HR1584/S1255 – ADDING "FLEXIBILITY" TO OUR FEDERAL FISHERIES LAW

Introduced in the 111th Congress, the *Flexibility in Rebuilding American Fisheries Act of 2009* (Senate Bill 1255 and House Bill 1584) would amend the federal fisheries law (Magnuson-Stevens Fishery Conservation and Management Act or MSA for short) to extend the allowable time period for rebuilding certain "overfished" fisheries. As written, S1255 and HR1584 would allow the time period for rebuilding these stocks to be extended in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates would dictate otherwise.

Additionally, S1255 and HR1584 would allow the Secretary of Commerce to have reasonable flexibility to make important fisheries management decisions in extending the 10-year rebuilding timeframe if it is determined that:

- The cause of the fishery decline is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities
- The 10-year period should be extended to provide for the sustained participation of fishing communities or to minimize the economic impacts on such communities, provided that there is evidence that the stock of fish is on a positive rebuilding trend
- Such 10-year period should be extended for one or more stocks of fish of a multi-species fishery, provided that there is evidence that those stocks are on a positive rebuilding trend
- There has been a substantial change to the biomass rebuilding target for the stock of fish concerned after the rebuilding plan has taken effect
- The biomass rebuilding target exceeds the highest abundance of the stock of fish during the 25-year period preceding the date the rebuilding plan has taken effect and there is evidence that the stock is on a positive rebuilding trend.

In evaluating the progress to end overfishing and to rebuild overfished fish stocks, the *Flexibility in Rebuilding American Fisheries Act of 2009* gives the Secretary of Commerce the authority to review factors other than recreational or commercial harvest in order to determine if these other factors are contributing to the overfished status of a stock of fish. Such factors include commercial, residential, and industrial development of coastal areas or other agricultural activities in coastal areas, and the impact of such development or activity on the marine environment; predator and prey relationships of target and related species; and other environmental and ecological changes to the marine conditions.

S1255 and HR1584 also adds that if the Secretary of Commerce determines that extended rebuilding time is warranted under any of these clauses, then the maximum time allowed for rebuilding the stock of fish concerned may not exceed the sum of the initial 10-year rebuilding period, the expected time to rebuild such stock absent any fishing mortality and under prevailing environmental conditions, and the mean generation time of such stock.

S1255 and HR1584 also define the term "positive rebuilding trend" as being applied to fisheries where the biomass of the stock of fish has shown a substantial increase in abundance since the implementation of the rebuilding plan.