

**Written Testimony of  
Rick E. Marks  
Hoffman, Silver, Gilman & Blasco  
Arlington, Virginia**

**Reforming the Magnuson-Stevens Fishery Conservation and Management Act of  
2006**

**To the  
Committee on Natural Resources  
United States House of Representatives**

**December 1, 2011**

Chairman Hastings, Ranking Member Markey and distinguished Members of the Committee, I appreciate the opportunity to speak with you about reforming the Magnuson-Stevens Fishery Conservation and Management Act of 2006 (MSA). I am Rick Marks, a principal at Hoffman, Silver, Gilman & Blasco P.C. ("HSGB") of Arlington, VA. Our fisheries clients operate in many regions around the nation. Prior to joining HSGB, I was appointed by the Secretary of Commerce to serve on the Mid-Atlantic Fishery Management Council and worked as a marine fish biologist for the State of North Carolina. I worked for NOAA as a Fishery Reporting Specialist and a Benthic Field Technician. I hold a Masters Degree in Marine Environmental Science with emphasis in Coastal Fish Ecology and a Bachelor of Science Degree in Biology. I have authored scientific papers in peer-reviewed journals regarding various aspects of finfish ecology. I am currently working on professional certification in Environmental Conflict Resolution with the Morris K. Udall Foundation in Arizona.

Mr. Chairman, for the record my comments here today are solely my own as an advocate for the commercial seafood industry. Please note my testimony reflects issues critical to many of my clients whom operate in Alaska, Washington, Oregon, California, Florida (both coasts, and the FL Keys), New Jersey, New York and Rhode Island.

**(1) Need for MSA Reform**

The 2006 MSA Amendments fundamentally altered the way domestic fishery resources are managed. The new provisions focused on ending overfishing, rebuilding stocks, reducing fishing capacity, and developing limited access programs -- all in the context of a more intensive reliance on fisheries science in the decision-making process. The changes created higher demands on science and management. Requirements to end overfishing added a whole new layer of requirements and tighter deadlines have created premiums for resources and increased dependence on short-term monitoring of annual catch limits and quotas. In sum, the new MSA demands are high and the federal government is struggling to meet those demands within a restrictive budgetary situation.

The fact that the Committee is considering eight bills targeting MSA reform is a clear indication serious problems precipitated from the 2006 authorization. Historically, MSA

reauthorizations occur about every 10 years so the sheer number of bills introduced thus far further supports the need for comprehensive reform, sooner rather than later.

In 2009 NOAA revised the National Standard One Guidelines (NSG1) requiring the Regional Fishery Management Councils (RFMCs) to consider both scientific and management uncertainty when setting quotas. The revisions were designed to prevent overfishing, rebuild overfished stocks, and achieve optimum yield (OY). For the 2006 reauthorization to work it requires a heavy reliance on high quality scientific information. Unfortunately, this is information that in most regions we simply do not have. Juxtaposition of insufficient data with consideration of uncertainty in the quota setting process results in larger precautionary buffers and lower yields at the expense of the industry and our nation. In addition, proliferation of unpopular catch share programs has fanned the flames of reform.

NOAA currently manages 528 stocks of fish. Of this total, roughly 114 are considered adequately assessed by the agency. Most of the 114 assessments (approx. 80) occur regularly on economically important stocks in Alaska and New England. In other regions, the assessment periodicity is reportedly far less, accounting for approximately 15 per year in the Gulf of Mexico, South Atlantic and Caribbean combined (Angers 2011). Thus, a large majority of fish stocks are data poor or not adequately assessed at all with the result being uncertainty trumping opportunity for additional fishery yields.

Congress clearly intended for science-based decision-making to be the order of the day. In theory, I agree with this premise but in reality, our fishing industry is paying dearly for the lack of adequate science. We built an implementation model that exceeds our scientific capabilities. We need this Committee to consider comprehensive MSA reform at the earliest possible time to effectively rebalance our management system.

## **(2) Comments on Current MSA Legislative Reform Efforts**

**H.R. 594**: “The Coastal Jobs Creation Act of 2011” (Rep. Pallone-NJ): This legislation would create a national grant program with a specified list of qualified activities and funding criteria. On a positive note, if funded, the legislation could provide grant opportunities to improve science-based decision-making. However, this depends on how the specific guidelines are crafted -- the Secretary of Commerce is given sole responsibility to develop them within 30 days. Based on industry’s recent experiences with implementation of the MSA, National Ocean Policy, Coastal and Marine Spatial Planning, National Catch Share Policy, and the most recent 2011 National Fish & Wildlife Foundation (NFWF) Bycatch Engineering Grant Program (which was disbursed solely to catch share program proponents), it is unclear which of the 13 qualified activities would be consistent with NOAA philosophy and is therefore problematic absent more detail.

**H.R. 1013**: “The Strengthen Fisheries Management in New England Act of 2011” (Rep. Keating-MA): The U.S. Department of Commerce Office of the Inspector General issued report No. OIG-19887 on January 12, 2010. The report detailed OIG concerns regarding, among other things, NOAA’s retention of civil penalties and its Asset Forfeiture Fund

(AFF). Clearly, NOAA has the statutory authority to retain such relevant proceeds. However, the OIG noted concerns about internal controls and questions about how such resources were being expended. Congressman Keating's responsiveness to the OIG report is to be commended. I agree with the basic idea of H.R. 1013; to provide a transparent separation between fines/penalties/seizures and program operations, to remove the direct incentive for excessive fines, and to use AFF monies for improving fisheries management.

I note two concerns here. First, if all the funds are shifted from the AFF then NOAA will have to fund the program from somewhere else in its continually shrinking budget. I am concerned that scientific funding may suffer in this transaction and we may end up no better in the bargain. Second, the bill is New England-centric in that it specifies improving fisheries research in the waters off New England for fisheries under the jurisdiction of the New England Fishery Management Council (NEFMC). However, it is important to note here the NEFMC has sole jurisdiction for some fisheries that extend deep into the Mid-Atlantic region (e.g. Atlantic scallops, New England groundfish, Atlantic herring) and joint jurisdiction with the Mid-Atlantic Fishery Management Council (MAFMC) for species such as Atlantic monkfish. H.R. 1013 should be combined with H.R. 2610 to develop a more comprehensive approach.

**H.R. 1646: "The American Angler Preservation Act"** (Rep. Runyan-NJ): H.R. 1646 is the most comprehensive MSA reform legislation before the Committee. There are a number of provisions contained in this legislation that have merit and should be considered (specifically or conceptually) for inclusion in a comprehensive MSA reform package. First, the bill endeavors to add oversight to the SSC process through a peer review trigger, risk-neutral decision making, and requiring the SSC to file research recommendations with Congress. At the October 27, 2009 hearing on the "Implementation of the Magnuson-Stevens Fishery and Conservation Management Reauthorization Act of 2006" Representative Rob Whitman (R-VA-1) questioned then NOAA/NMFS Chief Science Advisor Dr. Steve Murawski about the need for SSC oversight. Dr. Murawski replied that "None was planned but that it is a good idea" (Murawski, 2009). I too support the concept of adding SSC oversight.

H.R. 1646 contains similar provisions regarding stock rebuilding flexibility included in H.R. 3061, further indicating there are ongoing problems with this component of the MSA, at least in the Mid-Atlantic region.

Mr. Runyan's bill also reforms the Fisheries Disaster Relief provision contained in Section 312 by requiring the Secretary to make a determination within 60 days after the Secretary receives a request. I agree with this provision since Section 312 currently applies no time constraint for the Secretary to render a declaration, leaving constituents in dire economic situations with little recourse.

The Secretary closed the entire Gulf of Mexico snapper-grouper fishery to protect sea turtles for 5 consecutive months starting in May, 2009. The Governor of Florida issued a formal request to the Secretary for a fisheries disaster declaration along with 350

members of the Florida fishing industry who also submitted a letter of support. The Secretary did not respond to this situation until early 2011, nearly 18 months later, having determined that despite the hardship the industry survived the closure so no disaster declaration was necessary.

Furthermore, the Secretary is placed in the difficult position of being both the author of the regulations (that created the problem) and the decision authority on the remedy. There is also the complicating factor that disaster aid will come from the Department of Commerce budget. I believe this puts the Secretary in direct conflict and encourages delay in decision-making. To address this conflict it may be useful for the Committee to consider, in instances where the disaster is the direct result of fisheries regulations implemented by the Secretary, that the Small Business Administration (SBA) or some other relevant entity have input into the disaster determination.

H.R. 1646 contains some excellent catch share reform ideas (See also H.R. 2772 discussion below). The critical elements of Rep. Runyan's approach on catch shares that are absolutely necessary are to provide eligible fishermen with a petition and a final referendum on how they want to develop their fishery. Only in this way will the process be truly organic and industry-driven.

It is important to note here that catch share programs are not conservation tools, they are business plans and a type of social engineering. NOAA clearly recognizes this, stating in the National Catch Share Policy that "Taken together, ACLs and LAPs [limited access privilege programs] combine the positive benefits of a firm cap on fishery removals with the additional benefits of achieving important economic and social objectives...." (NOAA 2010). It is the social and economic relevance of a LAP that is all the more reason for the fishing industry to have an honest vote in the process.

H.R. 1646 contains a provision that requires additional discussion – the 5-year program termination unless the ongoing program is approved by a 2/3rds vote of the participants. There has been much discussion in the history of catch shares regarding the ability for the fishing industry to effectively finance the purchase (or lease) of catch share allocation. I am concerned that a firm sunset trigger might hamper financing opportunity and this issue must be thoroughly vetted before including such a provision in law.

That said, once a catch share program is implemented the law does not contemplate a clear process for removing it. Thus, a 2/3rds vote of the current participants to keep the existing program, concurrent with the plan review requirements of Section 303A(c)(G), may be the less intrusive but still effective approach to pursue with H.R. 1646.

Finally, H.R. 1646 provides a certification process for a fishery to be closed (including application to fisheries already closed under current law). In effect, the Secretary may not close a fishery that would have a direct or indirect affect on a specified number of businesses at a specified economic impact if certain scientific standards are not met. While I am not certain the certification process specified in H.R. 1646 provides the most

perfect answer, there is great value in considering what information is necessary before the Secretary can completely close a fishery.

**H.R. 2304: “The Fisheries Science and Improvement Act of 2011” (Rep. Wittman-VA):**

I believe the basic premise of H.R. 2304 is on point but that we need to expand and refine some provisions before moving forward if we are to make this bill helpful to the entire regulated community. The basic idea of ensuring that NOAA bases management decisions on sound science is critical. The lack of credible science and subsequent use of the precautionary approach are major issues driving the need for MSA reform.

First, extending the ACL deadline to 2014 is moot since the species application requirements set forth in MSA Section 303 (as added by P.L. 109-479) specified deadlines in 2010 (for species subject to overfishing) and 2011 (for all others). The RFMCs (or the Secretary in the case of New England groundfish) have already developed ACL consistency amendments.

Regarding scientific improvements, there is great value in Rep. Whitman’s concept of up-to-date stock assessments and surveys as prerequisites for ACLs. Many in the commercial, charter and sport fishing sectors believe the ACL/AM requirements are contrary to achieving OY and that quotas will be continually reduced due to scientific uncertainties to compensate for avoiding overfishing at any cost and achieving rebuilding in as short a time as possible.

The Atlantic monkfish fishery along the U.S. East Coast is an excellent example of how poor science (assessments and surveys) can negatively impact the fishing industry, especially when layered with precautionary decision-making. It also illustrates the benefits of improved science. In 1999, the NEFMC developed the initial fishery management plan for monkfish and proposed to permanently close the directed monkfish fishery, citing concerns that the stock was so small it could not sustain a directed fishery. The primary problem was that the NMFS survey vessels did not catch monkfish. Poor survey results (a.k.a. “best available science”) forced managers to conclude that the stock was in trouble.

A NOAA-industry cooperative monkfish bottom trawl survey was completed in 2001. The results of this survey proved that monkfish biomass was substantially larger than the estimate generated by the federal trawl surveys. Thankfully, the monkfish fishery continues but unfortunately, the data-poor condition persists. Annual quotas were set for the first 7 years of management using unreliable survey data. Thus, available fishing days for fishermen from New Jersey to North Carolina went from 40 days a year in 2000 to a low of 12 days in 2006. The quota was reduced from a high of 21,325,318 pounds in 2005 to a low of 8,084,353 pounds in 2006 – a precipitous near 40% decrease in one year due solely to a lack of reliable science and subsequent precautionary decision-making.

The approach embodied in H.R. 2304, if inclusive of “data poor” species, could provide relief from rigid ACL control rules in the absence of sufficient data. If not, fishermen will be continually subjected to precautionary decisions with no clear plan to address the lack of reliable scientific information.

H.R. 2304 also provides an exemption from the ACL requirements for “Ecosystem Stocks” (ES). Here again, I agree with the basic concept of exempting certain data poor and minor stocks from the ACL requirement but recommend some improvements to the bill before moving forward. My recommendation would be to develop broader application that closely links scientific capabilities with the ACL/AM requirements. Rather than ES we should designate stocks into “core” and “minor” components based on clear metrics including value and scientific need. ACL/AM requirements could be applied to core stocks but for minor stock components, or for stocks where status is unknown or those in a data poor condition, the ACL/AM requirement need not apply or could be made less rigorous.

**H.R. 2610:** “The Asset Forfeiture Fund Reform and Distribution Act of 2011” (Rep. Frank-MA): In some ways similar to H.R. 1013, Representative Frank’s legislation is more comprehensive, addressing elements of reform in the wake of the OIG report on the AFF oversight, especially in the New England region but not solely in that region. Representative Frank recognizes and preserves the role of the individual States as well as the joint nature of the RFMC relationship.

Overall, I support the key provisions of H.R.2610 – reimburse any person who was treated unfairly by the federal government, provide a transparent separation between fines/penalties/seizures and program operations to remove the incentive for excessive fines, and use AFF monies for activities in direct support of sound fisheries management research where violations occurred. I note here NOAA subsequently revised the AFF Policy (*See* 76 FR 16386) but provided no funds in support of scientific activities. Also, I am concerned that with no other source of funding specified by Congress for OLE activities that funding for scientific work may be tapped which is unacceptable.

**H.R. 2753:** “The Fishery Management Transparency and Accountability Act” (Rep. Jones-NC): I support H.R. 2753. In this era of transparency there should be no need for such basic legislation. However, the 2006 MSA amendments and the idea to “separate politics from science”, ceded an unprecedented amount of authority to the RFMC SSCs. While each council operates differently, and the range of comfort in the regulated community varies from region to region, there is no reason why we should not require RFMC, SSC and Council Coordinating Committee meetings be widely available and archived.

**H.R. 2772:** “The Saving Fishing Jobs Act of 2011” (Rep. Runyan-NJ): Similar to H.R. 1646, Representative Runyan’s H.R. 2772 is in response to the groundswell of animosity against *implementation* of NOAA’s National Catch Share policy. It is important to note here this widespread opposition is not against the policy but rather, how it is being implemented. Many in the fishing industry consider the catch share process to be a rushed, top-down process. Indeed, NOAA indicated as early as December 2009 that “32 additional programs will begin development in FY 2012” (NOAA 2009). Many fishermen also perceive the process to be tainted by Walton Foundation trust grants to NGO interests who may not have the best interests of the U.S. commercial fishing

industry in mind. I agree with many of these perceptions and they exist as an industry reality.

Besides inadequate science undermining our management system, the proliferation of catch share programs is presently one of the most problematic industry issues. Recently, 41 Members of Congress from 12 states filed letters with the House Commerce, Justice, and Science Appropriations Committee expressing concern over the expansion of new programs in New England, the Mid-Atlantic, Southeast and Gulf of Mexico. This level of concern is a strong indication there are serious problems with some of the existing programs and that the majority of fishermen in many regions do not wish to see these programs expanded into new fisheries absent a firewall in the form of a clear referendum process.

H.R. 2772 contains provisions identical to those in H.R. 1646 with two noted additions: (1) any new catch share program that results in a 15% reduction in the number of eligible fishermen is subject to termination; and (2) the 3% fee cap provision in Section 304 is replaced with a requirement for the program to cover all costs, including observer costs.

Regarding the 15% termination provision for newly created programs, I completely support Representative Runyan's efforts to protect jobs. Catch share programs are widely reported to consolidate fleet size and reduce employment. However, in the event that a catch share program is supported by eligible fishermen via a transparent and fair petition and referendum, the 15% provision should not apply.

Regarding the requirement for fiscal responsibility, this could also be a valuable consideration in a perfect world where catch share programs are completely open, market-based systems where the responsibilities of management are balanced by the privileges of economically efficient harvest. However, that is not the case as programs are constrained by such things as ownership caps, ultra-conservative control rules, strict bycatch limitations, and excessive observer coverage requirements. As long as there is heavy government constraint on these programs the 3% cap limitation should apply. In situations where the system is based on a free market economy and eligible fishermen are fully aware of the programmatic costs prior to a final referendum vote the fiscal responsibility requirement should apply.

**H.R. 3061: "The Flexibility and Access in Rebuilding American Fisheries Act of 2011"** (Rep. Pallone-NJ): While the RFMCs are given some flexibility to tailor their approaches to management plans the one area that remains rigid is in regard to stock rebuilding. The law still retains the requirement that rebuilding be completed in 10 years or sooner, if possible, *rather than what is practicable*. The RFMC chairmen supported adding an element of stock rebuilding flexibility during the 2006 reauthorization but their efforts were unsuccessful.

The 10-year deadline is completely arbitrary, has no basis in science, and its impacts may be worsened in data poor situations. We all agree that stocks must be rebuilt – we simply disagree on the time frame. It makes no practical sense to visit extreme hardship on

coastal communities if a stock can rebuilt to the exact same level in 12, 15 or 18 years rather than in 10 years under more onerous restrictions. I believe by not including a clear flexibility provision in the MSA we missed an opportunity to inject some common sense into the management process.

H.R. 3601 requires each SSC submit an annual report detailing their scientific advice, condition of the assessment data, and recommendations for improvements. This reporting requirement will precipitate a more transparent scientific process.

Regarding suspension of the ACL requirements, H.R. 3601 allows the Secretary the option to suspend ACLs if the stock is not overfished, not approaching the overfished condition, is fully rebuilt, or if the scientific advice from the SSC is based on such a high level of uncertainty that is insufficient to ensure the fishery management plan is consistent with the components of National Standard 8 (*See* MSA Section 301(a)(8)). I agree conceptually with one core aspect of the ACL suspension issue – ACL control rules should not be set on data poor or minor stocks for which we do not have adequate information to make the necessary and timely determinations.

I also agree with the provisions in H.R. 3601 that *require* the Secretary to identify whether fishery management plans are having adverse economic impacts, for the Secretary to take actions as necessary to attempt to mitigate those adverse impacts, and for the Secretary to report to Congress on those actions. In the end these provisions may not ease all the socioeconomic pain stemming from necessary regulations but they may minimize the impact and encourage the Secretary to think creatively outside the regulatory box.

### **(3) Other Relevant Reform Issues That Should Be Considered By the Committee**

**Mixed Stock Exemption:** A clear provision should be added to the MSA to allow the RFMCs to set a single ACL for a group of fish stocks that are commonly found in association with each other, often referred to as a mixed stock assemblage. Although this provision was a clearly defined component of the NSG for years the agency never implemented the tool. Often times, the availability of individual species within a mixed stock grouping will fluctuate and may be inconsistent with the ACL provisions. This is aggravated as stocks rebuild or in data poor situations or where monitoring is not timely. This situation prevents fishermen from accessing more abundant stocks and impedes our ability to achieve OY.

**Statutory Exceptions for Trans-boundary and Short-lived Species (MSA Section 303 note):** The MSA currently provides an exemption from the ACL/AM control rules for stocks managed under an international agreement in which the U.S. participates and also to a fishery for a species that has a life cycle of approximately one year that is not subject to overfishing. In my opinion this provision is too narrow in scope and does not address species that are truly trans-boundary in nature but lack a formal agreement, or are species whose life history characteristics prevent NOAA from being able to apply the ACL control rules in an efficient manner.



I provide here three examples where a clear case can be made for MSA control rule exemptions – Atlantic mackerel and Gulf of Mexico Spiny Lobster and Atlantic butterfish. In the case of *Atlantic mackerel*, scientific evidence indicates the stock distribution is shifting into Canadian waters (Overholtz, 2011). Unfortunately, the U.S. has no formal trans-boundary sharing agreement and Canada takes what they can harvest. Unilateral U.S. management actions pursuant to MSA will not affect rebuilding or end overfishing but will disadvantage our fishermen and weaken the U.S. negotiating position.

While the U.S. opportunity to harvest mackerel was reduced by more than 80,000 metric tons (mt) since 2007 (from 115,000 mt to 34,907 mt) the Canadian government allows their fishermen to harvest most of the available quota since their fishermen are under no obligation to fish under MSA control rules. Due to the lack of a trans-boundary exemption, rigid interpretation of MSA requirements, confusion among fishery managers about whether or not the law requires the production of sustainable fishery yields or the application of layers of scientific uncertainty, the U.S. mackerel fishery (which is *not* overfished) has been severely restricted. Thus, Congressional action is necessary to require the U.S. government to implement an Atlantic mackerel resource sharing agreement with Canada and provide the Atlantic mackerel fishery with an ACL exemption.

Regarding the State of Florida's valuable *Spiny Lobster* (*Panulirus agrus*) fishery in the Gulf of Mexico, domestic fishermen account for a mere 6% of the total harvest. In fact, genetic evidence indicates that stock recruitment occurs entirely outside U.S. jurisdiction within the Caribbean Basin and waters of Southern Cuba, Brazil, Belize, Honduras and Columbia. In 2011, NOAA's Southeast Data Assessment Review (SEDAR) determined it was not possible to establish population benchmarks based only on the U.S. segment of the population (FKCFA 2011). There is no formal Pan-Caribbean agreement to manage this international stock. Despite the trans-boundary characteristics of this stock coupled with insufficient data available to make a stock status determination, MSA requirements force the RFMC's to set ACL/AM control rules for this species. Though the current ACL is sufficient there is real concern that scientific and management uncertainty will, over time, artificially reduce the allowable catch level. Spiny lobster should be exempt from the ACL rule.

I also agree with the statutory exemption provided for species with a short life cycle or unusual life history characteristics such as the Atlantic squids (*Loligo* and *Ilex spp.*), and warm-water species of shrimp. Allowing management flexibility for such species is appropriate and *Atlantic butterfish* is a perfect example. In 2004, NOAA determined that the butterfish stock was overfished and must be rebuilt in as short a time as possible but not to exceed 10 years. In 2010 NOAA determined the stock was not undergoing overfishing but could not determine if the stock was overfished. NOAA also concluded that the results of in 2004 were inaccurate and not suitable for management decisions.

Six years later, a rebuilding program is in place based on data that are insufficient to determine the condition of the stock. Given the fact that butterfish has a short lifespan (1-

3 years), extremely high natural mortality rate, uncertain and variable survey indices, and an exceedingly variable catch level it is not possible to accurately determine the condition of the stock on a timely basis. These uncertainties force precautionary decision-making when setting ACLs which negatively impacts fishing activities directed at other species, in particular the *Loligo* squid fishery.

Conforming the National Environmental Policy Act and MSA: In spite of clear direction given by Congress in 2006 (Section 304(i), as added by P.L. 109-479), NMFS and the Council on Environmental Quality have yet to adequately streamline the procedures for review under the two statutes. The results are unconscionable delays in conserving and managing our fish stocks. For example, 2012 measures for Pacific groundfish are based on data from 2008 to inform a regulatory process that began in 2009 in order to comply with environmental review timelines. At its November 2011 meeting the Pacific Fishery Management Council voted to maintain status quo on almost all ACLs through 2014 in spite of data showing markedly increased abundance on key stocks, simply because the environmental review time requirements would prevent the fishery from starting on time.

Stock Assessment Prioritization and Cooperative Research: The issues related to fishery science and stock assessment needs can be addressed using a transparent approach designed to provide a framework in which Commerce, NOAA/NMFS and the RFMCs can objectively prioritize research and assessment needs as well as cooperative research (CR) requirements on an annual basis for 5-year periods. These prioritized needs can inform budgetary allocations from Congress to NOAA and the Regional Science Centers.

I recommend that each NOAA/NMFS Regional Office, in conjunction with the Regional Science Centers, be required to complete a prioritization schedule of scientific research and stock assessment needs using a hierarchical score of pre-determined scientific and fishery attributes (i.e. economic value, stock status, survey needs, core/minor stock, level of uncertainty, protected species concerns, etc.) for each upcoming 5-year period. A similar process should be used for cooperative research recommendations recognizing that CR projects are Science Center directed and should be tailored to meet the unique needs of each region. Each RFMC, in conjunction with its SSC and consistent with requirements of MSA Section 302(h)(7), should review and adjust the recommendations of the NOAA/NMFS Regional Offices based on the Council's data needs. NOAA/NMFS Headquarters staff could then finalize the recommendations and cost estimates for each region and forward on a timely basis to Congress and the Office of Management & Budget (OMB) for consideration in the budgetary allocation process.

Consideration of Shore Side Investment in Catch Share Programs: In certain high volume fisheries around the country (i.e. Atlantic mackerel & pelagic squids, Alaska and Pacific groundfish) there is a heavy reliance shore side processing capacity, investment and marketing capability. In these distinct situations catch share programs must be made inclusive to protect these elements of the infrastructure. The consolidation of fishing vessels under typical catch share program is not the only source of job loss for fishery-dependent communities. Consolidation can also occur in the processing sector. For example, there are seven groundfish processing facilities in the Gulf of Alaska (five in Kodiak, one in Sand Point, and one in King Cove). These seven facilities compete with

each other for a market share in pollock, cod, rockfish, and flatfish. The companies also buy salmon, halibut, sablefish, crab, and herring from local fishermen.

The companies owning these facilities invested heavily to compete under an open access system to handle large volumes of pollock and cod. However, under a typical catch share system, consolidation in the fishing sector will likely be followed by consolidation in the processing sector. A program that does not factor in processing infrastructure may well result in shrinkage from seven facilities to two or three. This will adversely impact markets for all AK fishermen, including those engaged in salmon, halibut, sablefish, crab, and herring. Consolidation of processing capacity could hurt the local labor force in communities such as Kodiak where shore based processing workforce stands at roughly 1500 workers. Two-thirds of those jobs could be lost if a new catch share program triggers consolidation within the processing community.

Fisheries Management Responsibility in National Marine Sanctuaries: I continue to believe there are competing management jurisdictions between the National Marine Sanctuary Act (*See* NMSA 16 U.S.C. 1434) and the MSA (*See* MSA 16 U.S.C. 1852) when it comes to fishing regulations in sanctuaries. The specific problem appears in Section 304(a)(5) of NMSA (16 U.S.C. 1434) whereby the Councils are afforded the opportunity to prepare draft regulations using the MSA as guidance only “to the extent that the standards are consistent and compatible with the goals and objectives” of the Sanctuary designation. This is the crux of the jurisdictional and philosophical inconsistency.

RFMC Chairmen adopted a unanimous position in 2006 to amend both the NMSA and the MSA to exclude fishery resources as sanctuary resources and to achieve jurisdictional clarity by vesting federal fisheries management under the MSA. The House Natural Resources Committee attempted to address this issue during the 2006 reauthorization but Members deferred to the NMSA reauthorization. I agree with the position of the RFMCs and recommend the Committee consider including a jurisdictional clarification in the MSA. This approach will ensure that fishery resources are managed consistently throughout the range and subject to the National Standards.

Create Separate Definitions for the Terms “Overfished” and “Overfishing”: MSA Section 3 (*See* (34)) combines both terms into one definition. This is an inaccuracy that should be corrected. Simply stated, overfishing is an ongoing rate of removal from a fish stock that is too high and may lead to a stock becoming overfished. A stock that is determined to be overfished has already been exposed to a level of fishing mortality that jeopardizes the capacity to produce maximum sustainable yield and must be rebuilt.

Once clearly defined, a separate consideration could be developed for specific instances in which a robust, non-overfished stock is being subjected to too high an ongoing rate of removal. Rather than an immediate fishing closure, the fishing effort could be phased down over short period of time (i.e. 1-3 years) to reduce severe economic impacts but still provide adequate protection to the resource.

#### **(4) Recommendations**

Simply put -- implementation of the 2006 MSA amendments exceeded our scientific capabilities with little improvement expected in the future, and the result being losses in fishery yields due to chronic application of ever-increasing uncertainty buffers. The NSG1 evolved to include precautionary decision-making leading to safety buffers that effectively prevent the U.S. fishing industry from achieving OY. Furthermore, for stocks that are not overfished or where overfishing is not occurring, or when stock assessments yield inconclusive results, we may never reach the OY benchmark. These are the core weaknesses of U.S. fisheries policy yet achieving OY is a primary objective of MSA. My recommendation is for Congress to begin substantive reauthorization discussions now with a plan to offer a comprehensive reform package at the first appropriate opportunity. The eight pieces of legislation discussed today offer an excellent start with numerous elements that can be incorporated into such a package.

Mr. Chairman, thank you and the Ranking Member and the Members of this Committee for beginning this process in earnest. I look forward to working with you and your staff to secure positive changes to our Nation's fisheries policy.

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