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H.R. 21, the "Ocean Conservation, Education, and National Strategy for the 21st Century Act"
Sub Committee on Insular Affairs, Ocean and Wildlife
U.S. House of Representatives

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Madam Chairwoman and Members of the Committee, I am Jim Donofrio, the Executive Director of the Recreational Fishing Alliance (RFA). The RFA is a national 501(c)(4) non-profit grassroots political action organization whose mission is to safeguard the rights of salt water anglers, protect marine, boat, and tackle industry jobs, and insure the long-term sustainability of our nation's marine fisheries. Recreational fishing produces significant economic activity in the United States. NOAA estimates the total recreational saltwater economic value exceeds $30 billion annually[i] and provides considerable income and employment.

I appreciate the opportunity to appear before you today to discuss H.R 21, "Ocean Conservation, Education, and National Strategy for the 21st Century Act". The RFA has submitted numerous comments on earlier versions of H.R. 21. The RFA acknowledges that the current version before the House and the topic of this Subcommittee hearing has addressed some of our previous concerns. Unfortunately, the RFA continues to have substantial objections to H.R. 21.

Consistent with our mission statement, appropriate measures of fisheries management and conservation are among the RFA's primary concerns. Balancing all three tenants of the RFA mission is the goal of our organization. Achieving that goal would mark the successful management of our domestic fisheries as we envision it. The current management approach falls short of this goal. All too often, conservation goals supersede the needs of the fishing community. The result of which are regulations that deny access for recreational anglers to rebuilding fisheries and force fishing related businesses to permanently close their doors as fishing activity plummets. Anglers are the life blood of the recreational fishing industry and purchase equipment, bait, ice, fares, boats, fuel and other fishing goods and expenditures that drive this industry. RFA views current fisheries management approach as shortsighted and

unfair because it focuses only on fish and not on a balance of fish, fishermen, and industry. RFA believes that conservation, access and a viable marine industry can coexist. RFA further believes the intent and spirit of Congress in passing the Sustainable Fisheries Act[ii] amendments in 1996 was to achieve this balance.

The RFA is encouraged to find language in H.R. 21 that recognizes the human dimension in marine ecosystems. As expressed in the Sec. 3, RFA fully supports securing for present and future generations, the full range of ecological, economic, educational, social, cultural, nutritional, and recreational benefits of healthy marine ecosystems. Recreational fishing provides nearly all these benefits and my comments today reflect our desire to maintain them for the recreational fishing community and recreational fishing industry. The stated purpose of managing our nation's marine resources is for the benefit of the public and the RFA supports this policy.

As you are aware, federal marine fishery management and conservation is primarily governed by the Magnuson Stevens Fishery Conservation and Management Act (MSA)[iii], as amended, which among other things, established the 8 regional fishery management councils and set forth requirements for fishery management plans. Additional oversight is provided by The Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act)[iv] National Environmental Policy Act (NEPA)[v], Regulatory Flexibility Act[vi], as well as several international fishing treaties of which the US is a contracting party. Each of these laws mandates conservation priorities and standards to which fisheries managers must adhere. Federal oversight of marine fisheries is assigned to the National Marine Fisheries Service under the Department of Commerce (DOC) with additional oversight, in some fisheries, by the U.S Fish and Wildlife Service under the Department of Interior. The creation of a National Ocean Policy (NOP),(sec 101 (a)(A), would require each federal agency to issue new or revise regulations to ensure consistency with the National Ocean Policy. RFA interprets this section such that NOP would supersede MSA. RFA contends that MSA is not a perfect fisheries law and hopes that legislation currently in the House and Senate will improve this law. However, MSA has been the nation's primarily fisheries law and proven to be successful in rebuilding many depressed stocks. In 1997, one year after the passage of the Sustainable Fisheries Act, 86 stocks were identified as overfished.[vii] In 2008, only 46 stocks were identified as overfished representing a 46% reduction in the number of overfished stocks.[viii] On average, 3.6 stocks per year are removed from the overfished category. There is no denying that this represents good progress. Where MSA fails is in ensuring that fishermen and the fishing community are able to enjoy the benefits of their sacrifices and role in rebuilding. RFA maintains that MSA must remain the nation's primary fisheries law and that any national ocean policies spawned from H.R. 21 provide guidance and recommendations to MSA, not supersede it.

The framework through which US domestic fisheries are managed is an open, public process with significant federal oversight. Formulation and ultimate implementation of fishery management plans is deliberate, structured and well vetted. The cost of this framework in terms of time, limits the responsiveness of the regional fishery management councils to a minimum turn-around time for a non-emergency amendment of 12-15 months. Such a time frame has been criticized by the RFA and others as limiting effective management. In the South Atlantic Red

Snapper fishery, Amendment 17 to the Snapper Grouper Fishery Management Plan was not able to be implemented in response to overfishing determinations made in July 2008, thus violating MSA requirements to enact regulations to end overfishing in one year. As such, interim rules had to be approved to comply with MSA. H.R. 21, if enacted, would create additional layers of bureaucracy and add to this already lengthy process further reducing the regional councils' responsiveness.

RFA is concerned about this additional bureaucracy and the potential length of time necessary to comply with H.R. 21 provisions. RFA supports the current public process in its effectiveness to facilitate stakeholder input and cautions that an excessively long process would increase the burden to provide such input. Many may feel discouraged and disenfranchised if they are unable to dedicate additional time to the new process. Additionally, such a dense bureaucratic tangle may confuse and intimidate the general public, thus diminishing its involvement.

RFA supports the concept of ecosystem based management outlined in Title I so long as, humans, including traditional activities such as recreational fishing, are not just considered but protected. In its application to marine fisheries, there are ecological processes outside of direct fishing activity that undeniably drive the status of many important fisheries such as winter flounder and salmon. However, the jurisdiction of the regional councils and Department of Commerce ends with fishermen. If ecosystem based management is the goal for the US fishery management system, then it will be necessary to address non fishing impacts on marine fish stocks.

Current management is primarily single species management and with the focus primarily at the higher trophic levels. Yet, the overarching objective of MSA is to produce and maintain maximum sustainable yield (MSY) for all federally managed species. Basic ecological theory and fisheries scientists express little confidence in the ability to maintain a high level of abundance for all species at the same time. The contradiction of MSY management has manifested in the current management of spiny dogfish. Spiny dogfish is a voracious predator that has been rebuilt to an inordinate level of abundance in response to MSA requirements. The current level of spiny dogfish, estimated by NMFS to exceed 2,000,000 metric tons[ix], is now impacting on the rebuilding efforts of other important fisheries such as cod and summer flounder. In 1998, the spiny dogfish biomass was estimated to consume 5.7 million age 0 cod and 68 million age 0 summer flounder.[x] To compare these numbers, the mean summer flounder recruitment is roughly 35 million fish per year.[xi] It is estimated that in order to maintain the current biomass of spiny dogfish, 12 million pounds of prey per day must be consumed. RFA contends this is not ecosystem based management because spiny dogfish are dominating New England and Mid Atlantic waters at the demise of all other species. Diversity is a key tenant of ecosystem based management and the current abundance of spiny dogfish is compromising this objective. RFA believes in the case of spiny dogfish, that ecosystem based management would be far more beneficial than MSY management. RFA is apprehensive about how or if these two management approaches can be rectified.

Specific to the recreational sector, most fisheries are regulated through season, minimum size limits and bag limits. As rebuilding requirements in MSA exert greater pressure on fishery managers, increasing minimum size limits has emerged as the primary mechanism to meet these mandates. The unintended consequence is that recreational fishing effort becomes focused on the older, more reproductively valuable fish in the population. This approach may have longterm implications and may diminish managers' ability in meeting MSA objectives. Furthermore, recreational anglers are forced to discard an inordinate amount of fish in order to encounter a legal sized fish. Not all of the sub-legal size fish released after capture die and the rate of mortality varies among species from low percentages of 4% in tautog to upwards of 100% in warsaw grouper and other deep water species. Summer flounder has a relatively low discard mortality rate of 10%. Yet, in 2008, the mortality associated with recreational discards equaled the mortality of recreational harvest. This excessive discard mortality is completely in response to rigid MSA requirements to rebuild the summer flounder stock by 2013. RFA believes this is a wasteful management approach that is not consistent with ecosystem based management and penalizes anglers for complying with regulations. In its application to ecosystem base management, RFA believes there are benefits on spreading fishing pressure over age classes that are more abundant and resilient. This approach would promote a well developed age structure and secure more reproductively valuable individuals in the population.

Though vast, the ocean and marine resources are finite and actions do not occur in a vacuum. MSY management demands constant productivity and assumes little interaction between rebuilding species. This is an impossible mandate without limited flexibility to account for natural variations of productivity and interactions between species. RFA believes ecosystem based management is the direction marine resource management should take. However, RFA is concerned that H.R. 21, if passed, would make the entire MSY based management system inconsistent with ecosystem based management. Furthermore, it is unclear whether an ecosystem based approach is compatible with surplus production management which is the cornerstone of traditional fisheries management. Under Sec 101 (a)(C), H.R. 21 states that ocean waters, coastal waters, and ocean resources should be managed using ecosystem based management. Yet in sections 4.(8) (A) through (F), ii is vague in how ecosystem based management will apply to fisheries management. RFA is very concerned about moving forward with such a policy without knowing exactly how would apply to fisheries management.

Effective ecosystem based management requires a significant amount of data on the marine environment. We currently do not have a complete understanding of ecological processes that influence fish populations. Furthermore, we have an even more difficult time incorporating climate and weather change in the context of the marine environment. Under single species management, there are many sources of uncertainty affecting stock assessments: 1) imperfections in catch statistics, 2) imprecise estimates of biological parameters, 3) variability in fishery independent resource surveys, and 4) natural variability in biological processes, particularly in recruitment and natural mortality. If this uncertainty is pooled to accommodate an ecosystem based management model, the associated error would be exceedingly large. This is a risky approach. Ecosystem based management is a very data hungry approach and as mentioned above, the terrestrial and atmospheric stressors also impact the marine resources. The scope of data necessary to properly manage in an ecosystem based management approach would be

profound. RFA supports moving in this direction only if an adequate science budget and infrastructure is provided.

RFA is very much concerned about sec 101 (a)(D) which states that the lack of scientific certainly should not be used as justification for postponing action. Essentially, this section places the burden of providing the best available science on the fishing community which is patently unfair. The responsibility of producing the best available science is currently assigned to NMFS as mandated by MSA. Under this charge, NMFS has promulgated regulations to meet rebuilding requirements based on scientific information with considerable uncertainty. Regulations based on poor science have had significant negative impacts on the fishing communities. In the case of summer flounder and Atlantic scallops, severe restrictions were pending based on NMFS's best available science. The cumulative on-water observations from fishermen specific to these two species were not consistent with NMFS's stock assessment. The fishing industries took it upon themselves to foot the expense of improving the assessment for these species when NMFS was unable or unwilling. The result was marked improvements to our understanding and assessment techniques for these stocks and a determination that no restrictions were necessary. These improvements were only possible because of the financial commitment of the fishing industry. A similar situation just recently occurred with South Atlantic Red Snapper. Sec 101(a)(D) would make the situation where the industry improved the summer flounder and Atlantic sea scallop assessment the norm as opposed to the exception. This approach would bankrupt many fishing businesses as poor management decisions are advanced without any scientific justification. The fishing industry should not be the lead entity ensuring the management decisions are based on the best science.

Biological reference points and rebuilding strategies are derived through estimations of carrying capacity (K), natural mortality and maximum sustainable yield. These are all theoretical reference points and in many cases, based on assumptions and very little empirical information. Reference points are used to establish rebuilding goals (targets), set overfished and overfishing thresholds and determine the rebuilding timeframe. The consequence of setting these reference points without much empirical information can be profound. This has proven to be extremely challenging and contentious in single species management. This very point was discussed at a hearing before this same committee in December of 2007. MSY and K are among the most difficult things to determine even in data rich fisheries such as summer flounder. RFA recognizes that uncertainty will always be present in fisheries science and does not suggest deferring action indefinitely. However, the chances for errors become far greater when setting biological reference points and rebuilding strategies for multispecies and ecosystem based plans.

As we have previously stated in previous comments, RFA generally supports the objectives of Title II, including the enactment of a NOAA Organic Act. Likewise, RFA supports the concept of regional partnerships outlined in Title III. There have been a number of regional partnerships at the federal, state, and local level which have advanced conservation of ocean and coastal resources. However, the RFA continues to have serious concerns with elements of title III which would create a new overlapping regulatory regime. The RFA contends that additional funding for the implementation of H.R. 21 is absolutely necessary in a manner which would not divert funding from base programs at NOAA.

Finally, RFA supports additional funding for ocean-related programs and certain objectives contained in Title IV. The current financial climate in most coastal states prohibits them from carrying out the provisions of H.R. 21 without hiring additional staff. Funding agreements in Title IV must not limit the states from using federal funding to increase their personnel to meet these objectives.

In closing, RFA believes ecosystem base management holds many advantages over traditional single species management. The ecosystem approach is a more holistic approach that attempts to incorporate all processes that influence the marine environment and marine resources. Under such an approach it is impossible to assume that productively is constant and all species can be maintained at MSY. Likewise, rigid rebuilding requirements under the current MSA may not be compatible with a more science based approach such as an ecosystem based approach. Management goals under ecosystem based management may have to be revised. At the same time, a commitment to make and fund substantial improves to fisheries and ocean science will need to be made. One must respect the limitations of our current science and not force ecosystem based management simply to advance a political goal. The consequences to the fishing community and resource could be profound. There will be considerable variance and error associated with estimates of current and future stock size under an ecosystem based approach and we must proceed with caution.

Thank you Madam Chairwoman for the opportunity to comment on H.R. 21. I look forward to working with you and members of this committee who have expressed interest in this important issue. From the individual saltwater angler to the many small businesses that comprise the marine, boat, and tackle industry, our members are hopeful that Congress will take the right steps to ensure we have viable fishing communities in the future. I believe that we can develop language consistent with an ecosystem based approach that will promote healthy fisheries, allow fishermen to access robust fish stocks and at the same time achieve long-term conservation.

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[i] US Department of Commerce. 2004. The Economic Importance of Marine Angler Expenditures in the United States. NOAA Professional Paper NMFS 2

[ii] P.L. 104-297

[iii] P.L. 109-479

[iv] 16 U.S.C. 5107

[v] P.L. 97-258

[vi] P.L. 96-354

[vii] National Marine Fisheries Service. 2007. Report to Congress: Status of United States Fisheries

[viii] National Marine Fisheries Service. 2009. 2008 Status of US Fisheries.

[ix] Sulikowski, J. 2008. Status of Spiny Dogfish, *Squalas acanthias.* University of New England.

[x] Link, J.S., L.P. Garrison, and F.P. Almeida. Ecological interactions between elasmobrachs and groundfish species on the northeastern U.S. Continetial Shelf. Evaluating predation. North American Journal of Fisheries.

[xi] NEFSC. 2008. Stock Assessment of Summer Flounder, *Paralichthys dentatus*