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Before the
House Committee on Resources
Subcommittee on Fisheries Conservation,
Wildlife and Oceans
1324 Longworth House Office Building,
Washington, D.C. 20515

Regarding:
H.R. 4368
The Weather and Oceans Resources Realignment Act

September 30, 2004

It is a pleasure to be here today on behalf of the Coastal Conservation Association (CCA) and our 90,000 plus members. I am Bob Hayes and I am the General Counsel for CCA. I am here today to discuss HR 4368, the Weather and Ocean Resources Realignment Act, which makes the National Oceanic and Atmospheric Administration (NOAA) an independent agency within the Department of Interior. First, I'd like to provide you with a little background on CCA and my qualifications, and then discuss the substance of such a change.

The Coastal Conservation Association is the leading marine recreational fishing membership organization in the United States. Formed by a small group of sportfishermen in Houston in 1978, CCA has grown to a fifteen-state operation with over 90,000 members. Each of our states operates somewhat independently focusing on issues in the state that are important to marine recreational fishermen. However, like so much in fisheries management, conservation issues require a regional and national perspective; therefore, CCA learned long ago that federal and international fisheries management were just as important to the local marine recreational fisherman as conservation of the most local fish population.

CCA pursues conservation policies set by our state and national Boards of Directors. These boards are made up of active volunteers concerned about the health of the nation's fisheries. CCA has been active in a number of conservation issues in the last twenty years, including: all of the East and Gulf Coast net bans; gamefish status for redfish, speckled trout, tarpon, striped bass, river shad, marlins, spearfish, and sailfish; and the reduction of bycatch through the use of closed areas and technology. We have also pushed for improvement of the management system through the restructuring of state and federal management systems; the elimination of conflicts of interests by decision-makers; and the active involvement of our membership in the management process. CCA has not addressed HR 4368 and therefore has no position on it. We have a meeting in late October and would be happy to address the bill and provide any additional views at that time. The views here reflect the attitude of the organization but until they are approved, the thoughts in this testimony are essentially my own.

I have had 30-plus years experience working with, for and against NOAA. I have been the lawyer to five fishery management councils, a deputy general counsel for fisheries, an office director at NMFS responsible for displacing foreign fishing, a member of various committees and boards advising NMFS and NOAA, and, at the moment, the recreational Commissioner on the International Commission for the Conservation of Atlantic Tunas (ICCAT). Almost all of my fisheries practice for 20 years has focused on improving fishing for recreational fishermen. For most of that time recreational fishermen have said to me that NOAA or at least NMFS should have stayed in the Department of Interior. Such a change would be extraordinarily popular in the marine recreational fishing community. The question today is would the change amount to something or would it simply be the rearrangement of the deck chairs on the Titanic. I am of two minds on this issue.

From a recreational angler standpoint, moving NOAA to the Department of Interior, as a unit, would give the recreation community a boost. When I go to the Department of Interior, I am often greeted as a colleague, sportsman, stakeholder and conservationist. When I go to NOAA, I am often referred to as a "rec guy," user of the resource, or some other less-than-friendly term. In our view, the intrinsic and economic value of

recreational fishing is not well understood by NOAA or the Department of Commerce.

Two examples will suffice to make this point. The administration sent a Marine Mammal Protection Act amendment to this Committee that described marine recreational fishermen as "non-commercial" fishermen. (The MMPA needed to be fixed because of the bycatch of marine mammals by commercial gear, some of which was authorized to be used in North Carolina by recreational fishermen.) It did not seem to matter to DOC that the term, no matter how accurate, was offensive to recreational fishermen. Fortunately, the Chairman, members, and staff of this Committee have a far better understanding of the sensitivity of this problem and have properly addressed it in the House bill.

The second example concerns striped bass. Striped bass fishing is the most popular recreational fishery in the country. It can only occur in state waters because NMFS has closed the EEZ to all fishing for striped bass. NMFS, in an effort to allow the commercial landing of a small bycatch in the offshore commercial fishery, is investigating ways to open the EEZ to striped bass fishing. Recreational fishermen are opposed to this because it will shift the fishery offshore, allow access to larger fish which will disrupt the recovery of the stock, and undermine state gamefish laws. No one inside of DOC/NOAA/NMFS wants to address the recreational concern. Rather, to solve a small bycatch problem, DOC would rather put the entire recreational fishery at risk.

There are millions of saltwater recreational fishermen. So why do recreational fishermen think there is no one home at the Department of Commerce or NOAA?

Part of the problem is that recreational fishermen are hard to communicate with by traditional means. There are no conventions or huge annual meetings. No one group speaks for the whole community. Although there are some 12 million saltwater anglers, angling advocacy groups cannot count 3% of them as members. As a result, consensus of opinion on specific issues is hard to get. It is also hard to get the angling public focused on federal issues when most of the real problems they have are in the states.

On the federal side, this administration has made it clear that fish problems (commercial or recreational) should not go to the Secretary. NOAA has made it clear that bureaucratic success is keeping issues bottled up at the NMFS level. The measures of success for NMFS, as a result, are not stocks recovered or economic value enhanced, but rather reduction of controversy from the Congress and fewer lawsuits filed. This leaves NMFS focused on today's problem, which is almost always a commercial problem. Such problems often get fixed at the expense of the fish or the angling public. So the common view that the DOC does not care about recreational fishermen gets strengthened daily by the decisions NMFS makes.

NMFS' treatment of commercial longline bycatch is a good example. About four years ago, it became obvious that the North Atlantic longline fleet was interacting with lots of endangered turtles. NMFS proceeded to develop a research program to develop technology to avoid catching turtles on longlines. Over the next three years, NMFS spent about \$15 million to successfully develop alternatives so that some 15 longline vessels could continue fishing the North Atlantic. The research is now being expanded to other areas and holds great promise as a viable way to avoid turtle bycatch.

In the same four years, NMFS has been faced with effects of the bycatch of marlin. White marlin in particular is subject to high bycatch mortality. In the last four years NMFS has not increased its scientific effort to address white marlin mortality. Many think increases funding were blocked by NOAA and the Department, so the recreational community went to Congress and got its own money for research. The recent \$2.5 million appropriated was entirely a result of recreational fishermen's efforts to earmark monies for cooperative billfish research. The DOC message to the recreational community is clear. If you are a commercial fishing entity, we're here to help you. If you're one of those rec guys, go help yourself.

To my knowledge the leadership of NOAA has had one, hour-long meeting with the leadership of the recreational fishing community in the last three years. In contrast, the American Sportfishing Association (ASA) and CCA have met with the President on two occasions: once in DC and once in Texas, for a total of four hours. The DC meeting was attended by Secretaries Gale Norton and Ann Veneman. No one from NMFS, NOAA, or the Department of Commerce attended. The leadership of ASA and members of CCA routinely meet with Gale Norton and her staff about issues, which get addressed and fixed. There is no similar level of attention at the Department of Commerce.

NOAA and DOC will tell you this is because they have delegated responsibility for recreational fishermen to NMFS. Bill Hogarth and his staff have worked hard on reaching out to the recreational community. Today, NMFS has a recreational liaison office, which is developing a recreational fishing strategic plan. Bill Hogarth has met with recreational fishermen all over the country. When he asks what recreational fishermen want he gets lots of answers, but they all can be covered by "reasonable access to a sustainable fishery." On the whole, Bill Hogarth gets high marks from everyone for his efforts. But NMFS' efforts at understanding recreational fishing are not the issue here. Presumably, all of the NMFS outreach would continue and be supplemented in the Department of Interior. The question is would NOAA/NMFS operate better in the

Department of Interior?

Generally, I have concluded that changing the hat on the head and body of this beast, will not change the beast. As the Oceans Commission correctly concluded, a stronger, more effective service-oriented ocean agency is needed. How to get that agency – and to make NOAA and NMFS the agencies we all think they ought to be – is the real question. Shuffling them to a different Department or making them an independent agency without addressing the fundamental problems will not result in positive change.

The fundamental problems in oceans management are clear and well documented. First and foremost is the layering and multiplicity of jurisdictions addressing management of ocean resources. Some 15 federal agencies and departments now have a hand in federal oceans policy. Combine those with 29 coastal states and territories and three interstate commissions and you have a political nightmare. Each of these jurisdictions has different priorities, budget structures, and statutory schemes. Most of them overlap somewhere in the ocean inside of the 200 mile limit. All of them are important to some constituency and all of them have some political support.

Secondly, we have the problem of population. In the next ten years, some 70% of the nation's population will live within an easy day's drive of the oceans. Many of those people have reached a degree of affluence that allows them to recreate in a marine environment. One facet of that growth will be in marine recreational fishing, which will require continued access to healthy resources. The tackle manufacturers will tell you that their largest growth sector is marine recreational fishing. The recreational boating industry will tell you that some 70% of recreational boaters also fish from their boats. Most people I talk to in the industry think the federal number of 12 million marine recreational anglers is a low number. Recreational fishing is growing and competing for space and resources. It will need to be managed to ensure maximum economic value while controlling its impact on the resource.

People who live near the coast affect it. The Chesapeake Bay is a classic example of destroying the health of an ecosystem through population growth. You don't have to live within 100 miles of it in order to impact water quality in the Bay. The same is true of Delaware Bay, Long Island Sound, Narragansett Bay, Puget Sound and any number of estuaries that people in this room can name. Coastal population growth doesn't need to be managed by NOAA, but ocean policy makers need to manage for it.

Increased populations also mean more food consumption. Our waters are not capable of accommodating increases in fish consumption if the increase is to be met by sales of wild fish. We already have too many overfished fisheries, too many commercial vessels, and too little money to address the problem. The common answer to the consumption issue is mariculture but it comes with its own set of environmental, health, and economic problems.

Lastly, you have the science. Ocean and atmospheric science is done by a hodge-podge of private institutions, academic programs, and government science centers. Much of it is superb; however, priorities are hard to set and outcomes that support better, more predictable outcomes are hard to achieve. We need to specifically identify the sampling universe of recreational fishermen. We need better data on what is landed and the total mortality of recreational and commercial fisheries. Unfortunately, we lack basic science on any number of species. The nation needs to focus its research programs to compliment the management system.

The list of potential answers to these management problems includes ecosystem management, preservation of biodiversity, more regional commissions, council appointments, circumventing states, White House-level ocean czars, and any host of governance changes. These look to me like we are taking a complicated system and making it more unworkable. Since I don't know a great deal about ocean mining, offshore oil exploration, coastal zone management, or marine and estuarine pollution, let me offer some ideas on something I do know something about – fisheries management.

The single most important thing about fisheries management is that done properly, it works. It has worked in striped bass, redfish, king mackerel, and most of the North Pacific fisheries. It is working in summer flounder, many of the reef fish fisheries in the Gulf and a number of mid-Atlantic fisheries that were overfished just recently. It works when the management system has decent science, takes a responsible precautionary approach, and weathers the political pressure from interest groups (recreational, commercial, and environmental), which for whatever reason don't like the answer. It is a system that requires courage and conviction to achieve success. It does, however, have a few flaws.

The first flaw is the quality of the science. Fisheries science is a good guess at best. Scientific inaccuracy is the reason that CCA pushed for application of the precautionary approach in the 1980s. Most of the science is not directed at the entire ocean system. It has traditionally been done on a species or group of species. Today, scientists tell us it ought to be done on a holistic basis. Ecosystem management is all the rage. The Oceans Commission jumped at the opportunity to embrace ecosystem management. A cynic might think they like it because, as of yet, no one can explain what it is or how it would work within the existing statutory

structure. It sounds good, but it is unattainable in today's budgetary and statutory world?

What is attainable? Better fisheries data, better quality, reputable fisheries scientists, and protection of their unbiased conclusions from the chorus of criticism from those who don't like the conclusions. Congress can accomplish this by establishing the improvement of science as clear priority, by appropriating funds to accomplish it, and by insisting that agency managers take the political heat and not pass the buck onto agency scientists.

The second problem is the statutory structure. If, as a nation, we intend to move toward management of ecosystems, then there needs to be a rationalization of the statutory goals. The present fisheries management system lacks a single clear goal. Some would suggest that the goal should be preservation of ocean biodiversity. Some would suggest the goal is to prevent overfishing and recover fish stocks. Some would suggest it is the preservation of marine mammals. Recreational fishermen would suggest the goal ought to be maximum access to a sustainable resource. Some would suggest it is the maintenance of economically viable stocks at the expense of all other things in the oceans. (This probably is the present de facto goal). There are certainly others.

Congress needs to face this problem directly and develop a clear unified objective for NOAA's management of the fishery resources. The administration should take some leadership here as well, by articulating a single goal that blends all of their statutory responsibilities. Once everyone knows the objective, it should be a lot easier to develop a coherent policy.

CCA has suggested for some time that the next step is to use the fishery management planning process as a real plan. Most FMPs are not a plan; they are a description of a fishery with the measures that manage it. There is no real attempt to plan in a strategic sense where the fishery is going and what it ought to look like five, 10, or 20 years down the road. How does NOAA expect to react to the increase in ocean recreation in the next ten years if it doesn't have a planning mechanism to do so? Congress needs to look at this next year.

Finally in the bigger picture, NOAA needs to be run as a regulatory and service agency supported by sound science, not as a science agency which also has regulatory and service functions. The tool in fisheries management is regulating the users of the resource. There clearly are other impacts on the health of fisheries, but the primary control is over the harvesters. The science programs in the agency need to support the regulatory function and the entire regulatory system needs to be streamlined all the way to the Secretary.

Before I close I would like to thank Congressman Saxton and Congressman Young for introducing this legislation. This legislation raises the issue of reorganization, which ought to be part of the debate on oceans management. For three years now the recreational community has watched and participated in discussions about the governance of ocean issues. The size of the problem and its complexity often seem to dwarf the concerns of the average recreational fisherman. But let there be no doubt: our love of the ocean and our need for it to be healthy are as great as any interest represented in this debate. We are willing to think outside the box, so long as the result is a healthy marine ecosystem to which we have reasonable access. Thank you for allowing us to testify here today.