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H.R. ____ Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act

To the
Committee on Natural Resources
United States House of Representatives

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Chairman Hastings, Ranking Member DeFazio and distinguished Members of the Committee, I appreciate the opportunity to speak with you about the "Discussion Draft" legislation titled "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act" (henceforth referred to as "Draft").

I am Rick Marks, a Principal at Robertson, Monagle & Eastaugh, P.C. ("ROMEA") of Reston, VA. Our extensive fisheries-related client base includes fishermen, fish houses, shore-based processors, fishing associations and fishing-dependent coastal communities in many states from several regions around the nation.

My background includes service on the Mid-Atlantic Fishery Management Council, as a supervisory marine fish biologist for the State of North Carolina and as a Fishery Reporting Specialist and Benthic Marine Field Technician for NOAA. I hold a Master of Science Degree in Marine Environmental Science and a Bachelor of Science Degree in Biology. I have authored several scientific papers in peer-reviewed journals regarding various aspects of marine finfish ecology and biology and have a professional certification in Environmental Conflict Resolution from the Morris K. Udall Foundation in Arizona.

My comments here today are my own as a Principal at ROMEA and advocate for the U.S. commercial fishing and seafood industry. However, in my preparation for this hearing I canvassed our clients extensively about specific contents of the "Draft" so in large part my testimony reflects feedback on issues critical to many of our clients operating in Alaska, Washington, Oregon, California, Florida (Gulf Coast, East Coast, and the entire FL Keys), New Jersey, New York, and Rhode Island.

The 2006 Amendments and subsequent implementation fundamentally altered the way domestic fishery resources are managed. The core concept was to separate fish politics from science. The new provisions focused on ending overfishing immediately, accountability, rebuilding stocks as quickly as possible, reducing fishing capacity through limited access programs -- all in the context of a more intensive reliance on science in the decision-making process.

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. For the 2006 reauthorization to work it required 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 on many stocks with consideration of uncertainty in the quota setting process has resulted in precautionary buffers and yields below MSY at the expense of the industry and our Nation. In addition, proliferation of unpopular catch share programs in some regions has intensified the call for reform.

The following points justify the idea that additional reform is necessary and to address the unintended consequences from 2006. These include but are not limited to: (1) the Committee considered no less than eight bills focusing on MSA reform in 2011; (2) you have convened 6 hearings with testimony from almost 100 witnesses in the 113th Congress; (3) NOAA is conducting a re-examination of NSG1 and data confidentiality standards; (4) in 2013 the GAO concluded that the 10-year rebuilding requirement was arbitrary and the mixed-stock exemption should be revisited; (5) many of the recommendations from the 2013 "Managing Our Nations Fisheries III" and from the Regional Fishery Management Councils (RFMCs) strongly support carefully targeted reform; (6) we are plagued by weak stock management and a requirement to have all stocks, incl. minor ones, at MSY in the same time/space; and (7) we are not meeting our objectives to maximize harvest to provide the greatest benefit to the Nation.

Whenever comprehensive changes are made to complex policies we don't always get it all right. The time to begin discussing a responsible rebalancing of the Act is now and we appreciate the Committee's attention to and leadership in this matter.

Comments on the "Draft"

SECTION 3: Flexibility In Rebuilding Fish Stocks

The title of the "Draft" reflects the interest from around the country in restoring some measure of flexibility to the stock rebuilding requirements without undermining conservation. This theme resonates with many in the fishing industry. RFMCs unanimously supported adding an element of stock rebuilding flexibility during the 2006 reauthorization and renewed those efforts in 2013-2014.

The change to section 304(e)(4)(A)(i) of the Act of "possible" to "practicable" in terms of rebuilding periods affects the existing 9th Circuit Court ruling in *NRDC v. Daley* which has been an issue for the Pacific Council and the subject of Council comments. If approved, this provision would provide the Council the option to choose between several rebuilding scenarios and not just the shortest and most harmful. The proposed change is viewed by the industry as beneficial to coastal communities without undermining stock rebuilding objectives.

The section also removes the 10-year rebuilding time frame and substitutes the time a fishery could be rebuilt without fishing, plus one mean generation (which is the current NSG1 for stocks that can't be rebuilt in 10 years). The 10-year requirement has long been considered by industry to be completely arbitrary but was touted by the environmental community as the gold standard.

The National Academy of Science (NAS) concluded in their report titled "Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the U.S." (NAS 2013) that the pre-set 10-year rebuilding requirement was indeed arbitrary and harmful, thus ending the debate. We need to replace this requirement with more scientifically valid metrics.

The "Draft" also provides several common-sense exceptions to the rebuilding time period which will be determined by the Secretary (not the RFMCs) including: (1) biology of the stock, environmental conditions or management measures under an informal international agreement; (2) the cause of depletion is outside the jurisdiction of the Council or can't be affected simply by limiting fishing; (3) if a stock is part of a mixed-stock fishery that cannot be rebuilt in the time frame if that causes another component to approach depleted status, or will lead to significant economic harm; (4) informal transboundary agreements that affect rebuilding; and (5) "Unusual events" affecting the stock and rebuilding and rebuilding can't be accomplished without significant economic harm to fishing communities.

Subsection (a) also adds helpful new flexibility requirements that rebuilding plans take into account environmental factors, including predator/prey relationships; a schedule for reviewing rebuilding targets and progress being made on reaching those targets; and consideration of alternative rebuilding strategies including harvest control rules and fishing mortality targets, things also requested by the RFMCs.

The "Draft" also includes a helpful flexibility provision allowing a RFMC the ability to terminate a rebuilding plan for a fishery that was initially determined to be overfished when updated science determines the stock is no longer overfished. This clarifies that once a stock is in a rebuilding period the process does not have to proceed to completion irrespective of stock response and condition.

The "Draft" omits a change to MSA Section 312(a) Fisheries Disaster Relief that was a provision in 2011 in Mr. Runyan's H.R. 1646 which requires the Secretary to render a disaster determination within specified time period after receiving a disaster request. Currently, Section 312 applies no time constraint for the Secretary to render a declaration. *We recommend the Committee consider a response time not to exceed 1-year.*

To illustrate, in May 2009 the Secretary closed the entire Gulf of Mexico snapper-grouper fishery to protect sea turtles for 5 consecutive months. 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. The Secretary did not respond to this situation

until early 2011, and determined that despite the hardship the industry survived the closure so no disaster declaration was necessary.

By comparison, it took the Secretary of Commerce just 90 days to respond to the most recent 2013 disaster request for a commercial fishery failure for Frazier River Sockeye in Washington State.

Subsection (c) allows increased flexibility by allowing a RFMC to phase-in rebuilding restrictions over a period of 3 years for healthy fisheries not subject to chronic overfishing and for which immediate restrictions will result in significant economic impacts to fishing communities. It is critical to note that overfishing will still need to end but that in certain circumstances, up to 3 years will be allowed to lessen economic harm.

SECTION 4: Modifications to the ACL Requirements

This section provides Councils with increased flexibility in setting annual catch limits (ACL). The ACL requirement is retained in the Act but the RFMCs could consider changes in ecosystem and economic needs of the communities when setting limits. In light of changing environmental conditions, these additions make scientific and common sense.

There are helpful targeted ACL exceptions for ecosystem component species that are not overfished or subject to overfishing or likely to become subject to those conditions. These species are defined in a manner that generally matches what is now in the NSG1. Since these non-targeted species are such minor components, it makes sense to retain them generally in the management context but not as species "in the fishery". This allows for ecological monitoring but does not increase management complexity or negative economic ramifications. A potential example of this application is the Giant Grenadier in Alaska trawl fisheries in the BSAI/GOA.

The "Draft" allows setting multiple year ACLs and annual catch limits for a stock complex. We suggest "stock complex" be replaced with "mixed stock assemblage". This provision will provide some limited flexibility for RFMCs to set a single ACL for a group of fish stocks that are commonly found in association with each other. Often, the availability of individual species within a mixed stock assemblage will fluctuate and may be inconsistent with species-specific ACLs. However, this provision does not really address the weak stock management problems inherent in mixed stock fisheries and should be further developed to address minimum stock biomass. This problem can be exacerbated as stocks rebuild, in data poor situations, and where monitoring is not timely.

The Act currently provides an exemption from the ACL control rules for stocks managed under international agreements and for species whose life cycle is approximately one year that is not subject to overfishing. These provisions are too narrow in scope and do not address species that are truly trans-boundary in nature that have an informal agreement (or no agreement) in place, or are species whose life history characteristics prevent NOAA from being able to apply the ACL control rules in an efficient manner. The "Draft" contains helpful provisions to address two of these three concerns.

For example, 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. In this instance, unilateral U.S. management actions pursuant to MSA do not affect rebuilding or end overfishing but 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 since 2007 (from 115,000 mt to 34,907 mt) the Canadian government allowed their fishermen to harvest most of the available quota since their fishermen are under no obligation to fish under MSA rules. Due to the lack of a trans-boundary ACL exemption, rigid interpretation of MSA requirements, and application of layers of scientific uncertainty, the U.S. mackerel fishery (which is *not* overfished) has been severely restricted and it will prove difficult to rebuild quota levels under the new MSA standards.

The proposed ACL exception is also appropriate for ***Atlantic butterfish***, a species that exhibits a short lifespan (1-3 years), an extremely high natural mortality rate, highly uncertain and variable survey indices, and an exceedingly variable catch level so that it is not possible to accurately determine the condition of the stock on a timely basis. Each of these uncertainties contributes to precautionary ACLs, essentially turning butterfish into a "choke" stock with negative effects on fishing for other robust species, undermining our ability to achieve Optimum Yield (OY) which is a requirement of National Standard 1.

However, Section (3)(B) in the Draft (Page 7) does not quite address the problems related to the ***Spiny Lobster*** fishery in the Gulf of Mexico. While valued at $375M and supporting more than 3500 jobs in Monroe County, FL alone -- U.S. fishermen account for just 6% of the total harvest. 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 agreement (formal or informal) to manage this international stock.

Despite the true trans-boundary nature of this stock and insufficient data available to render a status determination, MSA requirements could force the RFMC's to set precautionary ACL control rules for this species that will harm U.S. fishermen with no biological benefit to the stock. Considerations should be made in this particular instance where there is no transboundary agreement but the recruitment, distribution, life history and preponderance of fishing activities are transboundary.

SECTION 5: Overfished and Overfishing Defined

This section correctly defines "overfishing" and removes the term "overfished" from the Act, substituting the newly defined term "depleted". The section also requires changes to the annual Status of Stocks report submitted by the Secretary to distinguish between

stocks that are depleted or approaching that condition due to fishing and those meeting that definition as a result of other factors. The industry supports the separation and clarification of the two terms and the requirement to differentiate vis a vis stocks status. However, we recommend the proposed definition of "overfished" be revised to include a minimum stock biomass level which reflects the current NSG1.

SECTION 6: Transparency and Public Process

This section requires RFMC Science and Statistical Committees (SSCs) to develop advice in a transparent manner and allow for public input. However, the 2006 MSA amendments ceded unprecedented authority to the SSC and the increased use of video/call conferencing/webinar technology has increased to where critical decisions can be made outside of the public eye. So, there is an elemental need to consider public access.

While each council operates differently, and the range of comfort in the regulated community varies from region to region based on those differences, there is no reason why we should not require RFMC, SSC and Council Coordinating Committee (CCC) meetings be widely available in some timely manner and archived for public access.

We note that subsection (b) requires the Council and CCC to provide a live broadcast only if practicable to do so, but does require an audio recording, video (if the meeting was in person or via video conference), and a transcript of each Council and SSC meeting on its website within 30 days. Note there are some concerns being expressed that 60 days may be a more appropriate timeframe. It will be the responsibility of the Secretary (not the RFMCs) to maintain and make available an archive of the Council and SSC meetings.

This concept of ensuring public access was raised originally in 2011 and generally supported by the fishing industry, especially in the Gulf of Mexico and South Atlantic regions as a provision in H.R. 2753: *"The Fishery Management Transparency and Accountability Act"* introduced by Rep. Walter Jones (NC-R).

Subsection 6 (c) stipulates that fishery management plans, amendments, and regulations implementing those plans and amendments are deemed to have met the requirements of the National Environmental Policy Act (NEPA). The provision also specifies that MSA timelines will be the controlling schedule.

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 due to duplicative mandates. This delays and hamstrings the RFMC process and can harm the fishing industry.

For example, 2014 measures for West Coast Groundfish are based on data from 2010 to inform a regulatory process that began in 2011 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.

SECTION 7: Limitations on Catch Share Programs
Generally, the industry supports this comprehensive definition of the term "catch share". We note the inclusion of the term "sector" which heretofore has been excluded from the limited access program concept and one that has different connotations. The term "sector" should include the system being used today to manage New England Groundfish.

My processors in Alaska, the West Coast, and New Jersey support retention of "processors" in the definition. Though this inclusion does not mandate that harvesting shares be awarded to processors, it is a continual recognition (along with recognition of cooperatives and communities), that in certain high volume fisheries where there is a heavy reliance on shore side processing capacity, investment and marketing capability, (such as Atlantic mackerel & pelagic squids, Alaska and Pacific groundfish), that consideration can be given to these critical elements of the infrastructure.

We note that Subsection (b) establishes a formal simple majority catch share referendum process applicable only to future catch share programs in New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico regions. This is broad support across the fishing industry in the named regions for an iron-clad transparent referendum process. Now, there is no interest in my broad client base to dismantle existing catch share programs or remove the tool entirely from the system. However, what may not be widely known is a lack of consensus in the exempted regions about a referendum requirement for future programs. This is readily apparent in the small boat fishing-dependent communities in the Aleutians and on the West Coast.

There is a groundswell of opposition from the named regions against NOAA's National Catch Share program that plays out annually in the Commerce-Justice-State appropriations process. It is important to note this widespread opposition is not against the policy but rather its implementation. Many in the fishing industry, particularly in the Gulf and South Atlantic, consider the catch share process to be a top-down process. NOAA indicated as early as December 2009 (in the initial stages of the *DRAFT* policy!) that "32 additional programs will begin development in FY 2012" (NOAA 2009). Many fishermen firmly believe the process to be tainted by foundation trust grants to NGOs who do not have the best long term interests of the U.S. commercial fishing industry in mind.

It is important to note here that in some regions, catch share programs are supported by industry, while in other areas they are flatly opposed and viewed not as conservation tools but as a means of social engineering and worse. NOAA clearly knows this, stating in the 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 darker side of social and economic implications of catch share programs that are the reason the fishing industry in many regions desires to have an honest transparent vote. Reforming the referendum process contained in Section 303(A) was first raised in 2011 by Rep. Runyan in H.R. 1646/2772. The current law does not protect fishermen, particularly small boat fishermen in New England and Gulf of Mexico, and there is no referendum provision for the South Atlantic and Mid-Atlantic, leaving the industry in those areas exposed to proliferation of catch share programs they mostly do not want and for which there is often insufficient scientific information.

Frankly, the only question before the Committee should be what definition of "Permit holders eligible to participate" is the most appropriate. Some of my fishermen in the named regions support the current proposed definition that requires holders of a permit with landings in 3 of most recent 5 years (with allowances for hardship considerations); while many others, particularly in the Gulf of Mexico and South Atlantic, believe that an active permit holder (with no or very low landing requirements) should be allowed to vote. There is agreement in all named regions that all catch share program specifics must be provided in advance to ensure a fully informed vote.

SECTION 8: Data Collection and Confidentiality

This comprehensive section constitutes a very large segment of the "Draft" and received mixed reviews from industry across regions, covering the gamut of issues. I also note here there is currently controversy surrounding the agency's codification of practices pertaining to the protection of confidential data so the topic has relevance.

First, regarding Electronic Monitoring (EM) – the industry feedback was essentially that EM can be helpful in some targeted regional fisheries (some of our clients are experimenting with electronic logbooks to enhance reporting efficiency/accuracy; some fishermen see EM as a key to cost savings for observer coverage) but perhaps not as part of a national model. As such, there was some concern expressed by industry that developing EM programs at a regional left would be difficult enough and the Secretary should not be trying to develop national objectives, performance standards and regulations.

Also, perceptions exist that the development of a national EM program could be West-Coast centric. There was also concern that this section could be interpreted as a potential mandate for broad use of EM and about potential costs to industry. Many industry stakeholders oppose video cameras while some support it, and there are others that actually prefer human observers.

I fully recognize and appreciate the growing interest in EM being expressed by NOAA in the 2014 "Priorities and Annual Guidance" Report (NOAA 2013); in discussions at the recent CCC meetings; and for the work being done by the PSMFC, the PFMC, and some participants in the West Coast Groundfish IFQ program and in some small boat fisheries in Alaska as a potential cost savings option.

However, I am not convinced from the feedback I am receiving from industry that there is broad national acceptance for EM, esp. video cameras, in all regions/fisheries. Perhaps a more suitable approach for the "Draft" would be to limit EM to pilot projects in specific fisheries where the RFMC of jurisdiction and stakeholders can collaborate to develop/implement a program with objectives, standards, regulations and costs suitable to the specific needs of a given fishery.

Regarding confidentiality of information in Subsection (c), there is general industry support for clarifying and enhancing the current language regarding the collection and use of confidential information and providing a comprehensive definition of what constitutes "observer information".

I noted earlier that NOAA is under pressure from the NGO community to relax confidentiality standards and increase the types of information made available to the public, including trade secrets and proprietary information. The "Draft" provides a clear indication that it is the intent of Congress to protect sensitive information.

The only concerns raised by industry (from the West Coast mainly) include: (1) the potential for an interpretation of the changes to Section 402(b) to mean that NOAA/observers could be prevented from informing fishermen of their catch, discards and MMPA interactions for an observed trip; and (2) the inability to release data ***in the aggregate*** to show the value of a fishery or a particular fishing area to help the industry defend its interests during National Ocean Policy implementation.

Subsection 8(d) focuses on Data-Poor fisheries by authorizing the use of area-specific money in the Asset Forfeiture Fund (AFF) to gather fishery independent data, to survey/assess "Data-Poor" fisheries, and to develop cooperative research to collect fishery independent data. It also requires the RFMCs to list and prioritize Data-Poor fisheries.

NOAA currently manages 528 stocks of fish. Of this total, roughly 114 are considered adequately assessed by the agency. Most of the 114 assessments (approximately 80) occur regularly on economically important stocks in Alaska and New England. In other regions, the assessment periodicity is far less - 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 the achievement of OY.

There is widespread industry support for the improved data collection and focus on Data-Poor stocks contained in the "Draft", especially in the Gulf of Mexico, South Atlantic and Mid-Atlantic regions where assessments occur less frequently compared to other areas.

I note here that Rep. Wittman introduced H.R. 3063 which contains a potentially useful provision pertaining to development of a national stock assessment plan under MSA Section 404(b). I have long been a proponent for a national, transparent, prioritized stock assessment and survey program to ensure that adequate assessments, supporting surveys

and cooperative research are conducted in each region to support healthy commercial/charter/sport fisheries. This provision should be considered in the context of the "Draft" and dovetail with current requirements specified in MSA Section 302(h)(7).

SECTION 9: Council Jurisdiction for Overlapping Fisheries
This section adds reciprocal voting rights to established council "liaison" positions between the New England and Mid-Atlantic RFMCs only. While fishermen in the Mid-Atlantic have not requested this action and do not wish to dismantle established council membership, fishermen in New England made the request. Since the provision establishes a limited reciprocal voting right and does not disrupt current council procedures, there is general agreement about this provision between fishermen in the two areas. Please note that H.R.3848 was referred to this Committee and provides the State of NY with a non-reciprocal, 3-vote seat on the NEFMC. This legislation is likely to meet with stiff opposition from fishermen in both regions and from States on both RFMCs.

SECTION 10: GOMEX Cooperative Research and Red Snapper Management
There is longstanding and widespread industry support in the Gulf of Mexico and South Atlantic for a requirement that the Secretary, working with States, GMFMC/SAFMC, and commercial/charter/sport stakeholders, develop and implement a cooperative research program for both regions with a priority on data-poor stocks.

I note here that industry comments from Alaska elucidated concerns that S-K funding proposed to be diverted for use in implementation of subsection (b)(2) could potentially pull funds from other regions.

Subsection (d) of the "Draft" outlines specific scientific requirements for timely surveys and stock assessments and task prioritization at the NMFS Southeast Regional Science Center; and adds a requirement to utilize any information generated from RESTORE ACT funding to be used as soon as possible in any fisheries stock assessment. There is widespread industry support in the affected regions for these requirements.

Regarding red snapper management and State seaward boundaries in the Gulf of Mexico in Subsection (f), the proposal to uniformly extend State jurisdiction 9 nautical miles has generated little comment from my constituents in Florida. Their state already has jurisdiction out to 9 miles so this represents little change for Florida fishermen. The comments that I did receive indicate the existing boundaries are historic and should remain as they are, and also that the federal government should not be dictating individual Gulf State authority.

SECTION 11: NPFMC Clarification
This section should be expanded to include extension (or removal) of the sunset date for authority over the West Coast Dungeness crab fishery (*See* 16 USC 1856 note).

SECTION 13: Consistency With Other Laws
This section clarifies that fisheries management activity impacted by the National Marine Sanctuaries Act (NMSA), the Antiquities Act, or the Endangered Species Act (ESA) be

accomplished under the MSA using the RFMC process. In instances where the MSA conflicts with these other laws, the MSA shall be the controlling process. This provision does not amend these other statutes.

Regarding Marine Sanctuaries, many stakeholders who fish in/around these areas believe there are definitely conflicting jurisdictions between the National Marine Sanctuary Act (*See* NMSA 16 U.S.C. 1434) and the MSA when it comes to fishing regulations. I hear most often about these conflicts (and the potential for increasing problems…) related to the Channel Islands, Olympic Coast and Florida Keys 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 conflict between NOAA/NMFS and NOAA/National Ocean Service (NOS).

The 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 at the time deferred to the NMSA reauthorization.

The RFMCs did not resurface this as primary issue for the 2014 MSA reauthorization. None the less, I agree with the 2006 position and recommend the Committee consider at least supporting the provision contained in the "Draft" to ensure jurisdictional clarity under the MSA in instances of conflict between the statutes. This approach will help ensure that fishery resources are intended to be managed consistently throughout their range and under a transparent public and scientific process.

The potential for widespread adverse industry impacts from Antiquities Act authority increases during the latter part of every Administration. Creation of the Hawaiian Islands National Marine Monument was a case in point. The provision contained in the "Draft" will likely not protect the industry from expansive closures but could provide some level of protection with the application of MSA requirements.

Regarding conflicts with the ESA -- during the past 20 years, ROMEA's clients in several regions have struggled to contend with intrusive ESA impacts in federally-managed fisheries involving a number of protected species. We assisted our clients with ESA decisions involving: Steller Sea Lions (Alaska trawl fisheries); Loggerhead Sea turtles (Gulf of Mexico longline fisheries); Atlantic Right Whales (South Atlantic gillnet fisheries); Atlantic Sturgeon (Mid-Atlantic gillnet fisheries); and Sea Turtles (Mid-Atlantic/NE Atlantic Sea Scallop dredge fishery).

Each one of these environmental conflicts represented extremely difficult challenges that mostly did not end well for industry. In many instances, fisheries were closed and

industry losses severe. These processes were often marred by NGO litigation (or threats thereof) but also by several key characteristics such as: (1) lack of a transparent process, (2) lack of adequate scientific data; (3) lack of adequate time to address the problem, and (4) lack of a clearly defined role for the RFMC.

The noted exception to this was the most recent 2013 situation with Atlantic Sturgeon. NOAA/NMFS leadership adopted a different model for the sturgeon, providing a Draft Biological Opinion and allowing input from the RFMCs, Atlantic States Marine Fisheries Commission, and the public. The adequate time and added transparency ensured that additional data were considered (a first ever stock assessment is underway) which has, so far, allowed for a more informed decision-making process.

The provision contained in the "Draft" specifying that the MSA process will be used to develop changes to federally-managed fisheries impacted by these statutes is widely supported by industry and should facilitate a less litigious, more transparent process, and signal it is the intent of Congress that this be the preferred approach.

Closing

Implementation of the 2006 MSA amendments exceeded our scientific capabilities and limited our flexibility. The NSG1 evolved to include precautionary decision-making leading to ACLs with safety buffers that effectively prevent the U.S. fishing industry from achieving OY. Furthermore, Data-Poor stocks persist and unwanted catch shares threaten fishermen in several regions. These are some of the weaknesses of U.S. fisheries policy yet achieving OY is a primary objective of MSA.

Mr. Chairman, thank you and Mr. DeFazio and the Members of this Committee for beginning this process in earnest. I and many of my clients view the "Draft" as a helpful, measured step in the right direction. I look forward to working with this Committee to refine the "Draft" and to seek constructive balanced improvements in our Nation's fisheries policy.

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