

STATEMENT OF RICHARD B. ROBINS, JR.,
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Testimony on the discussion draft titled, “H.R. ____ Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” before the U.S. House of Representatives Committee on Natural Resources

February 4, 2014

Chairman Hastings, ranking member DeFazio, and members of the Committee, thank you for the opportunity to testify before you today regarding the discussion draft titled “H.R. ____ Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.” I am Richard B. Robins, 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.

Through the Magnuson-Stevens Fishery Conservation and Management Act, the United States has one of the world's strongest statutory frameworks for the management of sustainable fisheries. The Act is highly effective at preventing overfishing and rebuilding overfished stocks. However, in the years since the requirements of the last reauthorization have been implemented, it has become increasingly clear that the councils need more flexibility to make decisions that are tailored to the needs and circumstances of each fishery.

I applaud the Committee's efforts to increase flexibility in the Act by addressing one of the most acute impediments to the successful management of some U.S. fisheries—the 10-year rebuilding requirement. Giving the councils flexibility to rebuild stocks as quickly as practicable, instead of on a 10-year rebuilding timeline, will allow councils to incorporate biological, ecological, social, and economic considerations more effectively into the development of rebuilding plans. I strongly believe that this change will enable the councils to achieve more meaningful and durable successes in the stock rebuilding process while promoting more productive and resilient fisheries.

Spiny dogfish is one example of a fishery that would have benefited significantly from the proposed amendment to the 10-year rebuilding requirement. The spiny dogfish rebuilding plan initially called for a 5-year rebuilding plan. This aggressive rebuilding schedule required a one-year transition to an “exit” fishery that eliminated the directed fishery in federal waters and limited catches to incidental quantities of 600 pounds per day. At the time, the fishery accounted for over 60 million pounds of landings annually and supported hundreds of predominantly small, day boats and their crews from Cape Hatteras to Maine. Spiny dogfish have a mean generation time of 35 years, so the proposed modifications to the rebuilding requirements in Section 3 of the draft would have allowed for a longer rebuilding period that would have stabilized the fishery at a lower level. This would have substantially mitigated the social and economic impacts to coastal fishing communities.

I also appreciate the addition of a provision to vest the liaisons of the New England Fishery Management Council and Mid-Atlantic Fishery Management Council with voting rights. This solution responds effectively to concerns among many Mid-Atlantic and New England stakeholders and will facilitate enhanced coordination between the two councils.

These are important provisions that, if included in the final reauthorization, will have undoubtedly positive impacts on our nation's fisheries. However, after careful review of the draft I continue to have a number of concerns. My testimony today will have two parts. First, I will briefly comment on several issues that were *not* addressed in the draft, despite being highlighted during the initial hearings. Second, I will share a number of specific concerns regarding content within the draft.

The draft does not address problematic accountability requirements in recreational fisheries. The 2006 reauthorization of the MSA introduced a new requirement for the councils to develop accountability measures (AMs) for all federally managed fisheries. While AMs have been effective management tools for some fisheries, they must be developed appropriately for recreational fisheries, relative to the available catch data. Councils need the ability to develop recreational AMs that are consistent with the precision, accuracy, and timeliness of the catch estimates, in order to manage recreational fisheries effectively. This issue is critical to the successful management of recreational fisheries. The need for more statutory flexibility in the development of recreational AMs was evidenced most recently by the Agency's partial disapproval of the Mid-Atlantic Council's Recreational Omnibus Amendment. In recreational fisheries monitored by NMFS' Marine Recreational Information Program (MRIP), the councils should be able to consider confidence intervals about the catch estimates when developing triggers for AMs.

The draft does not respond to the numerous recommendations regarding a sustainability certification for U.S. fisheries managed under the Act. In an increasingly global market, the sustainability of U.S. fisheries needs to be affirmed. Our standards for sustainable management are the strongest in the world, and an affirmation of this sustainability would be an important step to facilitate education, awareness and marketing for the benefit of U.S. fisheries.

The draft does not strengthen or clarify the Act's references regarding ecological considerations or ecosystem approaches to fisheries management. Implementing ecosystem principles in fisheries management could require fishing some individual stocks at levels above F_{MSY} temporarily, which is currently precluded by the Act. This is a statutory impediment to the implementation of ecosystem management principles, and should be resolved by allowing fishing on individual stocks at levels above F_{MSY} on a temporary basis, if those levels are within ecosystem reference points recommended by the Scientific and Statistical Committee. The draft is also silent on the management of forage fish stocks, which play an important role in the structure and function of marine ecosystems. The optimum yield (OY) definition in the current Act provides for reductions below maximum sustainable yield for ecological considerations, and the National Standard 1 guidelines include references to managing forage stocks at levels above B_{MSY} . Adequate consideration of the importance of forage stocks within regional ecosystems is an important consideration in the implementation of ecosystem principles in fisheries management and should be clarified in the Act.

The draft does not include any provisions for cost-sharing or other funding mechanisms for observer coverage, and the draft does not extend any of the section 313 provisions to councils other than the North Pacific Fishery Management Council. The draft also does not enable the other seven councils to specify observer coverage levels within their fishery management plans. Councils should have the authority to specify observer coverage levels in their FMPs. This need is reinforced by the recent disapproval by the National Marine Fisheries Service of the observer coverage requirements in Amendment 5 to the New England Fishery Management Council's Atlantic Herring Fishery Management Plan and Amendment 14 to the Mid-Atlantic Fishery Management Council's Squid, Mackerel, and Butterfish Fishery Management Plan. Councils should be able to specify required observer coverage levels within their fishery management plans. In the Northeast Region, this discretion should supersede the inflexible allocations required by the Standardized Bycatch Reporting Methodology (SBRM) omnibus amendment. The Act should also enable the Agency to use cost-sharing mechanisms, with the industry, to cover at-sea observer costs, and should have specific discretion within their appropriations, to allocate sufficient funds to meet observer coverage levels.

The reauthorization should build on the Act's strengths and enhance its flexibility, without compromising its integrity. The exemptions to the requirements in the current Act should be reviewed carefully to ensure that they would not substantially weaken the Act's ability to ensure the sustainable and effective

management of U.S. fisheries, or compromise our ability to address future challenges in fisheries management, including changing environmental conditions associated with climate change.

Several provisions in the draft reauthorization are of particular concern. These include:

- The ACL exemption for incidentally caught species,
- The exemption for rebuilding mixed-stock fisheries,
- The changes in the role of the Scientific and Statistical Committees (SSC),
- The proposed data confidentiality provisions, including the prohibition on the use of fisheries monitoring data in coastal marine spatial planning.

The draft's proposal to exempt incidentally caught species from ACLs poses several problems (reference Page 8, line 16). Some incidentally caught species are landed on a very large scale, and this exemption would exempt them from quota-based management. Monkfish is one example--most of the Northern Management Area landings of monkfish are landed under "incidental" trip limits. Other species, such as river herring, are caught incidentally but are a species of concern, and are currently being managed by catch caps in the Northeast Region. This exemption could be difficult to define and could substantially weaken the management of important fisheries resources.

This reauthorization should address the mixed-stock exception, as it relates to rebuilding requirements. The 1998 version of the NS1 guidelines allowed weak stock components within a mixed-stock fishery to be exempted from rebuilding requirements, if they were not expected to invoke protection under the Endangered Species Act. These guidelines offered inadequate protection for weak stock components, while the current NS1 guidance is overly rigid, since it does not exempt weak stocks from the statutory rebuilding requirements. The National Academy of Sciences' National Research Council devoted considerable attention to the limitations of the current mixed-stock exception in their 2013 report, and it should be enhanced in this reauthorization. The draft proposes to exempt weak stock components from rebuilding requirements if they would result in significant economic consequences. This exemption attempts to address the NRC's conclusions, but results in a wholesale exemption from the rebuilding requirements. The NRC also suggested focusing on maintaining F rates, rather than focusing on fixed rebuilding schedules. Perhaps these concepts can come together in the mixed-stock exception, by exempting weak stocks from a fixed rebuilding requirement, but requiring the maintenance of an appropriate F rate on the weak stock. This would ensure more biological protection than the proposed solution in the draft, and would give councils more flexibility to mitigate the social and economic impacts associated with the application of the current NS1 guidelines to the more productive stocks in the complex.

The draft proposes to substantially change the role of the SSC, by modifying the ACL ceiling from the SSC's fishing level recommendation to their overfishing level recommendation (Page 9, line 3.) For councils that have a risk policy, the buffer between the overfishing level (OFL) and the SSC's acceptable biological catch (ABC) recommendation, is determined by applying the Council's risk policy to the OFL, in fisheries with stock assessments that produce biological reference points. All but one of the councils have risk policies or ABC control rules. In fisheries with adequate assessments, the councils ultimately determine the relationship between ABC and OFL through their risk policy. In data-poor stocks that do not have assessment-based reference points, the SSCs use ad hoc methods to determine ABC, and the councils generally have less control over the buffer. Since the OFL is determined in the stock assessment and peer review process, this change would marginalize the role of the SSC, and sets up a potential conflict with National Standard 2.

The SSC's responsibilities, which include providing the councils with advice on ABC, do not change in the draft. Consequently, the SSC would still be providing the councils with ABC and OFL, and a

certification that their advice represents the best available science. If the Council subsequently set an ACL above the ABC, it would create a tension with the National Standard 2 requirements of the Act.

The greatest need for flexibility on this issue is on data-poor stocks, rather than on stocks that are adequately assessed. Councils should have more discretion in establishing ACLs on data-poor stocks that do not have assessment-based reference points, or in cases where the SSC invalidates the reference points. This issue should be addressed in both section 302 (h)(6) and section 302 (g)(B) to avoid conflicts relative to National Standard 2 in the management of data-poor stocks.

With respect to the data confidentiality section of the draft, the Act should safeguard the identity of individuals while ensuring informed decision-making by the councils and the Agency. Section 8 of the draft does not adequately advance the ability of the councils to make informed decisions. Furthermore, the prohibition on the use of fisheries monitoring data for purposes of coastal marine spatial planning would significantly disadvantage U.S. fisheries in the future. Marine spatial planning is a multi-sectoral, data driven process. The Mid-Atlantic region of the U.S. is expected to experience significant development of offshore wind energy. Preserving access to these important fisheries will depend on adequate fisheries monitoring data, and incorporating this data in data portals as the wind energy siting process moves forward. This issue will be among our most important challenges in the future on the East Coast, and the Act should put the regional councils and U.S. fisheries in a strong and effective position.

To the extent that electronic monitoring is intended to monitor interactions with public, U.S. fisheries resources, it should be available for law enforcement purposes. Fisheries monitoring data (e.g. VMS data) should also be available to the U.S. Coast Guard for search-and-rescue operations to promote safety at sea.

The transparency requirements proposed in Section 6 would benefit from additional review. Transparency is an important aspect of the Council process, and we have undertaken important efforts to webcast our Council meetings, which facilitates enhanced access and transparency. The proposal to require video broadcasting of the meetings would require additional resources and would not add significantly to the transparency of the process. Similarly, the proposed requirement for written transcripts would add considerable costs without providing additional resources. Audio archives of our Council meetings are already available on our website and should satisfy these concerns.

Section 7 proposes to extend the referendum requirements for new catch share programs beyond the Gulf and New England councils. Referenda may be appropriate in certain circumstances, but may not result in the most effective management of fisheries in other situations. Many East Coast fisheries have been through a period of overexploitation and stock depletion that were preceded and accompanied by open access and oversubscription. If the referendum requirement is extended to other jurisdictions, the councils should have flexibility in determining eligibility and voting details. I recognize that major fisheries reforms require broad support, and we have made stakeholder engagement a hallmark of our Council's management philosophy and programs. Our Council has a solid track record of evaluating catch shares objectively and pragmatically, as one option among many in the management of fisheries, and we have not adopted catch shares in the large majority of our fisheries.

I appreciate the Committee's efforts to make resources available for cooperative research priorities in Section 8(e) through the use of the Asset Forfeiture Fund, and in Section 10, through Saltonstall-Kennedy (SK) funds. I would suggest making a portion of the SK funds available to all of the regions to support cooperative research priorities identified by the councils. I would also suggest including the Northeast Area Monitoring and Assessment Program (NEAMAP) in your definition of eligible research programs in both of these sections.

The reauthorization also presents an important opportunity to enhance the coordination between the Act and other federal statutes; notably, the National Environmental Policy Act, the Endangered Species Act, and the National Marine Sanctuaries Act. The references to these coordination opportunities in the draft discussion document would benefit from additional discussion by the regional councils, and I look forward to providing additional information on these important references following the upcoming meeting of the Council Coordination Committee (CCC).

I have included below additional comments that focus on specific details within the draft in the attached appendix. I appreciate the complexity of the reauthorization before the Committee and sincerely appreciate the opportunity to testify before you.

DETAILED COMMENTS ON “H.R. _____ STRENGTHENING FISHING COMMUNITIES AND INCREASING FLEXIBILITY IN FISHERIES MANAGEMENT ACT”

	<i>Description</i>	<i>Comments</i>
SEC. 3	FLEXIBILITY IN REBUILDING FISH STOCKS.	
Page 2, Line 13	In the management of “highly dynamic fisheries,” the Council could phase-in the rebuilding plan over a 3-year period.	“Highly dynamic fisheries” should be defined. This exemption may also benefit from some biological caveats.
Page 3, Line 17	Exemption III to the rebuilding requirements would exempt the requirement to rebuild components of a mixed-stock fishery from the T_{max} requirement if it would result in “significant economic harm to the fishery.”	“Significant” is not defined. The mixed-stock exception should be refined in this reauthorization, to strike a balance between the 1998 NS1 guidance and the current guidance, to facilitate its implementation where appropriate.
Page 3, Line 18	Exemption III to the rebuilding requirements also exempts mixed stock components from the T_{max} rebuilding requirement if that component cannot be rebuilt in that timeframe without “causing another component of the mixed-stock fishery to approach a depleted status.”	Ecosystem references in the current Act should be clarified and strengthened, particularly as they relate to OY and to the management of fisheries across trophic levels.
Page 4, Line 9	Exemption V provides an exemption to the rebuilding timeframe if the Secretary “determines that the stock has been affected by unusual events.”	“Unusual events” are not defined. councils should be able to amend rebuilding timelines if ecological conditions inhibit the recovery of the stock
Page 4, Line 18	The proposed requirement to consider “predator/prey relationships” in specifying a rebuilding timeframe does not appear to have any specific implication and would benefit from additional clarification	
Page 5, Line 7.	This proposed provision would allow the use of “alternative rebuilding strategies, including harvest control rules and fishing mortality targets.”	If such an alternative still resulted in the development of a rebuilding plan consistent with the other, proposed requirements of Section 304, this may not be problematic. However, if the control rules and fishing mortality targets are not set at levels that are expected to achieve stock rebuilding within the proposed T_{max} , subject to the other draft exemptions, then this may not result in stock rebuilding.

Page 5, Line 13.	“Depleted” appears here and is defined elsewhere in the draft as a level below the normal range of stock sizes associated with the production of MSY.	The addition of this language is welcome for stocks that are depleted as a result of factors other than fishing. The definition would benefit from additional review and discussion.
Page 5, Line 13.	The draft proposes to allow councils to terminate the application of paragraph (3), which include the requirements to end or prevent overfishing, if a Council meets one of two exemptions if the Council determines that a fishery is not depleted.	Exemption B is based on the completion of the next stock assessment. Exemption A is the end of the 2-year period following the effective date of a regulation, plan, or amendment. A stock assessment or assessment update would be essential to making the determination that the fishery is not depleted, so it may be cleaner to base this exemption just on the assessment-based determination. If an assessment update or other analytical product would satisfy this determination requirement, that should be clarified.
Page 6, Line 8.	This proposed exemption to ending overfishing would allow councils to phase-in the regulations to end overfishing over a 3-year period if chronic overfishing has not occurred and if an immediate end to overfishing would result in significant adverse economic impacts.	“Significant adverse economic impacts” are not defined. This provision could be helpful in cases where assessments produce results that are dramatically worse than previous assessments. This may have the practical effect of allowing overfishing to continue for up to 3 years in some cases. This section may benefit from some additional detail or biological caveats if this exemption goes forward.

SEC. 4 MODIFICATIONS TO THE ANNUAL CATCH LIMIT REQUIREMENT.

Page 6, Line 19	This adds language allowing councils to consider “changes in an ecosystem and the economic needs of the fishing communities” in establishing annual catch limits (ACLs).	This is vague, and it is unclear how these considerations relate to National Standard 1 and OY. Ecosystem changes that have adverse consequences for stock performance would typically result in lower yields, and may lead to lower reference points if they persist. Would this exemption allow councils to specify higher ACLs than indicated in an assessment due to ecosystem changes? If so, this would not promote the ecological sustainability of our fisheries. Similarly, could councils set ACLs higher than currently allowed in order to meet the economic needs of the fishing communities, and, if so, how does this relate to National Standard 1? We have previously testified that councils should have the flexibility to optimize rebuilding periods to more fully consider biological, ecological, and economic factors, and the draft addresses this by replacing “as short as possible” with “as short as practicable,” and by eliminating the 10-year requirement. This proposed language, beginning in line 19, should be reviewed relative to National Standard 1 and clarified.
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Page 7, Line 9	The ACL exemption for short-lived species would be extended to a stock for which “more than half of a single-year class will complete their life cycle in less than 18 months.”	We use the short-lived exemption for squid on the East Coast, but we still set quotas for those fisheries, based on SSC advice, and we still have to satisfy National Standard 2. The practical benefit of the exemption is that accountability measures (AMs) are not required on these short-lived species. The exemptions for short-lived species might be more appropriately applied as exemptions to AMs (at a minimum, they should be exempt from paybacks), since year classes are already dead before regulations could be developed and implemented.
Page 8, Line 8	ACLs may be set for a “stock complex.”	“Stock complex” is not defined in the language and the implications of this provision are unclear.
Page 8, Line 16	This section defines Ecosystem Component Species as stocks of fish that are “non-target, incidentally harvested stock of fish in a fishery, <u>or</u> (emphasis added) a non-target, incidentally harvested stock of fish that a Council or the Secretary has determined...” is not subject to overfishing or depleted.	The use of “or” in line 16 would effectively exempt all non-target, incidentally caught species from annual catch limits. Consequently, this language is problematic and would benefit from additional review and discussion.
Page 9, Line 2	This language would substantially modify the role of the SSC, by striking “fishing” and inserting “overfishing.” Whereas councils are currently required to set ACLs within the “fishing level recommendations of its scientific and statistical committee,” the draft language would require councils to set ACLs within an “overfishing” level set by the SSC.	With the exception of data-poor stocks, the current overfishing levels (OFLs) are identified in the stock assessment process. This modification would marginalize the role of the SSC, and could create a tension with NS2. The current process works well for stocks that have adequate stock assessments, and has produced more inconsistent results in the absence of reference points. We have testified in support of having more flexibility in setting ACLs on data-poor stocks. This section could also benefit from additional review and discussion.
SEC 5. DISTINGUISHING BETWEEN OVERFISHED AND DEPLETED		
Page 9, Line 22	Replacing the term “overfished” with “depleted” acknowledges that the deterioration of some stocks may result from anthropogenic and other impacts unrelated to fishing.	The proposed definition of the term “depleted” would benefit from additional review and discussion.
SEC. 6 TRANSPARENCY AND PUBLIC PROCESS FOR SCIENTIFIC AND MANAGEMENT ACTIONS.		
Page 10, Lines 15 and 20; Page 11, Line 4	This section would require live broadcast of the Council and CCC meetings, and audio/video archives of each meeting.	Transparency is an important attribute of the Council process. Audio webcasts and archives should be considered as an alternative to the proposed video requirement. Similarly, written transcripts pose a significant cost and an audio archive should be sufficient for most uses.
Page 11, Line 17	NEPA streamlining	This reauthorization is an opportunity to streamline the NEPA and Magnuson-Stevens processes.

SEC. 7 LIMITATION ON FUTURE CATCH SHARE PROGRAMS.

Page 12, Line 12	Catch shares are defined here to include “sectors.”	This may need some revision, since “sector” is used broadly in fisheries discussions, but has a distinct use in the New England groundfish fishery. This language should be reviewed and refined.
Page 14, Line 16	This section includes a hardship provision for participation in a referendum.	This could make it impracticable to conduct a referendum. Limiting referenda to permit holders would facilitate the administration of referenda. This section should be reviewed and discussed.
Page 15, line 2	This section would preclude the use of catch shares in any Secretari ally managed fisheries unless first petitioned by a majority of those eligible to participate in the fishery.	This requirement is burdensome and would diminish the role of the HMS AP in the development of plan amendments.

SEC. 8. DATA COLLECTION AND DATA CONFIDENTIALITY.

Page 16, line 6	This language would not authorize use of electronic monitoring for law enforcement.	If electronic monitoring is in use to monitor interactions with public fishery resources, they should be available to law enforcement.
Page 16, line 21	This section would allow councils to develop plans to substitute electronic monitoring for human observers, if it will “provide the same level of coverage as a human observer.”	This may be impracticable or impossible, depending on the nature of the fishery and the details of the vessel. This requirement should be reviewed and revised to facilitate and encourage the development and use of electronic monitoring.
Page 18, Line 1	Confidentiality provisions	The confidentiality protections should allow for reasonable use of fisheries data by councils in making management decisions, and by stock assessment scientists, without identifying individual vessels or operators. Limiting the use to Council employees may prevent councils from making informed decisions regarding important issues. That was the case when our Council made allocations to tiers in the Tilefish fishery. The tiers were based on history, but we did not know what the allocations were. This section should be amended to improve decision making.
Page 21, Line 14	This would prevent the Secretary from providing fisheries monitoring data to any person for the purposes of coastal and marine spatial planning under Executive Order 13547.	This would severely disadvantage U.S. fisheries in the ocean planning process and should be deleted. Ocean planning is a multi-sectoral, data-driven process, and the best defense of traditional fisheries uses of the ocean will depend on effective data collection and interpretation.
Page 23, line 4	This would allow the Secretary to use law enforcement proceeds within regions for fisheries science. At line 4, it states “subject to appropriations.”	Since this section provides for the use of law enforcement penalties, is it necessary to make it subject to appropriations?

SEC. 9 COUNCIL JURISDICTION FOR OVERLAPPING FISHERIES.

Page 26, line 1	This section would prioritize Saltonstall-Kennedy (SK) funds for Gulf of Mexico Cooperative Research and Red Snapper Management.	This same model could be used around the nation to address data-poor fisheries, and would benefit from broader discussion. Some portion of the SK funds should be made available to all of the regions to support cooperative research.
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