



**Caribbean**

Miguel Rolon  
Executive Director  
Marcos Hanke  
Chair



**Gulf of Mexico**

Dr. Carrie Simmons  
Executive Director  
Dale Diaz Chair



**Mid Atlantic**

Dr. Christopher Moore  
Executive Director  
Mike Luisi  
Chair



**New England**

Thomas Nies  
Executive Director  
Eric Reid Chair



**North Pacific**

David Witherell  
Executive Director  
Simon Kinneen  
Chair



**Pacific**

Chuck Tracy  
Executive Director  
Marc Gorelnik  
Chair



**South Atlantic**

John Carmichael  
Executive Director  
Melvin Bell  
Chair



**Western Pacific**

Kitty Simonds  
Executive Director  
Archie Taotas Soliai  
Chair

DRAFT October 18, 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 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 (MSA) 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 also 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 comply with rules of conduct published by the National Marine Fisheries Service. In addition, Councils expand on this guidance by adopting procedures in their SOPPs 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 comments 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 establishes many new requirements that are the responsibility of the Councils or the National Marine Fisheries Service (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 FMPs, the CCC is concerned that these new requirements will interfere with completing the routine, but critical, work necessary to keep fisheries operating. The benefits of many of these requirements (particularly the reports) are difficult to discern. In many cases, H.R. 4690 would impose deadlines on meeting these new requirements that 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. Removal of 'to the extent practicable', however, will create questions and uncertainty over what meets the standard of 'minimize'. This could lead to

increased litigation over Council actions until courts clarify how this change should be interpreted.

Several sections of H.R. 4690 could diminish the role of the RMFCs by shifting responsibility to the Secretary of Commerce. 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.**” The 180-day timeframe 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 (ESA, MMPA, 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 timeframe may only encompass two Council meetings. This does not allow nearly enough time to initiate an amendment, conduct scoping, form plan teams (varies by region), 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 with 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 a real possibility that management of some stocks could be taken out of the hands of a Council and given to the Secretary. This does not seem consistent with the regional approach 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 would only be met if additional resources are provided to the agency. We note that the authorization level for FY 2022 is actually lower than the administration’s FY 2022 request for Fisheries Programs and Services, which is based on current requirements. It is difficult to understand how this level of funding will support the additional activities required by H.R. 4690.

In conclusion, the CCC appreciates your request for our comments. 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 has important features that address priority issues of 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 core obligations and the objectives of some of its provisions. We look forward to providing additional input as this reauthorization bill is moved forward.