

DRAFT - Proposed for distribution on September 14, 2007

Honorable Don Young

Dear Congressman Young,

Per your August 20, 2007 letter of request, we offer the following comments relative to proposed H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act*. Rather than a Title-by-Title assessment, we believe that stating our comments generally may be a more useful response. While this legislation appears well-intended, and contains some potentially positive provisions (such as an organic act to formalize the structure of the National Oceanic and Atmospheric Administration (NOAA), and a funding mechanism for marine resource management), we cannot support H.R. 21 in its current form. In general the proposed bill would create several additional layers of bureaucracies and possibly conflicting authorities, which in fact could lead to decreased efficiencies in ocean governance, deterioration of current initiatives towards ecosystem-based management, and exacerbation of litigation-based resource management. We further believe that the primary provisions of H.R. 21 run directly counter to some of the key provisions of the recently amended Magnuson-Stevens Fishery Conservation and Management Act (MSA), which was the result of several years of discussion and debate around many of the same issues being addressed in H.R. 21.

The Regional Fishery Management Councils (Councils), authorized under the MSA, currently engage in managing not only fisheries, but habitat, marine mammal and seabird interactions, coastal community development, and numerous other aspects of the marine environment that collectively equate to an ecosystem-based management approach. Several of the Councils have developed, are or developing, Fishery Ecosystem Plans (FEPs) for the areas under their jurisdiction, and there are also initiatives for regional collaboration across federal and state agencies (such as the Alaska Marine Ecosystem Forum, which is a voluntary association of primary federal and state agencies involved in marine resource, or related, management activities). The recently amended MSA contains several provisions based on the recommendations of the U.S. Commission on Ocean Policy, including a requirement for an assessment of the state of science for integration of ecosystem considerations in our management process, as well as establishment of a long-term fund to support progress towards ecosystem-based management.



At the same time, and in coordination with the Councils, NOAA has vigorously pursued the concept of ecosystem-based management, as is evidenced by the numerous initiatives centered on the ecosystem-based management concept, as were detailed in the April 2007 testimony of Mr. Jack Dunnigan, NOAA Assistant Administrator for the National Ocean Service. Collectively, these initiatives seem to constitute the general intent of H.R. 21 relative to ecosystem-based management, but do so in deliberate, step-wise manner that recognizes the realities of our state of scientific knowledge, and which recognizes the myriad Acts and other applicable laws relative to marine resource management. H.R. 21 would seem to largely subsume the recently reauthorized MSA, which was the result of years of debate and hearings on many of these same issues, and which took a practical approach to ecosystem-based management.

The essential problems we see with H.R. 21 can be summarized as follows:

1. The proposed legislation creates several additional layers of bureaucracies and authorities, which could conflict with existing authorities and existing statutes. The recently reauthorized MSA and the National Environmental Policy Act are two primary examples. The bill also contains requirements for numerous redundant reports (at the Administrator level, the Committee level, and at the regional ocean partnership level) to be finalized in very short and unrealistic time frames.
2. The primary purpose of H.R. 21 is already being affected, through efforts of NOAA and the regional fishery management Councils to embrace a broader ecosystem approach to marine resource management. H.R. 21 could diffuse and delay ongoing efforts in this regard, by redirecting funds and personnel to largely redundant exercises.
3. The requirements to establish new regulations for which every federal action must comply will significantly redirect numerous agency resources, thereby thwarting and delaying the positive initiatives currently underway; further, the establishment of such regulation could conflict significantly with existing regulations, statutes, and National Standards.
4. While the legislation states in section...that “it is not intended to replace existing authorities”, other sections of the bill contains provisions for the development and implementation (through regulations) of strategic plans at both the national and regional levels, which would appear to carry the force of law and thereby subsume long-standing, successful management processes. Specifically relative to fisheries, the regional ocean partnerships and attendant regional ocean strategic plans would appear to be vested with regulatory authority over fisheries management decisions, in direct conflict with the Regional Fishery Management Councils and the MSA. The addition of the term “important ecological area’ further confuses the issue of management authorities, given its relationship to essential fish habitat and attendant requirements of the Magnuson-Stevens Act.

5. Ecosystem-based management, and marine ecosystem health, while ostensibly defined in H.R. 21, remain subjective concepts. While the proposed legislation speaks to the establishment of “clear standards against which compliance can be assured”, the bill does not in fact establish such clear standards. A major concern is that this legislation could be way ahead of our available scientific understanding, and set us up for management by litigation, or create total gridlock in management processes.

Notwithstanding our concerns, there are some potentially positive aspects of H.R. 21. We believe, for example, that the focal point of the bill should be on those provisions which elevate the importance of oceans and coastal protection within the federal government and coordinates federal authorities and programs. Further, codifying NOAA’s program authorities and setting forth the agency’s policy goals and missions in a single statute is a positive step but, it should be done so in a manner which strengthens the agency while avoiding reorganization efforts that would be disruptive to ongoing missions. A new position in the Executive Office of the President for a National Oceans Advisor and codifying the Committee on Ocean Policy, which currently operates under an Executive Order may be a positive step, but only if the scope of the proposed coordinated management regime for activities in federal waters is clarified to ensure that NOAA Fisheries', and Councils', authority to manage living marine resources will not be diminished under such plan. Finally, provisions of the bill which promote ecological prediction and management capabilities, and make commitments to funding such activities, are certainly a positive step. However, this generally positive intent must be reconciled against the significant concerns outlined in this letter.

In summary, we strongly support the concept of ecosystem-based management and believe that we are currently embracing that concept in realistic, step-wise approach which is based on a vigorously expanded NOAA and Council mission to understand the state of our ecosystems and respond accordingly in our management actions. The provisions of H.R. 21 have the potential to seriously divert both focus and resources from this mission, and create a tangle of bureaucracies and authorities which will actually impede the implementation of a realistic ecosystem-based management approach. Again, we appreciate the opportunity to comment on this important piece of legislation. Please contact us if we can be of further assistance.

Sincerely,

DRAFT - Proposed for signature by each of the eight Regional Fishery Management Council Chairs

cc: Honorable Ted Stevens
Honorable Lisa Murkowski
Vice Admiral Conrad C. Lautenbacher
William Hogarth
Others?