SUBCOMMITTEE ON

FISHERIES CONSERVATION, WILDLIFE AND OCEANS

Committee on Resources

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Reauthorization of the

Magnuson-Stevens Fishery Management Act

Submitted by:

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Good Afternoon, my name is Bob Hayes and I am the General Counsel for the Coastal Conservation Association ("CCA"). I would like to thank the Chairman for this opportunity to address the Committee on the reauthorization of the Magnuson-Stevens Act. First, I would like to tell you a little about CCA and how it operates. Second, I will address some of the issues the Chairman has addressed in his draft bill and finally, I will raise some of the issues of concern to recreational fishermen that are not addressed in the draft bill.

The Coastal Conservation Association is the leading marine recreational fishing group in the United States. Formed by a small group of sportfishermen in Houston in 1978, CCA has grown to a fifteen-state operation representing 80,000 members. Each of our states operates somewhat independently focusing on issues in the state that are important to marine recreational fishermen. However, like so much in fisheries management, conservation issues encompass a regional and national perspective; therefore, CCA learned long ago that federal and international fisheries management were just as important to the local marine recreational fishermen as the conservation of the most local fish population.

CCA pursues conservation policies set by our state and national Boards of Directors. These boards

are made up of active volunteers concerned about the health of the nation's fisheries. CCA has been active in a number of conservation issues in the last twenty years, including: all of the east and gulf coast net bans; game fish status for redfish; speckled trout; tarpon; striped bass; river shad; marlins; spearfish; sailfish; and the reduction of bycatch through the use of closed areas and technology. Our Maryland chapter is actively involved in the health of the Chesapeake Bay and management of its valuable recreational species. Sherman Baynard testified at your recent field hearing on oyster bed protection in the Bay.

MAGNUSON -STEVENS ACT

Our comments on the draft bill are organized in the same fashon as the draft; therefore, the order of our comments does not suggest any emphasis by CCA.

Report on overcapitalization. As a first step toward right-sizing the commercial fleets in this country this report should be extremely useful. We suggest, however, that the report's geographical breadth of "United States waters" be clarified to ensure that state as well as federal fleets are included. For example, if only federal fleets were included, the list would exclude the Texas inshore shrimp fleet, which the state has not only determined to be overcapitalized but is in the process of reducing through the buyback of half of the permits in the fleet.

We further suggest that this study be done every five years so that future overcapitalized fleets can be identified.

Buyout Provisions. While section of the Sustainable Fisheries Act ("SFA") has been almost dormant since 1996, there have been buyouts and proposed buyouts through Congressional action. There are few groups in this country that have spent as much time and effort in developing acceptable buyout provisions for commercial fisheries as CCA. In addition to our efforts to reduce the size of the pelagic longline fleet, recreational fishermen are the sole source of funds for the present reduction of the Texas shrimp fleet. What we have learned is that the stumbling block is not the buyout itself but rather the source of the funds to execute it. We suggest the creation of a fund specifically for the purpose of buyouts that could be funded through an accumulation of all of the penalties now paid for fisheries violations and any funds collected as fees for licenses or Individual Transferable Quotas ("ITQs").

Data Collection. Recreational fishermen are not opposed to improving the collection and use of data about recreational catch. In fact, we would like to see a significant improvement in the collection of catch

data and the economic data required to comply with the Regulatory Flexibility Act. To the extent that sharing state collected data will improve the system, we support the sharing of it. We suggest that data regarding the impact of fishing regulations on the recreational industry should, in certain instances, also be collected.

Ecosystem Based Management. CCA supports the development of a workable definition of ecosystem management. CCA does not support a requirement that an unnamed and unknown advisory panel develop criteria for using this management technique. CCA is not opposed to the further development of the science as proposed in the draft bill; to the contrary, we encourage it. However, ecosystem management is scientific theory with little or no practical application. Its parameters are not well understood and the principles for its use are not easily identified. One example – the ill-fated Sargassum plan in the southeast – surely should have been identified as the likeliest candidate for approval as an ecosystem plan. Yet, five years after development, it still has not been approved because NMFS cannot figure out how it fits into the present statutory scheme. What the draft bill suggests is taking this principle and requiring Councils to put it into place in, for example, the Florida Keys. In order to accomplish the implementation of this principle, not only does the scientific approach need to be changed, the entire structure of the Magnuson-Stevens Act needs to be adjusted.

Therefore, we suggest that the requirement in Section 2(1)(B) be deleted and that you add a requirement for a report from the Secretary regarding what changes, if any, need to be made to the Statute, implementing guidelines and regulations in order to put an ecosystem plan in place.

Overfishing. The changes proposed in separating the definitions of overfishing and overfished seem reasonable enough on there face. Since only the definition of overfished seem to have changed and it would appear to be a lesser standard that the present definition it would be useful to find out the impact of the change before it was made. CCA suggests that the Committee ask NMFS to determine what effect this will have on existing fishery management plans before it moves forward with the change.

Bycatch. Most importantly, the definition of bycatch should be amended to exclude recreationally caught fish. Several attempts have been made administratively to accomplish this but in each instance the definition in the Act was problematic. There are no approved catch and release programs under the Magnuson-Stevens Act making the second sentence of the definition inoperable. The first sentence does

nothing more than show a complete a lack of understanding of the marine recreational fishery. Let's use the catch of white marlin as an example. White marlin is a targeted fish in the recreational fishery. They are very rarely landed, almost never retained for personnel use, and are not under a catch and release program. Yet, they are bycatch and subject to the bycatch reduction provisions. The Billfish Advisory Committee and NMFS wrestled with this problem for almost two years and finally gave up by declaring that the definition just did not make any sense in this fishery.

We would like to work with the Chairman on a definition that makes sense and does not brand recreational activity as something to avoid.

CCA supports the use of bycatch donations so long as it does not lead to a reduction in the conservation of the resource or undermine state and federal gamefish laws. For example, we would not support the landing of striped bass in any state that has a gamefish law nor would we support the landing of marlin for a consumptive purpose. We suggest that this section be further amended to ensure that the donation of the fish would not undermine the underlying purpose of and state or federal management measure.

Bycatch reduction gear development. CCA supports the development of technological methods of avoiding and reducing bycatch. Bycatch reduction devices in the shrimp fishery are the best example of the use of technology to reduce bycatch, but there a number of other fisheries that could use this research. We suggest you set a date certain for the first Secretary's report and require the Secretary to develop and implement a program at a specific amount.

Essential fish habitat. CCA supports the emphasis on measures that address destructive practices by commercial fishermen. Overfishing is still the greatest threat to the viability of the nation's marine resources but habitat destruction is a close second in many fisheries. The destruction of the bottom in the shrimp fishery may not jeopardize the shrimp fishery, but it does a significant amount of damage to other fisheries through the reduction of habitat. Strengthening this section to focus on something that the Councils and the Secretary can realistically impact is the right thing to do with this section.

Oyster reproduction sites. CCA has previously testified on this concept. Our suggestion then was to reduce the impact to the maximum amount possible. We perceive that this section attempts to reduce the impact by limiting the area that will be closed. We suggest that you limit the impact by excluding only those activities which will have a negative impact. If the Chairman's intent is to conduct an experiment,

then we suggest using a completely closed area as a control for others that are left open, and determining whether fishing has any impact on the recovery of oysters.

We should note also that the requirement for the Secretary to impose specific regulations for fishing in an area where no other federal regulations for fishing exist is an extreme and unprecedented use of federal power. CCA is adamantly opposed to the Congressional use of this form of power when there is no demonstration of the need for such regulations. A Congressional field hearing in Annapolis is hardly the kind of public process envisioned in the Magnuson-Stevens Act and, even if it was, the requirement represents an extraordinary intrusion on the sovereignty of the States of Maryland and Virginia.

Individual quota limited access systems. CCA recently provided testimony to the Committee on the use of individual transferable quotas ("ITQs"). Many of the suggestions about involving participants in the fishery and giving the Councils' broad discretion to implement the system are included in the draft proposal. There are two things, however, which are troubling about the proposal. The first is the charging of fees for the use of the system. This concept is based on the perception that individual recipients are getting something akin to a privilege for the right to use the quota. CCA does not make that assumption. Rather we view the granting of an ITQ as nothing more than an individual allocation which is subject to recall from whoever has it. Charging a fee will be viewed as a deterrent to the use of the system and may restrict the use of the device rather than encourage it. ITQs, properly implemented, can be a useful conservation tool and should be encouraged, not discouraged.

Additionally, the section does not appear to allow the Secretary to develop limited entry systems or ITQs for highly migratory species. I assume the use of such tools in those fisheries would have the same beneficial effect as it does in other fisheries. At a minimum, the section ought to be made clear that ITQs can be used in HMS fisheries as well.

Cooperative Education and Research. CCA is not opposed to the use of commercial vessels to do research so long as the underlying science is not compromised.

Highly Migratory Species. For the last five years, the United States has worked at the International Convention for the Conservation of Atlantic Tunas (ICCAT) to achieve compliance with the international conservation measures adopted. International compliance has been slow to come. The provision you have added will help achieve acceptance of a market driven, internationally-approved enforcement mechanism in order to make international conservation effective. Much more needs to be done. After the upcoming

meeting of ICCAT in Tokyo later in May, the other Commissioners and I can meet with the Chairman to develop a more effective system.

Prohibited Acts. A prohibition on the sale of recreationally caught fish is long overdue. Most states already prohibit such sale and some of the fishery management plans also follow this system. CCA has long argued that a recreational fisherman does not sell his catch and I believe the vast majority of recreational fishermen agree with this position.

Membership of Fishery Management Councils. CCA supports the intent of this amendment. Individuals who have no financial interest in the fish being managed ought to be on Fishery Management Councils. CCA has argued for years that the hired hands of interest groups are not the right people to make unbiased decisions about how to manage the resource. There has always been a clear distinction between people that are knowledgeable and those who have been hired to represent a point of view. Today, there are Council members who are paid to be members by recreational, commercial and/or environmental groups. They are there not because of there own knowledge, but to represent the views of the group that pays them.

We suggest that the section be applied to all Council members and be changed to prohibit the appointment of any individual who is employed by any association of commercial, recreational, charter and/or non-governmental organization, or is a paid representative of any entity that has an interest in a Council decision. We believe that all but about 100 of CCA's 80,000 members would be eligible under these criteria. Hundreds of thousands of environmental and conservation representatives would still be eligible under these criteria. Lawyers, consultants, association operatives and the like would all be ineligible and the Council system would be much better for it.

At a minimum environmental interests ought to be added to the list of prohibited interests. The environmental representative's point of view can be bought just like the rest.

Miscellaneous amendments. All of the miscellaneous provisions appear to be good additions to the Act.

RECOMMENDED ADDITIONS TO THE MAGNUSON-STEVENS ACT REAUTHORIZATION.

Marine Protected areas.

In the last few years, there has been increased interest, primarily in the environmental and academic communities, in the use of Marine Protected Areas (MPAs) as a device to manage and restore marine

fisheries. MPAs are different things to different people. To most fishery managers, they are a tool that has been used in both fresh and salt water for years. Time and area closures for spawning aggregations are the best known use of an MPA. Closed areas for destructive gear types are also common. Time and area closures have been proposed by CCA for any number of conservation problems and are broadly supported in the recreational community.

The environmental community views them as a clean and efficient way to manage fishery resources by excluding uses, including all fishing, from large areas of the ocean. In their view, the creation of no fishing areas will enhance stock recovery and protect large portions of the biomass. Environmental groups are heralding the use of MPA as a new day for oceans management and have announced their objective of putting 20% of the nation's oceans in no fishing zones.

Why are recreational fishermen so opposed to no fishing zones?

MPAs, at least as the environmental community envisions them, limit recreational access to the resource without any demonstrable benefit to the health of most fishery resources and, so far, with little public involvement. MPAs are unpopular because anglers believe they will be used to restrict access. Expanding angler access is something the recreational sector, local, state and federal officials have been trying to encourage for twenty years.

Recreational fishermen have led the fight to conserve America's marine fisheries. Striped bass, weakfish, redfish, mackerel and Atlantic shad are all recovering as a result of the efforts of recreational fishermen. We have worked inside the existing management system with the existing tools to turn around the exploitation of these resources and recover them. We've done it because we believe the highest and best use of these resources is for recreation.

For a number of years the economic development theory for recreational fishing has followed two paths. The first is to provide for ease of access to the resource. Millions of dollars of angler's money has been spent through the Wallop Breaux program to increase angler access. The second path has been the recovery of key recreational species. This rebuilding was done on a "build it and they will come basis." The explosion in recreational fishing for these rebuilt species has more than proved the point. It works. Today, sportfishing contributes more to the economy than ever before.

Recreational fishermen are not opposed to the use of traditional management measure s to address

specific management issues based on good science and implemented as a result of a public process. As a result we support the Freedom to Fish Act HR 3104 which amends the Magnuson –Stevens Act by adding guidelines for the use of MPA's. These guidelines would also apply to the management of marine recreational fisheries in federal marine sanctuaries. In essence they provide for a public process, sound science and a nexus between the problem being solved and the measure being proposed. They are intended to make the exclusion of the public from a public resource the management measure of last resort for stock rebuilding.

We recommend that you support the inclusion of HR 3104 in your bill.

Judicial review. One of the major flaws in the Sustainable Fisheries Act is the inability of the Courts to take into account the status of the stock prior to issuing an order on whether NMFS and the councils have complied with either the overfishing prohibition or the rebuilding program. Most fishery management plans are based on at least two year old data. Most plan amendments take a couple of years to put together and most court reviews occur one to two years later. Courts are restricted from taking into account whether the plan adopted is working. Rather, the court looks at whether the statute was implemented and whether the record rationally supports the measures adopted. Courts not only do not know whether the plan is working, they are restricted from ever looking at it by the Administrative Procedure Act. Considering that the court is looking at a series of decisions made on data that may be five years old at the time of the ruling, there is little relevance between the decision being made and the status of the stock as a result of the measures adopted. Therefore, we suggest that courts be required to take into account the present status of the stock prior to determining whether the measures adopted could achieve their purpose. Section 305 (f) should be amended by inserting the following:

> (5) In any action which is a challenge to measures intended to prevent overfishing or rebuild an overfished fishery a hearing will be held prior to issuing any order impacting such measures, which (A) assesses the impact of the measures on preventing overfishing or on rebuilding and (B) assesses the status of the fishery at the time of the hearing. Findings from the hearing will be taken into account prior to issuing any order.

Thank you for allowing us to testify here today and share the views of the Coastal Conservation Association.