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GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

November 6, 2002

The Honorable James V. Hansen
Chairman, Committee on Resources
House of Representatives
Washington, D.C. 20515-6201

Dear Mr. Chairman:

This letter provides you with the views of the Department of Commerce (the Department) on H.R. 4749, the "Magnuson-Stevens Act Amendments of 2002," as amended by the House Subcommittee and full Committee mark-ups of June 26 and July 10, respectively. The Department believes that this bill represents a thoughtful and carefully considered revision of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and, therefore, we generally support this bill, albeit with reservations/comments on some of its provisions.

The National Marine Fisheries Service of the Department's National Oceanic and Atmospheric Administration (NOAA Fisheries) has testified on several occasions on Magnuson-Stevens Act reauthorization, explaining our views on which provisions merit attention by Congress. The Department acknowledges that H.R. 4749 addresses the major issues: overcapacity and overfishing; buyouts; science, observers and data collection; ecosystem-based management; bycatch; fish habitat; individual fishing quotas (IFQ); and membership in the Regional Fishery Management Councils (Councils). As noted in the enclosed comments, the Department finds that this bill proposes solutions to these issues that are generally reasonable. Therefore, we believe that H.R. 4749 would improve the 1996 Magnuson-Stevens Act on a number of key points, and we agree that this bill draft provides an excellent start in the reauthorization process.

At the same time, the Department has some questions and concerns about this bill's treatment of certain issues, and we are prepared to work with the Committee to clarify and improve those provisions. The most serious concerns relate to (1) the definition of "overfished" in Section 8; (2) essential fish habitat in Section 10; and (3) some of the proposed regulations governing new IFQs in Section 12. The Department believes that the IFQ issue is particularly important, and, for that reason, we have taken this opportunity to comment in considerable detail on the provisions of H.R. 4749 that address that issue. Some other provisions, such as the report on foreign fishing for highly migratory species in Section 14, are, in our judgment, unnecessary and can therefore be removed, but are not major problems.

In addition, this views letter also comments on a number of amendments that were approved at the Subcommittee and full Committee mark-ups. Most of these amendments address management and science matters, including definitions of key concepts, such as "maximum sustainable yield" and "best available science." We have questions and concerns about some of the proposed solutions, but we recognize the importance of these issues and are prepared to address them through means that are acceptable to Congress and the Executive Branch.

Finally, the Department would like to call Congress' attention to an issue that is not addressed in H.R. 4749: the need to amend the Magnuson-Stevens Act to accommodate an agreement made with Canada on reciprocal fishing privileges for northern albacore tuna. We would be pleased to work with Congressional staff on the details.

Specific comments on the substantive provisions of H.R. 4749 are enclosed. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the viewpoint of the Administration's program.

Sincerely,

Theodore W. Kassinger

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Enclosure

cc: The Honorable Nick J. Rahall, II
The Honorable Wayne T. Gilchrest
The Honorable Robert A. Underwood