

WRITTEN TESTIMONY OF

Richard B. Robins, Jr., Chairman, Mid-Atlantic Fishery Management Council

Before The U.S. House of Representatives Committee on Natural Resources

**Oversight Hearing on the Reauthorization of the Magnuson-Stevens
Fishery Conservation and Management Act**

September 11, 2013

Chairman Hastings, ranking member DeFazio, and members of the Committee, thank you for the opportunity to testify before you today regarding the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, MSA, or the Act). I am Richard B. Robins, Jr. and I serve as the Chairman of the Mid-Atlantic Fishery Management Council. The Mid-Atlantic Council has primary management authority for 12 species of fish and shellfish in federal waters off the coast of North Carolina through New York. In 2014 I will also serve as the Chairman of the Council Coordination Committee (CCC), which comprises the Chairs, Vice-Chairs, and Executive Directors of the eight regional councils.

I appreciate the opportunity to testify before the Committee on Natural Resources about the regional councils' perspectives on the reauthorization of the MSA. My testimony will reflect my own experience in the Mid-Atlantic region. I will also summarize several common themes of the concerns that have been identified by the other U.S. regional fishery management councils. While these concerns do not represent formal positions from the councils, they are relevant to your Committee's ongoing reauthorization work. The individual councils and the CCC look forward to continued discussions and opportunities to provide input into the reauthorization process in the months ahead.

The United States has one of the strongest federal fishery management systems in the world. The Magnuson-Stevens Fishery Conservation and Management Act established a framework for sustainable fishery management which has contributed to the rebuilding of many depleted U.S. fisheries. The underlying goal of the Act is to conserve and manage U.S. fisheries for the greatest overall benefit of the nation. This same goal is central to the oath of office that every appointed Council member takes at the beginning of their term.

As we reflect on the experience of the 2006 reauthorization and look forward to this reauthorization, I think it is important to ensure that the Act and its requirements will position the regional fishery management councils (RFMCs or councils) to manage fisheries for the greatest overall benefit of the nation, across the full spectrum of stock assessment characteristics, stock conditions, and dynamic environmental conditions.

One of the greatest strengths of our fishery management system is that it does not require us to apply a one-size-fits-all management approach to our 446 federally managed stocks and stock complexes. Instead, the Act delegates a portion of decision-making authority to the individuals on councils who are most familiar with each region's fisheries. As such, this allows management plans to be tailored to the specific characteristics of each fishery. However, over the past year in discussions about reauthorization of the MSA, it has become apparent that the councils' need more flexibility to make the decisions that are best for each fishery.

The next reauthorization should build on the past success of the Act in order to position our fisheries for a sustainable future in terms that extend beyond simply preventing overfishing. Successful conservation and management of U.S. fisheries should not be defined exclusively in biological terms; rather, the Act should enable the councils to manage fisheries for biological, ecological, social, and economic success. Changes should be undertaken very carefully and should not compromise the integrity or ambition of the U.S. fishery management standards. My testimony today will outline several critical areas where small, targeted changes in the Act can have a major impact without jeopardizing the sustainability of our nation's fisheries.

REBUILDING REQUIREMENTS

REBUILDING TIMEFRAMES

Provide the councils flexibility to consider a range of rebuilding plans and timeframes.

The councils recognize that a short rebuilding time period may be desirable because healthy stocks provide higher catch levels than stocks that are overfished, thus providing greater long-term socio-economic benefits. However, there are always tradeoffs between biological, social, and economic outcomes, and the councils need flexibility to evaluate the tradeoffs associated with a wider range of timelines. Rebuilding requirements could be made more flexible by allowing councils to rebuild stocks to their biomass targets as quickly as practicable and in a manner that protects an overfished stock from further decline. This would allow the councils to tailor each rebuilding plan to the life history of the stock, the socioeconomic characteristics of the fishery, and the statistical characteristics of the data used to inform management decisions.

Replace the 10-year rebuilding target with biologically-derived maximum rebuilding times for all species.

The current 10-year rebuilding timeframe results in inconsistent management approaches depending on the life history of the stock. For example, a stock that is expected to rebuild in slightly less than 10 years in the absence of fishing mortality could require much more restrictive management than a stock that is expected to rebuild in slightly more than ten years. This results from the fact that the maximum rebuilding timeframe (T_{MAX}) for a stock that cannot be rebuilt within 10 years is the minimum time that it would take to rebuild the stock in the absence of fishing plus one mean generation time.

In the Mid-Atlantic, the rebuilding plan for the spiny dogfish fishery fell within the 10-year rebuilding timeframe. As a result, the fishery, which was landing over 60 million pounds annually in the mid-1990's, changed abruptly to an "exit-fishery" mode for one year before a 600-pound trip limit was implemented in the fishery. This effectively eliminated directed fishing in federal waters.

In some cases, including spiny dogfish, the requirement to rebuild stocks within a fixed 10-year time frame precludes the councils from effectively considering social, economic, and ecological tradeoffs. As a result, some of our rebuilding successes have been successful in biological terms but have resulted in Pyrrhic victories that have come at unnecessarily high short-term and cumulative costs to our fishing communities. Amending the Act to replace the arbitrary 10-year rebuilding requirement with a biologically derived metric for T_{MAX} (e.g., T_{MIN} plus one mean generation time) would result in more consistent management for all fisheries and would give the councils flexibility to minimize the adverse economic impacts of rebuilding.

Address inherent uncertainties related to environmental, ecological, and anthropogenic factors and other conditions that can affect a fishery's rebuilding progress.

Overfished stocks, as defined by the current Act, often do not become that way solely as a result of excessive fishing effort. Environmental factors and changing stock assessment methodology can also play a significant role in the status determination of a fishery. The Act should be amended to use the term "depleted" instead of "overfished" to reflect the fact that a fishery's status is typically influenced by multiple factors.

Rebuilding requirements should also accommodate variability in environmental conditions once a stock is being managed under a rebuilding plan. The councils have limited ability to predict, and no ability to control, many of the factors other than fishing mortality that affect the rebuilding process. For example, Pribilof blue king crab, managed by the North Pacific Fishery Management Council, has failed to rebuild even in the absence of fishing pressure. The Act should be amended to allow the councils to manage contingencies when stock rebuilding is precluded by environmental factors.

As a result of these uncertainties, the New England Council has recommended focusing on ending overfishing and controlling fishing mortality during stock rebuilding, rather than focusing on fixed rebuilding timelines.

Include clear guidance for responding to changes in stock status associated with updated stock assessments.

The Act requires that management decisions be based on the best available data. In some instances, such as Widow rockfish, managed by the Pacific Fishery Management Council, the councils have been required to continue rebuilding to a biomass target after new stock assessments indicate that the stock was never overfished. Rebuilding plans should not be this inflexible, and councils should be able to set Annual Catch Limits (ACLs) derived from their Scientific and Statistical Committee's (SSC) catch recommendations based on current stock assessment results.

ECONOMIC IMPACTS OF REBUILDING

Prioritize the minimization of adverse economic impacts in the development of rebuilding plans.

It is difficult to separate economic impacts due to poor stock conditions in some regions from the impacts of statutory requirements, but it is apparent that rebuilding a depleted fishery can have severe and long-lasting adverse impacts on fishing communities. By nature of reducing total catch, all rebuilding plans contribute to negative short-term economic impacts. However, the councils are optimally positioned to develop strategies that will mitigate some of the social and economic consequences of rebuilding without jeopardizing the ability of a stock to rebuild to its biomass target.

REBUILDING DATA-POOR STOCKS

Provide distinct provisions for rebuilding data-poor stocks.

Despite ongoing efforts to improve stock assessments and catch estimates, data-poor stocks continue to pose a range of challenges for the councils. Congress strengthened the Act by placing a greater emphasis on science-based decision-making through the 1996 and 2006 amendments, but for some of our fisheries, councils simply do not have the information necessary to support this process. This becomes particularly clear when rebuilding data-poor fisheries. Given the highly uncertain nature of these fisheries, it does not make sense to use the same set of requirements for data-poor and data-rich species. Stock rebuilding targets and schedules for data-poor species may

imply a level of assessment certainty that does not exist. The Act should be amended to include clearer guidance on the determination of an overfished or depleted status for a data-poor stock and on the development of a rebuilding plan for that stock.

OTHER ISSUES

MIXED-SPECIES FISHERIES

Include distinct provisions for managing and rebuilding multi-species complexes.

Single-species moratoria are impractical, unrealistic and result in unnecessary impacts on healthy stocks in a multi-species complex. Implementing measures to immediately end overfishing on a single component stock of a complex may unnecessarily adversely impact other species in the complex. South Atlantic red snapper and Southern New England/Mid-Atlantic winter flounder are examples of fisheries that were closed due to the single-species rebuilding requirements of the Act, despite the fact that these species are components in mixed stocks and fisheries. In the South Atlantic region, moratoria on 4 stocks have precluded new assessments on those stocks because the harvest moratoria eliminated the only available data source for those species.

Mixed-species fisheries cannot be adequately managed by applying single-stock principles. Stocks in a complex will vary in abundance over time, and it is unlikely that all will be at high abundances at the same time. Rather than expecting all stocks in a multi-species complex to be at Maximum Sustainable Yield (MSY) levels simultaneously, a desirable fishery yield should be specified for an overall complex allowing individual stocks more normal variability.

ACLS/AMS AND OVERFISHING DETERMINATIONS

Annual Catch Limits (ACLs) and Accountability Measures (AMs) have the potential to be powerfully effective management tools, but their utility depends on the quality of the data used to assess stock size and set appropriate catch limits.

Allow ACL/AM exemptions for a broader range of fisheries.

Many fisheries are appropriately managed with ACLs (quotas) but there are instances when ACLs are not the optimal management strategy and there are no clear benefits achieved by establishing them. A first step in this direction would be for Congress to maintain the overall language for ACLs but to give the councils limited discretion to apply ACLs where practicable.

Councils should have the ability to decide when implementing ACLs for data poor stocks may not be appropriate based on current management and monitoring programs. For example, ACLs may not be the best management strategy for small-scale, subsistence fisheries in the Western Pacific region. Another difficulty with the ACL requirements is that many species are considered incidental or rarely encountered components of actively managed target species. For large multi-species targeted fisheries, the mandate to establish ACLs for incidental species can lead to closures that cause unnecessary economic losses relative to the harvest of the targeted species and result in minimal biological gain for either the targeted or incidental species. In other instances, it may be very important to control incidental fishing mortality on a stock in a mixed fishery and the councils should have the ability to distinguish between and among these situations in order to achieve their management objectives.

Extend the timeline for ending overfishing in non-overfished stocks

Overfishing should be managed as a transient condition (i.e., a rate) that can occur on both overfished stocks and stocks that are not overfished. Temporary or short-term overfishing on a non-overfished stock, which can often be corrected in a relatively short period of time, does not jeopardize the long-term ability of a stock to achieve MSY or Optimum Yield (OY) on a continuing basis. By comparison, an overfished stock is the result of years of overfishing or environmental changes that can typically only be corrected over a longer time period.

The current requirement to end overfishing immediately, regardless of whether the fishery is actually overfished, has likely caused undue and severe economic impacts in U.S. fisheries. Providing for a multi-year reduction in fishing rates to eliminate transient overfishing conditions, particularly in cases where the stock is healthy, would enhance regulatory stability.

For long-lived species, consider basing the overfishing limit on recruitment overfishing instead of MSY.

In the context of rebuilding long lived species, such as South Atlantic red snapper, some councils have suggested that recruitment overfishing and growth overfishing pose different risks to the long-term health of the stock and should be treated differently. In cases such as South Atlantic Red snapper, some transient growth overfishing could be tolerated during stock rebuilding without jeopardizing the stock's ability to recover. As a result, the South Atlantic has suggested that the limit of exploitation (the OFL) should be based on recruitment overfishing rather than MSY for this species. Basing OFL on recruitment overfishing could provide a more meaningful standard if overfishing must be eliminated immediately. The fishing public can understand the need to fish at or below a rate that allows a population to replace itself. However, problems occur when their fisheries are forced to endure the very low exploitation rates that are often necessary to achieve MSY on a long-lived, slow growing stock.

Include provisions which allow councils to end overfishing over a multi-year period to avoid severe social and economic impacts.

The requirement of the Act to end overfishing immediately has destabilized some U.S. fisheries. The Red snapper fishery and New England groundfish are examples of fisheries that have been dramatically impacted by this requirement. Quotas must ultimately be aligned with stock assessments, so some adverse outcomes are unavoidable in certain fisheries that may have experienced chronic overfishing and overcapacity. However, specific flexibility to eliminate overfishing under certain circumstances over a multi-year period would allow the councils to substantially mitigate short-term social and economic dislocation in our managed fisheries. Examples of stocks that were rebuilt prior under these types of approaches prior to the 2006 reauthorization include King mackerel and Spanish mackerel in the South Atlantic, which were rebuilt within a generation time and still allowed a viable fishery to operate.

Include specific provisions for setting ACLs or AMs for data-poor stocks.

The new system of ACLs and AMs has worked well in fisheries that have moderate to high levels of data and stock assessments upon which to establish an appropriate ACL, but such a prescriptive approach is often challenging in data-poor fisheries. These fisheries often lack the catch data or life history information (e.g., age and growth, size at reproductive maturity, and reproductive potential) that are needed to manage effectively with ACLs and AMs. Octopus in the North Pacific, black sea bass in the Mid-Atlantic, and reef fish in the Caribbean are examples of data-poor stocks that have been difficult to manage under the new ACL requirements. The councils need some limited flexibility to more effectively manage small scale, incidental, or data-poor fisheries that may be

managed more effectively using management tools other than ACLs and AMs. Councils should have more discretion in setting ACLs for data-poor stocks. This discretion could be established by making the SSC catch advice on data-poor stocks advisory rather than binding, if certain conditions are met.

Include provisions for addressing dramatic changes in the perception of stock status.

The requirement to end overfishing immediately would benefit from a narrowly-defined exception when there is a dramatic change in the perception of stock status. Gulf of Maine Cod is the most recent example of a fishery that was dramatically impacted by the results of a new stock assessment. Changes to the Act or to the National Standard 1 guidelines could provide for a tempered management response in cases where there is both a significant change in the perceived status of a stock as well as considerable uncertainty in the assessment.

Consider ACL/AM provisions for transboundary stocks that are not subject to international treaties or transboundary resource sharing agreements.

In cases where a transboundary stock is not subject to an international resource sharing agreement, such as Atlantic mackerel, U.S. fisheries may be disadvantaged by the ACL/AM requirements. In the mackerel example, the Mid-Atlantic Council is required to account for projected Canadian catch when it sets the U.S. ACL. If the anticipated Canadian catch approaches the overall Acceptable Biological Catch (ABC) for the stock, the U.S. fishery could be closed. Unfortunately, there is little incentive for other nations to enter into our more restrictive management framework, and U.S. councils should have more flexibility in these situations when setting ACLs in U.S. waters.

FISHERY DATA AND FUNDING

Ensure that science-based requirements of the Act are adequately funded.

The 2006 ACL requirements have increased the demand for assessment products from the regional science centers. As previously described, the effectiveness of the regional councils is integrally linked with the availability of quality fishery data at adequate frequencies. In particular, additional scientific resources are needed to bring data-poor stocks up to an adequate assessment level.

Expand cooperative research programs and establish dedicated sources of long-term funding.

Cooperative research programs provide a means to improve the accuracy of stock assessments while engaging stakeholders in the research process. Despite the importance of these programs, many of them face inadequate or uncertain funding from year to year. The Mid-Atlantic Council has funded the Northeast Area Monitoring and Assessment Program (NEAMAP) through its Research Set-Aside (RSA) program for the past 6 years, but the allocation of these funds solely to NEAMAP prevents us from funding other projects that address our annual research priorities. NEAMAP has become a core monitoring program in the Mid-Atlantic and its funding should be secured through the next reauthorization, using Saltonstall-Kennedy funds or other dedicated funding sources to ensure its future. The reauthorization should include provisions for funding of cooperative research programs around the country.

Include explicit authority for the funding of monitoring and observer programs.

The councils depend on having effective monitoring and reporting systems in place to help inform catch and bycatch estimates and to detect potential problems in a fishery as early as possible. Not only do these programs require adequate funding to operate, but they require consistent funding from one year to the next. Given the critical nature of these programs, an amendment to the Act should include specific provisions securing long-term funding for necessary monitoring and

reporting programs. Amendment 5 to the New England Fishery Management Council's herring management plan included innovative cost-sharing mechanisms to support observer coverage that were disapproved by NMFS. Councils should have a broader range of options for funding observer coverage to ensure that U.S. fisheries are adequately monitored, including fisheries that are not managed under Limited Access Privilege Programs (LAPPs). The reauthorization should include cost-sharing options for observer coverage.

Ensure that all mandates are sufficiently funded.

Congress should avoid adding any new unfunded mandates and should ensure that appropriate funds are available for the councils to meet the existing requirements of the Act. Continued investment in stock assessment capacity is of paramount concern in this reauthorization process.

SOCIAL AND ECONOMIC STABILITY

Allow the councils greater flexibility to consider social and economic factors in the development of management measures.

Although the councils have always incorporated socioeconomic information into their decision-making processes, the use of such information has been limited largely to describing the likely impacts of potentially restrictive management measures on revenues or participation, rather than being used to improve participants' socioeconomic well-being. The Act should be amended to include specific social and economic objectives that would encourage proactive analysis of socioeconomic impacts.

Establish and fund a national seafood certification for U.S. fisheries managed under MSA.

The U.S. has one of the strongest fishery management programs in the world, and several councils have voted to support establishing a U.S. fisheries sustainability certification in the next reauthorization. This issue deserves to be addressed—U.S. fishermen fishing under today's Magnuson Act should be standing tall among their international peers. In a market transformed by globalization, the sustainability of U.S. fisheries needs to be affirmed, and U.S. fishermen and processors should be able to identify and label their products as fish that were harvested responsibly and sustainably under the gold standards of the Magnuson-Stevens Act. A public affirmation of the core strengths of the U.S. management system would be an important step to facilitate education, awareness, and marketing for the benefit of U.S. fisheries.

DATA CONFIDENTIALITY

Revise data confidentiality requirements to facilitate informed decision making

Several councils have experienced significant problems associated with the issue of data confidentiality. In some cases in the South Atlantic, it is preventing the Council from being able to conduct accurate stock assessments. In other case, it prevents councils from making informed management decisions. Mid-Atlantic tilefish allocations were made without the benefit of knowing what the allocations would be within each tier due to the confidentiality provisions, and New England has encountered similar obstacles. In some cases, such as the Mid-Atlantic's effort to protect deep-sea corals, the best available information is coming directly from fishermen, and the councils should be able to use this voluntarily supplied data as long as it is presented without direct attribution to individuals.

REFERENDUM REQUIREMENTS

Clarify referendum requirements.

The Gulf Council indicates that Section 407 would benefit from revisions to streamline and clarify the referendum requirements for Red snapper Individual Fishery Quota (IFQ) program and provide a consistent set of requirements for referenda across Gulf of Mexico IFQ programs.

SAFETY AT SEA

Allow the U.S. Coast Guard to access data from Vessel Monitoring Systems (VMS) for search and rescue efforts

Section 402(b)(1)(H) states that fisheries information submitted to the Secretary can only be shared with the Coast Guard in support of fisheries enforcement and homeland and national security missions. Safety at sea is a concern of great national importance and the Act should be amended to allow the U.S. Coast Guard to access VMS data for search and rescue efforts.

GOVERNANCE AND REPRESENTATION

Allow Council liaisons in the Northeast Region to vote and make motions.

It was clear from our Council's port meetings in southern New England that fishermen in those states desire some form of representation on the Mid-Atlantic Council. Similarly, the Mid-Atlantic lands over \$200 million of sea scallops annually, and our representation is limited to participation on the New England Scallop Oversight Committee.

This issue is expected to be exacerbated by ongoing and substantial shifts in fisheries populations in response to changing ocean temperatures. I submit that vesting the liaisons of both councils with motion-making and voting rights in this reauthorization would resolve this issue in the interest of both councils.

RECREATIONAL AND SUBSISTENCE FISHERIES MANAGEMENT

Revise ACL/AM requirements to accommodate catch estimate uncertainty in recreational fisheries.

The 2006 reauthorization required ACLs and AMs for commercial and recreational fisheries. The implementation of recreational AMs, including paybacks for overages, has been difficult in some regions. The Mid-Atlantic Council recently completed an Omnibus Amendment that involved a comprehensive review and overhaul of our recreational AMs. Our recommendations were designed to enhance stability of recreational fisheries by improving alignment of our management strategies with the statistical characteristics of the recreational catch estimates. Councils should not be required to manage their recreational fisheries beyond the limitations of their available catch data, and the Act should support recreational AMs that are reasonable relative to the data.

Add explicit definitions of recreational and subsistence fisheries.

The Western Pacific Fishery Management Council recently endorsed the following definitions recommended by its SSC:

RECREATIONAL FISHING- Fishing undertaken for sport and pleasure, in which the fish harvested, in whole or in part, do not enter commerce or enter commerce through sale or barter or trade.

SUBSISTENCE FISHING- Fishing undertaken by members of a fishing community in waters customarily fished by that community in which fish harvested are used for the purposes of direct

consumption or distribution in the community through sharing in ways that contribute to food security and cultural sustainability of the fishing community. For this purpose, the term "sharing in the community" shall be defined regionally by the RFMCs.

STATE WATERS' CATCH

Promote consistency in the management of interjurisdictional fisheries.

Managing state waters' catch poses unique challenges around the country under the new ACL requirements. In the Mid-Atlantic region, most fisheries that have significant state waters' catch components are managed jointly with the ASMFC. The challenge in these plans is the fact that the enabling legislation for the ASMFC, the Atlantic Coastal Fisheries Conservation and Management Act, does not have the same requirements, standards, or provisions for review. However, in recent years, the ASMFC and the Mid-Atlantic Council have been able to reach consensus on quotas and associated management measures through our joint meetings.

Similar challenges exist in other regions, and the councils should not be forced to disadvantage their federal fisheries if management in state waters results in an ACL overage. Effective state involvement is essential to successful interjurisdictional management, and resources should be made available to the councils and the states to achieve coordinated management outcomes.

ECOSYSTEM-BASED FISHERY MANAGEMENT

Address possible conflicts between requirements of the MSA and the implementation of ecosystem-based management.

The Mid-Atlantic Council has taken several significant steps toward a more ecosystem-based approach to fisheries management since the last reauthorization. Our Council is pursuing an incremental, evolutionary strategy to incorporate species interactions, environmental conditions, and habitat associations into our management decisions. The process should ultimately enhance the ecological sustainability of our managed fisheries, but it may be necessary to fish some species at levels above MSY and other species well below MSY in order to achieve ecosystem level objectives. The act should be clear on these issues and the ecological objectives in the Act as they relate to the definition of OY.

I sincerely appreciate the opportunity to testify before your committee, and I look forward to your questions.