



July 25, 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 (Department) on H.R. 3104, the Freedom to Fish Act. The Department supports the privileges of recreational fishermen and encourages responsible recreational fisheries that are consistent with the sustainable use of marine fisheries. However, we believe that the purpose and intent of H.R. 3104 are unclear as currently drafted, and, therefore, the Department does not support the bill.

The Department has serious concerns with some of the more far-reaching Findings in section 2. For example, we are not entirely sure of the practical intent of section 2(5), which states that "(a)ll recreational fishery resources can be maintained ... without unnecessarily restricting public access to places to fish." Recreational fisheries are at times a source of significant fishing mortality for certain species, and need to be regulated accordingly. From time to time, it may be necessary to close areas to recreational fishing. Nor do we find it helpful to include among the Findings in section 2(6) the proposition that "(t)he absence of clear congressional policy has confused the general public as to how programs within the National Oceanic and Atmospheric Administration complement one another with respect to recreational fishing." We find that this statement is inappropriate in a bill that does not establish an overall policy on recreational fishing, but addresses just a few issues (open access, area closures and marine sanctuaries).

The bill proposes in section 2(4) and section 3 a policy of "open access" for recreational fisheries. We oppose such a sweeping approach, mainly because such a policy for recreational fisheries goes far beyond our current mandates under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under these provisions, the United States Government is obligated to conserve and manage fish resources to "provide recreational fishing opportunities," and the Regional Fishery Management Councils (Councils) must take into account and treat equitably recreational participation in federally managed fisheries.

Significantly, section 4 would greatly restrict the authority of the Councils to close areas to recreational fishing. Such an action would not be permitted "unless there is a clear indication that recreational fishermen are the cause of a specific conservation problem." In addition, it would also have to be shown that "less severe conservation measures, such as gear restrictions, quotas, or closed seasons will not adequately provide for conservation and management of the affected stocks of fish." This provision effectively imposes an unnecessarily difficult finding of cause. The Department believes that these provisions would excessively curb the prerogatives of the Councils, create novel and unnecessary rules

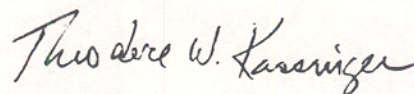
with respect to closures that apply differently to the commercial and recreational sectors, and encourage more litigation.

Finally, section 5 amends section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), which sets forth the duties and functions of the Councils in drafting proposed regulations for fishing in national marine sanctuaries. Section 304(a)(5) currently combines the Councils' fishery management expertise and knowledge under the Magnuson-Stevens Act with the goals and objectives of the national marine sanctuaries under the NMSA. The following points illustrate how this amendment would severely undermine the obligations of the Department's National Marine Sanctuary program under the NMSA to designate, implement, and manage national marine sanctuaries using an ecosystem approach:

- The amendment does not allow the Secretary or the Councils to consider the goals and objectives of the sanctuaries. Instead, it restricts them to the provisions of the Magnuson-Stevens Act, and does not account for the purposes and policies of the NMSA.
- The proposal greatly broadens the scope of the Councils' authority under section 304(a)(5) to propose and revise regulations that are applicable to fishing, including non-fishing regulations such as those relating to vessel discharges, vessel operations, anchoring on coral reefs, and disturbing wildlife. This provision minimizes the ability of the Department to regulate non-fishing activities that might adversely affect sanctuary resources.
- This section provides that any regulation may be applied within the boundaries of a state if approved by the Governor. Since section 304(a)(b) of the NMSA currently provides specific procedures for how sanctuary regulations may apply in state waters, this amendment unnecessarily adds a separate and ill-defined procedure that confuses the issue.

In summary, we believe that the purpose and intent of H.R. 3104 are unclear as drafted; that certain provisions propose excessively ambitious and unsubstantiated findings; that special rules, or carve-outs, on issues such as closures are unwarranted; and that the proposed changes to the NMSA are unnecessary and unhelpful. The Department is committed to the productivity and success of this nation's marine recreational fisheries. We would be happy to work with recreational fishing groups and the Committee to identify ways in which federal law and policy on these issues can be updated and improved. 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

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