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New England Fishery Management Council
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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

February 12, 2014

The Honorable Doc Hastings
Chairman, House Committee on Natural Resources
U.S. House of Representatives
1203 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for providing the New England Fishery Management Council with a copy of the Magnuson-Stevens Fishery Conservation and Management Act discussion draft dated December 18, 2013. For almost forty years this important statute has led to significant progress in the management of our fisheries resources. We have made considerable strides in improving the status of many stocks, although this has not been without cost. Stringent rebuilding requirements have had negative economic consequences on many fishing communities, and as a result, I am glad to see the emphasis in the document placed on increasing the attention paid to fishermen and their communities while promoting sustainable management.

Our Council reviewed the discussion draft at its meeting in late January and developed comments that we are providing for your information. I want to make it clear that these statements represent the opinions of most Council members but should not be interpreted as being unanimously supported.

There are two overarching issues that we would also like to bring to your attention. First, the statute's conservation approach often ignores the very real limits to the information that science can provide. The recent National Academy of Sciences Report "Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States" referred to this as "...a mismatch between policy makers' expectations for scientific precision and the inherent limits of science because of data limitations and the complex dynamics of ecosystems." For example, the requirement for annual catch limits assumes that we can accurately identify the catch that will give us the biological and economic results that we want, yet there are numerous examples that demonstrate that this is often not the case. Similarly, the requirement to define a fixed rebuilding period assumes that we know current stock size, stock size targets and rebuilding trajectories to a degree of certainty that is rarely met. The Act will be strengthened if changes are made to acknowledge these limitations.

Second, the discussion draft introduces many new terms but does not always clearly define what they mean. For example, rebuilding requirements can be phased in for a "highly dynamic fishery" or "unusual events". Absent a statutory definition it will be left to NOAA's National Marine Fisheries Service to define such terms and the results may not be consistent with Congressional intent. Additional guidance may be necessary.

Thank you once again for providing us with the opportunity to review this discussion draft. We look forward to working with you as we strengthen this critical statute and continue to improve fisheries management.

Sincerely,

E.F. "Terry" Stockwell III
Chairman

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New England Fishery Management Council

DRAFT Council Comments

on

Discussion Draft for Magnuson-Stevens Act Reauthorization

''Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act''

Section 3: Flexibility in Rebuilding Fish Stocks

The Council supports provisions providing additional flexibility in rebuilding fish stocks. The discussion draft moves in this direction by modifying the rebuilding period and provides several additional exceptions to the requirement to adhere to this period. It does not, however, adopt the finding of the National Academy of Sciences: "Emphasis on meeting fishing mortality targets rather than on exact schedules for attaining biomass targets may result in strategies that are more robust to assessment uncertainties, natural variability and ecosystem considerations, and less prone to rapid changes in management measures, which have social and economic impacts that may be more severe than more gradual changes." The Council supports a focus on ending overfishing without regard to a fixed rebuilding time period.

Section 4: Modifications to the Annual Catch Limit Requirement

This section suffers from a lack of clarity and potential inconsistencies with other sections of the M-S Act. It is not clear if the consideration of ecosystem and economic impacts when setting Annual Catch Limits (ACLs) authorizes a deviation from other requirements of the M-S Act, such has ending overfishing or achieving optimum yield (as currently defined). While the section would authorize specification of an Annual Catch Limit for a "stock complex", that term is undefined and it is not clear how this provision would interact with requirements to rebuild individual stocks of fish.

Section 5: Distinguishing Between Overfished and Depleted

The Council supports the use of a term for low stock size that acknowledges that overfishing is just one possible cause for this state. The term "depleted", however, is used by some management agencies in a different context and may cause confusion.

Section 6: Transparency and Public Process for Scientific and Management Actions

The Council supports a transparent public process. As such, all Council meetings are currently webcast and recordings of all Council and Scientific and Statistical Committee (SSC) meetings are readily available. Transcripts of Council meetings are not currently prepared due to the cost, but could be prepared with adequate funding. Video recordings of Council and SSC meetings seem unnecessary and expensive and would create issues related to storage of large data files, and collection of video release forms.

The Council supports streamlining the M-S Act and National Environmental Policy Act (NEPA) processes. The goal of NEPA is to provide the information needed for decision makers and the public to evaluate policy choices, but unfortunately this goal has been subsumed by a rigid

adherence to bureaucratic requirements in order to withstand any potential legal challenge. The proposed language in the discussion draft would streamline the fishery management process while still ensuring that decisions are based on careful analyses.

Section 7: Limitation on Future Catch Share Programs

The discussion draft language in this section continues to hamper the Council's ability to use all of the fishery management tools that are available by extending the referendum requirement before implementing any catch share program in New England and other regions. While the Council would prefer this requirement be removed, the discussion draft does reduce the requirement for approval to a majority of permit holders (rather than 2/3), and the Council supports this change. It is not clear if the draft language would prohibit allowing crew members to participate in the vote, and the language on which permit holders could participate lacks clarity.

Section 8: Data Collection and Data Confidentiality

The Council supports increased emphasis on electronic monitoring tools. The draft language, however, reduces the effectiveness and applicability of those tools by prohibiting the use of information collected through electronic monitoring for the purpose of fishery law enforcement.

The draft language on data confidentiality does not appear to improve the ability of the Councils to use fishery data to evaluate management programs.

There is an increasing need for coordination between competing ocean user groups. Marine spatial planning is one way to fill that need. The fishing industry needs to be at the table for those discussions, well prepared with data that supports the industry's need to access specific areas of the ocean and its seabed. The draft language prohibition on using data collected through electronic monitoring in marine spatial planning is short-sighted and will only hurt the fishing industry.

Section 9: Council Jurisdiction for Overlapping Fisheries

The New England and Mid-Atlantic Fishery Management Councils coordinate closely on fisheries issues. Providing Council liaisons the ability to vote will improve that coordination.

Section 13: Ensuring Consistent Fisheries Management Under Other Federal Laws

The Council supports the draft discussion language that would require fishing restrictions adopted within National Marine Sanctuaries to be adopted through the M-S Act process. This is an important and needed clarification.

The Council supports the draft discussion language that would require any fishery management restrictions needed to implement Endangered Species Act recovery plans to be implemented through the M-S Act process.

While not included in the discussion draft, the Council would support the development of a sustainability certification by NMFS that would obviate the need for third-party evaluations.