



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

Council Coordinating Committee (CCC) Working Paper

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EXECUTIVE SUMMARY

Regional Fishery Management Council Positions on Magnuson-Stevens Act Reauthorization Issues - Council Coordinating Committee (CCC) Working Paper

The Council Coordination Committee (CCC), which is composed of leaders from each of the eight regional fishery management Councils, has prepared 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 synthesizes many additional 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 new issues come to light. This draft reflects all updates and consensus statements through the date on the cover page.

The Regional Fishery Management Councils (“Councils”) have approved 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.
- 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.

CCC CONSENSUS POSITIONS

The following are the consensus positions of the eight regional fishery management Councils regarding key issues being considered as part of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) reauthorization process. The consensus statements are grouped into three major topics (Science and Data Issues, Fishery Management Issues, and Council Process and Authority Issues). The statements are not listed in any particular priority order.

A. Science and Data Issues

Topic 1. Stock Rebuilding

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 MSA, 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.

Exceptions to Rebuilding Requirements

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.

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.

Topic 2. 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.

Topic 3. 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.

Topic 4. 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.

Topic 5. 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.

Topic 6. Cooperative Research

While some regions already have effective cooperative research programs, the CCC believes that an explicit national plan for conducting and implementing cooperative research could benefit both science and the management. Such a plan would promote buy-in for management actions. One example of a potential cooperative research application would be development of electronic reporting programs. However, because there are differences in regional needs, such plans should not be mandatory.

Topic 7. Cooperative Data Collection

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 assessments, 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.

B. Fishery Management Issues

Topic 1. Ending Overfishing

The CCC believes that some flexibility is needed in the requirement to end overfishing immediately 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.

Topic 2. Annual Catch Limit Requirements and Exemptions

The CCC believes that further consideration of exemptions or alternatives to the existing ACL requirements for data-limited species could improve the Councils' ability to provide stability in setting harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. Collecting the necessary data is critical to moving from such ad hoc methods to more traditional assessment methods. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms such as ecosystem-based fishery management approaches for data-limited stocks.

Topic 3. Forage Fish

The CCC recognizes that forage species play an important role in the structure and function of marine ecosystems. Under existing MSA provisions, some Councils have incorporated protection for forage species into FMPs where appropriate. The CCC believes the MSA already provides the Councils with adequate authority to address forage concerns. Current management efforts could be complicated by new requirements for forage fish management as it is not clear how these efforts would interface with the existing National Standards, which are the foundation of the MSA.

The CCC believes 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 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 --may not include other important types of forage species (e.g., squid) or unintentionally include important target fish species (e.g., pollock, shrimp, sockeye salmon, and whiting). Such broad definitions could allow for variable interpretations by different interested parties and thus invite litigation. 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. Further, the prey consumed by upper trophic predators are part of the natural mortality assumption in stock assessments.

The CCC believes that Councils should retain the authority to determine which species require conservation and management through 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. This can lead to confusion and additional litigation risk. Further, in order for a Council to add a forage fish to its FMP, there would need to be quantitative data to support federal management of that forage fish species.

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 funds away from other critical research such as monitoring surveys, processing of fishery-independent and -dependent samples, and stock assessments. NOAA and the states do not currently have enough resources to survey target stocks, let alone prepare stock assessments for forage species that would be needed to set science-based annual catch limits. In the absence of this critical information, the Councils' SSCs would have great difficulty addressing possible statutory requirements for forage fish. For example, information on the localized distribution of forage fish and ecological overlaps with other species and fisheries is often limited and highly variable. It is unlikely the necessary data and resources would be available in the near term, which could lead to more restrictive management measures for commercially valuable species that may fall under a definition of forage fish.

Topic 4. Catch Share Programs

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.

Topic 5. Mixed-use 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.

Topic 6. 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 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.

Topic 7. 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.

Topic 8. 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.

C. Council Process and Authority Issues

Topic 1. Resources Available for Additional Mandates

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 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.

Topic 2. 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.

Topic 3. NEPA Compliance

Fishery management involves fairly rapid cycles of adaptive management in which information about changing conditions is addressed through adjustments to the management program and regulations. The necessity for National Environmental Policy Act (NEPA) analysis of these actions results in

requirements that duplicate those in the MSA and other applicable law, including additional comment periods that delay implementation of these actions, which were developed through the open and transparent MSA process. Ensuring NEPA compliance for marine fishery management actions has been costly and time-consuming for Council and NMFS staff and has limited the Councils' abilities to pursue other regulatory activities. In addition, the CCC notes that there have been instances where compliance with NEPA has hindered adequate compliance with 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 MSA has been accomplished.

Topic 4. Other Federal Statutes

The CCC believes that all federal fishery regulations should be promulgated under the Council or Secretarial process established under MSA section 302 to ensure rational management of our fishery resources throughout their range. Under the MSA, the Councils are charged with managing, conserving, and utilizing the Nation's fishery resources as well as protecting essential fishery habitat, minimizing bycatch, and protecting listed species within the United States Exclusive Economic Zone. This is done through a transparent public process that requires decisions to be based on the best scientific information available. This time-tested approach has made U.S. fisheries management highly successful and admired throughout the world.

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

Topic 5. Exempted Fishing Permit Authority

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.

Topic 6. Timing and FMP Revisions

Legislated mandates for completing an FMP or regulatory amendment can place unrealistic demands on the Council and NMFS. Regulations are developed by the councils using a scientifically based, deliberative, and transparent process. It takes time to prepare adequate and informative scientific analyses, and receive important feedback from the public on potential impacts of alternatives, for effective decision-making by the councils. After the Council makes a decision and formally provides its recommendations, NOAA Fisheries reviews the submission, prepares proposed regulations if necessary and initiates a rulemaking process pursuant to MSA, NEPA, APA, and other legal requirements. In some cases, there are statutory requirements that limit how rapidly an action can be completed. For example, some statutes specify the minimum time that must be provided for public comments. Rushing to meet an amendment deadline without having adequate time for scientific and public input can result in less than optimal decisions, which in the end may result in a lengthier rulemaking process and provoke unnecessary and time-consuming litigation

Topic 7. Deeming/Transmittal Process

The CCC believes that extensive delays in approving Council plans/amendments and implementing regulations can result in confusion and direct economic losses to our recreational and commercial constituents. The MSA is rightfully so a measured and participatory process whereby the public get to see and participate in the development of plans/amendments/regulations. After this thorough process, the review and implementation process should conform to the timelines specified in the MSA. The CCC recognizes that resources are limited and that this often results in delays during the NMFS/NOAA GC review process; however, such delays should be minimized for the public's sake and to preserve the integrity of the process.

Topic 8. Aquaculture

As stewards of our nation's fishery resources, the Councils have an interest in ensuring that wild fish stocks, fish habitats, and commercial and recreational fisheries are minimally affected by the development and operation of aquaculture/mariculture facilities. To this end, the CCC believes that if the Councils have a clearly defined role in the siting, permitting, and review of aquaculture operations in federal waters, the permitting process will proceed more smoothly and conflicts between user groups will be minimized. For similar reasons, the appropriate Council(s) should be included during the identification and assessment of aquaculture projects including Aquaculture Opportunity Areas (AOAs) and the development of the associated programmatic environmental impact statements. Additionally, the Councils should be included on the AOA implementation teams.

The CCC also believes in the importance of clear and ongoing communication between all parties throughout the aquaculture permitting and authorization process. These parties include fishery management councils, commercial and recreational fishermen, developers, regulating and consulting agencies, and members of the public. The Councils have well-established relationships with fishery constituents and are ideally positioned to identify potential fishery conflicts and facilitate

communication with stakeholders who may be affected by proposed aquaculture facilities. The Councils also provide an open and transparent forum for scientific review, public input, and full consideration of potential interactions with fisheries. Permitting agencies and aquaculture developers should engage the appropriate Council(s), early and often, when identifying potential sites and during the project design phase to allow for early stakeholder input and mitigation of impacts to fish habitats and fisheries.

Topic 9. 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.

Topic 20. 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.¹

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

¹ <https://www.fisherycouncils.org/fact-sheets>

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]² explores this issue and discusses potential areas for improvement.

Topic 11. 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 though 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

² Integrating National Environmental Policy Act Compliance into a Reauthorized Magnuson-Stevens Act – A Council Coordination Committee Concept White Paper (February 2015), http://www.fisherycouncils.org/s/CCC_2015-02_022_nh_msa_reconciling_statutory_inconsistency.pdf

RFMOs and under no circumstances should the BBNJ become a legally binding instrument that would work in conjunction with the RFMOs.

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

Council Coordinating Committee (CCC) Working Paper

INTRODUCTION

The purpose of this working paper is 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. 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.

The CCC established a Legislative Committee 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. Based on input from the Legislative Committee, the CCC has approved numerous revisions to the Working Paper over time, such that it is essentially a living document.

This working paper synthesizes many additional 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 new issues come to light. This draft reflects all updates through the date on the cover page.

Background

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 of Representatives (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/>.

The topics addressed in this Working Paper are based on issues that have been introduced through various draft bills that have been introduced since 2014 to amend or reauthorize the MSA. More recently, the following bills have been circulated or introduced:

- **H.R. 2236** - “Forage Fish Conservation Act”; Sponsor Representative Debbie Dingell (D-MI); Introduced April 10, 2019.

- **H.R. 8632** - “Ocean-Based Climate Solutions Act”. Sponsor - Representative Grijalva (D-Arizona). Introduced on November 20, 2020
- **Discussion Draft** - Congressman Huffman (D-California) circulated a “discussion draft” of a bill to reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act in December, 2020. Not yet introduced.
- **H.R. 59** - The “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” to amend the MSA to provide flexibility for fishery managers and stability for fishermen, and for other purposes. Sponsor – Congressman Young (R-Alaska); Introduced January 4, 2021

Resources and Documents

Letters to U.S. Senators and Representatives (or their staff) that have requested comments on proposed legislation from the CCC and individual councils can be found at: <http://www.fisherycouncils.org/msa-reauthorization>

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.
- 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.

A. SCIENCE AND DATA ISSUES

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

Major provisions have been proposed to include modifying the rebuilding timeframe requirement, replacing the term “possible” with “practicable”; replacing 10-year requirement with timeframe reflecting life history, plus one mean generation, with exceptions; allowing consideration of environmental conditions and use of alternative rebuilding strategies; requiring Councils to specify schedules for reviewing rebuilding targets; and allowing Councils to terminate rebuilding if determination was found to be in error.

REBUILDING REQUIREMENTS

The MSA currently mandates that the time to rebuild depleted fish populations must be “as short as possible,” but no more than 10 years (with exceptions for biology, etc.). 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.

The short-term impacts of a rebuilding plan on fishermen and fishing communities are a function of the catches allowed during the plan. Catches during a rebuilding period are determined in large measure by two factors: the target date for rebuilding the stock (i.e. the length of the plan) and the targeted probability of success. These two factors determine the fishing mortality rate during the rebuilding plan. For a fixed ending date, increasing the probability of success will generally result in a lower mortality target and, as a result, lower catches during rebuilding. In the case of multispecies fisheries, lower catches for individual “choke” stocks may reduce overall revenues from the fishery. Once a stock is rebuilt, catches may increase because the target fishing mortality rate is higher than the rebuilding rate. As a result, it is possible that in some cases the economic benefits of rebuilding more quickly to these higher catches may compensate for the reduced catches during the rebuilding period. This is likely to occur only for very productive stocks that rebuild quickly.

In 2018, an early draft of Senate legislation included a provision that would require modification of a rebuilding program if a determination was made that the stock was not making adequate progress; however, this was not included in the approved bill. If this were approved, the Council would be required to adopt a new rebuilding plan with at least a 75 percent chance of rebuilding the fishery with the time limit as calculated by the Council’s scientific and statistical committee. A similar provision was included in a proposed amendment in a House bill.

Consensus Position

The CCC developed the following consensus position on rebuilding timeframes:

“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."

Regional Perspectives

NEW ENGLAND:

The New England Council believes the 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 MSY-based approach to management fundamentally assumes that stock productivity does not change over time. This assumption of stationarity is inconsistent with the rapidly changing environment, including climate change.

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.

MID-ATLANTIC:

The Mid-Atlantic Council believes the ten-year rebuilding time limit should be replaced with a more biologically-derived time requirement, 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 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.

SOUTH ATLANTIC:

The South Atlantic Council believes that the rebuilding time requirement should be simplified by eliminating the arbitrary 10-year requirement at $F=0$ and using the current biologically-based rebuilding period alternatives based on generation times or $75\%F_{msy}$ 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. Achieving a fishing mortality rate of $F=0$ is unrealistic in all situations and unfeasible for most multi-species fisheries. The requirement to rebuild at $F=0$, if possible, creates an incentive to delay a stock assessment and management action until a stock's condition declines to where rebuilding at $F=0$ will certainly be longer than 10y to ensure an option for significantly longer rebuilding times. Allowing longer rebuilding times will not result in overfishing, for the simple fact that other MSA provisions require target fishing mortality rates below the level that causes overfishing. However, they will give the Council greater flexibility to address social and economic impacts. (Last modified May 2021).

GULF OF MEXICO:

The Gulf Council agrees that 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 with appropriate consideration 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. (Last modified April 2020).

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 would result in more consistent application of rebuilding timeframes and 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 "practicable." 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.

The need to review rebuilding targets may vary by circumstances and stocks. For example, a stock that has a long rebuilding time but is not a constraining stock in the fishery may have a different assessment priority than a constraining stock with a short rebuilding time. The Pacific Council has an assessment prioritization process that can account for these (and other) factors. Prescribing a review schedule for the former case that is likely to change based on higher priority needs would be inefficient, counterproductive, and possibly detrimental if a less important assessment was prioritized over a more important assessment.

WESTERN PACIFIC:

Overall, the Council believes providing 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:

"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."

Regional Perspectives

MID-ATLANTIC:

The Mid-Atlantic Council acknowledges that exemptions to the rebuilding requirement could be appropriate for certain fisheries and circumstances. 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. Any exemptions from rebuilding requirements should be clearly defined so as to limit their potential for misuse.

We believe that a Council should be able to terminate a rebuilding plan if a stock's status changes to not overfished and that peer-reviewed stock assessments should be the basis for all status determinations and subsequent termination of rebuilding plans.

SOUTH ATLANTIC:

The South Atlantic Council strongly supports allowing exceptions to rebuilding requirements when critical aspects of a rebuilding plan are beyond the Council's control, the stock requiring rebuilding extends into international waters beyond US jurisdiction, the stock is short-lived, or the need for rebuilding is based on uncertain, data-limited analytical techniques. The impacts of climate change on stock distributions and their overlap with Council jurisdictions should also be considered as a basis for exceptions. For stocks that extended beyond the US EEZ, management of the US portion should be targeted to optimizing yield of the resources available to US fishermen. The MFMT for such stocks should be based on maximum yield concepts (Fmax) rather than MSY. (Last modified May 2021).

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.

GULF OF MEXICO:

The Gulf Council recognizes the necessity for exemptions to rebuilding plan requirements, especially for assessments on data-limited stocks that may or may not result in determining if a stock is overfished, or if the determination from a previously accepted stock assessment was found to be in error. It is not uncommon for the Gulf Council to manage a species for which little information is available and even a data-limited stock assessment is not feasible (e.g., lesser amberjack, almaco jack, and wreckfish). In these cases, it is not possible to determine whether such a stock is overfished and, in such circumstances, it may be prudent to withhold such a designation for a particular un-assessable species. Second, if it is possible to conduct a stock assessment on a species, such assessment is peer-reviewed and accepted, and determines that the stock is above a Council's

minimum stock size threshold, then that Council should be able to determine that stock in question is no longer overfished. (Last modified April 2020).

DEFINITION OF OVERFISHED

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 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.”

Regional Perspectives

MID-ATLANTIC:

The Mid-Atlantic Council believes that replacing the term overfished with the term depleted would be beneficial. 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 would be beneficial, provided that this distinction does not affect the requirement to rebuild the fisheries in question.

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.

GULF OF MEXICO:

The Gulf Council thinks that 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 MSA, 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 and/or environmental conditions. The MSA 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. (Last modified April 2020).

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 that 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. Using "depleted" rather than "overfished" allows a better understanding of stock status and avoids biased interpretations of the cause(s) of low stock abundance. The Council also recommends the definition of "depleted" and the definition currently used for "overfished" in the National Standard 1 guidelines should be consistent.

In addition, clarifying the distinction between "overfished" and "overfishing" is important to making the MSA more comprehensible, and recognizes the different management responses to crossing threshold levels, i.e., developing a rebuilding plan vs. ending overfishing.

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 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.

2 Climate Change & Regional Action Plans For Climate Science

CONSENSUS POSITION

The CCC developed the following consensus position:

"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.”

REGIONAL PERSPECTIVES

NEW ENGLAND

Climate change affects the productivity of fishery resources. The MSY-based management approach of the MSA does not recognize the rapid pace of these changes. More flexible approaches are needed, such as the use of dynamic reference points or reference points that do not assume stationary processes.

MID-ATLANTIC:

Fishermen and fishery managers have already observed climate-related changes in some East Coast fisheries. As the marine environment becomes warmer and more acidic, some species have shifted north, moved offshore, or exhibited changes in productivity and recruitment. For the Mid-Atlantic Council, “climate readiness” has involved an explicit and strategic focusing of attention on coordination with East Coast fishery management partners. In 2014 the Council hosted two climate workshops – the first focused on the current state of climate science and the potential impacts of climate change on marine ecosystems, and the second addressed the management and governance implications of climate change. The outcomes of these workshops were incorporated into the Council’s Ecosystem Approaches to Fisheries Management Guidance Document.

The Mid-Atlantic Council supports NMFS’ climate science strategy and has committed to continue working with NMFS on the implementation of this strategy in the Greater Atlantic region. The Council also supports the use of regional action plans to increase the production, delivery, and use of region-specific climate-related information. However, it is imperative that the implementation of these plans does not compromise existing fishery data collection programs.

SOUTH ATLANTIC:

Fishermen in the South Atlantic are observing climate related changes including northward shifts in stock distributions, changes in the size composition in some areas, and changes in nearshore abundance. There is also increasing evidence that changes in currents and water temperature may be implicated in declining recruitment for some stocks.

The Council agrees that a strong scientific foundation is critical. Adequately responding to these changes will require adequate data to define and characterize the changes. Current data collection efforts in the South Atlantic region, both fishery-dependent and fishery-independent, are inadequate and cannot meet this need. Survey efforts must be expanded and must be compatible with the efforts in neighboring regions to ensure that information on climate change effects is BSIA. Coordination and cooperation with state partners is also required to ensure future data are adequate.

The South Atlantic Council believes that the regional action plans are an important and far-reaching initiative. However, implementing the action plans must not take resources from other monitoring efforts that already struggle to meet BSIA standards. The plans should be designed to increase our understanding of oceanographic and fishery characteristics in our region and also to address the social and economic consequences of climate change.

Data collected by the independent survey and monitoring 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 agency has made improvements in coordinating survey efforts and expanding coverage, but significant data gaps remain. The Council supports increased efforts to include fishermen, universities, and state agencies in future survey plans as a way to address the chronic budget shortcomings in our region. (Last update May 2021).

GULF OF MEXICO:

The Gulf Council, along with the NMFS Southeast Regional Office (SERO) and the NMFS Southeast Fisheries Science Center (SEFSC), incorporate considerations of climate change in amendments to FMPs and stock assessments. For example, the Gulf Council and SERO incorporate climate change considerations into the Description of the Biological Environment, and in the evaluation of Environmental Consequences. The SEFSC and the Gulf Council solicit and include (as appropriate) research on fish stock range expansion or shifting, fish stock abundance, and other environmental variables in SEDAR stock assessments for Gulf species. Further, the Gulf Council and the SEFSC are working jointly on the development of climate vulnerability plans to further inform future management decisions.

The Gulf Council anticipates that climate change impacts will greatly influence its efforts to maintain stable fisheries. Temperature driven changes to migration patterns and life stage distributions may be the most noticeable initial effects. In fact, anecdotal accounts for both king mackerel and yellowtail snapper in the Gulf of Mexico are suggestive of such effects. However, longer-term and more negative impacts may come from ocean acidification, which may impact the ontogeny and abundance of the plankton upon which all our fish larval species prey. Ocean acidification may also first affect the fish larvae themselves in this critically sensitive life stage. The Gulf Council fully supports any effort to address climate change mitigation and research, but also fully supports the position of the South Atlantic Council that existing surveys (SEAMAP, MARMAP, others) not lose funding as a result of any new survey initiatives.

Further, like the South Atlantic Council, the Gulf Council engages its stakeholders using its “Something’s Fishy” data collection tool to identify otherwise overlooked patterns in biological or

oceanographic factors for a species prior to its being assessed by the SEDAR stock assessment process. At present, the Gulf Council has collected data from stakeholders on seven species (red grouper, gray triggerfish, yellowtail snapper, vermilion snapper, scamp, king mackerel, and cobia), with these data having a direct effect on the consideration of the severity of the 2018 red tide event in the eastern Gulf on red grouper. The continuance of the “Something’s Fishy” data collection tool will allow the Gulf Council to continue collecting information from on-the-water stakeholder observations.(Last modified April 2020).

NORTH PACIFIC:

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. The Council recently approved a Bering Sea Fishery Ecosystem Plan, which will provide proactive planning for the impacts of climate change. In conjunction with the FEP, the Council has held ecosystem research workshops to stay current with the most recent ecosystem and climate change research.

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.

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.

3 Recreational Data

BACKGROUND

The Marine Recreational Information Program (MRIP) is inadequate to track the recreational catch for monitoring a number of recreational ACLs and was not designed to provide data for in-season ACL management. In addition, the MRIP survey did not provide useful estimates for many EEZ-caught species due to the low number of trips being intercepted.

Proposed changes would create Federal-state partnerships to improve implementation of state data collection programs, require biennial reports from the Secretary to Congress on these programs, create Federal grants to states, and require the National Academy of Science to evaluate these programs after one year.

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

REGIONAL PERSPECTIVES

MID-ATLANTIC:

The 2006 reauthorization of the MSA introduced a new requirement for the Councils to develop accountability measures (AMs) for all federally managed fisheries. While AMs have been effective management tools for some fisheries, they must be developed appropriately for recreational fisheries, relative to the available catch data. Councils need the ability to develop recreational AMs that are consistent with the precision, accuracy, and timeliness of the catch estimates, in order to manage recreational fisheries effectively. Councils should not be required to manage their recreational fisheries beyond the limitations of their available catch data, and the Act should support recreational AMs that are reasonable relative to the data. In recreational fisheries monitored by NMFS' Marine Recreational Information Program (MRIP), the Councils should be able to consider confidence intervals about the catch estimates when developing triggers for AMs.

SOUTH ATLANTIC:

Recreational fishing is incredibly important to the South Atlantic and the Council supports further modifications to MRIP to improve the estimates for Council-managed resources. MRIP was not designed to meet the needs of management by quantitative catch limits and in-season accountability, and implementing such measures for recreational fisheries will remain controversial and difficult until data collection is made compatible with mandated management approaches.

While changes made to MRIP over the last decade have corrected errors in the estimation process and improved estimates of uncertainty, they have done little to address concerns with accuracy, reduce uncertainty, or improve buy-in with constituents. As most of the species managed by the Council fall into the category of “rare event species”, the current MRIP sampling level will never be able to consistently provide estimates with acceptable levels of precision. The Council therefore urges the agency to develop and support alternative approaches that are better suited to species that are rarely encountered in the generalized survey. Long-standing issues such as assigning all catches in Monroe County, FL, to the Gulf of Mexico and the use of different weight estimation approaches by the Southeast Fisheries Science Center and MRIP can be resolved without additional funds. The Council also recommends increased attention on outreach and angler contact to address ongoing constituent concerns.

The Council supports development of a systemic plan for collection biological data from recreational fisheries, while further requesting that (1) the Council be included in plan development to ensure its priorities are addressed, (2) the recommendations of the plan be funded so the data deficiencies will be resolved, and (3) common data standards are followed in regional plans to ensure data from one region are compatible with those from another region as required to respond to climate change impacts.

The South Atlantic Council has taken actions to improve recreational data through its amendment requiring mandatory reporting of for-hire fisheries and supporting a citizen science program to fill

data gaps. For the reporting program to be effective, additional agency resources are required to support biological sampling, trip validation, and law enforcement. The Council supports efforts to ensure alternative data sources, such as those from our citizen science program, are openly and transparently considered, based on their merits, in assessment and management analyses. (Last update May 2021).

GULF OF MEXICO:

The MRIP was not designed for in-season ACL monitoring and nothing short of a complete overhaul would make it effective for in-season monitoring. The inability of MRIP to monitor ACLs in a timely manner has forced the Councils and NMFS to set advance season dates that oftentimes either result in an underharvest or overharvest. Thus, post-season accountability measures have been developed to manage the recreational fisheries. The current process could be more efficient and designed to reduce uncertainty. One could say the problem is not necessarily due to MRIP but by the requirement of Congress to manage all fisheries using ACLs. In addition, recent changes in the MRIP data collection methodologies have made monitoring ACLs problematic and past estimates of fishery population size unreliable. Granted, improvements in data collection are always welcome; however, methodological changes to MRIP have been frequent and have created greater uncertainty in our management process. Further, frequent changes or modifications to sampling programs or effort calibrations, resulting in sometimes dramatically different estimates of catch, effort, and stock size, degrade stakeholder confidence in these data collection programs. This problem is further complicated in the Gulf as several states have developed individual or supplemental data programs that may create another source of catch estimates and create confusion. These new estimates may also result in a marked increase in workload for the affected Councils as catch limits and sector allocations must be updated to reflect the new “best scientific information available.” (Last modified April 2020).

PACIFIC:

Proposed Federal-State partnerships: The Pacific Council believes additional interaction through partnerships and best practices between the states and the Secretary would help clarify data needs and uses that could improve Council management of fishery resources and increase consistency between state and Federal management programs with overlapping or mutually dependent management jurisdictions. However, the Council already partners with NMFS and Pacific States Marine Fisheries Commission on state data collection programs. We are concerned about both the funding and workload impacts of prescriptive proposals on NMFS, especially given that NMFS’ funding and staffing already constrain Council functions.

Subsistence fishing: In addition, including the term “subsistence fishing” provides needed context to the importance of fishing activities to Native cultures. The language could, however be improved by expressing to what fishery sectors the term may or may not apply (e.g., recreational, commercial, treaty Indian, non-Indian, indigenous, etc.). Ceremonial and subsistence fishing has a long history in Indian treaty case law, and it should not be confused with recreational or commercial fishing. Treaty Indian subsistence fishing should be separated and clearly distinguished from some broader definition of subsistence that might include recreational fisheries. It should also be noted that treaty tribes may engage in and authorize commercial fisheries in addition to ceremonial and subsistence fisheries.

MRIP: A comprehensive review of the MRIP program and its limitations for use in stock assessments and inseason management would help focus program enhancements or development of other programs to help meet the needs of Councils and state managers.

WESTERN PACIFIC

The WPRFMC prefers to use the term “non-commercial” instead of “recreational” as non-commercial encompasses fishing for sport or pleasure (as defined in the MSA) as well as other motivations for fishing including subsistence, sustenance, cultural, traditional, and customary exchange. The region’s fisheries were historically “catch and consume” and only more recently transitioned into a “catch and release.”

There are no licensing requirements for non-commercial fisheries in the Western Pacific and only a limited data set for Hawaii through the Hawaii Marine Recreational Fishing Survey (via MRIP) but it is widely known that non-commercial catch is at least equal to, if not greater than, the commercial catch for most species (particularly nearshore species). Currently, any non-commercial fishery data collected in the region (via MRIP) is not used in stock assessment development or for management.

Existing data collection programs in the region, which were not designed for stock assessments or ACLs, do not provide adequate coverage for the broad spectrum of fishing methods in the region. Existing barriers to mandatory licensing and reporting of non-commercial fisheries is being looked at, including Hawaii state constitutionality of licenses. NOAA’s existing effort for a saltwater angler registry is only required in Hawaii and due to the lack of enforcement, cost, and for Federal fishing, participation is low.

The lack of the inclusion of the territories in a potential “States Grant Program” ignores the U.S. territories, which are the most data poor. Any program developed to collect recreational/non-commercial fishery data should include the territories.

4 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. In some regions, data for landings or catch delivered to commercial dealers or processors are reported electronically and available to NMFS in a timely manner. In these regions, fisheries managers are able to track individual fishing quota use and fishery wide harvests in order to accurately project when ABCs will be met, and announce fishery closures so as to avoid exceeding these limits.

In some regions, fishery observers who monitor catch, catch composition, and discards of species on vessels are also tasked with taking biological samples according to well defined data needs and protocols. These data are critically important for stock assessments.

Along the east coast, the Atlantic Coastal Cooperative Statistics Program (ACCSP) develops a target sampling matrix for target species. Obtaining the target sample number can be hampered by regulatory restraints. There is not a plan to achieve the target sampling level in most regions.

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

REGIONAL PERSPECTIVES

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 MSA Section 3133(b)(2).

SOUTH ATLANTIC:

The Council supports increased use of electronic reporting technologies to reduce data lags and burdens to fishermen and dealers. Electronic technologies should also be pursued to improve permitting systems and address the lack of observer coverage in our region. Reporting systems should provide ready access to prior reports for fishermen and automated reminders of deadlines to file reports. Observer programs should be greatly expanded to allow reliable data validation and to provide information that cannot be readily reported, such as set-level catch and effort and discard length information. Robust data management systems are needed in the Southeast Region to reduce the time it takes to provide final data. NMFS should develop a comprehensive data management strategy to ensure that various data platforms provide the same answer to the same basic queries, and that fishermen are not required to submit duplicate reports to multiple regions or programs. NMFS should also enforce penalties for late or non-reporting and should not renew permits if reports are not filed. (Latest update May 2021).

GULF OF MEXICO:

Some of the commercial fisheries in the Gulf of Mexico, such as the reef fishery are managed using individual fishing quotas (IFQs). IFQ programs require electronic reporting and data are available in a timely manner. However, commercial data collection for the majority of species in the Southeast still requires fishermen to complete paper logbooks. The Southeast Fisheries Science Center completed a pilot electronic logbook project for the commercial fisheries; however, findings from this project have yet to be implemented. It is imperative that any electronic logbook system include only critical data to keep the system simple and minimize the time burden for data entry. Further, data should be collected in such a way as to facilitate automated catch validation between reports generated by commercial fishermen and seafood dealers for the same catch entry. (Last modified April 2020).

NORTH PACIFIC:

In the North Pacific, catch and landings data from catcher vessels delivering to shoreside processors and catch that is processed at sea are reported electronically and available to NMFS in a timely manner. These reporting systems have been in place for many years and continue to be improved through the coordinated efforts of NMFS, the State of Alaska, the Pacific States Marine Fisheries Commission, and the International Pacific Halibut Commission. Fisheries managers are able to track individual fishing quota use, and monitor fishery wide harvests in order to accurately project when annual and seasonal catch and bycatch limits will be met, and announce fishery closures so as to avoid exceeding these limits.

In the North Pacific Groundfish and Halibut Observer Program, fishery observers who monitor catch, catch composition, and discards of species on vessels are also tasked with taking biological samples according to well defined data needs and protocols developed by the Alaska Fisheries Science Center. These data are critically important for stock assessments. Electronic monitoring is in use for some fixed gear fisheries and developing for use in trawl fisheries.

PACIFIC:

The Pacific Council supports the development of electronic fish tickets as a means of expediting catch accounting in commercial fisheries.

Electronic fish tickets are a software program or web-based application to populate data files meeting data export specifications approved by NMFS that are used to send landing data to the Pacific States Marine Fisheries Commission (PSMFC). Electronic fish tickets are used to collect information similar to the information required in state fish receiving tickets or landing receipts, but do not replace or change any state requirements. The electronic fish ticket system was designed and is managed by the PSMFC, with funding from NMFS.

The electronic fish ticket system has been used for the Pacific whiting shoreside fishery since 2007. In 2011, the electronic fish ticket system was expanded to include all shoreside groundfish deliveries by vessels participating in the shoreside IFQ program Trawl Rationalization Program. In 2017, the program was expanded to the fixed gear sablefish fishery.

The existing electronic fish tickets varies slightly by state and tribal agency such that each form records the information necessary for compliance with state/tribal landings regulations. The form also provides unique reporting functions, such as preparation of tax information that may be beneficial to first receivers.

The Pacific Council identifies development of electronic fish tickets for remaining commercial fisheries (remaining groundfish sectors, Highly Migratory Species (HMS), Coastal Pelagic Species (CPS), and salmon troll fisheries) as a near-term priority in its Regional Electronic Technology Implementation Plan. Washington, Oregon, and California and some tribal agencies are moving toward EFT requirements for these other fisheries.

WESTERN PACIFIC

The Western Pacific has had some success in working with the State of Hawaii in near real-time monitoring and reporting for the bottomfish fishery in the Main Hawaiian Islands. To conduct the outreach, follow-up, and data processing for any of the other managed fisheries similar to the bottomfish fishery would require an enormous amount of resources. Differences in fisheries may not allow for a similar management approach, but committed support and resources would allow the discussions on more timely reporting for ACL management.

Commercial fishery data is voluntarily provided in the territories and commonwealth in the region. If those areas were to mandate commercial fishery data licensing and reporting, they would also need to be provided the resources to institute and manage such a program. Current mandated ACLs do not allow for proper and efficient management due to the lack of data collection programs that can a) provide dependable data for stock assessments, b) provide timely reports and data synthesis, and c) provide for projections of catch for potential closures of the fishery.

5 Stock Assessment and Survey Data

BACKGROUND

States and fishermen have collected and provided data for stock assessments. However, there has been some dissatisfaction with how or whether the data were used in a stock assessment. To address these issues, previously introduced legislation would have amended MSA to include proposed revisions: defining the term “stock assessment”; requiring the Secretary to complete a peer-reviewed stock survey and stock assessments for all FMP species within two years; requiring the development of guidelines for incorporation of stock assessment information from a wide variety of nongovernmental sources; requiring such information to be considered “best information available,” based upon meeting the guidelines; and requiring the Secretary to develop a “cost reduction report,” to assess and compare costs of monitoring and enforcement programs for each fishery (for example, human observers vs. EM).

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

REGIONAL PERSPECTIVES

MID-ATLANTIC:

Analytical stock assessments form the foundation for the proper specification of ACLs and ultimately determine the success or failure of our federal fishery conservation and management system. Setting appropriate ACLs and AMs is challenging, if not impossible, without adequate data, yet many federally managed fisheries continue to be defined as "data-poor." Improvement of stock assessments, particularly for data-poor stocks, should be the highest research priority of the National Marine Fisheries Service in both the Northeast and throughout the U.S.

ACL/AM requirements have placed a major burden on the NEFSC to provide the data and analysis needed to set appropriate catch levels and track the performance of fisheries through time as required under MSRA. In the Northeast region, the demands for stock assessments have exceeded the NEFSC's ability to provide high-quality stock assessments at the frequency needed to manage our fisheries as required under the current mandates of the MSA.

The Mid-Atlantic Council's risk policy with respect to the implementation of its Acceptable Biological Catch (ABC) control rules provides a probabilistic framework to set ABC levels, and ultimately ACLs, relative to both the status of the stock and the level of scientific uncertainty associated with an assessment. Under this policy, the Council adopts more conservative harvest levels if stock levels decline and/or if scientific uncertainty increases. Allowable harvest levels—and hence, benefits to society—could be set at higher levels if the stocks we manage were assessed with a higher degree of frequency and certainty. Unfortunately, the information and assessment levels of roughly half of the stocks are insufficient for management under this probabilistic framework, meaning that the SSC and Council must use ad hoc methods of setting ABCs for those species, which is likely resulting in lost yield. Quotas set under these ad hoc methods for data-poor stocks are also less predictable and have resulted in a loss of stability and yield in some of our most important fisheries. Major improvements in the assessment of Mid-Atlantic stocks could be accomplished through increased funding for data collection and analysis to support better and more frequent stock assessments by the NEFSC.

SOUTH ATLANTIC:

Stock assessments are a critical issue because they are the source of the MSY parameters required for management under the MSA. However, stock assessments are data and resource intensive, so they have not been done for all managed stocks. Changing the definition of stock assessment or mandating unrealistic peer review deadlines will do nothing to resolve the underlying issues that prevent more stock assessments: a lack of data and assessment resources. The assessment and data collection programs in the Southeast US are stretched far beyond capacity. More funding is needed to allow the Southeast Fisheries Science Center to support the needs of the 3 Councils and the HMS Division that it serves. Moreover, since collecting and analyzing data are expensive, and agency resources are directed toward areas of high economic value, some stocks are unlikely to ever have adequate information to support a stock assessment. That does not mean that these stocks cannot be managed adequately, just that quantitatively adhering to MSA principles is impractical. The South Atlantic Council believes that the agency should strive to meet basic data standards (reliable catch,

effort, length, and age information) for all managed stocks. Further, Councils should be allowed flexibility to deviate from data intensive requirements such as ACLs and AMs for stocks that are not adequately monitored by existing programs. (Latest Update May 2021).

GULF OF MEXICO:

The Gulf Council participates in the Southeast Data, Assessment, and Review (SEDAR) process similar to the South Atlantic Council. This process allows consideration of all data that are potentially relevant during the various workshops. During the data workshops for a particular species, information and data provided by fishermen, the states, and universities, are considered for inclusion in stock assessments. The inclusion of these data in the assessment is determined by the stock assessment review panel and lead analyst(s) completing the assessment. Sometimes researchers refrain from sharing data until after publication in a peer-review journal or may be unaware of the stock assessment until the data workshop was already occurred. The SEDAR process, Council's SSC, and independent reviewer determine what constitutes the best scientific information available (BSIA) for stock assessments and management decisions that is provided to the Council before NMFS makes the final determination of BSIA. (Last modified April 2020).

NORTH PACIFIC:

Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the Council believes the requirements for the Secretary to develop plans and schedules for stock assessment will enhance fisheries management nationally. However, we have some serious concerns with 1) requiring the Secretary to conduct surveys within 2-years for all unassessed stocks, as this could require substantial redistribution of survey and assessment resources away from existing, but critical resource surveys in the North Pacific, and 2) the provision to incorporate information from a wide variety of non-governmental sources, and potentially require that information to be considered 'best information available'.

One of the most important aspects of building and maintaining a profitable fishing industry is the sustainability of resources available for harvesting. This requires, among other things, the establishment of biologically-based catch limits to maintain abundant fish stocks, marine protected areas to protect fragile habitat, and a comprehensive observer program to monitor the catches of all species. NOAA fisheries provides the scientific support through resource surveys, stock assessments and other applicable scientific information. Of particular interest to the Council is maintaining the NOAA standardized bottom trawl and acoustic surveys, which are critical for stock assessments and sustainability. The Alaska Fisheries Science Center is already faced with lower budgets necessitating reduced survey coverage, which results in higher uncertainty in the assessment and, for fishermen, lower catch limits and income. The Science Center needs more money to conduct surveys, not less. Requiring the Secretary of Commerce to conduct resources surveys and stock assessments for marginal species around the country, without additional funding to NOAA Fisheries, will create a significant loss of net benefits to the nation.

In the North Pacific, the public has opportunity to provide input into the science and scientific peer review of all issues through testimony and discussions at the SSC and Plan Team meetings, and these bodies regularly hear the views of stakeholder groups, oftentimes in detailed data-based presentations. And we are working to incorporate traditional knowledge into our understanding of the ecosystem. We are concerned that complying with this provision will increase burdens on our staff and our Scientific and Statistical Committee and invite potential litigation. This makes it especially difficult for the Council to fulfill its responsibilities under MSA. The implementing guidelines

for when such information would be utilized will be critical to its veracity and usefulness to managers.

PACIFIC:

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 prescriptive legislation could duplicate existing Council processes and could divert staff efforts from other productive work.

For example, the Pacific Council’s groundfish fishery management plan has over 90 stocks “in the fishery”; conducting stock assessments for all of them would take years, and because many stocks are caught infrequently, caught in low numbers, or have core distributions outside the Pacific Council’s jurisdiction, assessments are likely to be data limited and have little utility to fishery management. The Pacific Council already has a process developed in cooperation with NMFS to prioritize assessments for most of those species, and which allows the Pacific Council to set final priorities based on needs identified through the Pacific Council’s open process. The Pacific Council conducts this process every two years to coincide with its biennial management process, so requiring it to be conducted on the same schedule as the strategic plan, every three years, would be counterproductive and problematic.

WESTERN PACIFIC:

The Council does not believe that all available information would necessarily constitute the Best Scientific Information Available (BSIA). Available information (ranging from anecdotal evidence, to unpublished data, to gray literature, and 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 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 of improving the effectiveness of fisheries management, adding this layer on the National Standard 2 definition of Best Scientific Information Available is problematic.

6 Cooperative Research

BACKGROUND

Draft legislation would require that within 1 year after enactment, and after consultation with the Councils, the Secretary of Commerce shall publish a plan for implementing and conducting the identified research. The plan shall identify and describe critical regional fishery management and research needs,

possible projects that may address those needs, and estimated costs for such projects. The plan shall be revised and updated every 5 years, and update plans shall include a brief description of projects that were funded in the prior 5-year period and the research and management needs that were addressed by those projects. Proposed changes would also add: (a) the use of fishing vessels or acoustic or other marine technology, (b) expanding the use of electronic catch reporting programs and technology, and (c) improving monitoring and observer coverage through the expanded use of electronic monitoring devices.

CONSENSUS POSITION

The CCC developed the following consensus position:

“While some regions already have effective cooperative research programs, the CCC believes that an explicit national plan for conducting and implementing cooperative research could benefit both science and the management. Such a plan would promote buy-in for management actions. One example of a potential cooperative research application would be development of electronic reporting programs. However, because there are differences in regional needs, such plans should not be mandatory.”

REGIONAL PERSPECTIVES

SOUTH ATLANTIC:

Requiring NMFS to provide a written plan for implementing and conducting research to meet the Councils’ management needs would greatly improve the South Atlantic Council’s ability to manage South Atlantic fisheries. Plans should be developed on a regional basis and address the research priorities that the MSA requires Councils to regularly provide to NMFS. Communication and accountability will be improved by also requiring annual reports to the Council on new projects that were funded and ongoing projects that were completed during the prior year.

The South Atlantic Council supports partnering with stakeholders to use fishing vessels for research and monitoring, expanding the use of electronic catch reporting programs and technology, and improving monitoring and observer coverage through the expanded use of electronic monitoring devices. Working with stakeholders and using innovative technologies is essential to addressing research and monitoring needs. (Latest Update May 2021).

GULF OF MEXICO:

A formal plan to conduct cooperative research could benefit the Councils by promoting the needs of the industry and garnering buy-in to the Council policy and management process. Cooperative research should follow each regional Council’s research and monitoring priorities. (Last Modified April 2020).

NORTH PACIFIC:

The North Pacific Council believes that an explicit plan for cooperative research will benefit both the industry and the management process in more effectively managing our fisheries. In the current budget climate, with reduced stock assessment surveys already being planned by NMFS, such cooperative research will be even more critical. We also note that prioritization of the expanded use of electronic monitoring (EM) is consistent with efforts already well underway in the North Pacific and identifying this priority may provide the Council with additional information for management and monitoring of the fisheries.

WESTERN PACIFIC:

The Western Pacific Fishery Management Council develops and monitors its Five-Year Research Priorities as required by MSA§302(h) along with Cooperative Research Priorities. The Western Pacific Council submits this document annually to the NMFS Pacific Islands Fisheries Science Center for their consideration when developing their Annual Guidance Memorandum. NMFS should be required to track their accomplishments against the council's management research needs and report back to the council. There is no process or plan in place for the council to be notified – if, when, if not- on the status of the council's 5-year research priorities. A process or plan would assure accountability and transparency on the part of both the NMFS and the Council.

PACIFIC:

Developing an implementation plan for cooperative research is a logical step. Funding is an important aspect to consider; to the extent that cooperative research and management information is readily available, the Pacific Council would be able to effectively contribute to developing the plan. However, if information is not readily available, a one-year completion horizon is likely to be too short. Given the recent Federal budgeting delays, the Pacific Council has concerns about the one year plan development requirement.

Electronic Monitoring (§305). This section contemplates improving monitoring and observer coverage through electronic monitoring devices. The Pacific Council notes that there is a possibility of the opposite effect on human observer coverage resulting from EM use. The advent of electronic monitoring systems was intended to make monitoring requirements less expensive and provide more flexibility to fishermen, but it may also make human observer coverage more expensive and less flexible. While the Pacific Council supports, and has led, development of regulatory programs for electronic monitoring systems, some fisheries (such as the bottom trawl sector in our groundfish catch share fishery) may not be able to take full advantage of these systems while still having 100% monitoring requirements. We are already seeing small ports having difficulty with observer availability, and if electronic monitoring reduces the demand for observers in those ports, observer provider companies are likely to reduce staff and have remaining staff cover a larger geographic area. This leads to loss of flexibility for fishermen and processors to plan trips, and to avoid bad weather windows. The cooperative research plan should investigate ways to keep human observer options available to meet the needs of small ports and fishermen for whom electronic monitoring is not feasible. The Pacific Council notes that MSA §313(a-e) allows the North Pacific Fishery Management Council to establish a fee program to fund observer coverage, including electronic monitoring. The Pacific Council is interested in exploring the potential for a similar, dedicated funding mechanism to offset the cost of video review under the Pacific Council's third party review model or to solve other cost-prohibitive funding issues under the new electronic monitoring program. Currently, the groundfish trawl catch share program electronic monitoring regulations require that after year 2020, individual fishermen using electronic monitoring will be responsible for employing a certified video review provider; this additional cost could prohibit or discourage participation in the new program. The fund could also potentially be used to augment human observer coverage as needed. Consideration of expanding this authority beyond the North Pacific Council could be beneficial to dealing with the use of evolving technologies such as electronic monitoring and the associated costs.

7 Cooperative Data Collection

BACKGROUND

Previously introduced legislation (e.g., H.R. 200 as amended in 2018) would have required the Secretary to develop, in consultation with the scientific and statistical committees of the Councils and the Marine Fishery Commissions, and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on facilitating greater incorporation of data, analysis, stock assessments, and surveys from State agencies and non-governmental sources into fisheries management decisions. Under the proposed legislation, the Secretary would take into consideration and, to the extent feasible, implement the recommendation of the National Academy of Sciences in the report entitled “Review of the Marine Recreational Information Program (2017), including (1) prioritizing the evaluation of electronic data collection, including smartphone applications, electronic diaries for prospective data collection, and an internet website option for panel members or for the public; (2) evaluating whether the design of the MRIP program for the purposes of stock assessments and the determination of stock management reference points is compatible with the needs of in-season management of annual catch limits; and (3) if the MRIP program is incompatible with the needs of in-season management of annual catch limits, determining an alternative method for in-season management.

CONSENSUS POSITION

The CCC developed the following consensus position:

“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 assessments, 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.”

REGIONAL PERSPECTIVES

SOUTH ATLANTIC:

The South Atlantic Council is concerned that some of the proposed legislative provisions would be extremely time-consuming and burdensome for both the Scientific and Statistical Committee (SSC) and staff and appear to duplicate existing avenues of review for information from non-governmental sources. For example, the existing Southeast Data, Assessment, and Review (SEDAR) process already allows for any entity – governmental or otherwise – to submit data via working papers for consideration. The Council is concerned that well-intentioned efforts to develop national guidance and requirements on how such information is evaluated will further stress the overburdened and underfunded SEDAR program. Scientific analyses and conclusions produced by non-governmental entities that have already undergone an external peer-review process (e.g., independent scientific journals) are routinely incorporated into SEDAR assessments and Council analyses. The Council approved a process for development and review of third party (e.g., academics, private consultants) stock assessments by its SSC. The SSC regularly reviews scientific information for use in management

that has been collected by academic scientists and state agency scientists both independently and in cooperation with fishermen. (Latest update May 2021).

GULF OF MEXICO:

The Gulf Council thinks cooperative data collection can be valuable to the management process and scientific understanding, but studies and results should be subjected to an adequate peer review process. However, forcing Council's through its stock assessment processes to include data because it was gathered through cooperative data collection does not seem useful or beneficial to reaching the conclusion of best scientific information available (BSIA).

Oftentimes, stakeholders are quite eager to share their knowledge with the Gulf Council and stock assessment analysts. This information can be offered as contrast during the stock assessment process to serve as a sort of "check" against the trends in the data for a given species. Many regional Councils also have mechanisms to collect data from stakeholders which are used to inform the stock assessment and management processes. For example, the Council's Something's Fishy tool has been utilized before stock assessments to improve the quality of information ultimately used in each assessment. (Last Modified April 2020).

NORTH PACIFIC:

The North Pacific Council notes that although cooperative data collection can be very valuable to our management process and scientific understanding (e.g., the expanded Bering Sea crab surveys done by industry several years ago), the studies and results need to have adequate peer review. The concern isn't specifically with other non-government data sources per se, it is the notion that they won't be adequately peer reviewed or vetted to fulfill Best Scientific Information Available (BSIA) requirements of MSA and hold up to public and legal review. The Council had suggested that in developing the report, the Secretary also identify a process for ensuring adequate scientific peer review of the data and analysis. Basing management decisions on poorly designed studies and questionable information can be highly detrimental to the conservation of our stocks and management of the fisheries.

WESTERN PACIFIC:

The Western Pacific Fishery Management Council is concerned that this proposed provision would impose additional unnecessary burdens on the Scientific and Statistical Committee (SSC) and staff. The SSC and staff will be forced to act as gate keepers of information received by anyone, any agency, and any organization. Peer review processes are in place. These processes include assuring that all necessary and relevant information are included in reviews of stock assessments developed for management action by the councils.

The Western Pacific Council utilizes the Western Pacific Stock Assessment Review (WPSAR) process for incorporating data into, as well as approving, stock assessments. The WPSAR process includes the Council, NMFS PIRO, and NMFS PIFSC and provides an existing avenue for reviewing and incorporating useful data into stock assessments. This process should form the basis of facilitating incorporation of additional data, when and if available.

This provision requires the development of a report that facilitates greater incorporation of data, analysis, stock assessments, and surveys from State agencies and non-governmental sources into fisheries management decision. In the Western Pacific region, data from the State and Territories are the only source of fishery dependent data used in stock assessments that feed into fisheries management. These data and survey information and assessments are all documented in the

region's Annual Stock Assessment and Fisheries Evaluation report. Requiring the development of another report of similar nature would be duplicative.

Electronic data collection will need greater support/funding since the inherent biases in this type of system (i.e., zero catch, lack of validation, etc.) will need to be accounted for. MRIP in the Western Pacific only exists for the State of Hawaii and is not useful for stock assessment, reference point, or in-season management.

B. FISHERY MANAGEMENT ISSUES

1 Ending Overfishing

CONSENSUS POSITION

“The CCC believes that some flexibility is needed in the requirement to end overfishing immediately 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.”

REGIONAL PERSPECTIVES

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.

MID-ATLANTIC:

The Mid-Atlantic Council believes that it would be beneficial to 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.

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 that carry negative social and economic impacts. Flexibility should be provided to allow Councils to take meaningful action to reduce fishing mortality, balanced against the social and economic impacts as mandate by the MSA, while devoting the time necessary to develop the actions needed to fully end fishing mortality.

The Council recommends extending the duration of emergency rules to 2 years, to align with the time specified in the MSA to develop a response to address an overfished stock condition. Combining a longer emergency rule duration with flexibility in actions to end overfishing provides a real management benefit. Since reasonable actions taken sooner can often be more effective in fisheries than perfect actions taken later, an overfished stock will likely benefit from any action that reduces overfishing during the 2 years over which a rebuilding plan is developed. However, due to the current language requiring any action to end overfishing immediately, combined the 1y limit on emergency rules, there is no practical way for a Council to take immediate, common-sense action to reduce overfishing while a full response is developed and evaluated per the MSA and NEPA requirements. (Latest update May 2021).

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 of a healthy stock does not jeopardize the ability of a stock to achieve MSY or OY on a long-term 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 social and economic impacts. Greater amberjack is currently declared overfished in the Gulf of Mexico, and greater amberjack, gray triggerfish, and red snapper are under rebuilding plans. Gray triggerfish and red snapper have biomass levels above the minimum stock size threshold, but not above the biomass level at MSY. (Last modified April 2020).

PACIFIC:

The Pacific Council supports discontinuation of a rebuilding plan if it is determined that the original determination of overfished or depleted status was erroneous. The NS1Gs include a similar provision that also considers the stock status in subsequent years. The Pacific Council recommends adoption of the NS1G language: "... if the Secretary determines that the stock was not overfished in the year that the overfished determination ... was based on and has never been overfished in any subsequent year including the current year."

The Pacific Council also believes extending the term for emergency regulations and interim measures would potentially reduce Council and NOAA workload, reduce the risk of multiple changes to rebuilding measures over a short period, and allow better planning for both stakeholders and staff.

2 Annual Catch Limit Requirements and Exceptions

BACKGROUND

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 previous discussion draft released by the House Natural Resource Committee 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.

Individual Councils have worked with their SSCs to develop ABC Control Rules that address uncertainty and acceptable levels of risk of overfishing. Councils are required to set Annual Catch Limits (ACLs) less than or equal to the ABCs recommended by their SSCs. While this does present a limit to the Councils, if a Council concludes that this is overly restrictive, they can work with their SSC to modify the ABC Control Rule to address unusual situations.

Issue 2: Incorporating Updated Stock Information

The Act requires Councils to base management decisions on the best scientific information available (BSIA). 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. 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 or was never in an overfished status.

Additional flexibility to incorporate new information to inform or revise ABC recommendations in between stock assessments is also necessary. Assessment schedules do not always allow for timely incorporation of new information that may result in revised ABC recommendations, and existing ABC control rules may not be constructed to accommodate such situations.

Issue 3: ACL Exemptions

The MSA currently requires Councils to establish 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.

Stock Complexes and multiyear ACLs are new to some of the proposed legislation; ACLs for stock complexes are allowed under NS1 Guidelines. Multiyear ACLs are allowed by NS1 Guidelines; however, a three-year limit is not specified. If this is important, absent revising the NS1 Guidelines, the MSA would be an appropriate place for this but we may want to be cautious with prescriptive provisions (e.g., 10 year rebuilding).

CONSENSUS POSITION

The CCC developed the following consensus position:

“The CCC believes that further consideration of exemptions or alternatives to the existing ACL requirements for data-limited species could improve the Councils’ ability to provide stability in setting harvest limits. The ad hoc methods sometimes used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. While ACLs and AMs have been effective management tools for many fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms, such as ecosystem-based fishery management approaches, for data-limited stocks.”

REGIONAL PERSPECTIVES

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.

MID-ATLANTIC:

Allowing the Allowable Biological Catch (ABC) limit to be set up to the Overfishing Limit (OFL) 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.

SOUTH ATLANTIC:

Effective management through ACLs and AMs requires an adequate scientific basis to establish the ACL and monitor the AM. The South Atlantic Council supports greater flexibility in addressing ACL and AM requirements when the supporting science is out of date, highly uncertain, or simply lacking. Exceptions should be allowed, or alternative criteria developed, to address the small-scale, data limited fisheries that are unlikely to be adequately monitored given existing agency resources.

The South Atlantic Council believes that spiny lobster should be exempt from requirement for an ACL and associated AMs because the spiny lobster stock is unique among all federally managed species in

regards to its life cycle: (a) recruitment has been stable over many years but is not linked to production or local stock size; (b) recruits arrive over protracted periods from throughout the Caribbean; (c) 50% of larvae are lost to the north Atlantic, and more than 50% of the recruitment comes from external sources; (d) spiny lobster do not fit the standard pattern of how species behave

and how population dynamics work; and (e) spiny lobster have the longest larval duration of any oceanic marine animal. The ACL and AM system has immense value in management and sustainable harvest of most fishing stocks under federal FMPs. Although spiny lobster does not meet the current requirements for exemption (international management or short life cycle), the species is unique in its life cycle and management system and would benefit from an exemption.

The South Atlantic Council believes that ABCs should not be required for unassessed stocks or for assessed species that have not been re-assessed in 5 years. Basing ABCs for unassessed stocks on a quantitative portion of historical landings, as recommended by NMFS, results in ABCs with no scientific basis. Such ABCs could be too low, decreasing fishery yield and social and economic benefits, or too high, posing excessive risk to the stock. Neither scientists nor managers can realistically say which is more likely because historical landings do not provide reliable information on stock abundance. This is particularly true for mixed-stock fisheries, such as our Snapper Grouper Complex, with a long history of missing and inaccurate landings at the species level.

ACL management poses a special challenge for recreational fisheries in the southeast, due to the fact that the management paradigm and recreational fisheries are simply mismatched. Current ACL management shuts down or penalizes a recreational fishery when catches are high. However, in reality, high recreational catches are often reflective of high abundance of a species, which is a good thing. The current management paradigm forces the Council to react as if something bad happened, when in fact something really good happened in the fishery.

The management regime has to be brought in line with the science that can be funded, and that's fundamentally one of our problems now. It's why the Council hears from fishermen, quite often, that your management doesn't match what I'm seeing on the water, and that's because, a lot of times, the Council reacts to really good things as if they were bad things. For example, red snapper is probably on the most rapid increase in stock size of anything we've seen in the South Atlantic; however, the fishery remains under very limited harvest levels. There is a fundamental disconnect between the types of information that we have to manage our recreational fisheries and how we are required to apply accountability measures to address ACLs. The process would work much better if the Council had greater flexibility in applying ACLs/AMs, particularly in the recreational sector.

GULF OF MEXICO:

The biggest ACL-related challenge 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 are likely result in unnecessary economic losses relative to the harvest of the targeted species and yield minimal biological benefits.(Last Modified April 2020).

NORTH PACIFIC:

ACLs have been used in the North Pacific for over 40 years, and we believe that such limits are a cornerstone of sustainable fisheries management. We also believe there are situations where some flexibility in the establishment of ACLs is warranted, particularly in the case of data-limited stocks.

For example, prior to 2017, the Council was 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 that take octopus incidentally. This example underscored 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 catch specification process (at the Total Allowable Catch level), 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). (Last Modified April 2020)

PACIFIC:

Carryover: The Pacific Council believes specifying that a carryover exception allowing 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 carryover provision will have negligible biological impacts.

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.

Data-limited stocks: 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.

Identifying criteria to set ACLs for unassessed or infrequently assessed stocks would help inform the stock assessment prioritization process, and could also prevent other high priority management activities from being displaced by low priority assessment needs.

Transboundary stocks: In general the Pacific Council believes that considering and accounting for impacts and management of foreign fisheries on stocks that are target stocks of domestic fisheries is consistent with achieving the purpose of ACLs, which is to prevent overfishing. However, if U.S. fisheries have only minor impacts on a stock whose range is primarily in foreign waters, there could be justification for an ACL exception. The Pacific Council believes the U.S. should engage other countries in management considerations for transboundary stocks that are important to the U.S.

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 U.S. fisheries on transboundary stocks.

Some if the proposed legislative changes for setting Annual Catch Limits (ACLs) address many of the problems faced in implementing ACLs in the Western Pacific Region. Providing the Council the authority and 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.

3 Forage Fish

CONSENSUS POSITION

The CCC developed the following consensus position:

“The CCC recognizes that forage species play an important role in the structure and function of marine ecosystems. Under existing MSA provisions, some Councils have incorporated protection for forage species into FMPs where appropriate. The CCC believes the MSA already provides the Councils with adequate authority to address forage concerns. Current management efforts could be complicated by new requirements for forage fish management as it is not clear how these efforts would interface with the existing National Standards, which are the foundation of the MSA.

The CCC believes 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 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 --may not include other important types of forage species (e.g., squid) or unintentionally include important target fish species (e.g., pollock, shrimp, sockeye salmon, and whiting). Such broad definitions could allow for variable interpretations by different interested parties and thus invite litigation. 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. Further, the prey consumed by upper trophic predators are part of the natural mortality assumption in stock assessments.

The CCC believes that Councils should retain the authority to determine which species require conservation and management through 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. This can lead to confusion and additional litigation risk. Further, in order for a Council to add a forage fish to its FMP, there would need to be quantitative data to support federal management of that forage fish species.

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 funds away from other critical research such as monitoring surveys, processing of fishery-independent and -dependent samples, and stock assessments. NOAA and the states do not currently have enough resources to survey target stocks, let alone prepare stock assessments for forage species that would be needed to set science-based annual catch limits. In the absence of this critical information, the Councils' SSCs would have great difficulty addressing possible statutory requirements for forage fish. For example, information on the localized distribution of forage fish and ecological overlaps with other species and fisheries is often limited and highly variable. It is unlikely

the necessary data and resources would be available in the near term, which could lead to more restrictive management measures for commercially valuable species that may fall under a definition of forage fish.”

REGIONAL PERSPECTIVES

NEW ENGLAND:

The New England Council adopted an ABC control rule for Atlantic herring that will take into account its role as a key forage fish. The Council also restricted mid-water trawlers from inshore areas to protect concentrations of Atlantic herring. 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.

MID-ATLANTIC:

Forage fish stocks play an important role in the structure and function of marine ecosystems. The Mid-Atlantic Council and its constituent stakeholder groups have expressed strong interest in the development of a policy/approach for managing forage fishes. 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.

Since 1983, the Mid-Atlantic Council has managed four forage species – Atlantic mackerel, Illex squid, longfin squid, and butterfish – under a single Fishery Management Plan (FMP). In 2020, chub mackerel was added to this FMP. The Council sets annual catch limits, accountability measures, and other management measures that are intended to prevent overfishing while allowing these fisheries to achieve optimum yield.

In 2016, as part of its Ecosystem Approach to Fisheries Management (EAFM) Guidance Document, the Mid-Atlantic Council adopted a policy of supporting the “maintenance of an adequate forage base in the mid-Atlantic to ensure ecosystem productivity, structure and function, and to support sustainable fishing communities.” The EAFM Guidance Document also outlined the Council’s science and management goals and strategies of both managed and unmanaged forage species related to their roles in the ecosystem, the economy, and society more generally.

In 2016 the Mid-Atlantic Council also approved an omnibus amendment which designated more than 50 forage species as ecosystem components in all of the Council’s FMPs. Vessels fishing between New York and Cape Hatteras, North Carolina are subject to an incidental possession limit of 1,700 pounds for all ecosystem component species combined. These species were previously unmanaged in Mid-Atlantic federal waters. The intent of this action was to prohibit the development of new and expansion of existing directed commercial fisheries on these species in Mid-Atlantic federal waters until the Council has had an adequate opportunity to assess the scientific information relating to the fisheries and any potential impacts to existing fisheries, fishing communities, and the marine ecosystem.

Additional information about the role of forage species in Mid-Atlantic ecosystems and potential considerations for their management is available in the Council’s Forage Fish White Paper (<http://www.mafmc.org/eafm/>).

SOUTH ATLANTIC:

The Council addresses forage fish in its Fishery Ecosystem Plan and took action in 2020 to declare Bullet and Frigate Mackerel as Ecosystem Component species based on their importance in the diets of Wahoo and Dolphin. Existing MSA requirements provide a sound basis for managing fish stocks and prey components. Considering the enormous variety of resources, ecosystems and food-webs under the purview of the Council's nationwide, it seems unlikely that a single definition of "forage fish" can be developed without causing unforeseen negative consequences. Moreover, considering our ongoing struggles to develop ABCs that are based on science, it is even more unlikely that we will have the information necessary to appropriately apply any definition of "forage". If the South Atlantic Council had adequate information on food webs, forage species, and the abundance of fishery resources, 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.

Adding significant additional living resources to the Council's management responsibilities, and to the Region's monitoring responsibilities, without increased funding will be detrimental to other stocks. In MSA terms, this will result in increased uncertainty which will result in a need for greater precaution in management and further loss of economic and social benefits. (Latest Update May 2021).

GULF OF MEXICO:

Generally, forage fish that are not harvested should be in sufficient abundance to support the dietary needs of predators, especially if the predator species are being harvested. Forage fish in the Gulf, with the exception of penaeid shrimp, are managed or at least monitored by the five Gulf states and Commission.

In the Southeast region, resources to conduct stock assessments for targeted species with consistency are limited, let alone forage species for which even less life history and abundance information is available. Further, requiring the Councils to utilize limited resources for establishing catch limits for species of which little is documented for is non-productive. Most forage fish are short-lived, and vulnerable to environmental perturbations. In keeping with not requiring management using catch limits for short-lived species, the flexibility requested by the Councils in that manner is further requested if the active management of forage species becomes a responsibility of the Councils. For this reason, forage fish should be exempt from management under an ACL. (Last Modified April 2020).

NORTH PACIFIC:

In 1997, the North Pacific Council took 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).

Because forage fish and ecosystem concerns are adequately addressed by the existing North Pacific management programs developed under existing MSA provisions, recent proposed legislation (e.g.,

HR 2236 in 2019) does not appear to enhance the Council's ability to meet the MSA's conservation and management goals for forage fish species. The legislation would limit the Council's flexibility in achieving conservation objectives and in our ability to respond to changing ocean conditions and shifting ecosystems, and add to Council workload without any added benefit to the conservation and management of forage fish species. Additionally, legislation for forage fish conservation will not be able to provide enough specificity to avoid lengthy, complex implementing regulations or guidelines.

We believe the definition of forage fish is too broad to be unambiguously applied to species already managed under a fishery management plan or fishery regulations. While likely not intended, it is not clear if some of the most commercially valuable fish species in the North Pacific (e.g., Alaska pollock, Atka mackerel, and sockeye salmon) could be determined to be forage fish under any broad definition. In other words, these species could be considered forage fish under recent draft legislation (i.e., HR 2236) if they meet the three criteria of what defines a forage fish:

- (1) is a low trophic level (defined as fish that generally consume plankton)*
- (2) contribute significantly to the diets of other fish, mammals or birds, and*
- (3) serve as a conduit for energy transfer to species at higher trophic levels.*

All three of these species mentioned (Alaska pollock, Atka mackerel, and sockeye salmon) are planktivorous, are eaten by fish and mammals (like most every other fish species), and transfer energy up the food chain (like every other fish species). Thus, it could be argued by some that any fish species that eats plankton should be treated as forage fish.

We believe that any bill regarding forage fish conservation should clarify that the regional fishery management councils (though their fishery management plans) shall make final determinations of which species are considered as forage fish as this approach will best meet Congressional intent and lessen the likelihood of litigation. The Council is concerned that a broad definition of forage fish as proposed will allow for various interpretations by different interested parties. This ambiguity, particularly with respect to species that could be determined to meet the bill's definition of forage fish but are currently caught in target fisheries (e.g., Alaska pollock, Atka mackerel, sockeye salmon), may invite lawsuits that would ultimately be decided by the courts. As we describe above, developing a uniform, national definition of the forage fish category may not be feasible. In contrast, requesting each Council to develop a list of fish species in their area of jurisdiction that function as forage fish, is a relatively straightforward exercise.

We believe that the councils should have the discretion to adjust catch limits for forage fish to account for dietary needs, rather than make it a required provision of FMPs. The current language in the MSA already provides the councils with the authority to address forage fish concerns. Predator needs and other forms of natural mortality are already accounted for in the stock assessments and specification of acceptable biological catch limits, within the constraints of the best scientific information available. Additional adjustments to catch limits would require substantial research funding that may divert limited research monies away from critical surveys and stock assessments for harvested stocks. In the absence of additional dietary research, catch limits for target species would need to be extremely restrictive to account for this uncertainty. Greater specificity is unlikely to be appropriate given the rapid evolution of ecosystem science and the high degree of uncertainty that remains regarding interactions among species.

The Council also believes that, unless subject to a directed fishery, the SSC and Council should not be required to make catch limit recommendations for forage fish. Forage fish are considered as

ecosystem component species in the North Pacific groundfish FMPs, and by definition, are not subject to a directed fishery. Accordingly, annual catch limits are not established for these species, consistent with the National Standard 1 guidelines. Requiring Councils to make catch limit recommendations for species that are not subject to directed fisheries adds to Council workload without producing any tangible benefit. (Last Modified April 2020)

PACIFIC:

The Pacific Council has a long history of protecting forage species and generally believes that changes to the MSA are not necessary in order for this Council to protect and to sustainably manage forage fish. The Pacific Council already considers the impact of forage fish to the ecosystem and fishing communities to inform optimum yield (OY) and annual catch limit (ACL) decisions for managed forage species in our Coastal Pelagic Species Fishery Management Plan (CPS FMP). For example, one of the 11 goals and objectives in the CPS FMP is to "Provide adequate forage for dependent species." In addition, our harvest control rules for CPS stocks include built-in reductions in allowable harvest as biomass estimates and ecosystem indicators point to declining stock status. This harvest control rule closed the directed sardine fishery in 2015, four years before the stock reached its current overfished status.

In 2006, we adopted a complete ban on commercial fishing for all species of krill in West Coast Federal waters and identified essential fish habitat for krill (euphausiids), which serve as the basis of the marine food chain.

In 2015, we designated several forage species as shared ecosystem component species through our Fishery Ecosystem Plan initiative, which applied to all our FMPs. At the same time, we prohibited the development of new directed fisheries on unmanaged forage species until there was an adequate opportunity to assess the science relating to the fishery and any potential impacts to existing fisheries and communities. This action, which the Pacific Council initiated in 2012, recognized the importance of these forage fish to dependent species, to the California Current Ecosystem as a whole, and to the Council-managed commercial and recreational fisheries, which rely on a healthy stock of forage fish.

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.

The Pacific Council's Coastal Pelagic Species (CPS) FMP includes stocks that are important forage species, such as sardine, anchovy, and squid. One of the stated objectives of the plan is to provide adequate forage for dependent species. To achieve this objective, the CPS harvest control rules for actively managed species are more conservative than MSY-based management strategies, because the focus for CPS is oriented primarily towards stock biomass levels at least as high as the MSY stock size while reducing harvest as biomass levels approach overfished levels. The primary focus is on biomass, rather than catch, because most CPS (Pacific sardine, northern anchovy, and market squid) are very important in the ecosystem for forage. The CPS FMP also includes a complete ban on commercial fishing for all species of krill in West Coast federal waters and makes no provisions for future fisheries. This broad prohibition applies to all vessels in Council-managed waters, and was

intended to ensure that, to the extent practicable, fisheries will not develop that could put at risk krill stocks and the other living marine resources that depend on krill.

WESTERN PACIFIC

Forage fish species are included in the Western Pacific Council's Fishery Ecosystem Plans. ACLs have been specified for species such as big eye scads and mackerel scads. Big eye and mackerel scads are not managed under the Ecosystem-based Fishery Management approach by designating these species as ecosystem components. 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. The Council is also engaged in Cooperative Research in conducting aerial surveys to estimate biomass in order to update the MSY estimates for these not only ecologically important stocks, but culturally important species for the traditional indigenous fishing of the Western Pacific.

4 Catch Share 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

NEW ENGLAND:

Councils need the flexibility to consider and use all of the fishery management tools that are available. Provisions that require a referendum before implementing a catch share program make it more difficult to address management problems. While the New England Council would prefer this requirement be removed, reducing the requirement for referendum approval to a majority of permit holders (rather than 2/3) does provide a measure of relief, and the New England Council believes this would be a positive change. If the statute defines voting rights for a catch share referendum, the text should clearly state which permit holders can participate in the referendum and if crew members can vote. Since fisheries differ, it may be better if these voting provisions are determined by each Council rather than defined by the statute.

MID-ATLANTIC:

The Mid-Atlantic 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 feel that the Councils should be given significant control to determine how the referendum program is developed and implemented.

SOUTH ATLANTIC:

The South Atlantic Council has one long-standing IFQ program in the region (wreckfish) that was established in 1992. While no additional catch share programs are under consideration at this time, they can be a useful tool in some situations and should be retained. Each Council, working through the open and transparent MSA process, should be afforded flexibility to determine when and how catch share programs are implemented. The Council is considering changes to modernize the wreckfish IFQ program and requests agency support and resources to implement the improvements proposed. (Latest update May 2021).

GULF OF MEXICO:

The Gulf Council should have the flexibility to use a catch share program as appropriate. Each Council is uniquely positioned to best understand the nature of its fisheries and the needs of stakeholders. There have been circumstances where the creation of a catch share program benefitted the stock and the stakeholders. The Gulf Council should be provided the flexibility to consider these programs on a case-by-case basis, determining for itself whether a measure such as a referendum is necessary. (Last Modified April 2020).

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 addressing 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 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.). As catch share programs mature and the original social and economic contexts change, full performance reviews and annual cooperative reports provide the Council with the information and evaluation needed to address new problems and challenges that may not have been initially anticipated, as well as, improve our understanding of how additional catch share programs might be structured. (Last Modified April 2020)

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 both programs. 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.

5 Mixed Use LAPP Moratorium

BACKGROUND

Previously introduced legislation (e.g., H.R. 200 in 2018) would have required the Secretary of Commerce to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to study the use of limited access privilege programs in mixed-use fisheries (mixed-use means a Federal fishery in which two or more of the following occur: (A) recreational fishing, (B) charter fishing, and (C) commercial fishing.). Proposed language would also establish a moratorium on the submission and approval of a limited access privilege program for a mixed-use fishery until the date that the report is submitted except if such program was part of a pending fishery management plan or plan amendment before the date of enactment of the legislation.

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 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.”

REGIONAL PERSPECTIVES

SOUTH ATLANTIC:

Catch shares have been controversial in the South Atlantic and the Council is not currently considering additional catch share programs. The Council is concerned about the potential impact on existing data collection and research programs if NMFS funds have to be diverted to fund a National Academy of Sciences study of LAPP programs in mixed-use fisheries. (Latest update May 2021).

GULF OF MEXICO:

The congressional mandate to implement ACLs has made limited access privilege programs (LAPPs) an essential management tool in certain circumstances. LAPPs have proven to be an effective tool for preventing and ending overfishing, improving the economic efficiencies, and improving safety at sea. Exploratory studies in the Gulf of Mexico have also documented potential benefits for the headboat components of the recreational sector. It should be noted that, like the other management tools, LAPPs are not necessarily appropriate for all fisheries. The Gulf Council should be afforded the flexibility to determine the best solution for each problem within its region, based on the best scientific information available and the input and expertise of its fishermen.(Last Modified April 2020).

NORTH PACIFIC:

The North Pacific Council notes that NAS studies incur costs to the agency (typically ~ \$1 million) that in turn, affect the Councils by reducing funding for NMFS scientific and management support.

Additionally, prescribing a national moratorium on LAPPs limits the ability of Councils to use proven management tools based on regional needs and determinations, to fulfill their conservation and management responsibilities.

WESTERN PACIFIC:

The Western Pacific Council does not currently use Limited Access Privilege Programs (LAPPs). However, the term “mixed-use fishery” needs to be better defined to ensure that should the Western Pacific Council choose to use LAPPs in the future, it isn’t constricted by a term specifically written for other areas. The legislation should also ensure that should the study not be completed in one year, the moratorium would be lifted.

6 Bycatch

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

7 Council Jurisdiction

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

8 Essential Fish Habitat

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

C. COUNCIL PROCESS AND AUTHORITY ISSUES

1 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., 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.”

REGIONAL PERSPECTIVES

MID-ATLANTIC:

New unfunded mandates would be a burden on the Mid-Atlantic Council, and sufficient funds should be available for the Council to meet the existing requirements of the Act. Continued investment in stock assessment capacity is of paramount concern in this reauthorization process.

South Atlantic:

Unfunded mandates detract from meeting core Council and agency responsibilities. The Council is particularly concerned with the impact on already inadequate sampling, monitoring, and assessment budgets. NMFS has produced numerous policy directives that impose tasks on both Council and regional 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. (Latest update May 2021).

GULF OF MEXICO:

We concur with the issues identified above by the South Atlantic Fishery Management Council.

NORTH PACIFIC:

The North Pacific Council believes that no additional mandates should be imposed without additional resources. (Last Modified April 2020)

PACIFIC:

The Pacific Council agrees with the above consensus statement with an additional following sentence. When new policy initiatives are considered, provided funding should be commensurate with the associated Council workload.

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.

2 Transparency Requirements

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

REGIONAL PERSPECTIVES

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.

MID-ATLANTIC:

Providing a transparent and open public process is of utmost importance to the Mid-Atlantic 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. We encourage a review of the methods already being employed by each Council and consider both the need for, and feasibility of, any new requirements. 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.

SOUTH ATLANTIC:

The South Atlantic Council strongly believes that transparency in the public process is paramount to accountability and good decision-making. The Council 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. Webinar recordings or separate audio recordings 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. (Latest update May 2021).

GULF OF MEXICO:

We currently conduct audio recordings of our meetings and provide a written transcription of our Council meetings on the website. We also conduct audio recordings of all the advisory panel and Scientific and Statistical Committee (SSC) for public access upon request. The written transcription is often done for SSC meetings and is also available on the website. Council staff produces summary reports for all SSC and advisory panel meetings that are available on the website. We also webcast all our meetings for the public to see and hear what is being discussed. We do not video stream the meetings and see no added utility in doing so since it would cost substantially more to purchase video equipment and to hire more staff or contractors to handle the video equipment. (Last Modified April 2020).

NORTH PACIFIC:

All decisions made by the Council and its advisory bodies are done through a transparent, open public process. Meeting materials, agenda and schedule, and public comment letters are all posted in advance of the meeting on the Council website. During the meeting, the information is continuously updated with minutes that are drafted by the SSC, AP, and Committees, motions on which the Council has acted, and new material that is pertinent to the agenda items. 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. (Last Modified April 2020)

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.

The Pacific Council provides a searchable audio transcript of its meetings; however, in the past we provided written summary minutes, rather than full written transcripts. Summary minutes have been found to be easier to use than literal transcripts, and should be allowed as an alternative to searchable and written transcripts. Additional broadcast requirements and prescriptive timelines would be difficult to achieve and unnecessary, given the transparency of the Pacific Council process. For example, we have two Council meetings less than 30 days apart. Producing an official meeting record in that time would detract from preparation for the upcoming Council meeting. We are particularly concerned about the costs and workload associated with requiring Scientific and Statistical Committee (SSC) audios, videos, or transcripts. The SSC provisions seem unnecessary since the SSC is an advisory body to the Pacific Council, and provides written reports to the Pacific Council,

which makes the final decisions. All Pacific Council SSC meetings are publicly noticed and open to the public, and almost always occur at Pacific Council meetings. In addition, minutes of SSC meetings are included as part of the Pacific Council's administrative record and are available online. No further administrative record should be necessary.

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, U.S. 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).

3 NEPA Compliance

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 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."

REGIONAL PERSPECTIVES

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 Section 7 of HR 200 that substitutes the use of Fishery Impact Statements for required NEPA documents would streamline the fishery management process while still ensuring that decisions are based on careful analyses.

MID-ATLANTIC:

The Mid-Atlantic Council has long been a vocal advocate for streamlining the implementation of NEPA in the fishery management process, but we concluded that the proposed language that would essentially eliminate, or significantly reduce, the role of NEPA in the fishery management process

would not be beneficial. 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.

SOUTH ATLANTIC:

The Council believes that if the analyses and process required by MSA are followed, the intent of NEPA is met. The Council works closely with NMFS to prepare consolidated documents that meet both MSA and NEPA requirements. While we have adapted to work within the current requirements, the cumbersome and time-consuming process can benefit from streamlining and simplification. (Latest update May 2021).

GULF OF MEXICO:

Status quo application of NEPA requirements to Council actions works as intended; however, it would be less burdensome on the Council and NMFS to have the entire process integrated within the MSA. Streamlining review processes in this manner will create efficiencies in the amendment creation and implementation process, which will ultimately result in timelier document development and regulatory implementation without sacrificing content or opportunities for public involvement. (Last Modified April 2020).

NORTH PACIFIC:

In the North Pacific, this unique partnership between the Council and NOAA Fisheries has resulted in a decision-making process that embodies the goals of NEPA and the CEQ procedural regulations to reduce paperwork and delays and promote better decisions. As such, the Council supports the intent of the recent CEQ proposed rule to facilitate more efficient, effective, and timely NEPA reviews of proposed major federal actions. To meet the objectives of efficiency, effectiveness and timeliness, the Council and NOAA Fisheries have developed a process whereby all Council decisions have a well-documented analytical basis, and decision documents are consolidated to meet the requirements of the MSA, NEPA, E.O. 12866, the Regulatory Flexibility Act and other applicable laws. These procedures are detailed in the NOAA Fisheries Policy Directive 30-132 for NEPA compliance and NOAA Fisheries Procedural Directive 01-101-03 for operational guidelines for compliance with NEPA and MSA.

As mandated in the MSA, regulations are developed by the Council using a scientifically based, deliberative, and transparent process, with full stakeholder engagement. This process provides sufficient time to prepare adequate and informative scientific analyses, and receive important feedback from the public on potential environmental and economic impacts of alternatives, for effective and defensible decision-making by the Council. The public and deliberative Council process on the front-end inevitably saves time during the federal rulemaking process and reduces the potential for unnecessary, costly, and time-consuming litigation. The management changes being analyzed are often complex, with significant potential impacts to fishermen, processors, and fishery-dependent communities. This is why industry and public stakeholders are generally supportive of the deliberative Council decision making process and understand that it takes time to prepare, review, and revise NEPA and related analyses of environmental and economic impacts, and meaningfully consider public comments and recommendations from our Advisory Panel, Scientific and Statistical Committee, and other relevant advisory groups.

Under our current process, the time needed to prepare an analysis, go through our deliberative and public decision-making process, and implement regulations typically takes longer than the mandated one and two-year timelines recently proposed by CEQ. While these proposed timelines may be

appropriate for the vast majority of federal actions undertaken by federal agencies, we are concerned that they may be inconsistent with the MSA and the integrated analytical and rulemaking process developed by the Council and NOAA Fisheries.

We recommend that NOAA Fisheries' procedures maintain the integrated analytical and rulemaking process for fishery management actions developed under the MSA. In addition, given the proposed time limits to prepare a NEPA analysis and implement resulting regulations, NOAA Fisheries should consider whether the current process meets the requirements of the functional equivalency provisions as proposed.

Under the proposed rule, agencies may document any agency determination that compliance with the environmental review requirements of other statutes or Executive Orders serves as the functional equivalent of NEPA compliance by identifying that (1) there are substantive and procedural standards that ensure full and adequate consideration of environmental issues; (2) there is public participation before a final alternative is selected; and (3) a purpose of the review that the agency is conducting is to examine environmental issues. Courts have found that EPA need not conduct NEPA analyses under a number of statutes that are "functionally equivalent." CEQ proposes that the concept of functional equivalency be extended to other agencies that conduct analyses to examine environmental issues. We support this approach and request that NOAA Fisheries fully address and incorporate functional equivalence or a comparable approach to maintain the current MSA analytical and rulemaking process in the NOAA policies and procedures that guide Council operations and compliance with applicable laws. We believe the use of the functional equivalence provisions or a comparable approach would maintain the benefits of the Council process and be consistent with Section 304(i) of the MSA.

We support maintaining the Council process for NEPA compliance because it is fully consistent with the goals of NEPA and the proposed rule to "integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to ensure that agencies consider environmental impacts in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts." In addition, the MSA requirements and provisions, combined with E.O. 12866, the Regulatory Flexibility Act and other applicable laws, as well as the NOAA Fisheries procedural directives regarding substantive and procedural standards for analysis, provides a full and adequate consideration of environmental and socio-economic impacts. MSA Section 303(a)(9) requires preparation of a fishery impact statement which shall specify and analyze the likely effects including cumulative conservation, economic, and social impacts. The Council process also offers multiple opportunities for the public to provide oral and written comments at all stages of analytical development prior to selecting a preferred alternative. Additional opportunities for public comment are provided during the rulemaking process. (Last Modified April 2020)

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 (FIS) 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 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.

National Environmental Policy Act (NEPA) (§302(c)(1)). §304(i) of the 2006 MSA Reauthorization established a requirement for the Secretary, in consultation with the Councils, to develop procedures for integrating National Environmental Policy Act (NEPA) requirements into Fishery Impact Statements (FISs), and directed that the new procedures would be the sole environmental impact assessment procedure for actions pursuant to the MSA. The Pacific Council believes that great gains in efficiency would be possible under this scenario. However, despite consultations with the Councils, the recommendations of the Councils were not incorporated into the procedures. As a result, Council actions are still subject to both NEPA compliance and review and the existing FIS requirements of the MSA; therefore, we believe the intent of §304(i) has not been met.

Example: 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.

Regarding specific language in H.R. 200 ANS: NEPA/FIS Evaluation and Review (§302(c)(2,3); MSA §304(a)(2)(D) and 304(b)(1)). The addition of language in these sections is consistent with the intent of MSA §304(1), and the Pacific Council supports its inclusion, except for §302(c)(4); MSA §305(e). Adding the requirement that NMFS complies with NEPA in its review would be counter to the intent of §304(i), which was to make the FIS “...the sole environmental impact assessment procedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to the ACT.” The Pacific Council believes this provision in H.R. 200 ANS would require the Secretary to complete a NEPA analysis that was separate from the FIS, which would have to be submitted for approval to Council on Environmental Quality, create an inconsistency in the Act, and prevent any future efforts to streamline the approval process for FMPs, amendments, and regulations. As previously stated, the Pacific Council believes the objective of MSA §304(i) and the provisions in the original HR 200 language is not to circumvent the intent of NEPA, but to incorporate important aspects of the NEPA analysis and process directly into the MSA.

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.

4 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 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 all federal fishery regulations should be promulgated under the Council or Secretarial process established under MSA section 302 to ensure rational management of our fishery resources throughout their range. Under the MSA, the Councils are charged with managing, conserving, and utilizing the Nation’s fishery resources as well as protecting essential fishery habitat, minimizing bycatch, and protecting listed species within the United States Exclusive Economic Zone. This is done through a transparent public process that requires decisions to be based on the best scientific information available. This time-tested approach has made U.S. fisheries management highly successful and admired throughout the world.

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

REGIONAL PERSPECTIVES

NEW ENGLAND:

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

SOUTH ATLANTIC:

The South Atlantic Council prepares consolidated documents that meet both MSA and ESA requirements. However, the Council has experienced delays in past amendment development when issues arose due to interpretations made under other laws such as the ESA and MMPA. 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. Stronger engagement of protected resources staff in the amendment process would also be beneficial. (Latest update May 2021).

GULF OF MEXICO:

The Gulf Council has encountered at least two potential conflicts with other statutes. With regard to the National Marine Sanctuaries Act, the Gulf Council would like to lead the process of developing fishery regulations to ensure such regulations comply with MSA requirements. With regard to the Endangered Species Act, the Gulf Council would like to be involved in development of biological opinions and management recommendations that affect fisheries managed under the MSA to ensure such recommendations are reasonable and effective. (Last Modified April 2020).

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:

In addition to the ESA and the Antiquities Act identified in Section 5 of H.R. 200, the Council believes that it is important to recognize the MMPA as one of the statutes that can also affect existing fisheries management plans. Measures to implement the MMPA False Killer Whale Take Reduction Plan modified gear requirements and fishing areas for a fishery that is otherwise sustainably-managed under the MSA. Modification of the longline exclusion zone, originally established under the Council process, was done 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. Therefore, the MMPA should be included in Section 5 along with the ESA and Antiquities Act.

NORTH PACIFIC:

The Council believes that the authority of the MSA should take priority over other statutes (e.g., Endangered Species Act, Marine Mammal Protection Act, National Marine Sanctuaries Act, and Antiquities Act) in the case of conflict, particularly when it comes to managing fisheries. The Council develops regulations using a transparent, public process that requires decisions to be based on the best scientific information available.

In the North Pacific, many fisheries regulations stemming from Section 7 ESA consultations have been implemented through the MSA (Steller sea lion and short-tailed albatross protective measures for example), thus providing the opportunity for those knowledgeable about the fisheries to develop the fishery rules. Using the public, transparent process of the Councils to develop whatever fishery regulations may be necessary results in better decision making and maximizes benefits to the nation.

5 Exempted Fishing Permit (EFP) Authority

BACKGROUND

Recent proposed legislation would impose significant changes in the review process currently used by Councils to approve and issue permits under the Exempted Fishing Permit authority. In addition, proposed changes would limit the duration of permits. Both changes could undermine the effective use of EFPs by many Councils.

Proposed changes to the EFP process would require the Secretary of Commerce to follow new procedures before approving exempted fishing permits (EFPs), including peer review and certain determinations and a requirement for EFPs to expire after 1 year.

The proposed new procedures would include the requirement for a joint peer review of the proposed EFP by the appropriate regional fisheries science center and the appropriate State marine fisheries commission and a requirement that the Secretary certify that the regional fishery management Council or Federal agency with jurisdiction over the affected fishery has determined that: the fishing activity to be conducted under the proposed EFP would be consistent with any conservation and management objectives under the existing fishery management plan or amendments; the social and economic impacts (in both dollar amounts and the loss of fishing opportunities on all participants in each sector of the fishery) expected to occur as a result of the proposed EFP; the information collected through the fishing activities conducted under the proposed EFP will have a positive and direct impact on the conservation, assessment or management of the fishery; and the Governor of each of the States – of which any part of that State is within 100 nautical miles of the proposed activity under the proposed EFP – has been consulted on the proposed EFP.

The proposed language would require that any EFP shall expire at the end of the 12-month period beginning on the date that the permit was issued and that any EFP that is renewed be consistent with the new requirements listed above.

In addition, it is not clear if this provision will apply only to new EFPs or whether existing EFPs will also expire in 12-months and need to meet the new requirements in order to be renewed.

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

REGIONAL PERSPECTIVES

NEW ENGLAND

The New England Council has had great success with collaborative research programs. We currently use Research Set Aside programs to fund research that is critical to the management of several of our species. For example, the Scallop RSA program provides \$10-15 million per year that is used to survey the scallop resource, investigate bycatch, and develop gear solutions to minimize interactions with endangered turtles. All of these activities require EFPs before they can be conducted. We are moving to multi-year awards, which will be hampered by the any requirement that EFPs be renewed annually. Providing the states increased oversight of EFPs in federal waters through review requirements would further slow the approval process, delaying needed research. In our region, most fishing in federal waters is the purview of the Council.

SOUTH ATLANTIC:

The South Atlantic Council believes that the existing EFP regulations provide a sufficient framework for the expedited, uniform, yet regionally-based process envisioned to test solutions and collect data to address specific management issues. EFPs have been used in the South Atlantic to collect data regarding proposed depth-based area closures, to test gear configurations for bycatch reduction, and to address invasive species issues. The Council has worked successfully with the Southeast Regional Office to develop effective practices for reviewing EFPs.

Some of the proposed legislative changes to current EFP regulations may be overly prescriptive, overly burdensome, and have the unintended consequence of inhibiting the Council’s ability to address specific management issues in an expedited fashion. EFPs that are limited to only 1 year will probably severely limit the usefulness of the data received. As with any scientific study, the first sampling season may be largely a pilot used to develop effective methods that can be applied efficiently in later years. Additionally, a single year of data from any study is often highly uncertain

due to inherent ecosystem variability. Setting overly restrictive conditions for timing and review can be challenging and may reduce applicants; often it is the small players and active fishermen that come up with good innovative ideas. (Latest update May 2021).

GULF OF MEXICO:

The proposed modifications to the consideration of EFPs by the Councils would add a number of new requirements to the review process and would be expected to slow the process of approving EFPs and possibly reduce the number of approved EFPs. In addition to the existing review processes, additional reviews would be required by the regional science center and state marine fisheries commissions. Additional analyses would be required to meet other applicable laws to those already required (e.g., NEPA, EFH, ESA, and MMPA), likely adding an additional burden to NMFS staff time. It is already a requirement for approval that an EFP constitute scientific research and not fishing. Requiring the Governor of each state within the respective Councils' jurisdiction to be consulted about the EFP would likely add little to the quality of the process, and a letter would satisfy the requirement.

It is not clear if the renewal of an EFP for a second year requires the new requirements for review and analysis to be conducted again, or simply to be reviewed and updated, as appropriate. Further guidance would be useful. Timeframes associated with EFP duration should be determined by the underlying information needs and/or science being conducted as opposed to a prescriptive duration determined without consideration of the research being proposed. (Last Modified April 2020).

NORTH PACIFIC:

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

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

PACIFIC:

The Pacific Council agrees with the comments from the North Pacific Council. In addition, both our groundfish and highly migratory species processes relies on a biennial period for specifications and management measures, including analysis and approval of EFPs for the entire biennial period, if

appropriate. Limiting the EFP period to one year would add workload to the Council's and NMFS's approval process.

The Pacific Council believes that exempted fishing permits are an extremely important and useful mechanism to conduct scientific research, and can increase industry efficiency in advance of new regulation. For example, EFPs have been used to conduct surveys, test monitoring devices under field conditions, develop fishing gear that reduces bycatch and reduces impacts on habitat, and reduce observer costs. These studies are frequently done at no cost to the public and within existing allocation schedules. The existing regulations 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 and Fisheries Commissions, would greatly reduce the ability to get EFPs developed and approved in a timely manner. In fact, the Pacific States Marine Fisheries Commission would not be an appropriate review body for Pacific Council area EFPs since they largely serve a data warehouse function and generally are not a fishery management or scientific review entity as other regional fisheries commissions may be.

In addition, the Pacific Council believes that multi-year EFPs provide the necessary flexibility to scientifically test gear across different years and seasons, and can be critical to testing some solutions to fishery management problems. 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. Both our groundfish and highly migratory species processes rely on a biennial period for specifications and management measures, including analysis and approval of EFPs for the entire biennial period, if appropriate. Limiting the EFP period to one year would add workload to the Pacific Council's and NMFS' approval process.

The Pacific Council is concerned that language requiring EFP applications to provide information on the economic effects of the EFP "in dollars" and in terms of lost fishing opportunities for all sectors would elevate the required analysis just to examine the effects on all sectors, which are likely to be negligible for many sectors. This would greatly reduce our ability to get EFPs developed and approved in a timely manner.

A requirement that the proposed EFP "...will have a positive and direct impact..." presumes the results of the EFP fishery, whereas the purpose of EFPs is often to determine empirically if it will have a positive or negative impact; or by extension, what the tradeoffs are so that a decision about future regulations can be adequately analyzed.

6 Timing for FMP Revisions

BACKGROUND

Draft MSA legislation sometimes includes a deadline for Council action, or implementation of a regulation. These mandated deadlines have proven extremely challenging for the regional councils and NOAA Fisheries to meet, and result in other important and pressing issues being re-prioritized.

CONSENSUS POSITION

The CCC adopted the following consensus position (April 2020):

“Legislated mandates for completing an FMP or regulatory amendment can place unrealistic demands on the Council and NMFS. Regulations are developed by the councils using a scientifically based, deliberative, and transparent process. It takes time to prepare adequate and informative scientific analyses, and receive important feedback from the public on potential impacts of alternatives, for effective decision-making by the councils. After the Council makes a decision and formally provides its recommendations, NOAA Fisheries reviews the submission, prepares proposed regulations if necessary and initiates a rulemaking process pursuant to MSA, NEPA, APA, and other legal requirements. In some cases, there are statutory requirements that limit how rapidly an action can be completed. For example, some statutes specify the minimum time that must be provided for public comments. Rushing to meet an amendment deadline without having adequate time for scientific and public input can result in less than optimal decisions, which in the end may result in a lengthier rulemaking process and provoke unnecessary and time-consuming litigation.”

REGIONAL PERSPECTIVES

NEW ENGLAND:

The New England Fishery Management Council usually prepares two types of management actions: plan amendments and framework adjustments. Amendments make major changes to a fishery management plan, often making fundamental changes to the management program or addressing allocation issues. Framework adjustments make more routine adjustments that are consistent with the plan’s current design. The actions are typically supported with either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). The time between initiation and implementation depends on both the type of action and the supporting NEPA document. An amendment and an EIS take longer than a framework and an EA. While many framework actions are initiated and implemented within one year, most amendments take at least three-four years. To some this may seem excessive, but the time it takes to produce an amendment allows for extensive public input and careful analyses of alternatives and their impacts.

The Council typically holds five meetings a year, supplemented by committee meetings that focus on the details of a proposed action. Each year, there are many routine actions that must be completed. These limit the time available for new initiatives. Tasking of the Council that does not consider how long it takes to complete an action can disrupt these required activities.

NORTH PACIFIC:

The North Pacific It generally takes at least 2 years for a management change to be implemented, from the time the issue is first broached at the Council to the time that change is effective on the water.

The North Pacific Fishery Management Council holds 5 meetings a year, scheduled in the first weeks of February, April, June, October, and December. Three (minimum) or four (customary) meetings are required for the Council to recommend a management change, as follows:

- *Meeting 1: Action is initiated. Council identifies a problem, and tasks staff to address it.*
- *Meeting 2: Discussion paper. Generally, the Council tasks staff to come back with background and ground-truthing for the identified problem, and potential ways to solve it.*

Based on this review, the Council decides whether to initiate an analysis of specific alternatives.

- *Meeting 3: Initial Review. The Council reviews the comprehensive analysis that evaluates the problem and the impacts of alternative solutions, and addresses all applicable laws and requirements (MSA, NEPA, E.O. 12866, Regulatory Flexibility Act, and other applicable laws). The analysis is reviewed by the Council's Scientific and Statistical Committee, Advisory Panel of industry and other stakeholders, and the public, who provide input on the characterization of impacts in the analysis.*
- *Meeting 4: Final Action. The analysis has been revised based on feedback during initial review, and the Council is ready to make a final recommendation regarding a management change.*

Combining this process with the pre-determined Council meeting schedule, a fastest case scenario for a straightforward, uncomplicated, and uncontroversial management action could take as little as 4-6 months (noting there is a 4-month gap between the Council's June and October meetings). In normal practice, the Council would take 6-10 months from the time of initiation to make a final recommendation. For complicated or controversial actions, the Council may choose to review several discussion papers and multiple reviews of an analysis before they are ready to take final action, or there may be other staffing priorities that must be addressed (e.g., annual harvest specifications) that delay scheduling.

Once the Council has taken final action, the analysis is sent to the NMFS regional office to begin rulemaking and implementation. In the North Pacific, it is our rule of thumb that it takes a minimum of one-year from Council final action to implementation. This includes the following steps:

NMFS develops a proposed rule to implement the Council's recommendation, and NMFS and NOAA GC review the analysis and the rule to ensure that it supports the proposed action. Once the proposed rule is developed, the Council formally transmits the FMP amendment to NMFS, which begins the 90-day MSA "clock" for the Secretary of Commerce (SoC) to approve or disapprove the amendment. NMFS publishes a notice of availability, which opens a 60-day comment period. The Secretary of Commerce must decide on the amendment within 30 days after the comment period closes. NMFS responds to comments, and prepares the Final Rule, which includes an effective date for implementation. This sometimes, but not always occurs, concurrently with the SoC's decision re whether to approve the FMP amendment.

In some cases, the management change must be implemented at the beginning of the fishing year rather than mid-year. In these cases, the effective date of implementation may be up to several months after the rule is published. (Last Modified January 2020)

GULF OF MEXICO:

The Gulf Council meets five times each year on an approximately bi-monthly schedule. The dates and locations of upcoming meetings are posted well in advance on the Council website (<http://gulfcouncil.org/meetings/council/>). Since 2016, the Gulf Council has formally tracked the number of Council meetings between initiation and final action for each fishery issue, and the number of days between transmittal to the Secretary of Commerce and final implementation (i.e., rulemaking). In general, it takes an average of four Gulf Council meetings to complete Regulatory/Framework Actions and seven to nine Council meetings to complete Plan Amendments. This difference between management changes made by Framework Action versus Plan Amendment

often comes down to the complexity and contentiousness of the proposed action(s). Because Framework Actions encompass many of the items typically brought before the Council, several can be in progress at any given time; whereas, it is atypical for several Plan Amendments to be in progress simultaneously. It is unlikely that the Gulf Council is unique in these respects; therefore, the addition of mandated deadlines for Council action would further burden the Council process and could limit a Council's responsiveness to necessary management changes. (Last Modified April 2020).

7 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. 303. CONTENTS OF FISHERY MANAGEMENT PLANS (16 U.S.C. 1853)

(c) PROPOSED REGULATIONS. —Proposed regulations which the Council deems necessary or appropriate for the purposes of—

- (1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and
- (2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

SEC. 304. ACTION BY THE SECRETARY 16 U.S.C. 1854 (portions related to timing included below) 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.

(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.

(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 adopted the following consensus position:

“The CCC believes that extensive delays in approving Council plans/amendments and implementing regulations can result in confusion and direct economic losses to our recreational and commercial constituents. The MSA is rightfully so a measured and participatory process whereby the public get to see and participate in the development of plans/amendments/regulations. After this thorough process, the review and implementation process should conform to the timelines specified in the MSA. The CCC recognizes that resources are limited and that this often results in delays during the NMFS/NOAA GC review process; however, such delays should be minimized for the public’s sake and to preserve the integrity of the process.”

REGIONAL PERSPECTIVES

NEW ENGLAND:

Drafting regulatory text is a complex art that often requires legal advice. For that reason, in New England the initial drafting of regulations is the responsibility of the Regional Office. Council staff assists in the effort prior to the Council deeming the regulations consistent with Council intent. In addition, after the Council takes action on an amendment or framework, we work closely with the Regional Office to make sure that the document is complete before it is formally transmitted to the Secretary. While this can take time, we believe this is worthwhile in order to prepare the best possible document for the Secretary’s review. In our region this process has facilitated relatively rapid review and approval of most actions. While we always would like our documents to be implemented more quickly, we believe delays can best be addressed through regional coordination rather than a legislative fix.

SOUTH ATLANTIC:

The Regional Office staff draft the codified text for the regulations for review by the Committee and Council to ensure they track the Council’s intent. In general, the Council approves all actions at one Council meeting and then Council staff finalizes the document for pre-review by the Regional Office staff and NOAA GC. At the next Council meeting, the pre-reviewed document is presented to the Council for final review and approval for formal review by the Secretary. The Council also approves the codified text for the proposed rule and gives the Council chair authority to approve editorial changes to the final document and codified text. Council staff, Regional Office staff, and NOAA GC give the document and codified text one additional pre-review after the Council’s final approval. The Council’s goal is to send a document with the codified text to the Secretary of Commerce/NMFS prior to the following Council meeting. The goal of the extensive pre-review opportunities is that once a document is received for formal review, the process can begin immediately. Timely implementation is critical to meeting the need to take action and for the public to see the results of their input to the Council.

The MSA specifies a statutory deadline for reviewing FMPs and amendments: immediately commence review and immediately publish a Notice of Availability with a 60-day comment period from the day published. The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period. Total time equals 90 days. The MSA

defines "immediately" - means on or before the 5th day after the day on which a Council transmits to the Secretary a FMP, Amendment, or proposed regulation.

For Regulations - immediately initiate an evaluation to determine if they are consistent with the FMP, amendment, MSA, and other applicable law within 15 days:

- If yes publish for 15-60 day comment period.*
- If no, notify Council in writing of inconsistencies and provide recommendations to fix. Final regulations published within 30 days after the end of the comment period.*

There is no statutory deadline for review of Regulatory Amendments; however, the statutory deadline for regulations above applies. (Latest update May 2021).

GULF OF MEXICO:

The Gulf Council strives to transmit completed management actions to NMFS before the next Gulf Council meeting following final action on the subject document, or within approximately two months. Further, the Gulf Council attempts to complete some actions by a certain point in the year in anticipation of final rulemaking occurring before a key point in the fishing season. This has proven difficult to gauge in recent years, as the time between the Gulf Council transmitting a management action to the Secretary for implementation and final rulemaking has steadily increased, in some cases to well over 12 months. The Gulf Council understands the responsibilities placed on NMFS by the MSA; however, when a management change is deemed necessary and appropriate, it is often because it is so at that moment in time, not 12-18 months later when final rulemaking ultimately occurs. These delays in implementation can result in a continuance of biological, social, and/or economic harm, or they may deprive the fishing public of necessary social and economic benefits. As determined by the MSA, the Gulf Council process is a transparent and deliberative one; delays in the implementation of necessary and appropriate management changes presently have costs which are going unaccounted, but are occurring nonetheless. (Last Modified April 2020).

Pacific:

From the Pacific Council's Operating Procedure 1:

FISHERY REGULATION DEEMING PROCESS

[Procedure for Implementing MSA Section 303(c)]

In taking final action on Pacific Fishery Management Council (Council) recommendations to adopt a fishery management plan (FMP) or FMP amendment, or to revise regulations implementing an FMP, the Council is deeming that regulations implementing the recommendations are necessary or appropriate in accordance with Section 303(c) of the MSA. In so doing, the Council implicitly requests the appropriate National Marine Fisheries Service (NMFS) Region complete regulatory language to implement the Council's final action. Unless otherwise explicitly directed by the Council, after NMFS has prepared the regulatory language, the Council authorizes the Executive Director to review the regulations to verify that they are consistent with the Council action before submitting them, along with his determination, to the Secretary on behalf of the Council.

*The Executive Director is authorized to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in his determination, the proposed regulations are not consistent with the Council action.*¹

¹ In cases where the consistency is in question, the Executive Director is expected to work with NMFS to resolve the issues. Returning the regulations to the Council would be a last resort when questions cannot be resolved without involving the whole Council.

From the Operating Agreement Among the Pacific Fishery Management Council; NOAA Fisheries Service West Coast Regional Office; NOAA Fisheries Service Northwest Fisheries Science Center; NOAA Fisheries Service Southwest Fisheries Science Center; NOAA Fisheries Service Office of Law Enforcement, West Coast Division; NOAA General Counsel, Northwest Section; and NOAA General Counsel, Southwest Section:

Pacific Council staff will be responsible for reviewing proposed implementing regulations for Pacific Council-developed actions, and for making a recommendation to the Executive Director (and if appropriate, the Pacific Council) that regulations are deemed consistent with Pacific Council intent before transmitting the deeming decision and associated materials to NMFS.

WCR will assist the Pacific Council in the development of fishery management actions, by:

- *Providing advice, guidance, and information on fishery management policy issues and requirements as appropriate, including considerations of administrative costs and complexity, enforceability, timing of the development and implementation of an action, potential obstacles to the approvability of an action in advance of the Secretarial review phase, and regulatory simplification (i.e., how to keep measures and regulations as simple and clear as possible).*
- *Drafting proposed and final rules to implement approved measures, with the accompanying regulatory language, consistent with the Pacific Council's action and intent; providing such rules and regulations to Pacific Council staff in a timely manner to allow for the Pacific Council's regulatory deeming process.*
- *Notification to Pacific Council staff concerning the timing for formal transmittal of Pacific Council action and associated documentation for FMP amendments and other major actions of the Pacific Council.*

WESTERN PACIFIC:

The WPRFMC uses a Regional Operating Agreement (ROA) with NMFS to develop and transmit a FEP/Amendment prior to formal review to hopefully address concerns prior to transmittal.

8 Aquaculture

BACKGROUND

Aquaculture is being promoted as a way to reduce the seafood import/export deficit. The MSA treats aquaculture as fishing based on a legal opinion by NOAA General Counsel that landings or possession of fish in the exclusive economic zone from commercial marine aquaculture production of species managed under fishery management plans constitutes “fishing” as defined in the MSFCMA [Sec. 3(16)]. Fishing includes activities and operations related to the taking, catching, or harvesting of fish.

In 1994, the South Atlantic and Gulf of Mexico Councils established a live rock aquaculture permitting system for state and federal waters off the coast of Florida under Amendment 2 to the Coral FMP. Live rock is defined as living marine organisms or an assemblage thereof attached to a hard, calcareous substrate, including dead coral or rock. Live rock is used in the marine aquarium trade. This permitting system allows deposition and harvest of material for purposes of live rock aquaculture while maximizing protection of bottom habitat, EFH, and HAPC in federal waters of the South Atlantic Council.

The Gulf of Mexico Council approved an Aquaculture FMP in January 2009. There is a lawsuit underway challenging provision of the FMP. NMFS is challenging the Courts decision.

CONSENSUS POSITION

The CCC developed the following consensus position:

“As stewards of our nation’s fishery resources, the Councils have an interest in ensuring that wild fish stocks, fish habitats, and commercial and recreational fisheries are minimally affected by the development and operation of aquaculture/mariculture facilities. To this end, the CCC believes that if the Councils have a clearly defined role in the siting, permitting, and review of aquaculture operations in federal waters, the permitting process will proceed more smoothly and conflicts between user groups will be minimized. For similar reasons, the appropriate Council(s) should be included during the identification and assessment of aquaculture projects including Aquaculture Opportunity Areas (AOAs) and the development of the associated programmatic environmental impact statements. Additionally, the Councils should be included on the AOA implementation teams.

The CCC also believes in the importance of clear and ongoing communication between all parties throughout the aquaculture permitting and authorization process. These parties include fishery management councils, commercial and recreational fishermen, developers, regulating and consulting agencies, and members of the public. The Councils have well-established relationships with fishery constituents and are ideally positioned to identify potential fishery conflicts and facilitate communication with stakeholders who may be affected by proposed aquaculture facilities. The Councils also provide an open and transparent forum for scientific review, public input, and full consideration of potential interactions with fisheries. Permitting agencies and aquaculture developers should engage the appropriate Council(s), early and often, when identifying potential sites and during the project design phase to allow for early stakeholder input and mitigation of impacts to fish habitats and fisheries.”

REGIONAL PERSPECTIVES

SOUTH ATLANTIC:

The South Atlantic Council believes that aquaculture should be included in the MSA to take advantage of the transparent, public Council process to address major issues such as siting, species to be cultivated, potential law enforcement impacts of a cultured species and wild catches of the same species, and permit review including leasing and financial guarantees for decommissioning a facility. The States are an important partner and most aquaculture currently occurs in State waters. Expansion of aquaculture should explicitly recognize State jurisdiction and provide additional funding for State capacity to participate in the process.

The South Atlantic Council recognizes that there are several types of environmental risks associates with marine aquaculture. Federal, state, and local regulatory agencies should evaluate these risks as they develop and implement permitting and monitoring processes for the aquaculture industry. The

Council specifically recognizes the following potential interactions between marine aquaculture and essential fish habitat (EFH):

- 1. Escapement*
- 2. Disease in aquaculture*
- 3. Use of drugs, biologics, and other chemicals*
- 4. Water quality impacts*
- 5. Benthic sediment and community impacts*

The South Atlantic Council supports the establishment and enforcement of the following general requirements for marine aquaculture projects authorized under the Magnuson-Steven Fishery Conservation Act (MSA) or other federal authorities, to clarify and augment the general policies already adopted in the Habitat Plan and Comprehensive Habitat Amendment (SAFMC 1998a; SAFMC 1998b):

- 1. Marine aquaculture activities in federal waters of the South Atlantic require thorough public review and effective regulation under MSA and other applicable federal statutes.*
- 2. Aquaculture permits should be for at least a 10-year duration (or the maximum allowed if the applicable law or regulation sets a maximum less than 10 years) with annual reporting requirements (activity reports). Permits of 10 years or more should undergo a 5-year comprehensive operational review with the option for revocation at any time in the event there is no prolonged activity or there are documented adverse impacts that pose a substantial threat to marine resources. SAFMC Marine Aquaculture Policy June 2014*
- 3. Only drugs, biologics, and other chemicals approved for aquaculture by the FDA, EPA, or USDA should be used, in compliance with applicable laws and regulations (see Appendix for current list of approvals).*
- 4. Only native (populations) species should be used for aquaculture in federal waters of the South Atlantic.*
- 5. Genetically modified organisms should only be used for aquaculture in federal waters of the South Atlantic, pending FDA and/or other Federal approval, following a rigorous and documented biological assessment which concludes there is no reasonable possibility for genetic exchange with natural organisms or other irreversible form of ecological impact. Further, aquaculture of genetically modified organisms should be prohibited in federal waters of the South Atlantic when there exists a reasonable opportunity for escapement and dispersal into waters of any state in which their culture and/or commerce are prohibited by state rule or policy.*
- 6. Given the critical nature of proper siting, the permitting agency should require the applicant to provide all information necessary to thoroughly evaluate the suitability of potential aquaculture sites. If sufficient information is not provided in the time allotted by existing application review processes, the permitting agency should either deny the permit or hold the permit in abeyance until the required information is available.*
- 7. Environmental monitoring plans for projects authorized under MSA should be developed by the applicant/permit holder and approved by NOAA Fisheries with input from the Council.*

8. *Fishery management plans for aquaculture should require permittees to have adequate funds (e.g., assurance bond) committed to ensure removal of organisms and decommissioning of facilities that are abandoned, obsolete, or storm-damaged or have had their permit revoked. The plans should also require that the amount of these funds be determined by NOAA Fisheries with input from the Council and that the funds be held in trust.*

9. *When issuing permits for aquaculture in federal waters, NOAA Fisheries should specify conditions of use and outline the process to repeal permits in order to prevent negative impacts to EFH. NOAA should take the appropriate steps to modify or revoke permits using its authority if permit conditions are not being met.*

(Last modified May 2021).

GULF OF MEXICO:

The Gulf Council is the only Council to have an implemented fishery management plan for aquaculture. A recent court ruling determined that the Department of Commerce does not have the authority to permit aquaculture activities under federal fisheries management law (MSA). However, aquaculture is still permissible in federal waters of the Gulf of Mexico provided permits for aquaculture facilities in federal waters are obtained from the U.S. Army Corps of Engineers and the Environmental Protection Agency. The Gulf Council asserts, however, that it should be consulted on the permitting and siting process for aquaculture operations in Gulf of Mexico federal waters, since such operations are closely tied with the fishing community, processors, industry partners, and the marine environment on which they rely. Further, the Gulf Council asserts that major differences will be evident in the priorities and needs of each region; thus, an overarching federal management body would lack the regional expertise necessary to fully evaluate the concerns of each area. Regional subcommittees addressing aquaculture would be conducive to these varying needs, and a consultation process with each affected Council should be formalized. The Councils should be allowed to review, provide input, and address fishing and fishery management needs in the development of the Aquaculture programmatic environmental impact statement. The Councils should also be included on the Aquaculture Opportunity Area (AOA) implementation teams.

The Gulf Council urges the U.S. Army Corps of Engineers and the Environmental Protection Agency when evaluating permit applications, and National Marine Fisheries Service, in carrying out E.O. 13931, to consider the administration of drugs; culture of non-native species; financial bonds; and, establishment of harvest caps for aquaculture before granting a permit for aquaculture in federal waters of the Gulf of Mexico.

Aquaculture facilities sited in coastal and offshore waters are not “closed-loop” facilities, and the administration of drugs, biologics, and other chemicals can have adverse effects on the surrounding environment and associated organisms. Only drugs, biologics, and other chemicals approved for aquaculture by the FDA, EPA, and/or USDA should be used, in compliance with applicable laws and regulations (as has been identified in the Gulf Council’s Aquaculture FMP).

The Gulf Council does not support culture of non-native species. Propagation of ‘naturalized’ or invasive species could have major unintended consequences on the surrounding marine environment. Additionally, sterility is not a guaranteed reproductive state, and non-native stocks should not be cultured under this presumption. The Gulf Council recommends the culture of only native, non-genetically modified, non-transgenic species with progeny cultured from wild-caught broodstock. Lastly, the Gulf Council’s Aquaculture FMP and Gulf Aquaculture Permit strictly prohibits

culture of shrimp and stony corals in federal waters. Each regional fishery management council should determine which suite of species are available for culture with the appropriate rationale.

There should be financial guarantees such as bonds associated with escapement events to discourage repeat offenses and encourage best practices in the face of catastrophic weather events. It is likely that these events will occur and will require federal agency involvement to mitigate.

There does not appear to be a mechanism to understand the impacts of intensive culture on the surrounding environment in the short-term or long-term. As a consequence, optimal production characteristics are largely unknown. Further, the uncontrolled addition of farmed fish to the overall fish supply may also result in unforeseen socio-economic effects in the markets for wild-caught fish.

(Last modified May 2021).

WESTERN PACIFIC:

The Western Pacific Council recognizes that aquaculture is a rapidly developing industry and that aquaculture presents both potential benefits and potential negative impacts to the environment and society. The Western Pacific Council has had an aquaculture policy in place since 2007 that includes guidelines on cultured species; habitat; research, location, design, and operation; water quality; health management and disease control; indigenous people's rights and access; permitting and reporting; enforcement; protected species; and social and economic considerations. The Western Pacific Council is also working with NMFS on developing a programmatic Environmental Impact Statement (EIS) for aquaculture and in the process of amending its Fishery Ecosystem Plans to include an aquaculture management framework that includes permitting and reporting. The Western Pacific Council recognizes the push for aquaculture and is working to ensure that aquaculture is treated as a fishery in the Western Pacific and minimizes or eliminates impacts on other fisheries and the environment.

NORTH PACIFIC:

Currently, there are no offshore aquaculture facilities off Alaska, and to date, none have been proposed. Aquaculture facilities are currently all located in state waters, raising mainly shellfish (e.g., oysters and mussels), although there has been recent interest in developing kelp farming. The state also authorizes salmon hatcheries to enhance wild salmon production.

Although the North Pacific Council does not have an aquaculture FMP, the Council believes that it would be important for the Council to directly regulate aquaculture in the EEZ, so that major economic and conservation issues and concerns can be comprehensively addressed through a transparent, public process. Wild fisheries off Alaska are managed for sustainability and profitability, and the Council believes that a consultative only role for the Councils would be insufficient to adequately address potential adverse impacts. There will likely be major overlap of offshore aquaculture facilities with Council-managed fisheries, and we believe that offshore aquaculture could potentially impact the Council's ability to fulfill its responsibilities under the MSA and affect the Council's ability to conserve and manage marine resources and resource users based on the best scientific information available. For example, the Council would be very concerned about the location of aquaculture facilities in terms of pre-empting important fishing grounds, as well as potential adverse impacts on habitat (e.g., via waste production), fish stocks (e.g., transmittal of diseases and parasites), and fishing communities (competition reducing ex-vessel values).

The Council notes that the science regarding potential impacts of aquaculture in waters under the Council's jurisdiction may not be complete enough to accurately assess potential risk and harm to

fish habitat and wild stocks in the ecosystems that we manage. The Council believes it would be prudent to base decisions on siting, size, and type of offshore aquaculture facilities on scientific assessments of risk and recommends implementing a precautionary approach to aquaculture development for that reason.

9 Ethics/Standards of Behavior

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

10 Secretarial Plans

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.[1]³

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

³ <https://www.fisherycouncils.org/fact-sheets>

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]⁴ explores this issue and discusses potential areas for improvement."

⁴ Integrating National Environmental Policy Act Compliance into a Reauthorized Magnuson-Stevens Act – A Council Coordination Committee Concept White Paper (February 2015), http://www.fisherycouncils.org/s/CCC_2015-02_022_nh_msa_reconciling_statutory_inconsistency.pdf

11 Areas Beyond National Jurisdiction

CONSENSUS POSITION

The CCC developed the following consensus position:

“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.”

RESOURCES & DOCUMENTS

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

Acronyms

ABC	Acceptable Biological Catch
ACCSP	Atlantic Coastal Cooperative Statistics Program
ACL	Annual Catch Limits
ACLIM	Alaska Climate Integrated Modeling Project
AM	Accountability Measures
B_{MSY}	The stock biomass expected to exist under equilibrium conditions when fishing at F _{MSY}
BSIA	Best Scientific Information Available
CCC	Council Coordination Committee
CCE	California Current Ecosystem
CPS	Coastal Pelagic Species
DBSRA	Depletion-Based Stock Reduction Analysis
DCAC	Depletion-Corrected Average Catch Analysis
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EFP	Exempted or Experimental Fishing Permit
EIS	Environmental Impact Statement
ESA	Endangered Species Act
F	Fishing Mortality Rate
FEP	Fishery Ecosystem Plan
FMP	Fishery Management Plan
F_{MSY}	The rate of fishing mortality expected to achieve MSY under equilibrium conditions and a corresponding biomass of B _{MSY}
GC	General Consul
HMS	Highly Migratory Species
IFQ	Individual Fishing Quota
ITQ	Individual Transferrable Quota
LMRs	Living Marine Resources
MARMAP	Marine Resources Monitoring, Assessment, and Prediction
MMPA	Marine Mammal Protection Act
MRFSS	Marine Recreational Fisheries Statistics Survey
MRIP	Marine Recreational Information Program
MSA or	
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
MSY	Maximum Sustainable Yield
NEFSC	Northeast Fishery Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPFMC	North Pacific Fishery Management Council
NS1	National Standard 1

OFL	Overfishing Limit
OY	Optimum Yield
PSMFC	Pacific States Marine Fishery Commission
RFMC	Regional Fishery Management Council
ROA	Regional Operating Agreement
SAFE	Stock Assessment and Fishery Evaluation
SAFMC	South Atlantic Fishery Management Council
SEAMAP	Southeast Area Monitoring and Assessment Program
SEDAR	Southeast Data Assessment and Review
SEFSC	Southeast Fishery Science Center
SERFS	Southeast Reef Fish Survey
SERO	Southeast Regional Office
SOPPs	Statement of Organization, Practices, and Procedures
SSC	Scientific and Statistical Committee
TAC	Total Allowable Quota
T_{max}	Maximum Rebuilding Timeframe
WPSAR	Western Pacific Stock Assessment Review