Council Coordination Committee Concept Paper: Stock Rebuilding Requirements
MSA Reauthorization Workgroup #1

Question 1: Stock rebuilding timelines. Should there be more flexibility in the stock rebuilding requirements and how should that be reflected in the rebuilding requirements?
Some degree of additional flexibility with respect to stock rebuilding would allow Councils to balance the biological imperative to rebuild overfished stocks with the need to minimize negative social and economic impacts associated with rebuilding. The challenge in defining flexibility is recognizing the regional differences in the biology of the stocks the Councils are charged with managing. The current draft House legislation would allow for some flexibility by eliminating the arbitrary 10-year fixed rebuilding timeframe, and base rebuilding timelines on the time to rebuild in the absence of fishing, plus one mean generation (F=0 + 1 mean generation). However, this does not fully address the regional limitations on data availability and differences in stock importance within a fishery, particularly for mixed-stock fisheries, nor regional variation in the definitions of Minimum Stock Size Threshold (MSST). More clarity in the National Standard 1 guidelines regarding what defines a fixed rebuilding plan (that consider the above factors) would be helpful. As noted in the NRC report, F-based approaches to stock rebuilding may provide the additional flexibility needed in regions where data necessary to calculate MSY are sparse, or where changes in assessment methodologies have resulted in drastic changes in management. Finally, consideration of an alternative term such as "depleted" to reflect conditions that are not the result of fishing activities is needed, but specific uses of this term in other statutes should be noted.

Question 2: Exemptions for implementation of rebuilding plans. Should the Act provide for delayed implementation of rebuilding plans?
The MSA already provides for some delay in that rebuilding plans are required to be implemented two years after notification that a stock is overfished. If the rebuilding requirements are appropriate, there should be no reason to delay implementation of a rebuilding plan. This question is somewhat unclear and appears to blur the lines between phasing in ending overfishing and delaying rebuilding.

Question 3: Exemptions to stock rebuilding requirements. Which circumstances or factors should exempt a stock from rebuilding requirements?
Exemptions to stock rebuilding requirements should be limited in scope and carefully defined. Stocks with significant fishing mortality outside of U.S. jurisdiction should be considered for such an exemption. While Section 304(i) of the MSA does address international overfishing, it is unclear if this addresses the question of rebuilding. Unless an international agreement is in place, U.S. fishermen are disadvantaged regarding implementation of rebuilding. Additionally, limited exemptions for mixed stock fisheries should also be considered, but no stock should be allowed to decline below a minimum biomass level. This minimum level might be the MSST or another level between current MSST definitions and a lower threshold (see NRC report for further discussion of this concept). One way to approach this issue is to codify the exemptions, and provide further guidance within the National Standard guidelines concerning the circumstances under which the exemptions apply.

Question 4: Ending overfishing. Should there be any change to the current requirements to end overfishing, and if so, under which circumstances?
There should be some flexibility in ending overfishing "immediately" when our understanding of the stock status changes dramatically, such as with a new assessment and/or inclusion of new data. Fishing mortality would need to be reduced immediately by some percentage or measure and a rebuilding plan put in place. While the House bill language includes language to address this, although it will clearly not

address all situations. Considerations such as stock size, net present value, and uncertainty in the estimate of F all merit further discussion. Possible language for such exceptions is suggested below (underlined phrases could be further explored):

> "A fishery for which recent catches have not exceeded the fishing level recommendations of the Scientific and Statistical Committee, or for a stock that is above its target biomass level, and for which an immediate end to overfishing will result in significant adverse economic impacts to fishing communities, the Secretary may authorize a Council to phase in fishing restrictions over a continuous period of not more than 3 years if the following conditions apply:
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> - a recent assessment has resulted in a substantial change in the understanding of stock status;
> - fishing mortality must be reduced by at least 25 percent in the first year of the of the phase in period;
> - overfishing must be ended in the final year of the three-year phase-in period;
> - The net benefits to the nation are greater under this phased approach than would result from an immediate end to overfishing."

Question 5: Mixed stock exception. Please review the current exception, the House draft exception, the NAS/NRC discussion on this issue, and provide recommendations for any changes to the mixed stock exception.

The current high degree of prescription relative to single species biological reference point/stock rebuilding requirements may be incompatible with ecosystem approaches to management. Development of criteria would ideally ensure that ecosystem principles are adhered to in the application of a mixed stock exception. The statutory basis for the current mixed stock exception contained in the National Standard guidelines is unclear. The House draft language regarding a mixed stock exception should consider whether this applies only to the rebuilding timeline or to the requirement to rebuild to Bmsy, and does not allow overfishing to occur for a defined (limited) period of time. Thought should be given to an exception that would allow for fishing above the overfishing level (OFL) if it can be demonstrated that this would provide a greater net benefit to the nation (i.e. assist in achieving optimum yield (OY)). Also, the mixed stock exception should not be limited to applicability within one fishery; it may be that the exception is needed to facilitate sustainable harvest within another fishery.

Question 6: ACL exemptions. Should there be any changes to the current ACL requirements for incidentally caught species, short-lived species, or species with other characteristics?

A recent court decision determined that an ACL is not necessarily required for every stock (see Oceana v. Pritzker, 2014). Both the House and Senate bills contain exemptions for incidentally-caught and short-lived species, but fail to consider exemptions for data poor species that lack even reliable catch data.

Question 7: SSC's role in quota-setting. Should the SSC's role in quota-setting process be changed as proposed by the House draft?

The proposed House draft language does not modify the SSCs role; rather it modifies what Councils are bound by in setting catcimits. No broad consensus was achieved with regard to this issue. Opposition to the proposed change centered on concern that fishing at or above the OFL would drive the stock into an overfished status. Conversely, support for the change was focused on the fact that the OFL is based on some distribution, and there is "buffering/potential double-buffering" between this OFL distribution and ABC (which incorporates scientific uncertainty). A possible means to address this is an exception in the law to allow catch levels to exceed the ABC under specific circumstances. There might be instances where a Council may wish to exceed Fmsy in order to address ecosystem level impacts of a particular

species on others (e.g., spiny dogfish). Another possibility may be to consider all sources of uncertainty at one time, rather than compiling uncertainty into multiple layers (i.e., scientific uncertainty being one layer, and management uncertainty being another). Occasionally Fmsy proxies are used to set the OFL, which are by nature often more conservative. Finally, consideration should be given to requesting SSCs to develop one method for setting ABCs when a mixed stock exception is being applied and an alternate method for use when it is not.

Question 8: Other related priorities. Please offer any specific, additional recommendations that the WG believes will improve the Act with respect to stock rebuilding, ACLs, AMs, or related requirements.

From an overall standpoint, it appears that some of the regional differences or nuances in the discussions related to the questions above stem from regional differences in data quality/availability, which are generally related to lack of agency resources to pursue additional data collection efforts. Many of the distinctions in perspective appear to stem from different experiences in attempting to comply with the existing statute; regions that have struggled to rebuild overfished stocks and end overfishing while addressing community impacts tend to view the need for changes in the statute as more pressing than regions that have not faced the same challenges.

Furthermore, there is clearly some conflict between the use of holistic, ecosystem-based management approaches and some of the rebuilding requirements currently in the MSA. Allowing for consideration of ecosystem changes and economic needs of communities in determining OY is reasonable, but defining those needs could prove to be challenging.

Alternative definitions of overfishing should also be contemplated. MSY-based approaches are difficult to determine for some of the data poor, mixed stock complexes in certain regions. Quantifying the uncertainty in MSY estimates based on inadequate data translates into catch levels that may severely penalize fishermen, especially when there are sudden discontinuities in allowable catch levels .

Finally, from a procedural standpoint, delays in the review process beyond those specified in the law can impact conservation efforts. Councils can respond quickly to ACL changes to accommodate stock assessment updates, but delays in the review of these changes (or other management measures) impact the ability to efficiently implement those changes. This can have negative consequences on both fish stocks and fisheries.