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PUBLIC STATEMENT FOR THE RECORD

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

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Annapolis, MD

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Mr. Chairman:

Thank you for this opportunity to address the Council. My name is Ryan Mulvey and I am an attorney at Cause of Action Institute, a 501(c)(3) non-profit government watchdog organization committed to protecting individual liberty and promoting economic opportunity.

The management of our nation's fisheries has long been a source of contention and increasingly burdensome regulation. The byzantine rules that comprise our fishery management plans impose a real hardship on businesses—from the fishermen who land the catch, and those on shore who process them, to the distributors, vendors, and restaurateurs who provide them to the American consumer. Over the years, fishing regulations have become stricter and more onerous: quotas and catch allowances have been cut, access restrictions and moratoria imposed, and various other costs levied. These developments threaten the economic viability of a heritage industry.

One especially concerning trend in the Greater Atlantic region is the introduction of industry-funded at-sea monitoring (ASM). To fund their discretionary monitoring goals, the New England and Mid-Atlantic Councils have tried to compel fishermen to bear the bulk of the costs associated with third-party contractors riding their boats and observing their fishing operations.

The Northeast multispecies groundfish sector ASM program provides an example of how damaging and unfair industry-funded monitoring can be. After the New England Council passed groundfish Amendment 16 in 2010—after consultation with this Council—the National Marine Fisheries Service (NMFS) waited another six years before finally requiring sector vessels to pay for the monitors. Based on a NMFS report published in 2015, the per-sea-day cost of this monitoring was expected to exceed \$700 and put nearly 60% of the fleet out of business. My colleagues and I represented clients in challenging the legality of the groundfish ASM program. Although we were unable to obtain a decision on the merits, the courts recognized a real tension between the Magnuson-Stevens Act's requirement for regulators to preserve the economic vitality of the fishery and the unsustainable burden of industry-funded monitoring.

Devastating economic impacts have been somewhat mitigated in the groundfish fishery due to congressional action and continued government funding, but a recent report from the Northeast Fisheries Science Center confirms the continued decline of the fishery, which will only accelerate once monitoring costs fully shift to sector fishermen. The results of the "Measuring the Effects of Catch Shares" project similarly reflect a fishery in decline: total revenue, the number of active groundfish vessels, and fish stocks have all steadily declined, while barriers to market entry have increased. These realities are cause for alarm, and even more so given they are supported by research overseen by MRAG Americas, Inc.—an ASM

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service provider, which is led by a former NMFS regional administrator with ties to environmental organizations, and which stands to benefit economically from the continuation of catch shares and ASM.

I highlight the plight of the groundfish industry because a similar decline may now occur in other fisheries. The reason? Five words: Industry-Funded Monitoring Omnibus Amendment.

The Omnibus Amendment, which was originally co-sponsored by the New England and Mid-Atlantic Councils, was slated to expand industry-funded monitoring into the Atlantic herring and mackerel fisheries and to allow for standardized expansion of industry-funded monitoring via plan-specific amendments. Although this Council decided against final action in the mackerel fishery—a decision that we applaud—the New England Council choose to move forward with its own herring measures and the omnibus alternatives.

In response to NMFS's September 19th *Federal Register* notice concerning the availability of the New England Council's Omnibus Amendment, Cause of Action Institute filed a comment letter that I recommend to the members of the Council. Among the issues we addressed, the most important one—and the one continually ignored by regulators—is the lack of statutory authorization for industry funding requirements outside of a formal fee system or limited access privilege program. Our concerns have thus far gone unanswered, but we are anxious to read NMFS's response in the final rule approving or disapproving the Omnibus Amendment.

Although the Mid-Atlantic Council decided against the Omnibus Amendment, it would behoove the Council to address straightforwardly the ostensible source of authority under the MSA for regional fishery management councils to compel fishermen to bear the burdensome costs associated with supplemental monitoring programs. This issue is not going to go away so long as industry funding requirements exist. More importantly, the New England Council's efforts to expand industry-funded monitoring will impact many fishermen who reside within the boundaries of the Mid-Atlantic Council. Those stakeholders have no voice or vote in New England, and this Council bears responsibility for protecting their economic freedom and ensuring their interests are recognized.

In this regard, it is concerning that the New England Council moved forward with the Omnibus Amendment. The public record is replete with vessel owners outside of the Northeast complaining that their due process rights were violated because accessible stakeholder meetings were only held in New England. That alone is troubling. But the record also reveals that the Mid-Atlantic Council itself recognized why overlapping requirements for industry-funded monitoring in multiple fisheries were economically, if not legally, problematic.

The effects of industry-funded monitoring in New England-specific fisheries will be felt throughout the Greater Atlantic region, and they will adversely impact the economic viability of small-scale fishing enterprises. The herring fishery, which is expected to be subject to drastic quota cuts over the next three years that could cause up to an 87% decline in herring revenue, is only the beginning. Other fisheries will suffer, too.

We respectfully ask that this Council act to check the New England Council's overreach, to investigate the serious legal deficiencies in industry-funded monitoring schemes, and to protect the economic interests of small-business fishing firms in the Mid-Atlantic region by asking NMFS to disapprove the Omnibus Amendment.

Thank you.