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Testimony for

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Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

"Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act:

NOAA and Council Perspectives"

Chairman Sullivan and Ranking Member Peters, my name is John Quinn and I am here today to testify on behalf of the Council Coordination Committee (CCC), which is made up of the chairs, vice chairs, and executive directors of the eight Regional Fishery Management Councils that were created under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA).

By way of background, I am currently the Director of Public Interest Law programs at the University of Massachusetts School of Law, which is located near the port of New Bedford. New Bedford has been the highest grossing port in the United States for 16 consecutive years. I have been involved in fisheries issues for the last 30 years as a lawyer, a state legislator, and, for the last five years, as a member of the New England Fishery Management Council.

Thank you for inviting me here today to speak to the reauthorization of the Magnuson-Stevens Act. Without a doubt, this statute established the United States as the world's premier manager of fisheries resources. One of the major strengths of the Act is its support of a regional approach to fisheries management that is guided by an overarching federal framework. The eight Regional Fishery Management Councils are the cornerstone of that system.

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

As a group, we are strong believers in the Magnuson-Stevens Act – and not just because it established the Councils. The outcome of our management success is clear: commercial, recreational, and subsistence fisheries are key contributors to our coastal communities and the nation's economy. In large measure this is because the Act structured a very successful approach to sustainable fisheries management. Central to the Act are the 10 National Standards that guide our management process. National Standard 1, which is the most important, requires that conservation and management measures shall prevent overfishing while achieving optimum yield from each U.S. fishery.

Let me acknowledge the many successes of the MSA and the Council system. While some stakeholders have expressed frustration with decisions made by individual Councils – and some of those give your offices calls when they don't like Council decisions – I think it is important to note that the MSA actually gives stakeholders seats at the table when fishery management decisions are made. The MSA created these Councils to provide a public forum for fishery management decisions to be made. This public forum allows fishery managers, state officials, fishermen, academics, environmental groups, federal officials, and other interested parties to have a say in the management of our public resources. The decisions made through this public process are based on the best scientific information available and use stock assessments that have been conducted in a public manner and peer reviewed.

Finally, the decisions made by the Council are then again reviewed by the Secretary of Commerce and published in the Federal Register for an additional public comment period. While this is a time-consuming and sometimes duplicative process, it ensures that decisions are fair, informed, and science-based. The process also is fully transparent.

We should not be content to rest on our laurels. We believe that, going forward, we can improve our efforts. Today I would like to highlight some of the issues that we believe need to be addressed. As will be no surprise, our regional approach to management means that the Councils each face different challenges. Despite these differences, there are a number of areas where our opinions on needed improvements are consistent. I will limit my comments to the consensus statements that all eight Councils support. I've structured my statement around broad issues that have been identified.

Management Flexibility

<u>Rebuilding Plans</u>

One of the important provisions of the MSA is its focus on sustainable fisheries. To that end, in 1996 the Sustainable Fisheries Act amended the MSA and established strict requirements for ending overfishing and rebuilding fish stocks. A key requirement is that, in most cases, a stock must be rebuilt within a fixed time period, usually no more than ten years. Over the last twenty years, significant progress has been made, improving the status of many stocks. But we also have learned that there may be a need to improve the rebuilding provisions of the MSA so that the nation fully realizes the benefits of its resources. I want to make it clear that we do not seek to eliminate rebuilding requirements, but we think our experiences can be used to improve the existing provisions.

In general, the CCC believes that the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries would improve the ability of Councils to

achieve management objectives. We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but 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. For example, increased flexibility in rebuilding timelines would allow for a better balance between the biology of the fish and the socioeconomic needs of fishermen. A narrow exception for mixed-stock fisheries also could be considered.

We agree that exceptions to rebuilding requirements should be limited in scope and carefully defined. Ideally, such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines.

Management of Mixed Stocks

Many fishermen catch a mix of species on a trip. While in some cases selective fishing practices can effectively target some species and reduce the number or amount of non-target species caught, this is not always an adequate solution. Some of the Act's more prescriptive requirements pose particular challenges for the management of mixed stock fisheries and may not integrate well with ecosystem approaches. While the current National Standard guidelines allow for a mixed-stock exception to the requirements to prevent overfishing, the statutory basis for this is unclear and would benefit from clarification in the reauthorized Act. In addition, provisions for mixed-stock fisheries are more consistent with the concepts of ecosystem-based fishery management.

Transboundary Stocks

The addition of language that would allow the Councils to develop annual and in-season quota trading programs for international and national transboundary stocks will improve the ability of the Councils to achieve harvest and management objectives. The CCC also recognizes the potential for increased enforcement from recommendations of the Presidential Task Force Combating Illegal, Unreported, and Unregulated (IUU) Fishing.

Data Limited Fisheries

Further consideration of exemptions or alternatives to the existing Annual Catch Limit (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 Accountability Measures (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 or utilize ecosystem-based fishery management approaches (e.g., seasons, area-based management) for data-limited stocks.

Definition of "Overfished"

At present, when a stock falls below a minimum biomass, it is described as "overfished" and a rebuilding plan is required. While fishing can be the cause of a reduced stock, there may be other reasons as well, such has warming ocean waters or degraded habitat. 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 (perhaps unknown) factors. Not all of the Councils agree that "depleted" is the appropriate term to replace "overfished" since it has specific meanings in a number of other statutes. Care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.

Transparency

Clearly, a transparent public process is critical to maintaining public trust when managing a public resource. This need can be met in a variety of ways, but identifying specific requirements to meet this need can be problematic. Budget problems are very real, and written transcripts are costly. Video recordings of large meetings may not add substantive content, as they will not capture presentations and motions, which are the most critical visual aspects of meetings. Streaming video also may degrade the quality of webcast audio. While the technology for webcasts is rapidly evolving, live broadcasts generally require strong internet connections to be effective. In the context of Council meetings, which often are 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" (rather than in all cases) will allow Councils to achieve greater transparency within budget and operational constraints.

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 the 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. There haven't been any substantive changes in the way NEPA is used to support management actions or in the steps needed to complete those analyses. Clearly, proposed management actions should be thoroughly analyzed before decisions

are made. We believe that such analyses should be done within the framework of the MSA rather than NEPA.

Catch Share Programs

Catch share programs allocate part of a harvest to an individual or group of permit holders. Much has been written about their strengths and weaknesses. On the one hand, supporters believe the programs reduce the "race for fish," creating more rational harvest plans. Opponents argue that they privatize a public resource and lead to consolidation in the fishing industry.

One thing we have learned in forty years of the Council process: fishery management is complex, and no single solution will work in all fisheries. Councils should have the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive requirements for conducting a referendum before a catch share program can be adopted is likely to increase the administrative burden for the Councils. It may reduce the Councils' ability to implement the appropriate management program for their fisheries that could include modification of existing catch share measures or adoption of new catch share measures. Councils should be able to consider the use of all fishery management tools without burdensome requirements.

Collection and Use of Fishery Data

In general, Councils should be granted a reasonable degree of flexibility in the development and implementation of monitoring programs (electronic and otherwise) so that those programs may be tailored appropriately for each fishery and the needs of each region.

<u>Electronic Monitoring</u>

Our ability to manage fisheries effectively depends on having access to timely and accurate data. The development of electronic monitoring technologies and the utilization of other emerging technologies could be beneficial to U.S. fisheries – in terms of data collection and in terms of the potential to reduce the cost to fishermen and governmental entities. However, introducing additional national-level regulations to govern the use of electronic monitoring beyond the current constraints of the Act (e.g., the National Standards) may be counterproductive due to a number of factors, including funding and resource constraints, variability among fisheries, and the rapid evolution of technology. In addition, the costs of new technologies should be taken into account when implementing new programs or technologies.

<u>Recreational Fisheries</u>

Data quality and availability continue to be among the greatest challenges for the management of recreational fisheries. Given the importance of accountability, effective monitoring is critical for the successful management of recreational fisheries. Comprehensive recreational data also contribute to improved stock assessments that benefit all fishery sectors. While NOAA's Marine Recreational Information Program (MRIP) has provided some improved statistical methodologies to reduce sampling bias, the program has been only partially implemented, and it has done little to increase the precision of catch estimates. Addressing this problem will require increased sampling rates, which only can occur with increased funding. The Councils are examining additional technologies that should be encouraged to get better data.

Other Federal Statutes

With forty years of experience, the Councils have extensive expertise in managing federal fisheries. The Council process, tailored for each region, provides a well-known, effective forum for resolving fisheries issues. When other statutes are used to develop fishery regulations, that public process is often side-stepped. The CCC believes that an amendment to the MSA that ensures all federal fishery regulations are promulgated under the Council or Secretarial process established under MSA section 302 would ensure rational management of our fishery resources throughout their range. Under the MSA, the Councils are charged with managing, conserving, and utilizing the Nation's fishery resources, as well as protecting essential fishery habitat, minimizing bycatch, and protecting listed species within the United States Exclusive Economic Zone. This is done through a transparent public process that requires decisions be based on the best scientific information available. This time-tested approach has made U.S. fisheries management highly successful and admired throughout the world.

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

Climate Change

Fishery resources have evolved to make the best use of their habitats. Fish distribution can depend on many factors, including water temperatures. In many of our regions, warming sea water temperatures are leading to significant changes in the distribution of fish species. For example, in New England we are seeing species of fish in the Gulf of Maine that historically only were harvested off Long Island and New Jersey; at the same time, cold water species like lobster are leaving warming waters to the south. Other changes are occurring as well. Increased acidification of sea water is a threat to many shellfish species, both in nearshore aquaculture and offshore wild-caught fisheries.

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. These changes will impact entire marine ecosystems, and a single-species management approach likely will 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 also will 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. In a changing environment, this will become even more critical.

Resources

The Councils are concerned that important policy directives issued by the National Marine Fisheries Service (e.g., forage fish, allocation review, and ecosystem-based fishery management) frequently create unfunded mandates. The demands on Councils to fulfill existing regulatory and management requirements are significant, and these should be met before any new tasks are imposed. New mandates can be addressed only if adequate resources are provided.

We also want to make it clear that we rely heavily on data and analyses provided by NMFS. At-sea surveys of fish populations are the 'bread and butter' of the 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 one of the best investments an administration can make in U.S. fisheries.

Exempted Fishing Permits

Exempted fishing permits (EFPs) are an extremely important and useful mechanism to conduct scientific research. For instance, 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, reduces habitat impacts, and reduces impacts on protected species. These studies are frequently done by the fishing community at no cost to the public and have provided enormous benefits for the conservation and management of marine resources and habitats.

The existing regulations already provide a good framework for developing a regional process of issuing and reviewing EFPs. The EFP applications undergo a regional scientific peer review and are evaluated through a public process by the respective Councils. The public and affected states have an opportunity 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.

The CCC further 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 severely limit the usefulness of the data collected, as well as the type and quality of research that can be done.

General comments

I would like to close with a few general tenets that we think are important.

- Modifications to the Act should be national in scope but with reasonable flexibility to address region-specific issues. Avoid across-the-board mandates that could negatively affect one region to address a problem in another. Modifications to the Act that are specific to one region or one Council undermine the national scope of the Act and should be carefully considered, especially with respect to how these modifications might affect operations in other regions.
- Legislation should allow for flexibility in achieving conservation objectives but be specific enough to avoid lengthy, complex implementing regulations or guidelines.
- Legislation should be in the form of intended outcomes, rather than prescriptive management or scientific parameters.
- Legislation should avoid unrealistic/expensive analytical mandates relative to implementing fishery management actions.
- Legislation should avoid constraints that limit the flexibility of Councils and NMFS to respond to changing climates and shifting ecosystems.
- Avoid unfunded mandates and/or ensure that Councils and NMFS have the resources to respond to provisions of legislation.
- Preservation and enhancement of stock assessments and surveys should be among the highest priorities when considering any changes to the Act.

Finally, I believe it important to acknowledge the supportive relationship between the Councils and the National Marine Fisheries Service. Our management successes would not be possible without our close partnership. The Service is a key participant in the Council process and a key provider of the information we need. The regional offices and science centers are critical to our process. The healthy exchange of ideas and opinions between our groups leads to better solutions. We are thrilled that Mr. Oliver is heading the agency, and we look forward to working with him in his new role.

Thank you for the opportunity to address the Committee.