THE PEW CHARITABLE TRUSTS

June 2, 2014

The Honorable Mark Begich
Chairman
Subcommittee on Ocean, Atmospheres, Fisheries, and Coast Guard
Committee on Commerce, Science, and Transportation
Washington, DC 20510

The Honorable Marco Rubio
Ranking Member
Subcommittee on Ocean, Atmospheres, Fisheries, and Coast Guard
Committee on Commerce, Science, and Transportation
Washington, DC 20510

Dear Chairman Begich and Ranking Member Rubio,

The Pew Charitable Trusts is grateful for the opportunity to submit the following comments on the April 3, 2014 Senate staff working draft to reauthorize the Magnuson-Stevens Act. To date, the Senate process has been inclusive and deliberative, and we appreciate the willingness of Members and staff to listen to our suggestions for enhancing sustainable fisheries management.

In general, we believe that the current Magnuson-Stevens Act is working well to rebuild depleted fish populations, prevent overfishing, and better incorporate science into fishery management. Under the Magnuson-Stevens Act, 34 fish populations have rebuilt since 2000, and the number of stocks experiencing overfishing has decreased from 72 in 2000 to 28 in 2013.[1] The reauthorization of the Magnuson-Stevens Act should not put that hard-earned progress at risk by weakening the core conservation provisions of the Act.

Instead, we should build upon this success by better integrating ecosystem considerations into fisheries management. This more comprehensive approach to management will help us ensure the long-term health and resilience of our oceans by understanding and accounting for the interactions among species, their environment, and how fishing affects those interactions. Operationally, this means that important habitats must be protected, forage fish must be carefully managed to account for their role in the food web, new fisheries should be carefully planned, and the waste of nontarget wildlife, or bycatch, must be reduced. By using these and other ecosystem-based management tools like fishery ecosystem plans, fisheries management will be better able to meet the challenges of a changing and dynamic world.

Unfortunately, the staff working draft includes language that would weaken the Act's existing conservation requirements that have served as the foundation for the success we are seeing on the water – namely, annual catch limits and rebuilding plans. Further, it contains language that could

weaken the quality of the science that underpins our management system, and it fails to strengthen and better integrate bycatch avoidance and habitat protection that are critical to the long-term success of the Act. We recognize that there are a few promising sections that could lead to improvements in management and the resiliency of our ocean ecosystems, including provisions for improved forage fish management and guidance on the contents of fishery ecosystem plans, though we have identified some deficiencies in these sections that need to be addressed. But after considering the entire proposal, we've determined that we cannot support the draft in its current form because it weakens key conservation provisions of the Magnuson-Stevens Act.

In analyzing the staff working draft, we evaluated how the proposed changes would strengthen or weaken the Magnuson-Stevens Act's existing conservation provisions. Below are our detailed comments. We welcome the opportunity to discuss these and other issues in further detail at your convenience.

Annual Catch Limits

Science-based annual catch limits (ACLs) and their associated accountability measures were key reforms added to the Act in 2006 that have been helping to improve management of fish populations. Prior to the implementation of ACLs, fishery managers frequently failed to effectively reign in overfishing and ignored scientific advice for sustainable catch limits. But now, 371 fish stocks and stock complexes are managed under ACLs[2], and NOAA Fisheries reports that they are successfully preventing overfishing for the majority of stocks.[3] Maintaining strong ACLs is vital for ensuring the United States continues to reduce and prevent overfishing in our federally managed fisheries.

The staff working draft contains several provisions that could weaken ACL implementation by creating or expanding exemptions for many species. They are:

- *The language stating that each fishery management plan need not specify separate ACLs and accountability measures (AMs) for individual species of non-target fish in the fishery*. Staff working draft (SWD) Sec. 102 (a)(2)
  The language as written could potentially remove or weaken ACL requirements for a large number of species that are classified as "non-target." This could trigger more lax management for important species that are in need of recovery or susceptible to overfishing and allow fishery managers to designate stocks that have previously required management as "non-target." Without effective management of catch through science-based limits, these stocks would be more vulnerable to overfishing and rebuilding plans would be more likely to fail.

  We have specific concerns for:
  - Targeted fish that are caught as non-target species in another fishery. For example, yellowtail flounder has a directed fishery, but is also caught incidentally in New England's sea scallop fishery; and juvenile snappers and other reef fish are caught incidentally in the Gulf of Mexico shrimp trawl fisheries.
  - Already depleted populations that are not currently targeted due to their overfished status, but are caught incidentally as part of directed fisheries. Examples include Nassau grouper, goliath grouper, warsaw grouper, speckled hind, and many Pacific rockfish.

- Minor stocks in a fishery that are still susceptible to fishing pressure, but could be re-designated as non-target by Councils wishing to limit the number of stocks that require ACLs.

In addition, the expanded definition of bycatch in the staff working draft, which includes "non-target fish that are harvested in a fishery and retained," could result in species being classified as non-target and then caught and retained without limit as "bycatch." We recommend removing the non-target exemption, and will discuss our concerns with bycatch further in our comments.

We would like to highlight to the Committee that fishery managers already have considerable flexibility to apply ACLs to a group of related species, including target and non-target species, through the use of stock complexes. NOAA Fisheries' National Standard 1 Guidelines allow ACLs to be set for stock complexes, and they have been used widely - for instance, in the Gulf of Mexico reef fish complex, South Atlantic shallow-water grouper complex, and the New England skate complex.

- *The exemption of species with a mean life cycle of 18 months or less from ACLs.* SWD Sec. 102 (a)(2)
  Current law specifies that species with a life cycle of approximately 1 year are exempt from ACLs, unless the Secretary has determined that the fishery is subject to overfishing,[4] and the National Standard 1 Guidelines elaborate that the individual has only one breeding season in its lifetime.[5]

  As we will cover later, the draft seeks to strengthen the management of forage species by accounting for their unique role for managed fish in the ecosystem. Extending the ACL exemption from 12 months to 18 months would likely exclude important forage fish from ACL protections. And since intense fishing pressure can shorten the average life cycles of fish species, populations that have long undergone directed fishing could be abruptly removed from ACL management if their mean life cycle drops to 18 months or less. We recommend striking the ACL exemption for species with mean life cycles of 18 months.

- *The exemption of species where all spawning and recruitment occurs beyond both State and Federal waters.* SWD Sec. 102 (a)(2)
  We should not exempt species from ACL management because their spawning activities take place outside of U.S. jurisdiction. Fishing for a species means reducing its breeding population, whether it is actively breeding near the fishing grounds or not. ACLs are effective at preventing overfishing, and reducing protections against overfishing by removing ACLs will reduce the population of a species, regardless of how broadly the species may disperse over its life cycle. We recommend removing this exemption.

- *The allowance for "alternative fishery management measures" for recreational or mixed-use fisheries.* SWD Sec. 101 (d)(5)
  The intent of this section appears to be to reaffirm that Councils may employ certain strategies for recreational or mixed use fisheries as long as they comply with the requirements for ACLs and rebuilding requirements. If this is the case, the language "in accordance with this section" should be strengthened by instead saying "in compliance with this Act." Further, as we do not support the other proposed changes to the ACL section, the use of such management measures would only be acceptable under the existing ACL provisions in the Magnuson-Stevens Act, and only if these alternative management measures were required to achieve ACLs, rebuilding targets, or ending or preventing overfishing.

Rebuilding

The rebuilding provisions in the Magnuson-Stevens Act have a proven track record of improving the health of depleted fish populations. The current system of ending overfishing immediately and setting timelines and biomass targets to recover the stock has helped 34 fish stocks rebuild since 2000, and more are making progress towards healthy levels. The Act requires that the recovery time period be as "as short as possible," but not to exceed 10 years except in cases where the biology of the stock, environmental conditions or international agreements dictate otherwise. This significant flexibility has been applied widely by fishery managers, as most of our nation's overfished stocks are managed under rebuilding plans that exceed 10 years. The Natural Resources Defense Council estimated in 2013 that the average rebuilding timeline is 20 years, with some stocks having timeframes of 80 years or more.[6]

Recovered fish populations better support the fishermen and fishing communities that depend upon them. NOAA Fisheries reports that of the 26 rebuilt stocks where information is available, 6 stocks now produce at least 50 percent more revenue than they did when they were overfished and 7 stocks have current revenue levels 100 percent higher.[7] Economists at the National Oceanic and Atmospheric Administration's Fisheries Service estimated in 2011 that rebuilding all depleted U.S. fish stocks that year would have generated an additional $31 billion in sales, supported an additional 500,000 jobs, and increased the revenue that fishermen receive at the dock by $2.2 billion.[8] Given the success of these provisions, the significant economic benefits from rebuilding and the existing flexibility already inherent in the law, we do not support any changes that weaken their implementation.

The recently released National Research Council (NRC) evaluation of rebuilding plans under the Magnuson-Stevens Act reaffirmed the success of the rebuilding provisions, concluding that the current approach "has demonstrated successes in identifying and rebuilding overfished stocks" and that "for most stocks placed under a rebuilding plan, fishing mortality generally decreased, and stock biomass generally increased." The panel goes on to say that "the legal and prescriptive nature of rebuilding mandates forces difficult management decisions, ensures a relatively high level of accountability, and can help to prevent protracted debate over whether and how stocks should be rebuilt." They also note that "the rebuilding time frame provides a guide for setting target fishing mortality rates and creates an incentive to avoid delays in initiating rebuilding plans, which otherwise would require more severe management responses."[9]

Another scientific review of rebuilding in the U.S. found that "reductions in fishing mortality, especially when implemented early in the programs and maintained as long as necessary, lead to significant increases in stock abundance in roughly four of five stocks."[10] For those stocks with inadequate rebuilding, the causes were either due to failures in management to reduce fishing mortality (via ineffective or risky rebuilding plans, problems with non-compliance from fishermen, poor bycatch control, or cross-boundary issues with international overfishing) or the low resilience of the species (due to variable or slow responses to rebuilding measures, biological characteristics severely impaired by long-term fishing pressure, or changes in the marine environment).[11]

The weight of scientific evidence and these studies affirms the importance of effective and timely reductions in fishing mortality to the success of rebuilding.[12] Rebuilding in a timeframe "as short as possible" is the best way to restore the health and resiliency of the fish population, and restore economic returns to fishermen, fishing communities, and the public.

But the staff working draft contains some provisions that will likely weaken the implementation of the rebuilding provisions. Again, we do not support any changes to the rebuilding provisions of the Act and have specific concerns about the following:

- *The term "otherwise depleted" is inconsistently placed and has unclear meaning in the draft.* SWD Sec. 4(a)(2) and Sect 104(d)
  If the intent of this change is to provide no statutory difference between the requirements for an overfished stock and a stock deemed "otherwise depleted," then the new language must be included everywhere in the Act that "overfished" occurs and that is not the case in the draft. We additionally have concerns about what criteria differentiate an "overfished" stock versus an "otherwise depleted" stock under the staff working draft, and would like additional clarification on that point. How would the agency differentiate between fish populations that have declined due to directed fishing, residual fishing pressure effects, intermittent or large-scale environmental conditions, or, what is most likely – a combination of all of those factors? We are also concerned about the effect of such a change on existing case law – courts could interpret "otherwise depleted" populations to be subject to different requirements than overfished populations unless the language is made very clear.
- *It is unclear how "the minimum time required to rebuild an affected stock of fish" relates to the existing National Standard 1 guidelines.* SWD 104(d)(5)(C)
  Under the current guidelines, the minimum time for rebuilding a stock, or T_{min}, is defined as "the amount of time the stock or stock complex is expected to take to rebuild to its maximum sustainable yield (MSY) biomass level in the absence of any fishing mortality" with at least a 50% probability.[13] The language in the staff working draft is not clear as to whether the minimum time described is in the absence of fishing or not.
- *The proposed language that directs how the Council will determine whether the maximum timeline is 10 years, or a minimum time plus the mean generation time of the stock is unclear*. SWD 104(d)(5)(C)
  This language specifies that the timeline will be the latter timeline if "those time values are *scientifically established* and *widely accepted among fish population biologists*" (emphasis ours). It is unclear how this language will be interpreted, particularly as this is a novel standard with no

legal history. Stocks that are in a rebuilding plan have a determined biomass status – otherwise their overfished and/or overfishing status is left as "unknown." It should be possible to determine a mean generation time for all species with a known status. However, whether those values achieve a level of certainty that meets the standard of "widely accepted among fish population biologists" and how this assessment will be conducted is unclear. Further, the values for T_{min} and mean generation time (MGT) fluctuate based on the health of the species and environmental conditions.

- *The inclusion and location of the "except in cases where the biology… dictate otherwise" clause in conjunction with the mean generation timeline duplicates existing law.* SWD 104(d)(5)(C)
  The National Standard 1 guidance for populations that trigger this existing exception to the 10 year maximum timeline accounts for the relevant biological or environmental conditions that can be used to extend a rebuilding timeline by setting the new maximum timeline at T_{min}+1MGT - both values are calculated from biological and ecological parameters. By leaving the clause in, but also bringing in T_{min}+1MGT, the staff working draft essentially duplicates the biological and ecological exceptions, which may create loopholes for rebuilding timelines. The existing language concerning rebuilding timelines for species covered by international agreements is not duplicated in the consideration of T_{min}+1MGT as proposed in the draft.
- *The inclusion of the T_{min}+1MGT timeline in the statute could mean significantly longer rebuilding timelines.* SWD 104(d)(5)(C)
  This could result in rebuilding plans being set at this maximum allowed time, rather than more precautionary approaches that aim to achieve rebuilding in a timeframe "as short as possible". As an analogy, in current practice, rebuilding plans for species that would fall under the 10 year rebuilding timeframe typically set their rebuilding plans at the 10 year threshold, which is the maximum amount of time they are allowed. We believe that the net effect of including T_{min}+1MGT in the law will be to weaken the application of "as short as possible", which will have serious consequences for the success of rebuilding plans and the health of depleted fish populations. For species that previously were under the 10 year timeframe, including T_{min}+1MGT could result in shorter timeframes than were previously set, actually reducing the flexibility available to the Councils.

  In addition, we are not sure how this new language would affect current rebuilding plans. Would this new provision prompt managers to revise existing rebuilding plans using new timelines set forth in this proposal? Finally, as far as we know, no official analysis has been conducted to see what the effect of including the T_{min}+1MGT language in the statute would be. We highly recommend the Committee request that NOAA Fisheries provide a comparison of rebuilding timeframes under the current law and guidelines for rebuilding and rebuilt species to what they might be under the staff working draft proposal.

Fishery Ecosystem Plans

Fishery management typically focuses on the most important commercial and recreational species, with an emphasis on the maximum sustainable amount of each fish that can be caught. A broader approach that considers the health of multiple species, the critical interactions among these species, and the quality of the habitat they require will help restore and protect the ocean ecosystems that sustain our fisheries. By accounting for these factors, we can better evaluate potential impacts, trade-offs, and risks

of management – particularly in the face of numerous and significant ocean stressors such as climate change, ocean acidification, and diminished water quality.

Congress has long-understood the need to look more broadly at the ecosystem as a whole in fishery management. The Sustainable Fisheries Act of 1996 established an advisory panel to "develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities."[14] The Ecosystem Principles Advisory Panel (EPAP), which submitted a report to Congress in 1999,[15] recommended that a fishery ecosystem plan (FEP) be developed for each major ecosystem under Council jurisdiction and specified that each FEP should:

- Provide Council members with a clear description and understanding of the fundamental physical, biological, and human/institutional context of ecosystems within which fisheries are managed;
- Direct how that information should be used in the context of FMPs; and
- Set policies by which management options would be developed and implemented.[16]

The Magnuson-Stevens Reauthorization Act of 2006 (MSRA) further required "a study on the state of science for advancing the concepts and integration of ecosystem considerations in regional fishery management."[17] The resulting report includes recommendations that Congress should "provide each of the Councils with sustained, annual funding to develop and implement FEPs," give "more definitive and detailed guidance to Councils on how to develop FEPs," and specify what constitutes a successful FEP.[18]

The staff working draft takes numerous, positive steps towards addressing these concerns and integrating many of these recommendations into the Magnuson-Stevens Act. (SWD Sec. 103) We are particularly encouraged by the detailed description of the elements of an FEP, which includes delineating important components of the ecosystem, identifying sources of uncertainty and data gaps, setting ecosystem-level goals, and identifying conservation and management measures that can achieve those goals.

However, as written, we are concerned that the staff working draft may actually discourage Councils from developing and implementing FEPs, as the authority to create an FEP is discretionary yet the elements that comprise an FEP are mandatory. We strongly believe that both the authority and elements of an FEP should be mandatory, and that this can be done without jeopardizing the progress that some Councils have already made in creating FEPs.

Forage fish

We commend the Committee on the inclusion of language defining forage fish and establishing greater protections and consideration for forage fish in fishery management (SWD Sec. 3(a)(8), Sect 4(a)(3), Sec. 101(c), Sec. 102(a)(1)(E)). Forage fish are small, schooling species that eat microscopic plants and animals and then are in turn consumed by bigger fish, seabirds and marine mammals – in this way they form crucial connections between lower trophic level species and higher trophic level species in the food web. The Lenfest Forage Fish Taskforce, a group of 13 eminent scientists from around the world, concluded that "conventional management can be risky for forage fish because it does not adequately account for their wide population swings and high catchability. It also fails to capture the critical role of

forage fish as food for marine mammals, seabirds, and commercially important fish such as tuna, salmon, and cod."[19] While some regional Councils have taken steps to protect some of their forage species, in many cases forage fish are either unmanaged (and vulnerable to new fisheries) or have insufficient protections.

The staff working draft takes important steps towards requiring wide-scale adoption of scientifically-based forage fish management by requiring Councils to set control rules to derive acceptable biological catch levels, provide minimum reference points to determine fishery closures, and set ACLs that account for the feeding requirements of managed fish (SWD Sec. 101(c), Sec. 102(a)(1)(E)).

However, we would again caution that some of the language around ACLs may weaken these protections (see our earlier comments). We also encourage the Committee to expand the range of predators whose prey needs will be considered by the Councils to all living marine species, not just managed fish species. Marine mammals, seabirds, and unmanaged fish all have significant dietary dependence on forage fish, and they in turn play vital roles in the marine ecosystem.

Habitat and Bycatch

We were disappointed to see that the draft did not contain any language to sharpen existing provisions of the Act to better protect habitat and only minor steps to address bycatch.

Habitat is critical to healthy fish populations and ecosystems. It includes areas for fish to spawn, hide from predators and feed. But fishing practices, such as trawling or dredging, coastal development, pollution and other activities can damage important fish habitats. These habitats must be protected from fishing and non-fishing impacts to ensure that their ecosystem functions are not compromised. The 1996 amendments required managers to describe and identify essential fish habitats (EFH) and then to minimize to the extent practicable adverse impacts to the identified habitat. Unfortunately, very large portions of the ocean were identified as EFH and regional managers often deemed protection measures, such as bans of damaging fishing gear, to be "impracticable." As a result of the lack of focus in the identification process and the absence of a clear mandate to adopt protection measures, little has been done to protect EFH. The committee should look to advance habitat protections through this reauthorization by including the definition of "habitat areas of particular concern" in the Act, Council planning to protect and restore essential fish habitats and habitat areas of particular concern, and require assessment of the adverse effects of fishing on habitat in fisheries that are failing to rebuild.

Bycatch is the incidental catch of ocean wildlife in fisheries. This is a key source of mortality for many marine species. Bycatch occurs in both commercial and recreational fisheries, and is of particular concern when bycatch species are classified as overfished and in need of rebuilding under the Magnuson-Stevens Act, or threatened or endangered under the Endangered Species Act. Economically, bycatch equates to lost opportunity – it can preclude more valuable uses of fish resources and reduce future productivity by killing juvenile fish and mature reproductive fish.

Bycatch numbers are still high – a low estimate suggests 17 percent of fish caught in the U.S. are bycatch[20] – and is still poorly measured or accounted for, despite a statutory requirement to establish standardized reporting systems by 1998. Less than half of U.S. commercial fisheries analyzed by NMFS

for bycatch in the 2011 U.S. National Bycatch report (63 out of 152, or 41%) have sufficient data to estimate bycatch rates, based on 2005 data.[21] While we are encouraged by the added language to the Findings section of the Act with respect to bycatch (SWD Sec 3(a)(6)), the sentiments of the Findings and Purposes should be extended to strengthened requirements to monitor and avoid bycatch in the Act.

We also have concerns about the modified definition of bycatch included in the draft (SWD Sec. 4(a)(1)). We appreciate that the staff sees the need for a revised definition of bycatch, but the definition should be expanded to include marine mammals and seabirds so that all wildlife that could be killed or injured by non-selective fishing is covered. Further, the language in the definition that includes "fish that are subject to mortality due to a direct encounter with fishing gear" could be interpreted to describe all intentionally-caught fish, therefore, we suggest revising this to encompass only "unobserved mortality".

Finally, as discussed previously, the limitations on the requirements for ACLs in the draft will likely increase bycatch. For example, the language that exempts "non-target" fish from the ACL requirements would likely increase bycatch because, by definition, bycatch is non-target catch. This change will remove any caps on bycatch. Similarly, the exemptions from the ACL requirement for a species with a life cycle less than 18 months or where spawning takes place outside of US waters could lead to increased bycatch because of the lack of a cap.

We will be happy to work with the Committee staff to identify ways to bring these important considerations into the reauthorization of the Act.

Stock Assessments and Best Scientific Information Available

The staff working draft contains a mix of positive and negative changes regarding stock assessments and best scientific information available.

On the positive side, the assessment of fishery-dependent data needs and, if necessary, establishment of an integrated data collection program to gather and analyze the needed data could be a strong step towards identifying and filling data gaps (SWD Sec. 102(e)). We support the identification of data needs and cooperative research programs, increased fisheries independent data collection, and the adoption of electronic monitoring to address those needs.

We have concerns about several other provisions related to stock assessments and the best scientific information available in the staff working draft. The new definition of stock assessment could limit the application of the best available science for assessing the health of fisheries in data-moderate or data-limited situations (SWD Sec 204(a)). While we support the concept of increasing the frequency and number of stock assessments conducted, the stock assessment plan included in the staff working draft may open the door to requirements that full stock assessments be conducted as a prerequisite for the application of ACLs (SWD Sec204(b)). This would undercut the enormous amount of work that has gone into developing methods to use catch and other information to establish catch limits. The focus on rigid scheduling of stock assessments also loses sight of necessary improvements that will be required to ensure adequate and accurate catch and bycatch monitoring and reporting, and fishery-independent survey information.

NOAA Fisheries is concurrently working on plans to "right-size" stock assessments to the data needs of the fishery, and plans to efficiently prioritize when and where stock assessments are conducted. Much of this work builds on the Stock Assessment Improvement Program (SAIP) of 2001, which outlined a strategy for modernizing and upgrading NMFS programs for data collection, data management, information technology and fisheries stock assessments to support its mandates for the conservation and management of marine fisheries resources.[22] The SAIP identified the need for expanded assessment capabilities, including significant increases in the number of stock assessment scientists as well as improved data collection programs and facilities to support the assessment process. At the regional level, NOAA science centers have developed processes for prioritizing and conducting stock assessments (for example, the SEDAR process in the Southeast), which are tailored to the needs of the region. Further investment in these existing NOAA Fisheries programs and regional processes are a better way to address the current challenges.

We also recommend removing provisions in the staff working draft that would codify a new standard of "best scientific information available" that could introduce inadequate science in the stock assessment process (SWD Sec 205). Criteria and standards for "best available scientific information" are laid out in the National Standard 2 guidelines which were revised in July 2013 and should form the basis for what data is used to inform and improve fishery management. In point of fact, many sources of information are already incorporated as appropriate in existing scientific and management frameworks, both from governmental and non-governmental sources. Scientific and other relevant information from all sources is evaluated based on widely-accepted criteria of relevance, inclusiveness, objectivity, transparency and openness, timelines, verifiability, and peer review. Established scientific review processes are the best way to decide what information is appropriate and adequate for purposes of management, not changes to the Magnuson-Stevens Act.

A better way to improve scientific information and incorporate fishermen's knowledge into management is to expand cooperative research designed to answer the specific scientific and data needs of management. This could be done in conjunction with the previously-mentioned integrated data collection program, expanding on the National Cooperative Research Program.

"Sustainably Caught" Label

We are sensitive to the needs of fishermen to compete in the international marketplace and to be rewarded for the hard work that many have done to rebuild and sustain our ocean fish populations. However, we have serious concerns about a Congressionally-designated sustainability label for seafood (SWD Sec.105(c)). There have been significant improvements in federal fisheries management under the current Magnuson-Stevens Act, but that does not mean that each individual fishery is sustainable merely because it is managed under the authority of the Act. An independent assessment of each fishery against criteria related to the health of the population, the impacts of the fishery on the larger ecosystem and the cumulative impacts of the fishery and all other fisheries in the system is the only way to determine sustainability.

Our other concerns include how the Secretary would determine equivalence between Federal, State and International management, as well as equivalence between saltwater management, freshwater management, and aquaculture. We also question how NOAA Fisheries would enforce the new rules. Compliance with the existing standards in the law are already imperfect – many fisheries do not have adequate catch or bycatch monitoring, lack adequate surveys to assess stock health, and have low rates of observer coverage and enforcement.

A blanket "sustainably caught" label for fish or fish products caught in fisheries managed under the Magnuson-Stevens Act (or equivalent management) will obscure the work left to be done to restore our ocean ecosystems to truly sustainable levels.

South Atlantic Red Snapper Cooperative Research Program

In general, we support well-designed cooperative research programs, as they provide valuable opportunities to incorporate the unique knowledge of fishermen into the fishery management process. We also support additional research on red snapper as well as other snapper and grouper species in the South Atlantic region, which has historically suffered from a lack of fishery independent data collection programs. In that light, the concept outlined in this section where fishermen obtain permits to catch individual red snapper and then are required to provide managers with information on the size of each fish and when, where, how and by whom it was caught could increase the information available to managers about this fish. However, we are concerned that as currently written, the South Atlantic red snapper cooperative research program fails to ensure adequate protection for this severely depleted population and the data collection program should be enhanced (SWD Sec. 206).

Specifically, the staff working draft clearly intends to mandate the number of permits available for the research program. Rather than Congress making that determination, we feel it is much more appropriate for that decision to be made through the regional Council process, based on input from the Council's science and statistical committee. This will ensure that the number of fish that will be taken does not exceed what is allowed under the rebuilding plan. To do otherwise risks the recovery of this iconic species.

Further, the data collection component of the program should be strengthened by ensuring data is collected from all participants and is representative of the various sectors and fishing modes used to target red snapper. It is also vitally important to require catch reporting at least weekly if the data is to be considered reliable. The current recommendation for annual reporting of catch is very unlikely to yield information that will increase stakeholder confidence in the data used to manage this fishery, nor be useful for management purposes. In addition, we strongly suggest that this information should be reported to the Southeast Fisheries Science Center, which coordinates the southeast data assessment and review (SEDAR) program, in addition to the Secretary of Commerce. This is important to ensure the data collected can be utilized for stock assessments and management. Finally, any cooperative research program for red snapper should build upon recent efforts by the SAFMC and state agencies in the region to collect and analyze fish otoliths and other biological samples in addition to the length and weight of fish caught. This would provide important, much needed data to assess the status of this rebuilding population.

Subsistence Fishing

Subsistence fishing is a critical source of food for many tribes, particularly in rural Alaska, and fisheries management actions have significant habitat and ecosystem impacts on important subsistence species, including fish and marine mammals. We are therefore encouraged to see that the staff working draft recognizes that tribal governments are important sources of information and strategic partners in fishery management, and we have no objections to the provisions for the Arctic community development quota.

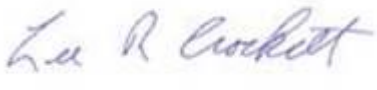
However, more could be done to recognize the value of traditional knowledge as a data source for management actions, and we would like additional clarification on what types of catch data would be required of subsistence fishermen. Finally, it is important to ensure the long-term representation of subsistence fishing interests through the North Pacific Fishery Management Council. This could be accomplished by adding a voting member nominated by the tribal governments and confirmed by the Secretary, or by including tribal subsistence to the list of user groups to be considered for balanced appointment to the Council. We are happy to work further with the Committee to identify and address these opportunities.

Other comments
We would also like to highlight the following points:

- *Annual reports* **–** We are encouraged to see the addition of required annual reports on the use of special funds relating to fish conservation (SWD Sec. 104(f)). This is a positive step to ensure transparency in how we invest in fishery science and management.
- *Saltonstall-Kennedy fund* - We also support ensuring that the Saltonstall-Kennedy funds are used to advance fishery science and management (SWD Sec 207). We would welcome the opportunity to discuss ideas for enhancing the proposed language to further promote transparency and bolster fishery management activities.
- *Judicial review* - In Sect 105(b) of the staff working draft, we oppose the deletion of "including but not limited to…" and ask that it be restored. While the intent of this proposed subsection appears to be to make subsistence fishing closures subject to judicial review, striking the phrase "but not limited to" could significantly limit stakeholder's access to courts.
- *Definition of Illegal, Unreported and Unregulated (IUU) fishing* - In Section 405 of the draft, we support the intent of the language to revise and strengthen the regulatory definition of IUU fishing. We suggest that the Committee consider clarifying Sec. 405(a)(4) to ensure that the additional activities described apply to all vessels. Further, we encourage the Committee to consider adopting a statutory definition of IUU that is consistent with the international definition included in the Port State Measures Agreement.

Thank you for the opportunity to submit comments. Again, we appreciate the Committee's deliberative process on this reauthorization proposal, and we look forward to continuing to work with you and your staffs to ensure that the Magnuson-Stevens Act remains a strong law that supports the sustainable use of the nation's fishery resources.

Sincerely,



Lee Crockett
Director, U.S. Oceans
The Pew Charitable Trusts

[1] NMFS (2014). Status of Stocks 2013 -Annual Report to Congress on the Status of U.S. Fisheries.
[2] Private communication with NOAA Fisheries – available upon request.
[3] Rauch, Samuel D. III. Acting Assistant Administrator for the National Marine Fisheries Service. Written testimony for the hearing on Magnuson-Stevens Fishery Conservation and Management before the Committee on Natural Resources, U.S. House of Representatives. Sept 11, 2013.
[4] Magnuson-Stevens Act Section 303 Note – Effective dates; application to certain species. 16 U.S.C. 1853 note
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