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November 4, 2021

The Honorable Jared Huffman
 1527 Longworth House Office Building
 Washington, DC, 20515-0502

The Honorable Ed Case
 2210 Rayburn House Office Building
 Washington, DC, 20515-1101

Dear Representatives Huffman and Case:

The Council Coordination Committee (CCC) is pleased to provide feedback on H.R. 4690, the “Sustaining America’s Fisheries for the Future Act of 2021” (Act). As key participants in the management of our Nation’s fisheries, the Regional Fisheries Management Councils (RFMCs) are at the forefront of efforts to sustain our fisheries in the face of increasingly complex challenges. Whether it is addressing the problems caused by climate change, competition for ocean space to support other activities, or other environmental and anthropogenic stressors, the RFMCs have a wealth of experience to share. The Councils believe that the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA) currently provides the authority, flexibility, and tools needed to promote stock resilience to climate change through a transparent and inclusive public process that relies on the best available science. Nevertheless, we understand that additional management flexibility and additional research may be warranted. In that vein, we believe our comments can help inform the reauthorization of the Magnuson-Stevens Act so the United States maintains healthy and productive ecosystems that support robust commercial, recreational, and subsistence fisheries, now and into the future. To that end, the following comments on the impacts of H.R. 4690 reflect our long experience with the management system and our desire to continuously improve it.

Each of the eight RFMCs provided you detailed comments on H.R. 4690 that identify the likely impacts of the legislation on their operations. These comments reflect the differences between our regional fisheries. Rather than repeat those comments, we are focusing on broad themes in H.R. 4690 that affect all of the Councils.

H.R. 4690 focuses attention on key issues that the Councils are facing, and we would like to highlight the impacts of that on our ability to manage sustainable fisheries. The need to adapt management to climate change is extremely important. H.R. 4690 includes several changes to the MSA that should provide additional guidance that will assist the Councils in this effort. For example, the East Coast Councils are cooperating to address governance issues caused by the shifting distribution of stocks. The bill outlines a process to review management authority and make necessary changes. A similar process does not exist at present; a defined process may help Councils adjust management responsibilities if it becomes necessary. As noted by several Councils; however, the process as proposed is convoluted and perhaps could be simplified. H.R. 4690 would also foster additional research on distribution and productivity of fisheries resources, as well as the development of tools and approaches to increase the adaptive capacity of fisheries management. In the press of routine management,

Councils often find it difficult to explore these issues, so these changes may improve our management response to climate change.

The bill also focuses attention on issues that Councils emphasize: the importance of high standards of ethical behavior and respectful treatment of all participants in the management process. Council members and staff are already subject to rules of conduct published by the National Marine Fisheries Service (NMFS). In addition, Councils expand on this guidance by adopting procedures in their Statement of Organization, Practices, and Procedures and Operations Handbooks that define required behavior and establish procedures for enforcing those standards. Some of the bill's provisions would create a need for extensive training for Council members, advisory panel members, and staff. Several Councils have commented that clarification is needed in order to understand the specific provisions of the bill with respect to the status of Council staff.

The CCC believes that some sections of H.R. 4690, as drafted, will increase the workload on the Councils and the agency, create demands for data and analyses that in many cases cannot be supported, could increase the risk of litigation on several important topics, appears to reduce the flexibility and the role of the Councils, and does not appear to authorize sufficient funding to meet its requirements.

H.R. 4690 proposes many new requirements that would be the responsibility of the Councils or NMFS. These include at least 25 periodic reports, additional elements that must be included in a fishery management plan, formal plans for managing stocks vulnerable to climate change, emergency operations plans, additional training to comply with revised ethics guidelines, etc. Each of these requirements increases the workload on an already saturated and stressed management system. Some must be accomplished within a short timeline. When added to the demanding pace of routine management actions and adjustments to fishery management plans (FMPs), the CCC is concerned that these new requirements will interfere with completing the routine, but critical, work necessary to keep fisheries operating. The objectives and potential benefits of many of these requirements (particularly the reports) are difficult to discern. In many cases, some of the proposed deadlines associated with these new requirements do not reflect the time it takes to complete Council actions in a thoughtful manner that provides for extensive public involvement.

The workload created by the new requirements is exacerbated by the fact that many cannot be supported by available data and analytic capabilities. For example, H.R. 4690 would require estimating maximum sustainable yield (MSY) under current and future conditions. In many of our fisheries, estimating MSY under current conditions is difficult or impossible, so it is not likely it could be done for future conditions, either. Where MSY can be estimated, doing so under possible future conditions would be a complex challenge. It is not clear how such information would be used to inform current management. Similarly, the bill would require Councils to identify as Habitat Areas of Particular Concern areas that "...are or may become important to the health of managed species" (emphasis added). This would require Councils to predict the future in a dynamic, highly variable system. These are just two of many examples of the bill placing unrealistic demands on the available scientific information.

Another possible impact of H.R. 4690 is that it may increase litigation risk with respect to minimizing adverse effects of fishing on habitat and minimizing bycatch. This bill would

remove the current standard that minimization must be accomplished “to the extent practicable.” This phrase currently provides Councils the ability to develop measures that take into account all of the National Standards. However, removal of “to the extent practicable.” will create questions and uncertainty over what meets the standard of “minimize.”

Several sections of H.R. 4690 could diminish the role of the RFMCs. The MSA currently authorizes the Secretary to prepare FMPs or amendments for stocks requiring conservation and management if the appropriate Council fails to do so in a reasonable period of time or if the Council fails to submit the necessary revisions after an FMP has been disapproved or partially approved. Section 506 of H.R. 4690 modifies this language to specify that the Secretary must prepare such plans or amendments if the Councils do not submit the required FMPs or amendments “after a reasonable period of time not to exceed 180 days” (emphasis added). The 180-day time frame proposed in this section is unrealistic and likely could not be met while complying with the rigorous and time-consuming requirements of the MSA, the National Environmental Policy Act (NEPA), and other applicable laws (Endangered Species Act, Marine Mammal Protection Act, etc.). It generally takes at least two years (but often longer) to develop and approve an FMP or major amendment. Most Councils meet 4-6 times per year, meaning that the proposed 180-day time frame may only encompass two Council meetings. This does not allow nearly enough time to initiate an amendment, conduct scoping, form plan teams, collect and analyze data, develop and refine alternatives, solicit input from scientific and statistical committees or other advisory bodies, draft decision documents, conduct public hearings, review public comments, take final action, and prepare the required documents for submission to NMFS.

Section 504 contains similar language if the Secretary determines that a rebuilding plan is not making adequate progress. In this instance, a Council must take action within nine months of receiving notice from the Secretary. Once again, this is an unrealistic time frame given Council meeting schedules and the requirements of NEPA and other applicable laws. As a result, there is an increased likelihood the responsibility for preparing an FMP or amendment may be transferred to the Secretary. This would affect the Councils by reducing the regional role in fisheries management that is one of the foundations of the MSA.

Finally, the CCC is concerned that the changes proposed in H.R. 4690 would divert limited resources from current needs unless there are increases in funding. In many regions, the basic surveys and monitoring programs, data and analyses, and frequency of stock assessments needed to meet the current requirements of the MSA are not available. The increased requirements of H.R. 4690 could only be met if additional resources are provided to the agency. The CCC notes that the administration’s FY 2022 request for Fisheries Programs and Services, which is based on current requirements, exceeds the bill’s proposed appropriations for 2022. It is unclear how the additional activities required by H.R. 4690 could be carried out without a substantial increase in funding.

In conclusion, the CCC appreciates your request for our comments and we hope you find them helpful. We would like to also refer you to the CCC’s Working Paper on MSA Reauthorization Issues, which identifies the impacts of possible MSA changes that have been discussed in recent years. The MSA has clearly been a success in protecting our valuable fisheries resources so that they provide a wide range of benefits to the Nation. H.R. 4690 addresses a number of issues that are high priorities for the Councils, such as our ability

to address climate change within our management framework; however, we are concerned that implementing some of its provisions could impact our ability to meet our core obligations. We look forward to providing additional input as this reauthorization bill is moved forward.

CAT: rdd

Sincerely,



Marc Gorelnik, Chair
Pacific Fishery Management Council



Mike Luisi, Chair
Mid-Atlantic Fishery Management Council



Taotasi Archie Soliai, Chair
Western Pacific Fishery Management Council



Marcos Hanke, Chair
Caribbean Fishery Management Council



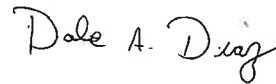
Mr. Eric Reid, Chair
New England Fishery Management Council



Melvin Bell, Chair
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Mr. Dale Diaz, Chair
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cc: Regional Fishery Management Council Executive Directors
Dave Whaley
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