these changes because of a mandatory requirement would limit a Council's ability to modify the rebuilding program in light of the new information. As a result, fishermen and their communities would be penalized for improvements in science.

The CCC agrees 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.

Stock Assessment and Survey Data:

Surveys and stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the CCC believes that it would be beneficial for the MSA to include a requirement for the Secretary to develop a comprehensive plan and schedule to address stock assessment needs on a national basis. Increasing stock assessment frequencies and improving stock assessment methods to reduce the uncertainty in setting harvest limits and achieving management objectives will also improve the ability of Councils to establish scientifically-based ACLs, including for those fisheries that are currently considered data limited. However, the CCC is concerned that requiring the Secretary to complete a peer-reviewed stock survey and stock assessments for all FMP species within two years is unrealistic. Comprehensive stock surveys have not been done for coral reef and other areas because they would have been prohibitively expensive and would provide little benefit at great expense. While new emerging drone technology may reduce costs of some surveys, the CCC remains concerned about potential redistribution of survey and assessment resources from stocks with high commercial and recreational interest to those of lower concern. Should Congress insist on completion of these surveys, substantial increases in funding may be needed for this work.

In addition, there has been some discussion of establishing guidelines to facilitate incorporation of data from non-governmental sources in fishery management decisions. There are existing legal requirements that govern data collection and quality (e.g., Data Quality Act) that dictate what NMFS is required to use

for stock assessments. Data from fishermen, the states, and universities are already considered and evaluated for inclusion in stock assessment, as appropriate for the methodology and use of the data collected. These data sources are reviewed by the assessment analysts and through the peer review process that usually includes the Councils' scientific and statistical committees. The CCC believes prescriptive requirements for use of any data source are not appropriate. The implementing guidelines for when such information should be utilized will be critical to its veracity and usefulness to assessment authors and managers.

A cost comparison report on monitoring programs (for example, human observers versus electronic monitoring) would be extremely beneficial to development of such monitoring programs.

Recreational Data:

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

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

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

Commercial Data:

The CCC believes that the management of commercial fisheries could be improved by streamlining the fishery monitoring and reporting process to produce more timely catch data. In most regions, commercial dealer data are not available as quickly as needed for quota tracking, and commercial logbook data from fishermen are not available as quickly as needed for verification of dealer data. In some areas, commercial fishermen cannot upload electronic logbook data or use E-logbook systems due to the lack of a federal system to receive the data. The lack of timely commercial data requires fishery managers to make projections about when an ACL will be met, which can result in closing a fishery too early or too late.

In most regions, there does not appear to be a plan for the systematic collection of the necessary biological data from commercial fisheries for use in stock assessments (size, age, and reproductive data). Stock assessment data would be greatly improved, as would the assessment results, if NMFS would immediately prepare a written plan for each region and coordinate across regions to address species as

they move from one region to another due to changes in the environment. The CCC believes additional funding is required for successful implementation of such a data collection program.

Resources:

The CCC remains concerned that important policy directives issued by NMFS (e.g., 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.

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

LAPP Moratorium:

The CCC believes that Councils should maintain the maximum flexibility possible to develop effective management tools, including limited access privilege programs. Temporary moratorium is likely to increase the administrative burden for some Councils and may reduce the Councils’ ability to implement the appropriate management program for their fisheries that could include modification of existing LAPP measures or new LAPP measures.

Limited access privilege programs are 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.

Exempted Fishing Permits:

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

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

In addition, the CCC believes that multi-year EFPs provide the necessary flexibility to scientifically test gear across different years and seasons. New regulations that limit EFPs to a 12-month period will

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

Areas Beyond National Jurisdiction:

The Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ Agreement) under the United Nations Convention on the Law of the Sea (UNCLOS) is currently being pursued as an independent and legally binding instrument that would address sustainable management of marine resources in Areas Beyond National Jurisdiction (ABNJ). The conservation approach of the BBNJ Agreement is to create area-based fishing closure zones within the ABNJ.

The CCC recognizes that a successful international fishery management platform already exists and is currently managing fishery resources in the ABNJ. Regional Fishery Management Organizations (RFMOs) are tasked to ensure sustainable management of fish resources within their designated convention areas. In contrast to the BBNJ Agreement where closed area-based management measures are only being discussed, RFMOs pursue sustainable fishing goals by considering a myriad of available management tools and choosing the one that addresses the specific management challenge. The BBNJ Agreement also is developed in a political process with the input from ENGOs where the RFMOs develop recommendation in a science-based process in a public, transparent process similar to the Councils. The CCC is concerned that the development of the convention such that high seas closures could be imposed, would override existing RFMO authority, and unfairly impact US fisheries under FMC management.

In general, the CCC believes the existing RFMO instrumentalities are wholly sufficient to manage living resources outside of national jurisdictions, of which the United States is a part. Furthermore, the CCC supports the RFMO platform and believes it should not be subjugated by the BBNJ through implementation of a redundant management program.

Based on past and long-term involvement of CCC members in various RFMOs, the CCC believes the BBNJ Agreement, as currently presented, will likely undermine the ability of RFMOs to properly manage the fisheries in their convention area, negatively affect RFMO credibility, and potentially create animosity among RFMO memberships with the UN.

The CCC believes that ultimate fishery management authority in the ABNJ should remain with the RFMO platform. The BBNJ program should be incorporated into the existing regulatory framework of the RFMOs and under no circumstances should the BBNJ become a legally binding instrument that would work in conjunction with the RFMOs.

I believe it important to acknowledge the supportive relationship between the Councils and the National Marine Fisheries Service. Our management successes would not be possible without our close partnership. The Service is a key participant in the Council process and a key provider of the information we need. The regional offices and science centers are critical to our process. The healthy exchange of ideas and opinions between our groups leads to better solutions.

Finally, Mr. Chairman, as the effects of the recent COVID pandemic have shown us, the need to protect the Nation's food security is also an important factor to consider when making management decisions.

Thank you, Mr. Chairman for the opportunity to present the views of the Council Coordination Committee. I am happy to answer any questions.