

Congress of the United States
Washington, DC 20515

August 25, 2021

Mr. Marc Gorelnik
Chair, Council Coordination Committee and
Chair, Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Dear Mr. Gorelnik,

We are pleased to have introduced H.R. 4690, the Sustaining America's Fisheries for the Future Act, legislation that would reauthorize and provide much-needed updates to the Magnuson-Stevens Fishery Management and Conservation Act (MSA). We would like to formally request the feedback of the eight fishery management councils on the introduced legislation.

As you well know, the MSA has not been updated since 2006. In this new era of climate change, advancing technologies, and changing ocean use, our fisheries management and fishing communities need an MSA that is updated to address those challenges. During the drafting of this reauthorization, we followed a stakeholder-driven, science-based process. We conducted rigorous outreach and stakeholder engagement, including 8 public listening sessions around the country, and incorporated the viewpoints and proposals heard during those discussions as much as possible. Changes were also made to the legislation based on consideration of feedback from over 50 organizations and individuals that sent comments on the discussion draft released in December 2020.

The feedback of the fishery management councils on this legislation will be invaluable to the integrity of this bill as we refine it, and we appreciate your time and thoughtfulness in your responses. We respectfully request your feedback by September 30th, 2021. The text of the bill is attached. Should you have any questions regarding this request, please reach out to Casey MacLean, legislative assistant to Representative Huffman, at Casey.MacLean@mail.house.gov.

Sincerely,



Jared Huffman
Member of Congress



Ed Case
Member of Congress



Pacific

Chuck Tracy
Executive Director
Marc Gorelnik
Chair



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 Withereff
Executive Director
Simon Kinneen
Chair



South Atlantic

John Carmichael
Executive Director
Melvin Bell
Chair



Western Pacific

Kitty Simonds
Executive Director
Taotasi Archie Soliai
Chair



November 4, 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 Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or 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 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 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 are already subject to rules of conduct published by the National Marine Fisheries Service (NMFS). In addition, Councils expand on this guidance by adopting procedures in their Statement of Organization, Practices, and Procedures 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 commented 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 proposes many new requirements that would be the responsibility of the Councils or 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 fishery management plans (FMPs), the CCC is concerned that these new requirements will interfere with completing the routine, but critical, work necessary to keep fisheries operating. The objectives and potential benefits of many of these requirements (particularly the reports) are difficult to discern. In many cases, some of the proposed deadlines associated with these new requirements 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. However, removal of “to the extent practicable.” will create questions and uncertainty over what meets the standard of “minimize.”

Several sections of H.R. 4690 could diminish the role of the RFMCs. 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” (emphasis added). The 180-day time frame 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 (Endangered Species Act, Marine Mammal Protection Act, 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 time frame may only encompass two Council meetings. This does not allow nearly enough time to initiate an amendment, conduct scoping, form plan teams, 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 within 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 an increased likelihood the responsibility for preparing an FMP or amendment may be transferred to the Secretary. This would affect the Councils by reducing the regional role in fisheries management 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 could only be met if additional resources are provided to the agency. The CCC notes that the administration’s FY 2022 request for Fisheries Programs and Services, which is based on current requirements, exceeds the bill’s proposed appropriations for 2022. It is unclear how the additional activities required by H.R. 4690 could be carried out without a substantial increase in funding.

In conclusion, the CCC appreciates your request for our comments and we hope you find them helpful. We would like to also refer you to the CCC’s Working Paper on MSA Reauthorization Issues, which identifies the impacts of possible MSA changes that have been discussed in recent years. 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 addresses a number of issues that are high priorities for the Councils, such as our ability

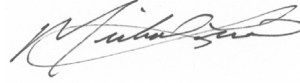
to address climate change within our management framework; however, we are concerned that implementing some of its provisions could impact our ability to meet our core obligations. We look forward to providing additional input as this reauthorization bill is moved forward.

CAT:rd

Sincerely,



Marc Gorelnik, Chair
Pacific Fishery Management Council



Mike Luisi, Chair
Mid-Atlantic Fishery Management Council



Taotasi Archie Soliai, Chair
Western Pacific Fishery Management Council



Marcos Hanke, Chair
Caribbean Fishery Management Council



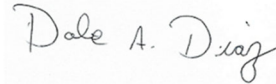
Mr. Eric Reid, Chair
New England Fishery Management Council



Melvin Bell, Chair
South Atlantic Fishery Management Council



Simon Kinneen, Chair
North Pacific Fishery Management Council



Mr. Dale Diaz, Chair
Gulf of Mexico Fishery Management Council

cc: Regional Fishery Management Council Executive Directors
Dave Whaley
Randy Fisher



**Western
Pacific
Regional
Fishery
Management
Council**

October 5, 2021

The Honorable Jared Huffman
1527 Longworth House Office Building
Washington, D.C. 20515

The Honorable Ed Case
2210 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Huffman and Case,

Thank you for the opportunity to provide comments on H.R. 4690, the *Sustaining America's Fisheries for the Future Act* which provides potential updates to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The Western Pacific Regional Fishery Management Council (Council) reviewed the bill at its 187th meeting in September and discussed how several provisions, if enacted, could disproportionately impact the fisheries management in the Pacific islands. The comments herewith focus on the impacts of the proposed legislation, and are not intended to express support or opposition to any element of the bill.

In general, the current provisions in the MSA have worked for fisheries in the Western Pacific by balancing the need to prevent overfishing and protecting endangered and threatened species while maintaining a well-managed sustainable harvest. This approach has benefited our nation's fisheries and local island communities alike. The MSA also serves as a global gold standard for fisheries management. Furthermore, the management framework and conservation measures developed for US Western Pacific fisheries by the Council have been adopted internationally by regional fishery management organizations.


Transparency and public involvement are foundational elements of MSA for carrying forward fisheries management decision making. Retaining these elements, as well as including MSA's current regional adaptability mechanisms, in any proposal remain key for effectively managing the fisheries of our diverse region. The Western Pacific region is unique, made up of several island chains with four distinct indigenous communities and traditions that are dependent on the ocean for food security, recreation, and cultural identity. Our communities consume nearly double the national average of commercial fish and shellfish, but also rely heavily on subsistence for their food security. The Western Pacific fishing communities are underserved and experiencing disproportionate levels of poverty and lack of food resources in comparison to the rest of the continental US. National level definitions and provisions that afford regional flexibility safeguard these regional differences and avoid unnecessary implementation challenges. Essential fish habitat, forage fish, bycatch reporting and subsistence fishing are examples of key provisions that would benefit from a flexible implementation approach nationwide.

The proposal includes additional reporting and planning requirements intended to monitor fisheries performance and the effects of management measures in relation to climate change. These requirements could pose a significant challenge for the less developed, culturally based fisheries in the Western Pacific. There is limited capacity to satisfy these requirements, and also potential impacts regarding how the reporting and planning would be used as part of the management decision making process. For example, the application of ACLs alone in our region has significantly impacted our data-limited cultural and artisanal fisheries. Pacific Island data collection systems were not designed for, nor evolved to support, the sophisticated stock assessments to support and implement ACL management. The consequences of a management decision based upon faulty science, or an incomplete picture, can be significant for subsistence-based communities, which cannot simply reconfigure for other fisheries. In addition, merging environmental climate data with highly variable, data-limited fishery dependent data could amplify the already existing large uncertainties and impact, and compete with the Council's current obligations.

The Council's fishery ecosystem plans (FEPs) by design inherently address climate change through an iterative and adaptive process of fisheries management. The Council is obligated to incorporate best scientific information available, including the externalities and uncertainties impacting fishery resources due to climate change in a responsive manner. Climate change is a long-term driver that the existing Council process addresses through this FEP framework. The proposed climate change provisions would appear to introduce redundancy into the regulatory process.

The Council's detailed comments in reference to the language of H.R. 4690 are included in the enclosed document. A continued investment in the research and monitoring infrastructure coupled with management capacity within our region is essential for the Council to meet and fully realize our responsibilities under MSA. Thank you for taking our comments into consideration as part of this MSA reauthorization process. Faafetai Tele Lava, Mahalo Nui Loa, Un Dangkulu Na Si Yu'us Ma'ase and Olomwaay!

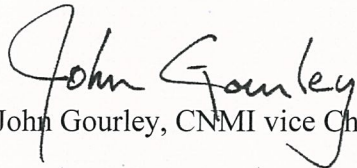
Sincerely,



Taotasi Archie Soliai, Chair



Kitty M. Simonds, Executive Director



John Gourley, CNMI vice Chair



Manny Duenas, Guam vice Chair



Roger Dang, Hawaii vice Chair



Taulapapa Will Sword, American Samoa vice Chair

Cc: WPRFMC Council Members
RFMC Executive Directors
Ms. Janet Coit
Mr. David Whaley

Encl: WPRFMC Comments on HR 4690



WPRFMC Comments on H.R. 4690

October 6, 2021

The following comments are provided on H.R. 4690, the **Sustaining America's Fisheries for the Future Act of 2021** by the Western Pacific Regional Fishery Management Council (Council) that would amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Title 1: Climate-Ready Fisheries

Sections 101-105 of the bill would require Councils to address the impacts of environmental conditions associated with climate change on fish stocks, marine ecosystems, fisheries management, and coastal communities. Proposed amendments to the MSA would require changes to the content of fishery management plans (FMPs), fisheries research priorities, and Council training.

Climate change may lead to shifting distributions of highly migratory species that constitute the majority of landings in the Western Pacific and impede the productivity of island-associated species that sustain island communities. Climate change may cause highly migratory fisheries that target tunas and billfish to redistribute relative to dynamic oceanic habitats. In contrast, island-associated fisheries may not be capable of redistributing to favorable areas, leading to the loss of fishery resources for vulnerable communities. As valuable highly migratory tuna stocks are predicted to shift eastward under plausible climate change scenarios into the future, the Council will need to ensure the ability for the US fishery to continue to have access to these resources and for those fisheries to become resilient to climate change. The Council has included in its Fishery Ecosystem Plans (FEPs) an objective to consider the implications of climate change in Council decision making. Existing MSA provisions have the ability and flexibility for the Councils to take this into account. The Council's FEPs are already adaptive by design and allow for the incorporation of scientific information as it comes available to inform Council decision-making, well in advance of impacts of climate change to materialize as abatable threats on our fisheries.

Additional provisions that require Councils to amend FEPs would be an increased workload without substantial certainty that these efforts have added benefits to address threats posed by climate change, given the lack of data in the region to support or inform many of these proposed obligations. Stock assessments and management strategy evaluations are required to project risks and uncertainty associated with future climate scenarios into future biomass dynamic scenarios that are often already associated with inflated levels of uncertainty. These stock assessments are already challenging due to the limited nature and quality of fishery data available, making improving data collection paramount in order to even begin to address climate change in decision-making. Otherwise, these requirements would only exponentially increase the regional challenges. Funding and resources are needed to conduct research and collect data to determine impacts prior to the Council being able to analyze and address those

impacts to the fisheries. Federal agencies tasked with providing best scientific information available for fisheries management decisions already assume the burden to incorporate external drivers impacting fisheries, such as climate change, in scientific information used for Council decisions.

Section 102: Promoting Climate Resilience in Fisheries Management

This section includes a proposal to add a new Section 322-Increasing resilience of fish stocks to climate change, which would require the Secretary to assess the vulnerability of fish stocks within each Council area and make recommendations to each Council to conserve and protect those stocks. Each Council would be required to publish a plan to prioritize management actions to increase resilience.

This provision would result in a top-down approach to management where the Secretary/NMFS would tell the Councils which species they should be managing and provide recommendations for management. MSA was set up to provide a bottom-up approach to management with the fishing community informing the Council and NMFS which species need conservation and management.

Fish Stock Vulnerability Assessment (FSVA) Workshops were held by NMFS and the regional Councils participated in the process. Conducting a vulnerability assessment would be a substantial undertaking and significant resources would be needed to conduct a regular update on a five-year cycle. Due to the nature of our region's limited funding resources to conduct the research needed for updating the FSVA, this effort would be difficult to achieve. Developing a separate plan to increase climate change resilience for priority management unit species will compete with the Council's current obligation to specify catch limits. As with other provisions, funding and resources are needed in order to carry out these provisions. Otherwise, this could become an unfunded mandate making it difficult for Councils and NMFS to effectively implement with existing resources.

Sections 104: Climate-ready Fisheries Innovation Program

This section would include the identification of research priorities to understand climate change on fisheries.

The Council is required to provide five-year research priorities and cooperative research priorities, so this would be easily accommodated. The development of research priorities for Section 104 could benefit from streamlining with the existing requirement to develop research priorities under MSA Section 302(h)(7). Identifying climate change research priorities does not necessarily guarantee funding availability. There is inequity in the distribution of research funding among the regional fisheries science centers. The Pacific Islands Fisheries Science Center does not receive the base funds to conduct large-scale research.

Section 201: Fishery Resource Disaster Relief

Under these proposed changes, the Fishery Disaster Relief program would be changed to Fishery Resource Disaster Relief and it includes additional anthropogenic and climate change causes that would qualify for disaster assistance.

The Fishery Disaster Relief program played an important part in American Samoa recovering from the tsunami in 2009, as well as Guam and CNMI recovering from major typhoons that hit in 2002 and 2018, respectively. This program provided funding for infrastructure, gear and vessel repair in the territories. This program will continue to be important as the islands continue to plan for the effects of climate change. The proposed language in HR 4690 provides prescriptive changes to the program and the fishing community would benefit from changes that do not limit its ability to receive funding for disasters to the fishery and fishing community.

Section 202: Subsistence Fishing

This section would define the term ‘subsistence fishing,’ which would include customary and traditional uses and customary trade. It also provides a definition for family and barter.

Subsistence fishing in the Western Pacific is the largest sector in many fisheries due to the reliance on the fisheries for food and culture. The proposed definition could assist in determining the impact of regulations on those non-commercial, non-recreational fishers. However, the harvest of the resources, particularly in the Western Pacific, can often straddle those definitions which then affect fishery management decisions such as sector allocation. Implementation of inclusive and flexible definitions allows for appropriate fishery management.

Section 302(g): Expanded SSC Duties and Responsibilities

This section would require the Council’s SSC to report on stock status and health, sources of mortality, bycatch, habitat status, social, ecological, economic impacts of management measures, and sustainability of fishing practices.

These duties have been assigned to the Council’s Plan Teams. National Standard 2 also puts some of these responsibilities to the Secretary of Commerce through the Stock Assessment and Fishery Evaluation Reports. The SSC’s role is to review this information and provide scientific advice to the Council if there are any emerging scientific issues that the Council needs to address. In contrast, the proposed language in the bill presents the SSC as a body that generates new information and conducts its own analysis, which would require fundamental changes on how the SSC operates.

Section 304: Council Procedures and Participation

This section would require that Councils hold roll call votes on all non-procedural matters, provide a webcast of the Council and Council Coordination Committee, and provide recordings or transcripts of meetings.

Mandating non-procedural roll call votes would result in an additional burden to the Councils as many of its actions are non-procedural. The Council votes on sending letters, administrative procedures, directing staff or its advisory committees, etc. Roll call votes are normally used for FEP and amendment actions. This provision would significantly increase the time spent on discussion and recommendations during meetings, lengthening meetings and perhaps delaying the agenda for members and the public.

Our Council has historically held teleconference meetings and is now operating through virtual meetings and strives to hold meetings in person to the extent practicable (funding, timing, etc). Plans are in place to accommodate the public participation and Council voting in meetings but not everything can be planned for (i.e. COVID-19). Councils need flexibility to adapt or modify procedures.

Including audio/video/transcripts on the Council's website would need to consider privacy and consent laws and may also discourage full discussion and participation by both members and the public. While Council meetings are public, there are concerns of discussions being taken out of context as well as inadvertent comments being captured on audio or in transcripts. Currently, reports or minutes of the Council and advisory group meetings are provided and maintained on the Council's website. Audio, video, or transcripts are not currently collected and would require additional resources in order to meet this provision.

Section 305(a): Council Accountability and Membership

This section would deem Council staff as Federal employees with respect to any requirement that applies to Federal employees. Further, Council staff, members, and advisors would be subject to all rules and policies regarding ethics and sexual harassment that apply to Federal employees and could be held individually liable for their actions.

It is unclear what "shall be deemed federal employees with respect to any requirement that applies to federal employees" would entail providing to, or restricting from, Council staff. Council staff are not Federal employees under the MSA which allows for greater flexibility in Council operations and the ability to develop a different relationship with the fishing community. A restriction to Council staff by designation as federal employees could reduce its effectiveness in its relationship with the fishing community and the public.

Provisions that hold Council employees accountable to Federal ethics and sexual harassment policies may be redundant as Council staff, members, and advisors are required to adhere to the Rules of Conduct by the US Department of Commerce that provides federal guidance on ethics as well as on rules and policies. This document is updated annually and is used as a method of incorporating and updating policies for the Councils.

Section 305(c): Lobbying

This section would amend MSA Section 302 to prohibit the regional fishery management councils from using Federal funds to attempt to influence federal or state legislation as well as issuance, advancement, modification or overturning of an executive order, proclamation, or Presidential directive.

The regional fishery management councils are prohibited from using Council resources (including funds, equipment, and time) to lobby Federal or state/territorial legislation. Current prohibitions on lobbying are also included in the Councils' annual ethics training provided by NOAA General Counsel. The Councils, however, may provide factual information as a response to requests, and these requests and responses are documented with NOAA General Counsel.

A provision that prohibits the Councils from communicating with the executive branch does not allow for input as intended by the MSA. The Council operates under the Executive Branch of government as it provides recommendations to the Secretary of Commerce. In order to prepare and submit FMPs to the Secretary as described in the functions of the Council in the MSA, communication is required. This includes communication on the impacts of any non-legislative requirement or mandate that may affect the Council's fisheries or the Council's responsibilities to manage these fisheries under the MSA.

Additional proposed provisions to document communication of Council staff, members, and advisors with the Federal executive branch on non-routine fishery management communication would require an inordinate amount of monitoring, documentation, and tracking would be burdensome and require a significant amount of additional resources. The amount of documentation needed for the communication between the Council and NMFS would be enough to erode relationships and the ability to work effectively on regional and national fishery issues. In addition, documenting and publicly posting Council communications with NOAA General Counsel would violate any attorney-client privilege afforded to the Council.

Section 305(d): Voting Members

This section would amend the requirements pertaining to voting Council member appointments to include new required expertise, include additional expertise for Council membership, and appointing at least one individual who does not have a financial interest in matters before the Council.

Council expertise is currently not limited to commercial and recreational fishing and any provisions to require additional expertise is unnecessary. Current membership on the Council is not by sector but by expertise but as per MSA section 302(a)(2) "reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority." Apportionment to mandate the inclusion of the conservation community, scientists, and non-consumptive users could lead to fewer fishermen on the Council and impact the bottom-up approach to fisheries management instituted by the MSA. The MSA allows for those that are impacted by federal fishing regulations (i.e. fishers) to provide input directly into management. A dilution of input from Council members with direct fisheries expertise to a more general ecosystem, science, and conservation expertise could result in potentially uninformed and ineffective management decisions.

It is also unclear what the need is for appointing an individual who does not have a financial interest. MSA addresses financial interest through disclosure and recusal under limited circumstances, which ensures that those with relevant expertise in the fisheries are able to participate in management decisions. Council members are required to submit a conflict of interest statement that NOAA General Counsel reviews before decision making. Someone appointed without financial interest right now may eventually have a financial interest as fisheries management is constantly evolving and may present a financial interest in a future issue. This provision would increase the burden on the Council to review all potential interests now and in the future.

Section 306: Amendments to the Western Pacific Sustainable Fisheries Fund

This section would amend MSA Section 204(e) to make changes to the Marine Conservation Plans (MCP) process to require the Western Pacific Council to publish a Notice of Intent (NOI) before submitting an MCP to the Secretary for approval, limit what the objectives of the MCP may include, limit demonstration projects to waters beyond the state boundary, and require the state of Hawaii to develop a Marine Conservation Plan. In addition, this section would require the Secretary to establish a Western Pacific Sustainable Fisheries Fund Advisory Panel to evaluate and annually rank applications for grants. The panel would be comprised of members selected by the Governor.

The Western Pacific Sustainable Fisheries Fund (SFF) receives funds from foreign incursions that occur in the Pacific Island Remote Areas, from Pacific Island Area Fishing Agreements (PIAFA), and from other funding sources. Funds are used to support fisheries development, management, and conservation projects in the US territories consistent with Marine Conservation Plans (MCP) developed by the Governors for their respective territories and the Council for the PRIAs and Hawaii.

MSA section 204(e)(7) identifies the Western Pacific Council as the administrator of the SFF through grants provided through NOAA. Changing the administration of the SFF from the Council to an advisory group composed of government appointees may reduce transparency and limit input from the fishing community, which is afforded through the current process.

One section in the proposal would require the State of Hawaii to develop an MCP. The development of MCPs is a requirement for spending funds received through PIAFAs, foreign fishing incursion settlements, or the territorial bigeye tuna catch and allocation agreements. Currently, the State of Hawaii is not eligible to enter into a PIAFA, receive funds from foreign fishing incursion settlements, or enter into territorial bigeye tuna agreements. However, State of Hawaii projects can be included in the MCP for the Pacific Remote Island Area (PRIA) which is developed by the Council.

Another section in the provision would require the Council to publish a Notice of Intent to approve MCPs. Currently, territorial governments develop, draft, and publicly vet their three-year MCPs at a local level. Draft MCPs are transmitted to the Council for review and approval based on consistency with the goals and objectives of their respective Archipelagic FEP. The public is provided the opportunity for formal input at Council and advisory panel meetings, which are publicly noticed in the Federal Register. Following Council endorsement, the Governor transmits the final MCP to the Secretary of Commerce for review and approval. Once approved, the final MCP is published by NMFS in the Federal Register.

The University of Hawaii Pacific Island Network no longer operates as a functioning entity and therefore its inclusion in MCP may not be appropriate. The proposed language limits MCP projects to what is referenced in the MSA and to federal EEZ waters. These changes may reduce the state and territorial government's ability to fund projects that address important issues and needs in coastal and territorial waters.

Section 406: Recreational Data Consistency

This section would establish guidelines for recreational catch data with data standards to improve timeliness, accuracy, and precision. This would include measures for calibrating federal and non-federal sources for consistency. The Secretary would also be tasked with developing a strategic plan that would improve collaboration and prioritize research.

Recreational, or noncommercial, fishery data in the Western Pacific is the largest gap in fishery information. The information that is collected could be improved through this section. However, data standards, improvements, and research aligned with the existing Marine Recreational Information Program (MRIP), allowing for regional variations and flexibility. A recent National Academies of Science review of MRIP may provide additional information on the needs of recreational/noncommercial fisheries in the U.S.

Title V, Section 502: Essential Fish Habitat Consultation

This section would change Essential Fish Habitat (EFH), including consultations regarding federal agency action with adverse effects on EFH. It requires agencies and federal projects to minimize and mitigate adverse effects, monitor, minimize and evaluate Habitat Areas of Particular Concern (HAPC), and establish regulations for the consultation process.

This section would also remove “to the extent practicable” when describing and identifying EFH, require minimizing adverse effects on such habitat caused by fishing, and require HAPC to be identified and described.

Essential Fish Habitat is a useful tool despite the fact that conservation measures resulting from EFH consultations are recommendations rather than requirements. However, provisions in this section requiring agencies to take action on conservation measures would result in additional costs and resources without additional conservation benefits. The Council considers the impacts of its fishery management actions on EFH. Resources for additional provisions are better used to collect data to improve EFH and implement corresponding conservation measures.

The data available in the Western Pacific region to identify and describe EFH is limited. As such, EFH includes a broad sweep of areas with very little ability to pinpoint which areas are essential. This has resulted in coastal infrastructure zones and other areas important to the islands for commerce and trade to be delineated as EFH and thus fall victim to unintended consequences through increased costs and resources for mitigating impacts.

This section also includes the term “adverse effects” and defines the term as “any impact that reduces the quality or quantity of EFH.” The current EFH descriptions are too broad and insufficient to evaluate what an adverse impact may encompass, and couple with limited data could cause significant problems for FEP actions. In addition, the removal of “to the extent practicable” would require the Council to describe EFH based on limited data, further exacerbating these types of issues. Increased EFH consultations and implementation of conservation measures would require additional resources for data collection in order to properly mitigate adverse effects.

Section 503: Reducing Bycatch

This section would remove the words “to the extent practicable” for minimizing bycatch under NS9, add “quantification of bycatch” into FMP required provisions, add discretionary procedures to “consider full retention requirements for species with high catch mortality rates,” and add a standardized bycatch reporting program to assess the amount and type of bycatch in each fishery. It would also amend the Bycatch Reduction Engineering Program (BREP) to provide information to Councils and tribes.

MSA provisions that require the Councils to minimize bycatch and bycatch mortality “to the extent practicable” allow for the development of conservation measures that balance factors such as efficacy, practicality, safety at sea, and socioeconomic impacts. Consideration of these factors is critical to developing successful bycatch measures. Eliminating practicability considerations from bycatch provisions could also be interpreted as requiring Councils to prioritize minimizing bycatch over other responsibilities, such as managing fisheries to achieve optimal yield and addressing climate change impacts.

NMFS issued national guidance in 2017 for establishing and reviewing standardized bycatch reporting methodologies for fisheries managed under the FMPs (82 FR 6317). This guidance recognized that the methodologies should be standardized within a fishery, but may be different from fishery to fishery, based on bycatch characteristics and feasibility of data collection in each fishery. It appears that the proposed national standardized reporting program would replace the 2017 guidance by requiring a consistent methodology for all fisheries. Establishing a consistent data collection method across the nation is likely to be impractical and costly, considering the diverse range of scale and characteristics of fisheries. For example, fisheries managed under this Council include a small-scale precious coral fishery that uses a submersible to selectively harvest target species and a pelagic longline fishery that has a federal observer program to collect data on incidental interactions with protected species and other non-target bycatch species; consistent data reporting, collection, and assessment would not be practical for these two fisheries. A requirement for a national standardized reporting program would likely impose disproportionate impacts on fisheries in the U.S. Western Pacific, especially if the standards are based on large-scale, high-volume, and data-rich fisheries. Most of the fisheries in our region are small-scale and data-limited but are known to have minimal bycatch based on their fishery and gear characteristics. A nationally standardized requirement for bycatch reporting may require this region to implement costly and burdensome data collection programs not commensurate with known bycatch characteristics and management needs.

Section 504: Improving Rebuilding Outcomes

This section would change ‘overfished’ to ‘depleted’, and would change the rebuilding timeline from 10 years to the time the stock of fish would be rebuilt without fishing occurring plus one mean generation while including a 2-year review of rebuilding plans.

Ecosystem-based approaches to fishery management consider that the depletion of a species may be caused by factors other than fishing. The proposal to replace the term “overfished” with “depleted” in the MSA also recognizes that external factors may drive stock productivity and estimated management benchmarks, but may not necessarily address issues considered by an

overfished status. The rebuilding requirement for fisheries that have stock biomass below a threshold would remain the same, but the provision adds an obligation to account for any anticipated risks of depletion within a two-year timeframe to prevent the stock from reaching a depleted state. If the definition of depleted is to account for other reasons aside from fishing, ending overfishing does not guarantee the stock will rebuild. External factors on the stock driving the depletion would remain to make rebuilding that much more difficult. Fishery management measures primarily focus on catch or effort controls. If the cause of depletion is habitat degradation due to land-based pollution or climate change, then fishery management measures in the rebuilding plan cannot prevent the stock from reaching a depleted condition. The relationship between depletion resulting from fishing mortality becomes dissociated and management measures to control non-fishing mortality-based causes may be beyond the Council's jurisdiction.

The ten-year rebuilding timeframe may be arbitrary but is a concrete target as compared to the provision in this section that designates the timeframe as biomass in absence of fishing plus one generation time. This is particularly relevant to the Western Pacific region where data is limited and fishery management is based on a stock complex. Section 304(e)(4)(A)(ii) removes the flexibility in managing through the biology of the fish stock and hardwires a definition based on an ecological parameter (biomass in absence of fishing) and “one means generation,” the definition which is also absent in this section. The depleted provision also prevents the Council from explicitly considering the needs of the communities which is the most important consideration for our Council. The balance between the conservation objective for the stock and the needs of the community heavily tips towards the need to rebuild and removes consideration of National Standard 8 when developing rebuilding plans.

Section 507(4): Councils

An addition to section 302(h) (Council functions) would require the Councils to approve criteria for identifying whether each managed stock is depleted or experiencing overfishing.

A change in terminology from “overfished” to “depleted” would also necessitate a change of the criteria. Clarification is needed to determine whether “depleted” as used in this bill refers to a biomass level falling below a relative level or rate of change in the fishery. Internationally, the term “depleted” may refer to catch biomass falling below a relative level, as defined by the UN Food and Agriculture Organization. In either case, this would be a large undertaking for the Council and its advisory groups to determine what constitutes a “depleted” stock-based on externalities. There are also concerns regarding the limited data available to support these decisions and the lack of resources available to improve the data quantity and quality. The current draft is also inconsistent in how it treats the term depleted. If the term is meant to replace overfished, which is associated with biomass level relative to an MSY, some sections use the term depleted to describe a fishery. The fishery is typically described with the rate of extraction in relation to the amount of biomass in a management area.

Section 508: Forage Fish Conservation

This section would direct Councils to consider the management of forage fish.

The bill's definition of forage fish creates confusion on which species would be considered forage. Given the trophic complexity of the ocean and nearshore environment, the majority of the species are considered as forage at some stage of their life history and contribute to the energy transfer in the food web.

The Councils already have the ability to consider the management of forage fish. Our Council has managed potential forage fish as part of its Ecosystem Component Species and could develop conservation and management measures for these species as needed. These measures could include annual catch limits and EFH as well as the need for a multi-species model to inform the proper level of harvest limits for the fisheries and allocation between federal and state jurisdiction. This would represent an additional workload for the Council that would need to be supported with additional resources.



North Pacific Fishery Management Council

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September 30, 2021

The Honorable Jared Huffman
1527 Longworth House Office Building
Washington, D.C. 20515
c/o Casey MacLean, legislative assistant
Casey.MacLean@mail.house.gov

The Honorable Ed Case
2210 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Huffman and Case:

Pursuant to the August 25 letter from your legislative assistant Casey MacLean to Mr. Marc Gorelnik requesting comments from the eight fishery management councils on H.R. 4690 “Sustaining America’s Fisheries for the Future Act of 2021”, I am responding on behalf of the North Pacific Fishery Management Council (North Pacific Council, or Council).

The North Pacific Council has a successful record of science-based, sustainable fisheries management since the Magnuson-Stevens Fishery Conservation and Management Act (MSA) was implemented in 1976. Each year, vessels homeported in Alaska, Washington, and Oregon harvest over 2,200,000 metric tons of groundfish in the North Pacific, worth approximately \$2.5 billion first wholesale. The abundance of groundfish stocks is high, and most stocks are well above the abundance levels that produce maximum sustainable yield. In the past 40 plus years, no Alaska groundfish stocks have been overfished or have been subject to overfishing.

The MSA has provided the North Pacific Council with the flexibility to develop a very successful fisheries management program in the North Pacific, resulting in global recognition for our sustainable and valuable fisheries. As such, the North Pacific Council believes that it is able to achieve the goals of sustainable fisheries management, including improving climate resiliency under the existing MSA. Under the current flexibility provided by the MSA, the Councils have the authority to identify data needs and promote stock resilience to climate change through a transparent and inclusive public process that relies on the best available science. Through implementation of the MSA, the United States is the global leader in the successful conservation and management of fishery resources and associated ecosystems in a proactive, sustainable manner.

The North Pacific Council offers the following comments on specific sections of H.R. 4690 that are applicable and of higher importance to the North Pacific Council. The following comments are not intended to provide support for or against the legislation. Rather these initial comments are based on the North Pacific Council’s ability to meet its conservation and management goals under the MSA, and the objectives specified in its 5-year NOAA Grant. As this bill goes through the legislative process, we will be pleased to provide additional comments if requested.

Sec. 102. Promoting climate resilience in fisheries management. Requires fishery management plans to promote stock resilience, identify data needs due to climate change, examine the vulnerability of a

fishery and its participants, and assess the anticipated impacts of climate change. Adds several new requirements for the contents of fishery management plans (FMPs), including an assessment of how management measures account for climate change and other environmental and ecological changes on the fishery, and an identification of the distribution for the fish stocks managed under the plan.

Comment: The North Pacific Council and its scientific advisory bodies already work closely with National Marine Fisheries Service (NMFS) to incorporate climate science into annual stock assessment processes and fisheries management to be consistent with the current requirements of the MSA, so a requirement to add this information to FMPs would be duplicative which could cause confusion and would divert staff time to amending FMPs continuously, each time new information becomes available. It is unclear what benefit would be gained by having this information in an FMP, which takes time and staff resources to amend, versus having this information in annual stock assessments which are prepared through a public process, publicly available and updated annually.

Sec. 103. Incorporating climate science. Requires that new Council members receive training on climate change and its impact on fisheries and adds changes in range, species distribution and productivity of a fishery to an area of fisheries research (MSA Section 404).

Comment: The NMFS has already started to include training on climate change and potential fisheries impacts as part of its new council member training. Such training will assist new Council members in getting up to speed on the research and management measures undertaken to understand and address potential impacts of climate change.

Sec. 104. Climate-ready fisheries innovation program. Establishes a program to develop innovative tools and approaches to increase the adaptive capacity of fishery management to the impacts of climate change. It includes coordination with the Councils.

Comment: The legislation appears consistent with the direction of science and management in the North Pacific. The NMFS Alaska Fisheries Science Center has been developing advanced models of climate and ecosystem responses. The North Pacific Council has been actively working towards climate ready fishery management and resilience through its Bering Sea Climate Change Taskforce for its Bering Sea Fishery Ecosystem Plan. It would be helpful to understand what this new provision would add to the current process in order to understand whether it would aid, divert or delay current efforts in the North Pacific.

Sec. 106. Emerging fisheries. Creates a framework for establishing a new fishery or gear type and requires Councils to analyze potential impacts and management of the new fishery or gear type. This section requires a Council to review its fisheries and gear on the list of fisheries (50 CFR 600.725), which are fairly generic, and make them more specific (including identifying geographic distribution of the fishery, and what species are authorized to be caught and retained by that gear type) and to ensure only active fisheries are included on the list.

Comment: The North Pacific fisheries and authorized gear on the list are not geographically detailed and not species specific. The North Pacific Council concurs that analysis of new gear types and new fisheries help to understand and regulate potential impacts before a new fishery occurs or a new gear type is used in a given fishery. For example, the North Pacific Council has analyzed new gears prior to authorization for use in a specific fishery, most recently authorizing the use of pot gear as a legal gear type for a Bering Sea and Aleutian Islands directed halibut fishery, and longline pots for the Gulf of Alaska sablefish fishery.

However, the purpose of requiring a list of fisheries authorized to be caught and retained by that gear type remains unclear, and would result in overly cumbersome regulations, increase regulatory bycatch and waste, and reduce the flexibility of the Council to quickly adapt to climate change. These impacts would affect the Council's ability to carry out its responsibilities outlined in its grant without an increase in the Council's understanding and knowledge of authorized fisheries and gear types.

For the North Pacific, the list of fisheries split out by gear type, geographic area, inside and outside of the EEZ, and by management jurisdiction will already be enormous and complex. Adding the species of fish authorized to be caught and retained in each fishery will make the list of fisheries extremely lengthy and cumbersome. For example, in just the North Pacific groundfish fisheries, there are 4 management areas (GOA, BS, AI, Arctic), at least 12 gear types (pot, longline pot, trap, jig, longline, hook and line, handline, rod and reel, spear, dinglebar troll, hand troll, bottom trawl, pelagic trawl), 2 agencies with jurisdiction (NMFS, State of Alaska), and over 150 individual groundfish species and approximately 400 other species that can be caught and retained in the groundfish fisheries. The list becomes even longer when the other fisheries (scallop, crab, and salmon) are considered. Any minor adjustment to the list of species would require the North Pacific Council to prepare a regulatory amendment to fix it, thus negatively impacting the Council's ability and available time to address other more pressing conservation and management issues.

A likely management response to a requirement to list species that are authorized to be retained is to shrink the list of species to make it more manageable. However, this will increase regulatory bycatch, as the fish species not listed for a specific fishery would be required to be discarded. Any list that constrains what species can be retained will result in increased bycatch, and will affect the Council's ability to meet National Standard 9. The Council seeks to achieve the goal of National Standard 9 to minimize bycatch by encouraging retention, and only restricting discards when necessary to achieve specific fishery management goals (e.g., preventing targeting of prohibited species). Many of the species caught and retained are not the primary target of the fisheries, but they are retained by fishermen because there is some marginal profit in doing so. Limiting what species can be retained simply increases bycatch and waste. It is not clear how the additional detail relative to fish species that can be retained would have positive effects on the process, or the conservation and management of fisheries.

Lastly, the legislation appears to provide an additional layer of Secretarial review that could establish a lengthy process to evaluate, review and approve any changes to the species that can be retained in a fishery, or the specific gear type used in that fishery. Thus, the legislation may affect the ability of the North Pacific Council to achieve its conservation and management goals by restricting its ability to more quickly develop new gear types to adapt to changes. Rapid changes in the ecosystem require an adaptable and flexible regulatory system as currently provided under the MSA.

Sec. 205. Community participation in limited access privilege programs (LAPPs). Adds provisions for Councils to identify eligible fishing communities and adds a process for fishing communities to participate in LAPPs. Establishes minimum requirements for a Community Sustainability Plan that may be submitted by a community to a council.

Comment: The language in 303A(c)(1)(L) is not clear regarding the requirement to 'provide a process for fishing communities to participate...' which could cause confusion and further limit

the ability of Councils to use these provisions. Further clarity on what ‘participation’ entails is needed, as well as the timing of the submittal of the community sustainability plan. In effect, it is not clear if the provisions would require each LAPP to have a community allocation, whether other means of participating are acceptable, whether a different process is required other than the normal Council process, and whether a community sustainability plan must be submitted to and accepted by the Secretary before a LAPP can be approved. It is also unclear whether there must be a direct link between the eligible communities and the specific fishery that is subject to the LAPP, aside from being in the management area of the Council. Management areas in the North Pacific are very large. The bill could provide additional clarity by specifying whether the fishing community provisions apply only to newly developing LAPP programs.

In developing LAPPs for North Pacific fisheries, the Council has used a wide range of tools intended to provide for the sustained participation of communities engaged in and dependent on the fisheries subject to the LAPP. While allocations to communities are one tool, and the authority to use that tool to comply with National Standard 8 could be made clear, continued allowance of other tools to maintain community participation in a LAPP would provide the Council the flexibility to meet the needs of the communities most effectively and meet the management objectives of its grant.

Sec. 206. Findings. Adds a technical amendment to findings. The proposed finding contains the sentence “Many coastal areas are dependent on fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources; ensuring sustainable use of fishery resources is essential to the well-being of these areas.”

Comment: Because the bill explicitly acknowledges that overfishing is not always the cause of a stock being in low abundance, and thus replaces the term “overfished” with the term “depleted”, and further acknowledges that climate change can affect fish stock abundance, it is unclear whether this finding is to apply to depleted fisheries or fisheries affected by climate change. If the intent is to have this finding apply to various reasons, it could be further modified by inserting “or stock declines caused by environmental change” after “...the overfishing of resources” to continue to explicitly recognize that fishing resources can be adversely affected by more than just overfishing.

Section 302 – Tribal Representation at the North Pacific Council. Adds two Alaska Native Tribal seats to the North Pacific Council and establishes a process by which members are selected.

Comment: The North Pacific Council notes there are substantial differences in the appointment process, term limits, and choice of alternates for the proposed new council seats as compared to other existing appointments to the North Pacific Council. Unlike all other appointed seats on the Council, the Tribal representatives would be appointed by the Secretary based on a list provided by Alaska Tribes (not the Governor), would not be subject to term limits (no maximum of three 3-year terms), and would get to choose their own alternate for their seat (no other appointed member is allowed an alternate). Further, the alternate is neither bound by approval of the Tribal governments nor subject to the same level of qualifications for membership as are other Council members. It is also worth noting that the addition of two additional ‘Alaska’ seats alters the geographic representation of Council membership, such that 7 of the 9 appointed members would be from Alaska.

Sec. 304. Council procedures and participation. Requires roll call votes for every motion (except procedural matters). This section would require that council meetings be held in person to the extent

possible, but ensure the availability of remote participation and voting. To the extent possible, all Council and CCC meetings must have a live audio or video broadcast on the Council's website, and a recording of the Council and SSC meetings posted by not later than 30 days of the meeting. The Secretary must archive these audio or video recordings and any transcripts and make them available to the public.

Comment: The Council notes that for some motions roll call votes can disrupt the flow of the meeting and inhibit consensus building. There are several reasons for this. First, many motions only provide minor technical fixes to amend the main motion, and it is clear from the discussion that there is unanimity for the amendment, and a voice call by the chair for any objections retains the flow of the deliberations whereas a roll call vote would be disruptive. Second, a member can object on a voice call vote on a motion, in which case it gets noted in the minutes. In cases when more than one member voices an objection, or the chair senses from the discussion that there may be some disagreement, a roll call vote is made. Third, roll call votes are taken on all final action votes. Additionally, under the existing MSA language at Section 302(e)(5), any Council member can request a roll call vote on any motion. If the intent of the legislation is to determine how each council member voted on each motion, one solution might be to use the language: "All votes on all motions shall be taken and recorded in a manner that allows the public to discern whether each council member supported, opposed or abstained from the vote." This would allow for the Council chair to run the meetings smoothly without constant interruptions of holding roll call votes, while still recording how each council member voted on each motion.

The requirement that *to the extent possible, each Council shall—(A) seek to hold meetings in person; and (B) ensure the availability of remote meeting participation and voting* seem to be at odds with one another and detail a level of logistics to each Council that is unnecessary and potentially unworkable. It is unclear how we can hold a meeting in-person, but allow council members to participate and vote remotely. Does a quorum of members need to be present in-person? Or can we hold an in-person meeting whereby all members attend remotely and vote remotely, and just a staff person is in the meeting room?

The Council appreciates the "to the extent practicable" language in the requirement for webcast or live audio and video broadcast of Council and CCC meetings on its website because this would provide more flexibility for meetings in Alaska. Web platform and live broadcasts generally require strong Internet connections to be effective, and such internet service has not been available in most remote locations near fishing ports in Alaska. While it is possible to have live broadcast by meeting in major population centers with strong internet, this runs counter to the goal of the North Pacific Council to provide more direct outreach to potentially affected stakeholders by holding meetings in small, remote coastal communities. The North Pacific Council has little ability to control the quality and cost of the internet connection. Consequently, requiring the use of webcasts "to the extent practicable" will allow Councils to achieve greater transparency within budget and operational constraints, and provide the flexibility that allows the North Pacific Council to meet in smaller, more remote coastal communities, which may lack the necessary internet bandwidth for webcast or live broadcast of meetings.

Sec. 305. Council accountability and membership. Revises lobbying and financial recusal requirements for Council members. Expands the criteria for Council member nominations to include subsistence expertise, and expertise in ecosystem-based fishery management or climate science, and requires a balanced apportionment of council membership among commercial, recreational, and now subsistence representation on a Council. Extends judicial review of agency actions to 60 days (Section 305(f)(1)).

This section also requires the Secretary to appoint to each Council at least one individual who does not have a financial interest in matters before the Council. This section also adds language that council members shall be subject to all law, rules, and policies regarding ethics and sexual harassment and assault that apply to federal employees, and that Council members are individually liable for their actions.

A new section is added that establishes in the MSA a prohibition on using Federal funds for lobbying by employees, members of the council or advisory bodies, or contractors. Technical or factual presentation directly related to the performance of a Council's duties can only be made through hearing testimony or written statements in response to a documented request (which must be posted on the Council website). All communications with NOAA GC regional offices relevant to the lobbying prohibition must be publicly available on the website, along with copies of all communication with Federal or State legislators or executive branch officials on any subject other than routine fishery management. Verbal communications must be documented.

Comment: This section states that Council employees shall be deemed Federal employees with respect to any requirement that applies to Federal employees, but apparently stops short of designating Council employees as Federal employees. Council employees are not Federal employees; this was established in the original MSA (Fishery Conservation and Management Act of 1976) specifically for councils to provide flexibility in the hiring and employment of council employees, and to provide some separation and independence of the Councils from NMFS. There are numerous requirements of Federal employees that have no bearing or relationship to council employees (e.g., U.S. citizenship, residency requirements, mandatory training, etc.). Requiring all Council employees to be subject to any requirement that applies to federal employees, or redesignating as Federal Employees, does not appear to be the intent of this section. Since this section is about ethics, the Council suggests that wording be modified by simply inserting the word "ethics" before the word "requirement".

Council staff already follow strict ethics requirements that are similar to those followed by Federal employees. The Rules of Conduct of Employees and Advisors of Regional Fishery Management Councils is prepared by the Ethics Law and Programs Division of the Office of the General Counsel of the U.S. Department of Commerce. All Council employees and advisory body members are required to agree to abide by these rules before serving. See: Rules of Conduct of Employees and Advisors of Regional Fishery Management Councils (2018)

The proposed determination for a financial interest (and thus prohibiting voting and deliberation) is "would have a relevant and probable effect on a financial interest of an individual." There is no significance threshold other than if it is likely to have any effect on someone's financial interest relative to the financial interest of other participants in the same sector. This could prevent many North Pacific Council members from deliberating and voting on many issues, as virtually every North Pacific Council action affects the financial interest of some participants and not others within the same sector. The proposed threshold for determination on financial interest would prevent the North Pacific Council members who are most knowledgeable about the fishery in question from even participating in the discussion and deliberation of the issue. Council members who are knowledgeable about a fishery have the ability to ask probing questions, understand interactions that may occur within the fishery and among the fisheries given the changes being considered, and provide outreach and trust in the management process from their fishing sector. This knowledge and expertise improves the quality and thoroughness of North Pacific Council decisions and improves the regulatory process by having all aspects of a decision considered prior to Council final action. Measures that restrict the contributions of knowledgeable North Pacific Council members would negatively affect decision-making and could result in decisions that need

to be reconsidered or amended, requiring the North Pacific Council to spend additional time and resources that could go to other important efforts. The MSA was designed to provide an opportunity for fishery participants affected by Federal regulations to contribute expertise and improve the regulatory process through Council membership.

This change will also require development of a whole new conflict of interest and recusal process. The conflict of interest and recusal provisions were recently clarified and revised and published in September 2020 (85 FR 56177) after an extensive public process and continue to require full financial disclosure as well as a significance threshold to determine a financial interest that triggers recusal. NMFS has also drafted a revised policy directive “Fishery Management Council Financial Disclosures and Recusal” (01-116; policy directive), and the accompanying procedural directive “Procedures for Review of Fishery Management Council Financial Disclosures and Recusal Determinations” (01-116-01; procedural directive). The North Pacific Council provided extensive comment during the agency’s development of the new regulations governing recusal and believes that these regulations provide the appropriate transparency and safeguards in establishing a recusal standard for determining conflict of interest and requiring recusal from voting.

It is not clear what problem the bill is trying to address with the lobbying provisions in this section. Council members and staff are already prohibited from using Federal funds to lobby on Federal or State regulations. Substantive requests by Congress for Council input are all made in writing and the Council responses are publicly available. As proposed, the legislation would place a huge burden on the Councils and NMFS to comply, and will negatively impact communication without improving the process. Under the proposed language to prohibit lobbying, Council staff (whose time is paid with federal funds) would no longer be able to answer factual questions by phone or in person with any legislator or their staff, even when the legislator calls them directly to ask a technical question; otherwise the staff person risks termination of employment. This will result in less information being used in the development of Congressional issues, which can translate into poorer outcomes.

Under the bill’s provisions, all communication (emails and texts) from employees, members of the Council and advisory bodies, and contractors (equating to approximately 250 people in the North Pacific) to anyone in the Federal executive branch – e.g., NMFS staff -- not involving “routine fishery management issues” would need to be posted on the website. This requirement will require intensive monitoring and extensive tracking of emails and texts (e.g., “Congratulations on your Promotion!”, “Hey, would you please share your chili recipe?”). Documentation of all phone calls or in-person discussions with anyone in the agency that didn’t involve routine fishery management (“How is your daughter doing at the University?”) would be similarly burdensome and be even more difficult to track and retain. Such monitoring and documentation requirements would add an enormous workload to the Council staff, which would impede the ability of the staff and Council to evaluate and advance priority conservation and management measures. It would also greatly limit interpersonal communication and adversely impact working relationships among the Council staff and NMFS staff, resulting in an erosion of trust and efficiency in working cooperatively to develop, analyze, and implement the conservation and management objectives of the Council and the agency.

The Council notes that NOAA GC represents the Council and thus communications should be subject to attorney client privilege. These communications also include legal issues regarding personnel employment matters. Requiring that all correspondence and communication (email, phone) with NOAA GC in the region be publicly available will result in reduced efficiency and

timeliness as all communication – including emails - would likely need to be first cleared by headquarters and create delays in time-sensitive situations.

Every Regional Fishery Management Council already has members without any financial interest in the fisheries managed by the Councils. A majority of North Pacific Council members do not have financial interests in the managed fisheries, which includes voting members (NMFS, WA, AK, OR representatives) and non-voting members (PSMFC, USFWS, USCG, and State Department). There are 7 appointed members (2 from WA, 5 from AK), which may have some financial interest in a segment of the fishery. These are understood through clear and direct disclosure requirements – with financial disclosure forms submitted and signed by each member that are posted and publicly available on the Council website -- and a clear and direct recusal process implemented by NOAA GC. The regional fishery management council system was designed to give fishery participants a direct say in the management of fisheries ('ground up instead of top-down management'). Requiring that the Secretary ensure at least one appointed member has no financial interest reduces the ability for fishery participants (and representation) to directly participate in the decision-making and inhibits the nomination process of governors. This requirement will reduce the on-the-water experience that can be critical to the discussion and deliberation at North Pacific Council meetings, and result in less informed decision-making. It will also reduce the outreach and communication with fisherman, who tend to trust information regarding North Pacific Council activities when provided by other active fisherman or fishing representatives. The MSA currently allows state governors to nominate a list of individuals that have no financial interest.

Sec. 308. Saltonstall-Kennedy Act reform. Creates an Advisory Committee to assist in the awarding of fisheries marketing, research, and development grants through Saltonstall-Kennedy (S-K) funding.

Comment: The North Pacific Council notes that the S-K proposal review process has been subject to at least some criticism over who does the reviews, the criteria used to evaluate reviews, the timing of the request for proposals, the limited ability to provide review, and transparency of the process. This draft legislation addresses some of these concerns by establishing a formal committee process for decision-making, making the evaluation criteria more explicit, and requiring independent reviews of the proposals. However, the Council notes that under the legislation, representation of Alaska fisheries on the American Fisheries Advisory Committee may be very limited (possibly only one or two members). As proposed, Alaska is grouped with Hawaii, Guam and American Samoa that have completely different fisheries and types of research, and operate at a substantially smaller scale than Alaska. Given that 60% of the seafood harvested in the U.S. is from the North Pacific, the Council notes the disproportionately small representation on the American Fisheries Advisory Committee, which could impede the marketing, research, and development of North Pacific fisheries.

Sec. 402. Expanding and improving electronic technologies. Sense of Congress that expresses the importance of electronic technologies and adapting to management needs, especially in the context of climate change. Authorizes the Councils to include electronic monitoring (EM) or on-board observation for data collection purposes. Requires the Councils to consider the use of EM as part of the information collection program (Section 402). Requires a review of existing electronic technology capabilities in NMFS, establishes a prize for electronic technology innovation, and establishes an advisory panel on electronic technologies to consider performance standards, identify knowledge gaps, and address data storage, ownership, and management.

Comment: The North Pacific Council has a comprehensive monitoring program that consists of onboard observers and/or electronic technology to monitor substantial portions of the fishing fleet in the North Pacific. The Council and the fishing industry have been working diligently to expand and improve the use of electronic technology for monitoring catch in different sectors of the fleet, including halibut and sablefish longline and pot fisheries and pollock trawl fisheries. The Council notes that the Advisory Panel for Electronic Technologies Development and Deployment as proposed in the legislation would benefit from the knowledge and experience of fishermen who helped to develop and deploy EM in the North Pacific.

Sec. 403. Stock assessments. Requires the Secretary to report to Congress on NMFS' progress on prioritizing and improving stock assessments.

Comment: Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. The North Pacific Council believes that an annual report on NMFS' progress to prioritize and improve stock assessments, and concomitant data collection and analysis would be useful to the Councils in making fishery management decisions. Improving stock assessment methods, collecting additional data and evaluating data gaps will reduce the uncertainty in setting harvest limits. While this section focuses on stock assessments, the Council notes that data collection through regular stock surveys can be more important to the conservation and management of fisheries than developing new stock assessments and stock assessment methodology. Stable and adequate funding for survey work is critical to acquiring fundamental information for managing fisheries.

Sec. 404. Cooperative research and management. Clarifies authorities for cooperative research and management projects to make the use of these more consistent. Updates priorities for cooperative research, including electronic technologies and climate research, and requires the Secretary to issue guidance on the development of cooperative management agreements, oversight, and enforcement. Adds to MSA findings that science and statistical committees (SSCs) should consider outside sources of information when seeking the best scientific information available.

Comment: The Council notes that cooperative research can provide useful information for the conservation and management of North Pacific resources, including stock assessment information and conservation engineering projects to reduce bycatch. However, cooperative research and other outside sources of information should have adequate peer review before consideration by the SSCs as best scientific information in order to meet the requirements of the MSA and withstand public scrutiny and legal review. Basing management decisions on poorly designed studies and questionable information can be highly detrimental to the conservation of stocks and management of the fisheries. Overall, having the SSCs continue to be the body identifying whether information is of sufficient quality to inform conservation and management ensures scientifically based decision-making for the North Pacific Council.

Sec. 407. Emergency operating plans. Requires NOAA to develop a contingency plan for pandemics or other emergencies that make it impractical to use human observers and conduct stock assessments, and to report to Congress on the plan.

Comment: The North Pacific Council was very concerned about the loss of critically important stock surveys in 2020 due to the pandemic, and pressed the agency to have contingency plans for 2021 surveys. NMFS successfully planned and conducted the research in 2021 as planned in the North Pacific region.

Sec. 502. Essential fish habitat consultation. Strengthens essential fish habitat (EFH) consultation and requires federal agency actions to avoid adverse effects to EFH or minimize and mitigate the adverse effects; requires federal agency actions to avoid adverse effects to Habitat Areas of Particular Concern (HAPC) and the species for which HAPC was designated. Adverse effect is defined as any impact that reduced the quality or quantity of EFH. The section also requires Councils to identify HAPC, develop plans to protect EFH, and periodically review habitat protection plans and EFH and HAPC designations.

Comment: Under MSA Section 303(a)(7), EFH is a required component of a fishery management plan. The FMP must describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), *minimize to the extent practicable adverse effects* on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. Note that conservation of EFH is not one of the national standards.

The bill implies that the Federal agency that authorized fishing activities (i.e., NMFS) would also have to ensure that the authorized activity avoids adverse effects to EFH or minimizes and mitigates the adverse effects (defined as any impact that reduces the quality or quantity of EFH). This would establish a different standard than that currently contained in MSA section 303(a)(7) which includes the words “to the extent practicable”, for minimizing effects on EFH from fisheries. The EFH regulations define practicability: “(iii) Practicability. In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7.”

For the waters off Alaska, all waters and habitats are EFH for some species or life stage of a managed fish species. EFH cannot be avoided in the course of any fishing operations. In the North Pacific, all commercial fishing gear types, with the exception of jig and troll gear, are considered to have some adverse impacts on EFH (at least localized, short-term impacts). For those gears that have some level of adverse impacts on EFH, the North Pacific Council has taken steps to minimize those adverse effects to the extent practicable. Without the term “to the extent practicable”, or some other reasonable threshold, fishing with bottom tending gear types (e.g., longlines, pots, trawls, dredges) may not be authorized unless effects can be minimized or mitigated, and as a result, fisheries using these gear types could be reduced or eliminated. This would greatly impact the North Pacific Council’s ability to meet the objectives of its grant, and meet the requirements of MSA including the National Standards.

The Council has a strong record of protecting EFH and identifying HAPC. Over 665,500 nm² (~65% of the EEZ) off Alaska has been closed to fishing with bottom trawls (and in some cases, other gears) to protect vulnerable habitats for crab, rockfish, and deep-sea corals. Some areas have been closed to all fishing gears, essentially creating marine reserves. These areas include the coral gardens, the Sitka pinnacles, all Alaska seamounts, Bowers Ridge and Ulm Plateau in Aleutian Islands. All of these habitat conservation measures were established through the flexibility afforded under the current MSA.

The bill appears to require Councils to identify HAPC in all FMPs, since it adds HAPC to required provisions of FMPs in Section 303(a). It is not clear how this would be achieved if there are no areas of EFH for FMP species that meet the HAPC criteria. The bill also revises the definition of HAPC to include the importance of its ecological function in maintaining and restoring spatial and genetic characteristics of fish populations. This change without further

clarification may invite uncertainty in application and potential litigation with respect to the scientific basis for assessing the performance or achievement of this objective.

The bill also requires Councils take action to minimize and mitigate any adverse effect on “the species for (SIC) with respect to which the HAPC is designated”. The Council established 20 HAPC sites consisting of seamounts and high-density coral areas that are EFH/HAPC for a whole suite of groundfish species, and not to a single species in need of further conservation using habitat protection as a tool. All of these groundfish species for which HAPC has been designated are already fully conserved via annual catch limits. One could interpret the requirement to minimize adverse effect on these species as further limiting or eliminating fisheries, as the fisheries could be considered to have an adverse effect. This would impact the Council’s ability to manage fisheries to provide optimum yield, and could create a perverse situation whereby the Council would need to remove HAPC designations to allow for sustainable fisheries as provided by the MSA.

Lastly, the bill’s provision to ‘prevent adverse effects on HAPC caused by fishing’ would appear to require that the Councils prohibit any fishing impact on HAPC. The North Pacific Council’s approach with HAPC has been to minimize adverse impacts from fishing but not to eliminate or prevent all adverse impacts from fishing at HAPC sites unless warranted by scientific information. This provision could lead to a prohibition of all fishing activity at sites designated as HAPC, including the Bering Sea skate egg deposition sites and the GOA Fairweather Grounds coral areas, which have not been adversely impacted by fishing based on submersible research observation. These areas are also important fishing grounds. MSA provisions that would prohibit fishing in HAPC areas would limit the North Pacific Council’s management flexibility and may create unnecessary adverse economic impacts on the fisheries, without concomitant benefits to habitat.

Sec. 503. Reducing bycatch. Revises the wording of National Standard 9, establishes a new nationwide standardized bycatch methodology and reporting system, and amends the bycatch reduction engineering program language.

Comment: With very limited exceptions, all fisheries in the U.S. have bycatch, which is defined by the MSA as “those fish which are harvested in a fishery, but which are not sold or kept for personal use”, i.e., fish that are discarded. All recreational and commercial fisheries discard fish that are not of the preferred species or size, or are required by regulation to be discarded.

National Standard 9 of the MSA requires that “conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” The word “practicable” includes social and economic tradeoffs in policy decision making regarding management measures to reduce bycatch. Without the practicability clause, there is no standard against which the appropriate level of minimization can be evaluated. At one extreme, bycatch could be considered minimized through a measure that reduced bycatch by some negligible amount, whereas at the other extreme it could also be considered minimized if all fishing was prohibited, or even eliminated entirely if all fish were required to be retained. Without a definition of term ‘minimize’, the phrase ‘to the extent practicable’ provides the Council the flexibility to establish measures to minimize bycatch that are tailored to, and appropriate for, the diverse fisheries in the North Pacific.

Inclusion of the phrase “to the extent practicable” provides some threshold for achieving bycatch minimization, which is necessarily to be balanced with other national standards. By eliminating

the practicability clause, the proposed bill creates a major policy change for just one fishery management component (bycatch), which could create uncertainty for the Council when considering and balancing the existing national standards. Other national standards, except preventing overfishing and using best available information, have qualifying language to acknowledge tradeoffs. Even National Standard 10 requires conservation and management measures to promote safety of human life at sea to the extent practicable. The net effect is that the proposed language would elevate bycatch considerations above all other National Standard considerations. The legislation would thus impede the ability of the North Pacific Council to carry out its responsibilities by limiting the flexibility of the Council to limit bycatch to a reasonable amount while still providing for sustainable fisheries, minimizing waste, and working towards climate resilient fisheries and ecosystems.

As for the modifications to the standardized bycatch methodology and reporting system, the amount and type of bycatch in each fishery within the Council region is monitored and assessed using a standardized bycatch methodology established in compliance with 50 CFR 600.1600-1610 (82 FR 6317). The regulation currently requires that each Fishery Management Plan describe the standardized reporting methodology for each fishery, including procedures used to collect, record, and report bycatch data in a fishery. The legislation would require consistent data reporting, data collection, and assessment across fisheries. The Council notes that such consistency may not be possible given the differences between recreational and commercial fisheries, and among the types of gear used in the fisheries. Additionally, data collection, reporting, and recording procedures can be expensive, logistically challenging to design and implement, involve new and cutting-edge technologies, and necessitate the consideration of the safety of human life at sea. Maintaining flexibility would allow the North Pacific Council to establish data reporting, collection, and bycatch assessment that is specifically tailored to each fishery, to provide the best scientific information in a cost-effective manner, such that the Council is able to meet its responsibilities under the MSA and its grant.

Bycatch estimates for U.S. fisheries are compiled and reported and regularly updated in the NMFS National Bycatch Reports, which are publicly available on the agency's website. While improvements are being made across the country to improve the accuracy and precision of these bycatch estimates, generating statistically accurate and precise information regarding bycatch in each fishery as proposed in the legislation would require the North Pacific Council to incur significant costs to revise its management plans and regulations, as it may require that nearly all fish caught and discarded on every vessel would need to be observed and monitored, as opposed to being estimated through sampling. Although most of the larger vessels participating in federally managed commercial fisheries of the North Pacific have human observers or cameras on vessels to monitor and collect discard information, such observations may be neither cost effective nor technically feasible for small commercial fisheries or even socially acceptable aboard recreational fishing boats. While having 100% observer coverage would provide more precise discard information and better data on mortality for assessments, such coverage is not practical for all fisheries and would be too costly for some vessels to operate.

Sec. 504. Improving rebuilding outcomes. Requires more detailed information in NOAA's annual status of stocks report to identify stocks subject to overfishing and in need of rebuilding plans; specifies that conservation and management measures are required to improve stock status for stocks approaching an overfished condition; amends the rebuilding timeline to be specific to stock biology; requires adequate and measurable criteria and progress in rebuilding plans; and strengthens requirements for responding to rebuilding failures.

Comment: The bill changes the rebuilding time requirements to “not to exceed the time the stock of fish would be rebuilt without fishing occurring plus one mean generation...” Removing the arbitrary 10-year requirement better aligns the rebuilding timeline with the biology of each species, thus providing the North Pacific Council with the ability to develop rebuilding plans that are more closely connected to the biological traits of the species. It also provides Councils with management flexibility so as to avoid negative economic impacts from overly constraining measures that may have little or no conservation gain.

However, the bill eliminates the exceptions for cases where environmental conditions dictate a different rebuilding time period. This seems counter to the intent of the bill to explicitly recognize that the status of some stocks is affected by non-fishing factors like environmental conditions/climate change, as evidenced by the bill replacing ‘overfished’ with ‘depleted’ (see below). This will affect the North Pacific Council’s ability to develop rebuilding plans, as there is an expectation that stocks can be rebuilt in a reasonable time frame, regardless of environmental conditions. The Council’s rebuilding plan for the Pribilof Islands Blue King Crab stock acknowledges that the stock status is entirely dependent upon environmental conditions and not affected by fishing mortality. Note that this crab fishery has been closed for the past 30 years, and all other fisheries with bycatch of these crab have been prohibited in the area (i.e., fishing mortality in almost nil). There is no expectation of rebuilding this stock within the next 50 years due to environmental conditions, even without any fishing mortality. As this example shows, climate change can affect a rebuilding time period, and should be recognized as such in rebuilding requirements. Otherwise, the North Pacific Council may be required to develop rebuilding plans with unrealistic rebuilding periods, which will require the Council to use its limited resources to regularly revisit and amend the rebuilding plans, without any benefit to the stocks or rebuilding schedules.

The bill requires the Secretary to review progress to rebuilding every 2 years. If the stock is unlikely to be rebuilt in the time period, or mortality rates or catch limits are exceeded without correction, or for other reasons, the Secretary shall make immediate revisions to that fishery to achieve progress, and for all other fisheries, the bill requires Councils to take appropriate action within 9 months. If the stock is not rebuilt under the original time period for rebuilding, the bill states that a new rebuilding plan shall be prepared that has no less than a 75% chance of rebuilding by the end of the new time period. Requiring that a rebuilding plan meet an artificial goal (75% or greater probability of success) if a rebuilding plan is not meeting the expected progress would almost certainly result in significant adverse impacts to fishermen and fishing communities, and would affect the ability of the Council to carry out its grant because it would be revisiting its rebuilding plans regularly, thus adding costs and reducing the time available to address other pressing conservation and management issues. The experience of several Councils shows that this requirement could lead to closing fisheries, with severe impacts on communities. The suggested language would take away the flexibility that Councils currently have in balancing the need to rebuild overfished fisheries with the need to minimize the economic effects on fishing communities. This reduces the ability of the North Pacific Council to balance its responsibilities under the MSA.

Sec. 505. Depleted fisheries and preventing overfishing. Replaces “overfished” with “depleted” throughout the Act. Includes a rule of construction regarding “overfished.” Requires that objective and measurable criteria are used to identify overfished stocks and stocks experiencing overfishing, clarifies that Councils cannot be less precautionary than science and statistical committee (SSC) recommendations, and requires SSCs to provide advice on accounting for all sources of mortality,

promoting resilience to climate change, and objective and measurable criteria for overfishing and depleted stocks.

Comment: The Council believes that the wording change to ‘depleted’ accurately reflects that fish stocks can be at low population levels for reasons other than overfishing. The North Pacific Council’s FMPs all include objective and measurable criteria for overfished and overfishing. The bill would add significantly to the duties of SSCs, which are already overburdened with meeting existing annual catch limit requirements. Members of the SSC are not employees of the Council but are outside agency or university scientists who volunteer their time (some members are eligible for a small stipend for meeting days). This additional workload may make it more difficult for Councils to attract talented and knowledgeable members for its SSCs, which would negatively impact Council decision-making.

Sec. 506. Preparation and review of secretarial plans. Requires the Secretary to develop a fishery management plan or amendment if a fishery requires conservation and management, should a Council not prepare and submit an FMP or amendment within 180 days.

Comment: This section creates new requirements of the Secretary of Commerce that serve to undermine the Council’s role and public process, and creates opportunity for increased litigation. It is not clear who determines ‘if such a fishery requires conservation and management’. Under section 302(h)(1), the Councils determine if a fishery requires conservation and management, but the legislation suggests that the Secretary would have the sole authority for this determination. The language requiring the Council to develop an FMP or amendment, along with the required documentation to comply with NEPA, MSA, and other laws and executive orders within 180 days, would greatly impact the ability of the Council to carry out its responsibilities under its grant. Such actions take a minimum of 12-18 months to complete, due to the Council’s use of sound scientific analysis and transparent public process as set forth in its grant. Thus, this legislation would effectively eliminate the role of the Council in making fishery conservation and management decisions pursuant to its grant and responsibilities for Councils established under the MSA. Secretarial review actions do not have the same level of public process and vetting as a Council submitted FMP, and we note that the original MSA intended for regional input as the primary mechanism to undertake fishery management actions.

Sec. 507. Councils. Requires that research should prioritize fisheries and habitats experiencing or expected to experience shifts in geographic range, spatial distribution or productivity. Requires Councils to develop objective and measurable criteria for identifying overfishing and depleted fisheries, develop a plan to protect EFH from adverse effects caused by fishing, including quantitative and measurable targets for increasing the quantity, quality, and representativeness of EFH, and update habitat protection plans no less than once every 7 years.

Comment: The Council agrees that fisheries and habitats experiencing shifts in geographic range, spatial distribution, or productivity can be an important research topic. However, requiring that research be prioritized on this topic will limit the flexibility of the North Pacific Council and its SSC to prioritize areas of research necessary to respond to the most pressing conservation and management needs during the 5-year period as specified under the MSA. The loss of this flexibility may affect the ability of the Council to carry out its responsibilities under its grant and meeting the requirements of the MSA, particularly if research funding is all directed at stocks or habitats undergoing shifting distributions, and not to other research needs that may be critical to the conservation and management of North Pacific fisheries.

The Council notes that the existing regulations require the Councils to review and identify EFH and take action as needed to conserve and enhance EFH at least once every 5 years, so it is not clear what will be the effect of the bill's language requiring review of habitat protection plans every 7 years. If the intent of the bill is to add additional EFH reviews, it would impact the North Pacific Council's ability to carry out its grant by leaving less time to work on other conservation and management issues, and other activities as outlined in the grant.

Sec. 508. Forage Fish Conservation. Directs the Secretary to define forage fish, requires an assessment of the potential impacts of a new commercial forage fish fishery, and requires consideration of predator needs in existing fishery management plans.

Comment: The Council notes that the Secretary's definition of forage fish may create uncertainty regarding what species are identified as forage species in an FMP. The Council also notes that the term "forage fish" appears to imply a special importance of the species as prey, however nearly all fish species are prey to larger predators and thus all fish species provide energy transfer up the food chain. The Council notes that, in our marine ecosystems, nearly all species of fish are "forage fish" at some point in their lives. Lastly, it is not clear if the legislation's requirement for the establishment of catch limits for forage fish only applies to fisheries that are directed on forage fish species. The proposed changes could affect the ability of the North Pacific Council to carry out its grant by introducing uncertainty in the definition of forage fish and the uncertainty regarding potential requirements for conserving forage fish.

In the North Pacific, what we consider forage fish species, as designated and specified in our groundfish fishery management plans (smelt, capelin, sand lance, lanternfish, krill, etc.), are already protected by regulations established by the Council. All directed fishing for these forage fish species in Federally managed waters is prohibited. Additionally, the sale, barter, trade, or processing of forage fish and grenadiers is prohibited, except that a limited amount of forage fish that are incidentally caught in other groundfish fisheries may be retained and processed into fishmeal. Although there are no directed fisheries on forage fish species (or catch limits), the NMFS does provide an assessment of those species comprising forage fish and their ecological importance every other year. A summary of forage fish management and protection measures in the North Pacific can be found here:

<https://meetings.npfmc.org/CommentReview/DownloadFile?p=e2efceab-a9e6-4dca-b258-29563b276e22.pdf&fileName=Forage%20Fish%20paper.pdf>

Because the Council has determined that forage fish and ecosystem concerns are adequately addressed by the existing North Pacific management programs developed under existing MSA provisions, the bill does not appear to enhance the Council's ability to meet the MSA's conservation and management goals for forage fish species.

Overall, provisions that would require the North Pacific Council to specify catch limits for forage fish species to account for the diet needs of marine mammals, birds, and other marine life would require an enormous amount of research information that is currently lacking. Many predators are opportunistic feeders and shift their prey based on abundance and availability. As a result, determining the exact amount of individual prey needed each year would divert limited research monies away from other critical research such as surveys and stock assessments. The Council notes that NOAA does not currently have enough financial resources to fully survey target stocks, let alone prepare stock assessments for individual forage species which would be needed to set scientifically based annual catch limits. In the absence of this critical information and necessary resources, catch limits would need to be reduced to account for this largely incalculable uncertainty, which could greatly impede the Council's ability to meet the goals and objectives of

its conservation and management program that includes achieving sustainable harvests of fish. Prey needs for upper trophic predators are already accounted for as natural mortality removals in most stock assessment models.

Once again, thank you for the opportunity to review this draft legislation, and to provide these comments to you on behalf of the North Pacific Fishery Management Council. We look forward to our continued dialogue on these critically important issues.

Sincerely,



Simon Kinneen
Chairman

cc:
Senator Lisa Murkowski
Senator Dan Sullivan
Representative Don Young
Regional Fishery Management Councils
Janet Coit, NOAA Assistant Administrator for Fisheries



Pacific Fishery Management Council

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Marc Gorelnik, Chair | Charles A. Tracy, Executive Director

September 30, 2021

The Honorable Jared Huffman
1527 Longworth House Office Building
Washington, D.C. 20515

The Honorable Ed Case
2210 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Huffman and Case:

Thank you for your August 25, 2021 request for comments by the Pacific Fishery Management Council (Pacific Council or Council) on the *Sustaining America's Fisheries for the Future Act of 2021*. The Council and its Legislative Committee reviewed the bill at its September meetings and have the following remarks.

The Pacific Council has held several discussions over the years on bills to amend or reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In general, the Pacific Council believes that the MSA has worked well to ensure a transparent, public, science-based management process that promotes sustainable harvests while preventing overfishing and rebuilding depleted stocks. The Pacific Council believes large-scale changes to the MSA are not warranted, and any changes made should be carefully considered. Legislation should be focused on intended outcomes, rather than prescriptive management or scientific parameters, and should allow for flexibility in achieving intended objectives while being specific enough to avoid lengthy, complex implementing regulations or "guidelines."

General comments

Emphasis on climate change: As we noted in a May 2021 letter to NOAA on Executive Order 14008, reduction of greenhouse gas emissions is the most direct way to increase the resilience of U.S. fisheries and ecosystems. In addition, there are a growing number of innovative and science-based tools and approaches to help fisheries, communities, and management entities adapt to the effects of climate change, and thereby increase resilience.

The Pacific Council has long taken an interest in ecosystem-based fisheries management and, by extension, climate change. We believe that it is important that climate change be incorporated into fishery management by all Councils. The Pacific Council has expressed this commitment through the adoption of an Fishery Ecosystem Plan (FEP) in 2013. The FEP serves as a basis for the Council to consider the effects of climate change on the fisheries it manages and, by extension, West Coast fishing communities that depend on those fisheries. The FEP also identifies initiatives that help the Council focus on ecosystem issues across its fishery management plans (FMPs).

Through this initiative process, the Council has been considering the implications of climate change on its managed fisheries and related West Coast fishing communities since September 2017, and just completed its climate and communities initiative scenario planning exercise.

Mandates, workload and funding: The *Sustaining America's Fisheries for the Future Act* includes several new mandates and requirements for both Councils and NOAA. As we noted above, the Pacific Council strives to meet the challenge of managing fisheries in a changing climate; however, if this bill becomes law all Councils will need considerably more funds, staffing, and access to scientific data. Currently the Pacific Council has five six-day meetings per year, which is barely enough to sufficiently address the mandates that we are currently required to meet. At a certain point, the Council process itself will simply become unsustainable. Councils were designed to include the voices of those directly interested in the Councils' management but as the number and complexity of issues increase, the burden of being involved in management increases, and it will be increasingly difficult to find people who are willing to participate in such a process.

The *Sustaining America's Fisheries for the Future Act* adds many additional reports and consultation requirements for both the Councils and the NOAA Administrator. While we understand the need for accountability with respect to meeting the intent of Congress, we also note that developing reports takes time and diverts resources from core management functions. With the increasing pace of climate change, climate change adaptation, and offshore wind energy development, workload for the Pacific Council has increased considerably. The funding increase contained within the bill is a welcome addition; however, it is not guaranteed that Congress will increase Council funding to the extent requested, which would be necessary to meet the new requirements contained in the bill.

The Pacific Council's specific comments are attached below. Thank you for your interest in the Pacific Council's comments and for your consideration of our responses. We would like to note that the Pacific Council, as well as the Council Coordination Committee, will continue to deliberate this and other reauthorization bills in the future. We would be happy to answer any questions or provide further thoughts as reauthorization moves forward.

Sincerely,



Marc Gorelnik
Pacific Council Chair

JDG:kma

cc: Pacific Council Members
RFMC Executive Directors
Ms. Janet Coit
Mr. Randy Fisher
Mr. Dave Whaley
Ms. Jennifer Gilden

Attachment: Specific comments on H.R. 4690

Title I: Climate-Ready Fisheries

This section mostly integrates climate change concerns into the MSA. As noted above, the Pacific Council has a longstanding interest in and commitment to addressing and responding to climate change, and has no concerns related to most of the provisions in this section, including the findings, purposes, and policy (Sec. 101), other than a general concern about increasing workload on the part of both the Councils and the U.S. Secretary of Commerce (Secretary).

Sec. 102, “Promoting Climate Resilience in Fisheries Management” (p. 8)

This section adds a number of new climate change-related requirements for any new FMP or FMP amendment submitted to the Secretary after January 1, 2021 and would require that any changes to FMPs required by this section be implemented for all FMPs within four years after the date of enactment of this bill.

Section 102(a) would require fishery management plans to contain conservation and management measures which “promote the resilience of fish stocks to cumulative stressors, including cumulative stressors associated with climate change.” (p. 8)

Council comments: This section requires prescriptive amendments to fishery management plan; however, the language is difficult to interpret. Councils have some influence on making fisheries, including affected communities and the regulatory environment more resilient to climate change, but less so making fish stocks more resilient. Councils’ influence on fish stocks are limited to harvest management and habitat protection. The MSA already requires stocks to be managed for optimum yield, regardless of environmental stressors, and the Pacific Council takes into account ecosystem impacts from climate change through its Fishery Ecosystem Plan and other avenues. Keeping fish stocks at target biomass levels will promote resilience through conserving genetic diversity within populations. The greatest threat to fish stocks is from habitat degradation, but the Councils’ only real authority over habitat is from fishing impacts in Federal waters. Unfortunately, many habitat problems are in the terrestrial/freshwater and nearshore/estuary environments where the Councils have little influence. The Council recommends clarification on the intent, relative to Council authority, of this provision. We are also concerned with the increased workload and lack of data surrounding this issue.

Section 102 adds a new MSA Section (322), “Vulnerability Assessment,” that requires the Secretary, within three years and every five years thereafter, to assess the vulnerability to climate change of fish stocks within each Council’s geographical area of authority, notify the Councils of such vulnerability, and recommend conservation and management measures. Within one year, Councils must then plan to prioritize management actions to increase resilience of the most vulnerable fish stocks and begin implementing the plans. This section also adds new requirements for secretarial reports and guidelines.

Sec. 102 also amends MSA Sec. 303 to require FMPs to include the impacts of climate change, including present and anticipated future conditions, on stocks, maximum sustainable yield, on

fishery participants, and requires Councils to explain how management measures account for the impacts of climate change and what data were used in the analyses.

Having information and data to develop models of climate change vulnerability will be necessary to meet the intent of this provision, and the current lack of such data and models may delay compliance. The changes to MSA Section 303 also raise concerns about the considerable workload impacts of this section.

Sec. 103, “Incorporating Climate Science” (p. 13)

This section adds climate change and ecosystem-based management as topics for the Council Training Program. This section also amends **Section 404** of the MSA to add a new area of research “on changes in geographic range and spatial distribution, and productivity of a fishery or interrelated fisheries.”

The Council believes this is a reasonable addition to the Council Training Program. Ecosystem-based management and climate change are relatively new and rapidly evolving concepts in fishery management. It will be important for all Council members, but especially new members, to be familiar with those issues.

The Council has no concerns regarding the change to MSA Sec. 404 provided new funding is authorized and core fishery surveys and research are not compromised.

Section 104, Climate-Ready Fisheries Innovation Program (p. 14)

This section requires the Secretary to establish the above-named program (including a new grant program) to develop innovative tools and approaches to increase the adaptive capacity of fisheries management to the impacts of climate change.

Again, the Council has no concerns about the content of this section but does harbor concerns about the workload and funding impacts, which in this case would mainly fall upon the Secretary. We also seek clarity on how the Councils would be expected to react to the innovations funded through this program.

Section 105, Managing Shifting Stocks (p. 17)

This section requires the Secretary to review the geographical authority of the Councils at the request of a Council *or* at least every five years to determine whether a substantial portion of a fishery is located in the geographical jurisdiction of more than one Council and requires the Secretary to designate one of the Councils to prepare an FMP or FMP amendment.

This section also requires the Secretary, in coordination with the Secretary of State and Administrator of the Agency for International Development where necessary to develop a strategy for coordinated research and management with nations that share a fish stock with the U.S. that currently is, or is expected to, see shifts in geographic range or spatial distribution or will span international boundaries within a life stage or across life stages.

We have no concerns regarding these provisions, which largely do not affect Pacific Council operations, but we believe the Secretary should regularly consult with the Councils during these processes.

Section 106, Emerging Fisheries (p. 23)

This section requires Councils to develop a list of unmanaged forage fish and prohibit the development of any new directed forage fish fishery until the Council has conducted a review of conservation needs.

We have no concerns with this section. We identified such species in 2013 and amended all of our FMPs accordingly, including prohibitions on the development of new fisheries.

Title II: Supporting Fishing Communities

Section 201, “Fishery Resource Disaster Relief” (p. 29)

This section substantially amends Section 312 of the Act (Fisheries Disaster Assistance) by adding a series of new definitions for types of disasters (including disasters caused by climate change impacts). This section also clarifies timelines, data requirements, metrics to estimate revenue losses, eligible uses, and requirements for allocation and disbursement of Federal fishery disaster assistance funding. This section clarifies that certain anthropogenic causes can qualify for disaster relief. Any fishery subject to overfishing in any of the three years preceding the date of a determination is not eligible for a determination of whether a fishery resource disaster has occurred unless the Secretary determines that overfishing was not a contributing factor.

This section clarifies disaster relief rules and should be beneficial to the process.

Sections 202, “Subsistence Fishing,” 203, “Working Waterfronts Grant Program,” 204, “Seafood Marketing,” and 205, “Community Participation in Limited Access Privilege Programs”

The Council has no concerns about these sections.

Title III: Strengthening Public Process and Transparency

Section 301. Tribal Representation At the Pacific Fishery Management Council (p. 88)

This section removes the requirement for tribal governments to submit “not less than three individuals” for consideration as Pacific Council members, as well as the term limit for the Tribal representative.

The Council believes these changes will be beneficial in terms of tribal representation on the Council.

Sections 302 and 303

These sections do not apply to the Pacific Council, and we have no comments.

Section 304. Council Procedures and Participation (p. 92)

304(a) requires Councils to hold roll call votes on all nonprocedural matters.

The Pacific Council does not believe it is necessary to conduct a recorded vote for each nonprocedural action, since the results of each vote are included in the meeting record. We also record the name of each non-unanimous vote on all matters. In addition, Pacific Council draft motions in writing, including the voting record, are posted on the Pacific Council's website in less than 24 hours (usually within four hours) after the vote. We believe this would burden the Council without any meaningful benefit.

304(a) also adds "To the extent possible, each Council shall seek to hold meetings in person; and ensure the availability of remote meeting participation and voting."

The Council has no concern with this change, as it reflects our current practice.

304(b) requires Councils, to the extent practicable, to make a webcast, live audio, or video broadcast of each meeting of the Council and the Council Coordination Committee meetings available on the Council's website with certain exceptions. Each Council would also be required to post on its website audio or video recording, searchable audio recording, or written transcript of each Council meeting and each meeting of the Scientific and Statistical Committee (SSC). The Secretary would be required to maintain a public archive.

The Pacific Council already fulfills most of these requirements. However, we are concerned about the costs and workload associated with requiring audio recordings, videos, or transcripts of SSC activities. These provisions seem unnecessary since the SSC is an advisory body to the Pacific Council, which makes the final decisions. All Pacific Council SSC meetings are publicly noticed and open to the public, and almost always occur at Pacific Council meetings or online. In addition, minutes of SSC meetings are included as part of the Council's administrative record and are available online. No further administrative record should be necessary.

Section 305. Council Accountability and Membership (p. 93)

Under **305(a)**, all Council employees are to be "deemed" to be Federal employees with respect to any requirements that apply to Federal employees. In addition, all Council, committee, and advisory panel members shall be subject to all laws, rules and policies regarding ethics and sexual harassment or assault that apply to Federal employees.

The Council has no concern about the sexual harassment and ethics provisions of this section. However, we are concerned about the implications of deeming any Council employee to be a Federal employee. The purpose and potential implications of this provision are unclear.

(305)(b) relates to disclosure of financial interest and recusal, amending Section 302(j) of the MSA. Among other minor changes, this action adds a requirement that those who are required to disclose financial interest must also disclose any financial interest held by any organization in which they are serving as a contractor.

The Council has no concerns about this.

305(c) adds detailed requirements regarding the prohibition on lobbying by Council members, advisory body members, employees, and contractors.

Council members, advisory body members, employees and contractors are prohibited from using Federal funds to attempt to influence Federal or State legislation, executive orders, Presidential proclamation, or similar Presidential directives. However, they *may* provide a technical and factual presentation directly related to the performance of a Council's duties, if in response to a documented request and it is made available.

The Secretary may begin investigations of this section on his/her own and must investigate complaints submitted by any person or government entity. Individuals found in violation are subject to civil penalties, including suspension or expulsion from Council activity.

This section also adds a new reporting requirement for Councils to post on their websites copies of all relevant documents and communication, including meeting minutes, briefing materials, and correspondence, including with NOAA general counsel; copies of all communication with legislators and executive branch officials on subjects other than routine fishery management in the region; and documentation of verbal communication with Federal or State legislators or with executive branch officials on subjects other than routine fishery management in the region.

This section requires the Secretary to provide training on these rules, and to submit an annual report to Congress.

The reporting requirements here are new, and there are potential concerns related to the requirement to post copies of all communication with a host of entities "on subjects other than routine fishery management in the region" on the Council website.

- *The requirement to document requests for input is vague and may be overly constraining. The bill should clarify if the request must be "made available" prior to presentation. Posting such documented requests to a Council's website may delay the presentation, and documenting verbal (in person or by phone) requests would be problematic to verify. Council members may be invited to speak directly with legislative staff or members of Congress while on other Council business, such as the annual Council Coordination Committee meeting in Washington D.C.; it is not clear if these types of interactions would be subject to this provision.*
- *The bill should make clear that Council members can still discuss such matters as private citizens, as long as they are not representing their Council.*
- *Prohibiting Councils from commenting on executive branch policies without a request for a presentation is overly constraining, since the Councils are part of the executive branch, and should be allowed to provide their input freely to their parent agency, department, and Chief Executive. Prohibiting such exchanges would be counterproductive to effective and efficient governance and would be analogous to preventing an employee from discussing policy matters with their supervisor.*

- *Constraining undocumented exchanges to “routine fishery management in the region” is both vague and overly constraining. For example, routine might be interpreted as anything covered in the MSA, or only implementing existing provisions of FMPs, excluding amendments intended to improve management; and “in the region” could be interpreted to preclude discussion of national or multi-region issues, which the Council Coordination Committee is charged with.*
- *Extending these provisions to State legislative issues is also problematic as those bodies have no legal oversight of Council authority, yet may potentially interfere with the Councils’ ability to carry out their mandates under Federal law.*
- *Extending these provisions to NOAA General Counsel (GC) would potentially violate attorney-client privilege; NOAA GC are the Councils’ legal counsel, and conversations should not have to be made public. This would also remove the Councils as a resource for NOAA GC and Department of Justice attorneys in litigation.*
- *The Council is unaware of similar constraints on any other executive branch advisory committee or body.*

305(d)(1)(A) adds the requirement that in making appointments to the Council, the Secretary appoint individuals with expertise in fisheries (including a new addition, subsistence harvest) or in ecosystem-based management or climate science. (p. 98)

The Council has no concerns about this addition.

305(d)(3) amends MSA Section 302(b)(2)(C) (appointments by Governor) to remove the requirement that the governor consult with representatives of the commercial and recreational fishing interests of the state when making appointments to the Council.

The purpose of this deletion is unclear, unless it relates to the inclusion of nonconsumptive users on the Council. Not consulting with fishing interests about the people that will be responsible for managing their fisheries is counter to the precepts of the MSA, which is intended to be an open, science-based, stakeholder-driven process. Rather than removing the requirement to consult with commercial and recreational fishing interests, it may be more appropriate to broaden the consultation requirement to include other interested stakeholder groups.

305(d)(1)(B) requires the Secretary, in making appointments, to consider several new categories when making appointments and in ensuring a balanced apportionment on each Council – participants in subsistence fisheries, members of the conservation community, scientists, non-consumptive users, and members of indigenous and tribal communities. (p. 98)

The Council has no concerns about this change.

305(d)(3) requires the Secretary to appoint at least one individual to each Council who does not have a financial interest in matters before the Council.

It is not clear what is meant by no financial interest; for example, would this include private recreational fishermen, paid consultants or officers of trade associations? Or is the intent that Council seats would be reserved for specific interests such as environmental NGO

representatives? If it is the latter, there may be issues with balancing interests within and among states unless additional at-large seats were added to each Council.

Section 306. Council Accountability and Membership (p. 93)

The Council has no concerns regarding Sec. 306, which does not apply to the Pacific Council.

Sec. 307, National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention, and Sec. 308, Saltonstall-Kennedy Act Reform.

The Council has no concerns about the content of these sections.

Title IV: Modernizing Fisheries Science and Data

Section 401. Data Modernization (p. 131)

This section requires the Secretary, through NOAA, to provide Congress with an implementation plan for a Fisheries Information Management Modernization initiative within 180 days after the enactment of this legislation.

The Council has no concerns about the content of this section, other than the workload and funding impacts, which in this case would mainly fall upon the Secretary.

Section 402. Expanding and Improving Electronic Technologies (p. 132)

This section includes a Sense of the Congress statement regarding the use of electronic technologies and the need of fishery managers to have timely and accurate data. It amends the MSA to allow Councils to require electronic monitoring or similar technology for data collection purposes; requires Councils and the Secretary to consider the use of electronic monitoring, reporting or other electronic technology as a part of the information collection program; requires the Comptroller General to review NMFS' ability to develop, deploy, and use electronic data collection and monitoring tools and to take into account cost and efficiency; requires the Secretary to establish an advisory panel to inform the Administrator and Councils on developments in electronic technologies; and establishes an "Electronic Technologies Innovation Prize" to catalyze rapid development and deployment of the technology.

This section contemplates improving monitoring and observer coverage through electronic monitoring devices. The Pacific Council notes that there is a possibility of the opposite effect on human observer coverage resulting from Electronic Monitoring (EM) use. The advent of electronic monitoring systems was intended to make monitoring requirements less expensive and provide more flexibility to fishermen, but it may also make human observer coverage more expensive and less flexible. While the Pacific Council supports, and has led, development of regulatory programs for electronic monitoring systems, some fisheries (such as the bottom trawl sector in our groundfish catch share fishery) may not be able to take full advantage of these systems while still having 100 percent monitoring requirements. We are already seeing small ports having difficulty with observer availability, and if electronic monitoring reduces the demand for observers in those ports, observer provider companies are likely to reduce staff and have remaining staff cover a larger geographic area. This leads to loss of flexibility for fishermen and processors to plan trips, and to avoid bad weather windows. In addition to recognizing the benefits of expanding use of electronic technologies, it is important to recognize and address the potential negative effects and

consider ways to keep human observer options available to meet the needs of small ports and fishermen for whom electronic monitoring is not feasible.

The Council is currently struggling with implementing its trawl catch share fishery electronic monitoring in regulations due to, inter alia, cost concerns. The Pacific Council notes that MSA §313(a-e) allows the North Pacific Fishery Management Council to establish a fee program to fund observer coverage, including electronic monitoring. The Pacific Council is interested in exploring the potential for a similar, dedicated funding mechanism to offset the cost of video review under the Pacific Council's third-party review model or to solve other cost-prohibitive funding issues under the new electronic monitoring program. The fee program should not be mandatory but having the flexibility to develop and implement such a program could make electronic monitoring programs more cost-efficient and easier to implement.

[Section 403. Stock Assessments \(p. 139\)](#)

This section requires the Secretary to report to Congress within one year and annually thereafter on NMFS progress to prioritize and improve stock assessments.

The Council is concerned about the workload associated with this requirement. While the Secretary is responsible for compliance with this provision, this represents a significant effort on an annual basis, and NMFS often seeks input from the Councils on their reports to Congress. A less frequent reporting requirement would seem adequate, especially given that assessments are often longer on multi-year cycles.

[Section 404. Cooperative Research and Management \(p 141\)](#)

This section clarifies that fishing communities can be included in partnerships under the cooperative research and management authority in the Act. It requires the Secretary to award funding on a competitive basis and based on regional needs, and to select programs that prioritize Council needs. This section also adds a qualifier that no exempted fishing permit (EFP) shall allow catch in excess of an annual catch limit (ACL) or bycatch in excess of a bycatch cap/limit. Councils must publish a report on the results of all approved EFPs.

The Council has no concerns about this requirement and believes allowing communities to be included in cooperative research partnerships could contribute to coastal community resilience.

Section 404(a) requires Councils to provide a list of critical research needs to the Secretary on an annual basis.

The Pacific Council currently maintains a list of research and data needs which it updates periodically, at least every five years. The Council is in the process of changing the reporting format to a publicly accessible database as a way to make updates easier and improve accessibility. Providing a list annually is not difficult; however, the expectation that the list be updated annually would represent a considerable increase in workload. In terms of cooperative research, the Council supports cooperative research as long as it does not weaken the definition and use of "best available science."

*The Council has no concerns regarding **Sec. 405**, which does not apply to the Pacific Council.*

Section 406. Recreational Data Consistency and Recreational Data Improvement Program (p. 147) .

This section requires the Secretary, within two years, to establish guidelines to improve recreational catch data, and to within one year develop a strategic plan for recreational data improvements, and revise the plan every five years thereafter.

The Council believes this provision could provide potential benefits to recreational fishery sampling programs; however, development of a strategic plan within one year, including necessary outreach and coordination, is probably not practicable.

Section 407. Emergency Operating Plans (p. 152)

This section requires the Administrator, within one year of the date of the enactment of this legislation (and in consultation with Councils, tribes, agencies, and stakeholders), to develop a contingency plan for circumstances that would make fisheries monitoring and stock assessments impracticable.

The Council believes that one year is not enough time to develop such a plan, but has no concerns related to the subject of the plan.

Section 408. Zeke Grader Fisheries Conservation and Management Fund (p. 152)

This section renames the Fisheries Conservation and Management Fund after Zeke Grader and allows the fund to address climate change research and adaptation.

The Council believes this is a fitting tribute to a man who devoted his life to fisheries conservation.

Section 409. Offshore Wind Collaboration (p. 155)

This section requires the Secretary and the Secretary of the Interior (acting through the Bureau of Ocean Energy Management, BOEM) to enter into a cooperative agreement to fund additional stock assessments and fisheries and marine wildlife research which may be necessary due to actions taken by BOEM for the development of offshore wind energy.

The Council believes that fisheries science related to offshore wind development will benefit from this endeavor.

Title V: Sustaining Fisheries Through Healthy Ecosystems and Improved Management

Sec. 501. Sense of Congress (p. 156)

The bill adds a new sense of Congress related to consistent application of the essential fish habitat provisions of the MSA.

The Council has no concerns about this section and welcomes the increased emphasis on the importance of essential fish habitat.

Section 502. Essential Fish Habitat Consultation (p. 156)

This section makes substantial changes to provisions regarding essential fish habitat (EFH) and habitat areas of particular concern (HAPCs). Councils are currently required to identify actions to encourage the conservation and enhancement of EFH, including recommendations to avoid, minimize, or compensate for adverse effects on EFH and HAPCs (50 CFR 600.815). This is replaced with a requirement that if any action by a Federal agency may adversely affect EFH, the action agency itself is required to avoid adverse effects. For any action by a Federal agency that may adversely affect a HAPC, that agency would be required to *minimize, monitor, and mitigate* any adverse effect on the HAPC and on the species for which the HAPC is designated. This section also adds a new definition of the term “adverse effect” to mean “any impact that reduces the quality or quantity of EFH.”

If the Secretary receives information from any source that an action or proposed action by a Federal or state agency may adversely impact EFH, the Secretary must recommend measures to avoid the adverse effects. If the adverse effects could not be avoided, the Secretary would be required to recommend measures to minimize and mitigate the adverse effects, and the agency would be required to provide a detailed response to the Secretary and the appropriate Council within 30 days.

This section requires each Council to avoid adverse effects on HAPCs caused by fishing, to *monitor* the efficacy of actions to avoid adverse effects and identify other actions to encourage the conservation and enhancement of HAPCs.

The Council believes that the EFH and HAPC provisions in the MSA are vitally important to protecting fish habitat and promoting resilience of fisheries. The changes in this bill strengthen these provisions. Requiring mitigation for damage to HAPCs could have a substantial impact particularly in regard to land-based actions that affect anadromous species, as well as offshore wind projects.

Although the Pacific Council already puts substantial effort into protecting EFH and HAPCs (for example through our Essential Fish Habitat Conservation Areas), we would like additional clarity on how these provisions might affect fishing activities. We also observe that the requirement to monitor the effectiveness of actions to avoid adverse effects on HAPCs will require additional funding and workload, probably on the part of NMFS and state agencies.

Section 503. Reducing Bycatch (p. 164)

503(a)(1) amends National Standard 9 regarding the minimization of bycatch to remove the words “to the extent practicable.” This section also removes the term “to the extent practicable” from the requirement to assess the amount and type of bycatch occurring in the fishery and management measures that minimize bycatch and minimize the mortality of bycatch that cannot be avoided.

The Council is concerned about the removal of the term ‘to the extent practicable’ in NS9. The intent of NS9 is to minimize bycatch while allowing fishing to achieve optimum yield. Removal of the phrase could lead to the literal interpretation that the only way to minimize bycatch is to minimize fishing, which conflicts with achieving optimum yield under NS1. Furthermore, removal could effectively negate decades of case law, leading to re-litigating countless issues. It is also

worth noting that the definition of bycatch in the MSA is restricted to “fish”; however, Councils are also responsible for ensuring bycatch of marine mammals, seabirds, and turtles are kept within statutory limits set under other applicable law, and often manage to protect other species such as corals, sponges, and other biogenic habitat.

503(a)(2) Regarding the provision that FMPs may “consider full retention requirements for species with high catch mortality rates,” the Council would like clarification if the intent was to consider retention of high **bycatch** mortality rates.

503(a)(3) requires the Secretary to establish a national standardized bycatch reporting program to assess the amount and type of bycatch occurring in each fishery and across fisheries and to determine the contributions of bycatch to the total fishing-related mortality of each fishery. (p. 165)

The Pacific Council currently includes such a bycatch reduction plan for all of its Fishery Management Plans. The effects of bycatch are included in its periodic SAFE documents, and bycatch projections are included in the assessed impacts of annual or biennial management measures. This section appears to incorporate current regulations under 50 CFR Subpart R into the Act; we have no concerns with this section.

503(b) amends the Bycatch Reduction Engineering Program.

The Council has no concerns about this subsection (1). The extension of the reporting period should provide some workload relief without affecting the implementation timeframe of typical bycatch reduction technologies.

Subsection (2)(D) requires extensive reporting and historical recordkeeping for bycatch technologies and methods that could have substantive workload impacts and may have little added benefit over the triennial report.

Section 504. Improving Rebuilding Plan Outcomes (p. 168)

This section makes two main changes. First, it involves the Secretary in ensuring that rebuilding plans are effective, and that Councils are meeting their rebuilding requirements, and sets out provisions for when multiple failures of rebuilding plans have occurred.

The Council generally sees benefits to fishery resources in this section.

This section also removes (p. 171) the 10-year limit on the period for rebuilding a depleted stock [section 302(a)(4)(A)(ii)] and replaces it with a requirement that the rebuilding timeframe “not exceed the time the stock of fish would be rebuilt without fishing occurring plus one mean generation unless management measures under an international agreement dictate otherwise.”

The Pacific Council generally supports changing the arbitrary 10-year rebuilding requirement to something based on the life history of the stock in question. As this change would result in more consistent application of rebuilding timeframes and better balance between conservation and the economic objectives of rebuilding strategies. The 10-year rule can lead to a discontinuous policy

that disrupts fisheries for little conservation gain. For example, if a stock can rebuild in nine years at the cost of closing all fisheries, this becomes a mandate. Paradoxically, the requirements for rebuilding a fish stock in worse condition, e.g., one that requires 11 or more years to rebuild with no fishing, provides for more than 11 years to rebuild (11 years plus the length of one generation of the species), with obviously less economic disruption. This is illogical and potentially disastrous for some fishing-dependent communities.

However, we do have some concerns associated with this change. Although removing the 10-year cap puts all stocks on the same maximum timeline to rebuild, it doesn't specify where the rebuilding target should be set within that timeline. Instead, the key phrase remains: "as short as possible ... taking into account the needs of fishing communities." These two phrases have been a major source of friction in our rebuilding plans for rockfish. Thankfully, the Council avoided the more drastic results that are theoretically possible under the 10-year cap; however, it would be helpful to have guidance in how to take into account the needs of fishing communities.

The term "as short as possible" sets a presumption that rebuilding should always be shorter unless justification can be provided that a longer time frame is needed. It is unclear what type of justification is required under this language. For example, it has been relatively easy to show that some fishing should be allowed, yet when it comes to a decades-long rebuilding timeframe, it's unclear how to choose between a 14 mt vs. 17 mt annual catch limit when the difference in expected rebuilding time is 10 years (for example, 2055 vs. 2065). This question is essentially what led to NMFS disapproving the Council's rebuilding plan for yelloweye rockfish in 2010.

Section 505. Depleted Fisheries and Preventing Overfishing (p. 176)

505(a) adds a definition of "depleted," and replaces the current definition of "overfishing" and "overfished" with a single definition of "overfishing" to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield on a continuing basis. This section also replaces the term "overfished" with "depleted" wherever it occurs.

Using the term "depleted" provides a better understanding of stock status and avoids biased interpretations of the cause(s) of low stock abundance. Clarifying the distinction between "overfished" and "overfishing" is important to making the MSA more comprehensible and recognizes the different management responses to crossing differently defined threshold levels.

505(b) requires each SSC to provide the appropriate Council with ongoing scientific advice for fishery management decisions, including (i) recommendations for accounting for all sources of mortality in establishing management measures, for the acceptable biological catch levels, for preventing overfishing, for maximum sustainable yield, and for achieving rebuilding targets and promoting resilience of fish stocks to climate change; (ii) objective and measurable criteria for determining whether a stock is depleted or experiencing overfishing; and (iii) reports on stock status and health, sources of mortality, bycatch, habitat status, social, ecological, and economic impacts of management measures, and sustainability of fishing practices, and prevailing and **anticipated future impacts of climate change on fish stocks**, fishing communities, and fishery sectors.

Regarding anticipated future impacts of climate change on fish stocks, although the Council agrees that this level of scientific knowledge would be desirable, we are concerned about the lack

of data to carry out this section, as well as the very considerable workload impacts to the SSC. The Pacific Council already considers ecosystem impacts from climate change through our Fishery Ecosystem Plan, and the SSC is required to use the Best Scientific Information Available. The Council is confident that those considerations will be reflected in advice from the SSC and is concerned that a statutory reporting requirement could result in dissemination of highly uncertain projections based on inadequate data and models. It is also worth noting that such data and models would likely not be available for all managed stocks.

Section 506: Preparation and Review of Secretarial Plans

Requires (currently law only authorizes) the Secretary to prepare a fishery management plan if a Council fails to submit such a plan, if the plan fails, etc.

The Council has no issues with this.

Section 507. Councils (p. 180)

This section amends the MSA to require Councils (with their SSCs) to prioritize fisheries and habitats experiencing or expected to experience a shift in geographic range, spatial distribution, or productivity within the next five-year period. Councils would also be required to approve, for each managed stock, objective and measurable criteria for identifying whether a stock is depleted or experiencing overfishing.

This section also requires Councils to develop and implement a plan to protect EFH from adverse effects caused by fishing, including quantitative and measurable targets and goals for increasing the quality, quantity, and representativeness of EFH, as well as conservation and management measures to implement the plan. At least every seven years, Councils would also be required to review the habitat protection plans, the designations of EFH, the designations of HAPCs, and amend each FMP as necessary and appropriate.

Again, the Council agrees with the intention of this section but is concerned about the workload impacts of such requirements, the lack of data to support such mandates, and the cumulative impact of all of the reporting requirements included in the bill. The Pacific Council already reviews EFH for each FMP every five years.

Sec. 508 Forage fish provisions (p. 182)

This section includes elements of the Forage Fish Conservation Act.

The Pacific Council has a long history of protecting forage species and generally believes that changes to the Magnuson-Stevens Fishery Conservation and Management Act are not necessary for this Council to protect and to sustainably manage forage fish. However, we recognize that the Pacific Council's practices regarding forage fish are not universal among the other fishery management councils.

We have the following responses to the bill's provisions:

Sec. 508(a) and (b) relate to the requirement for the Secretary to define “forage fish,” considering whether such species are at a low trophic level, are generally small- to intermediate-sized, occur

in schools or other dense aggregations, contribute significantly to the diets of other fish, marine mammals, or birds; and serve as a conduit for energy transfer to species at a higher trophic level.” (p. 183). **Sec. 508(b)** also changes the definition of optimum yield, adding “in the case of a forage fish, is reduced, pursuant to subparagraph (B), to provide for the diet needs of fish species and other marine wildlife, including marine mammals and birds, for which forage fish is a significant dietary component” (p. 183)

We have no issue with the provisions relating to the definition of forage fish. However, quantifying the dietary needs of forage-dependent predators is extremely challenging, is difficult to accurately estimate, and represents a significant workload and financial burden on the Council, State, and Federal agencies. Regional planning through the Council process is our preferred way to balance these efforts with other priority research activities.

Sec. 508(c) Requires SSCs to make recommendations regarding “maintaining a sufficient abundance, diversity, and localized distribution of forage fish populations to support the role of such populations in marine ecosystems” (p. 183).

Our concerns with this section are shared above.

Sec. 508(d) requires each Council, in developing its research priorities, to include forage fish populations and distributions and echoes the requirement in Section 106 to develop a list of unmanaged forage fish and to prohibit the development of new directed forage fish fisheries until sufficient research has been undertaken.

The Council has no concerns with this section; we already identified such species in 2013 and amended all of our FMPs accordingly, including prohibitions on the development of new fisheries.

508(e) requires each FMP to assess, specify, and reduce annual catch limits for forage fish fisheries by the diet needs of fish species and other marine wildlife, including marine mammals and birds for those marine species for which forage fish are a significant part of their diet. (p. 185)

Quantifying the dietary needs of forage-dependent predators is extremely challenging, is difficult to accurately estimate, and represents a significant workload and financial burden on the Council, State, and Federal agencies. Further, the dynamic populations of forage species make it difficult to assess the abundance of one, let alone multiple, often mixed stocks, making implementation of this provision impractical.

The Pacific Council already considers the impact of forage fish to the ecosystem and fishing communities to inform optimum yield (OY) and annual catch limit (ACL) decisions for managed forage species in our Coastal Pelagic Species Fishery Management Plan. For example, one of the 11 goals and objectives in the plan is to “Provide adequate forage for dependent species.” In addition, our harvest control rules for coastal pelagic species include built-in reductions in allowable harvest as biomass estimates and ecosystem indicators point to declining stock status. This harvest control rule closed the directed sardine fishery in 2015, four years before the stock reached its current overfished status.

For example, our harvest policy for Pacific sardine maintains a directed fishery cutoff that is three times the stock's overfished threshold as a conservative measure intended to maintain an adequate forage base and minimize fishery impacts at lower stock size. Our Coastal Pelagic Species (CPS) FMP and Fishery Ecosystem Plan strive to better understand ecological interactions and predator-prey relations.

508(f) requires the Secretary to develop guidelines to assist the Council in implementing this section.

This is an important step; for example, the requirements of Section 7 would benefit from additional detail. Under one interpretation, our current practices could meet the requirements of this section, but whether this is true in practice depends on how NMFS interprets the requirements of the bill in its guidelines. Under another interpretation, this section could have a significant impact on Council-managed CPS fisheries, given (among other things) the increased research that would be required to determine the dietary needs of fish species and other marine wildlife. Our main concern is that any legislation or resulting guidelines should not impose additional or unnecessary burdens on our management of forage stocks.

*The Council has no concerns regarding **Sec. 509**, which does not apply to the Pacific Council.*

[Sec. 510. Authorization of Appropriations. \(p. 188\)](#)

The funding increase included in the bill is important, given the additional mandates that the bill proposes.



New England Fishery Management Council

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Eric Reid., *Chairman* | Thomas A. Nies, *Executive Director*

October 1, 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 Mr. Huffman and Mr. Case:

Thank you for requesting feedback from the New England Fishery Management Council (Council) on H.R. 4690, the “Sustaining America’s Fisheries for the Future Act of 2021.” This bill would reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and would also address other issues. The Council carefully reviewed the bill’s language and the enclosure provides our comments on specific sections. Please note that because of limitations on our grant, our comments focus on the impacts of the legislation. We do not express support or opposition to any element of the bill. In addition to the attachment, we would like to offer a general comment.

Our Council – along with the other Councils – is experiencing increasing challenges in managing fisheries because of climate change. We are seeing changes in both fish productivity and fish distribution. In addition, the rapid development of offshore wind will affect both the areas that can be fished and the ability of the National Marine Fisheries Service to conduct research surveys that are essential to assessing fish stocks. These changes are stressing the management system – not just for the Councils, but for the agency as well. We are working diligently with our partners and stakeholders to adapt our fisheries in this environment, but anticipate that this task will be demanding for years to come.

Because of that, one of the impacts of H.R. 4690 that deserves careful consideration is the addition of approximately 25 periodic reports. While many of these reports are the responsibility of the Secretary and not the Council, each report increases the workload on an already stressed system. They consume valuable staff time at every level of the process and reduce the ability of staff to work on other management issues. The addition of so many reports – combined with the number of reports that are already required – will make it far more difficult to manage our fisheries. We do not expect a benefit from imposing these requirements.

We look forward to the reauthorization of the MSA, which is the foundation for the world's premier fishery management system. As always, we are willing to clarify our comments, or provide additional information, at any time. Please contact Executive Director Tom Nies should you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'ER', is positioned above the printed name and title.

Eric Reid
Chairman

Enclosure: (1)

New England Fishery Management Council

Comments on H.R. 4690

Title I – CLIMATE READY FISHERIES

Section 102. Promoting Climate Resilience in Fisheries Management

This section would amend section 303 of the MSA by adding a number of requirements that must be included in an FMP. These requirements are all related to climate change. Many of the requirements – for example, assessing and specifying the current and probable future condition of the fishery under prevailing and anticipated future environmental conditions – will create a large workload for the Council that will be difficult to accomplish. In many cases, estimating MSY under current conditions alone is difficult for a variety of reasons; extending that requirement to future conditions is problematic, and may not be possible. It is not clear that the information is available to meet these requirements. It is also not clear if estimates of future MSY/OY are supposed to be used as a basis for current management.

A new section 322 requires Councils to publish plans to prioritize management actions to increase resilience of fish stocks that are most vulnerable to climate change, and begin implementing the plans, within one year of a notification received from the Secretary. This requirement will compete for resources with scheduled management actions necessary to manage fisheries, such as the setting of ABCs/ACLs. This would certainly be a problem without additional resources provided to the Council, and perhaps the agency.

Section 104. Climate-Ready Fisheries Innovation Program

By establishing a Climate-Ready Fisheries Innovation Program, this section aims to develop additional tools for adapting fisheries management to the impacts of climate change. It is not clear how the development of research priorities for this program will be coordinated with the research priorities that Councils identify as required by Section 302(h)(7) of the MSA. Close coordination with the Council would be necessary to make sure the tools developed address regional issues and can be actually be used.

Section 105. Managing Shifting Stocks

This section would clarify a process for evaluating a change in stock distribution to determine whether management authority should be revised. Requiring this review every five years may be too frequent given the time scale of management actions, particularly if not identified as an issue by a Council. For example, if the Councils already manage the stock through a joint FMP, this review seems unnecessary unless requested by one of the Councils. It is also not clear which Council can request a review: is it either affected Council, the Council with current authority, or the Council that the stock has shifted into? The process outlined to determine management responsibility if the Secretary identifies a shift is also convoluted. If the review was not initiated by the request of a Council, that suggests the current management approach is accepted and reconsideration is unnecessary. If that is not the case, it will be difficult for the Councils to agree

on who should have management authority. This section also ignores that in an extreme case, the problem may extend across the boundaries of more than two Councils.

Section 106. Emerging Fisheries

This section would modify Section 305 of the MSA, specifying a more rigorous process for adopting new fisheries and gear in the EEZ. Some of the requirements in this section are already addressed in 50 CFR 600.747, but this section would modify the process for administering the list. The requirement for a periodic review of the list by the Council and the agency increases workload on both. This section also appears to constrain the ability of a Council to request a change to the list to this periodic review process. This would inhibit the development of new fisheries or gear, which may constrain the ability of fisheries to adapt to environmental change. This could be an issue for recreational fisheries – shifting stocks are being encountered in new areas.

The process proposed for approving a new gear is not consistent with the current way Experimental Fishing Permits (EFPs) are managed in our region. The EFP program is managed by the agency at present, whereas this section imposes a requirement on the Council to collect, evaluate, and make public data generated by the EFP. This is a new responsibility that may require additional Council resources. It is not clear if the requirement to make these data public overrides the confidentiality provisions of Section 402(b) of the MSA.

Title II—SUPPORTING FISHING COMMUNITIES

Section 202. Subsistence Fishing.

The proposed definition of subsistence fishing includes fishing where the fish harvested are intended “...for direct personal consumption as food...” This broad statement would appear to include recreational fishing activity, both by private anglers and the for-hire fleet. It is not clear if this is intended.

Title III—STRENGTHENING PUBLIC PROCESS AND TRANSPARENCY

Section 303. Atlantic Councils

Providing the NEFMC a voting seat on the MAFMC (and vice versa) would formalize and strengthen the longstanding process of the two Councils to share a liaison. It is unlikely to affect Council decisions, which rarely hinge on one vote. The statutory language that the new seat would “act as a liaison to represent the interests of the fisheries” may be problematic, as appointed Council members take an oath to make decisions to “...conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation.” It is possible the interests of a particular fishery (a definition which includes fishing for stocks) may not always coincide with the greatest benefits to the Nation.

At present, the Councils assign liaisons based in part on the specific issues that will be discussed at a meeting. If the Secretary appoints the representative as proposed, this will no longer be possible. This also would mean that the Secretary would have to make sure that at least one

appointed Council member has expertise in both jurisdictions, and would need to make sure governors nominate Council member candidates that possess this qualification.

Section 305. Council Accountability and Membership

This section makes a number of changes to provisions that apply to Council members, Advisory Panel members, and staff. The provisions that expand the qualifications considered for Council membership, and to require each Council have at least one individual that does not have a financial interest in matters before the Council, would not affect Council operations. There may need to be a clarification as to what constitutes a financial interest (for example, does a private angler have a financial interest?).

Section 302(f) for the MSA would be amended to deem Council employees as Federal employees with respect to any requirement that applies to Federal employees. This is a broad statement and its potential impacts are large. For well over 40 years, Council employees, in most cases, are not considered Federal employees. It is not clear if this language is meant to refer only to ethics provisions, or the entire range of regulations that apply to Federal employees. For example, does this provision subject Council employees to all personnel management requirements (work hours, travel, evaluations, training, etc.) that apply to Federal employees? Does this provision entitle Council employees to all Federal benefits? If there is a government shutdown, must Council employees comply with restrictions on working? This statement is unclear and will cause confusion if adopted. It also will cause confusion over the status of the Council staff: are they under the direction of the agency, and subject to its direction? If this provision is meant to apply to all federal regulations it may also conflict with 16 U.S.C 1852(f)(1), which gives each Council the authority to hire staff. If this provision only applies to ethics provisions, we note that ethical standards are already established for Council staff, and in some cases are more stringent than those that apply to federal employees.

Section 302(f) would be modified to make it clear that Council, committee, and advisory panel members are subject to all laws, rules, and policies regarding ethics and sexual harassment that apply to Federal employees. The Council emphasizes the importance of an open and transparent process to all of its participants. This includes insisting on the highest standards of ethical behavior by Council members, advisory panel members, and staff. We encourage an atmosphere that is free of harassment of any kind, and periodically brief Council members, advisory panel members, and staff on their responsibilities in this regard. We already have procedures in place for the removal of all members and staff for unacceptable behavior. The proposed modification in this section will provide additional protections to potential victims, but it is not clear how this will be enforced on advisory panel members, who are essentially volunteers. This will also create a need for periodic training to make sure participants are aware of their responsibilities. It is possible that without clear guidance and training (which will have to be provided by the Department of Commerce or its subsidiaries), this may discourage some stakeholders from participating in our process. They may not be familiar with the Federal regulations or do not trust their application, and may be concerned about their personal liability. If the exact standards that will be applied are not made public and available for review, they may be uncomfortable volunteering be subject to the requirements. Should this occur, this would make it more difficult to attract diverse participants and make sure that the

This section incorporates current restrictions on lobbying that apply to the Councils. However, it extends the prohibition to attempting to influence certain Presidential actions. This latter addition may inhibit the ability of the Council to provide its perspective on the arguments for or against the Presidential action. In addition, the enforcement mechanism proposed requires the Secretary to investigate any complaint or a potential violation received from any entity. This has the potential to encourage frivolous complaints that will burden the agency. One possible penalty for a violation of lobbying restrictions is a prohibition on employment by a Council. It is unclear how this will be implemented, since Council employees are not Federal employees and are not subject to Federal hiring practices. Further, the requirements of this section for extensive documentation and public availability of all communications with Federal or State officials on “subjects other than routine fishery management in the region” creates an unmanageable record-keeping burden with little apparent purpose except to discourage freely exchanging information.

Section 307. NOAA Sexual Harassment and Assault Prevention

While this section adds Council members and Council staff to the individuals covered by NOAA’s Sexual harassment Policy, it seems inconsistent with Section 302(f) of this bill in that it does not include Advisory Panel members.

Section 308. S-K Reform

The Council provides limited support to the S-K program at present, and this section would have limited impacts on the Council. Increased S-K funding, however, may benefit the fisheries managed by the Council. The establishment of an American Fisheries Advisory Committee with regional subdivisions that do not match either the Council or NMFS regional organization may complicate administration of the program.

TITLE IV—MODERNIZING FISHERIES SCIENCE AND DATA

Section 402. Expanding and Improving Electronic Technologies.

The Council is already expanding the use of electronic technologies in several of its fisheries. It is not clear this statutory requirement will accelerate that process.

Section 404. Cooperative Research and Management

This section would place added emphasis on the research priorities developed by the Council, which would increase the utility of cooperative research projects for management. It is not clear, however, how the critical needs identified by the Council for this program relate to the research needs identified by the Council in response to other MSA requirements. The requirement that the Council publish the results and data generated by these projects is not consistent with the current research process. These programs are administered and monitored by the Agency, not the Council. This would be a significant change in responsibility for this program, and would tax Council resources.

Section 405. Northeast Regional Pilot Research Trawl Survey and Study

This pilot study could help increase confidence in survey results and may serve as a supplement when federal surveys are interrupted. It would, however, require adequate funding to be

successful. Focusing on a trawl survey may also limit investigation of alternative survey techniques (autonomous vessels, other gear, etc.) that may be a better way to develop fishery independent indices.

Section 409. Offshore Wind Collaboration

The extensive development of offshore wind facilities off the east coast of the United States will affect fisheries in numerous ways. One of the major impacts is that it will disrupt the collection of fishery dependent and independent data. A cooperative agreement between the Secretary of Commerce and the Secretary of Interior to fund stock assessment and wildlife research will help to provide the science needed to manage fisheries in this changing environment. This section, however, would not include fishing industry or Council input on the elements of the agreement.

TITLE V—SUSTAINING FISHERIES THROUGH HEALTHY ECOSYSTEMS AND IMPROVED MANAGEMENT

Section 502. Essential Fish Habitat Consultations

The provisions in this section that strengthen the Secretary's ability to require that federal actions avoid adverse effects to EFH will provide additional protection to EFH identified by the Council. This will strengthen the ability of the Secretary to ensure that federal actions (presumably including permitting activities for major projects, such as offshore wind development) do not adversely affect EFH. Requiring the Council to comment on federal and state agency actions that are likely to adversely affect habitat will increase Council workload, but will also ensure that Council interests are described and considered. The requirement that agencies respond to the Council comments are a key feature that will promote a dialog between the Council and the agencies.

This section would modify the MSA required elements of FMPs to “minimize adverse effects on essential fish habitat.” This would remove the current phrase “to the extent practicable.” This is a significant change that would change the way measures to minimize adverse effects are evaluated. In the extreme, the only way to minimize adverse effects is to prohibit fishing, or at least prohibit certain gears. Removing the practicability language creates an opportunity to litigate any FMP that allows any adverse effects whatsoever to continue in order to comply with the goals of the MSA and its National Standards. Any plaintiff need only show that some additional measure would further reduce any effects, regardless of whether the measure is practicable or conflicts with one of the National Standards. Similar language would be added for HAPCs, and could have similar impacts.

This section also defines “Habitat Area of Particular Concern” in terms that are different than the current definition in 50 CFR 600.815(a)(8). For example, it includes a criteria that says an area that “may become important to the health of managed species” due to anticipate future environmental conditions. This is a standard that will be difficult, if not impossible, to apply. It could also dramatically increase the extent of HAPCs, since both current areas and possible future areas may be identified as HAPCs, and adverse effects must be minimized in both. This will make it difficult for fisheries to adapt to climate change.

Section 503. Reducing Bycatch.

This section would revise National Standard 9 by requiring Councils to minimize bycatch, without regard to practicability. This could lead to changing the way bycatch minimization is evaluated, and could lead to extensive litigation over bycatch measures. A similar change is made to the required elements of fishery management plans, imposing a requirement that bycatch be minimized without regard to other impacts, and without regard to the effect on fisheries. This could be seen as effectively elevating National Standard 9 to take precedence over other National Standards.

In addition, removing the language “to the extent practicable” could have significant impacts on recreational fisheries. Some recreational fisheries do not have catch and release programs, and size restrictions can lead to a high percentage of discards. In those cases the only way to minimize discards of one species may be to impose seasonal closures on all recreational fishing.

The requirement for the Secretary to establish a national Standardized Bycatch Reporting Program (SBRM) is difficult to evaluate. 50 CFR 600, Subpart R, already specifies requirements for regional SBRM programs. It is not clear whether the proposed statutory changes are intended to replace this guidance. Given the differences between regional fisheries, it may prove difficult to design a national program and it is not clear this would be an improvement over the current approach.

Section 504. Improving Rebuilding Outcomes.

This section would modify the MSA to clarify the difference between a stock that is depleted (at a low level of biomass) and a stock subject to overfishing. This distinction is made in the National Standard guidelines, but not in the MSA; this change would align the two. However, it should be noted that the current MSA language – which defines both “overfished” and “overfishing” as the same condition (an excessive rate or level of fishing mortality) – provides additional flexibility for addressing a lack of data, a changing environment, ecosystem-based fisheries management, or other situations where the difficulty in accurately specifying current or desired biomass levels is encountered. This change would remove that flexibility.

The definition of the term depleted clarifies that this may not be due solely to overfishing, but still requires Council action. This has the potential to be problematic, as the Council only has the ability to influence fishing activity. We cannot regulate other anthropogenic activities that may deplete a stock (e.g. dams, coastal pollution, etc.). In the case of a depleted status that is not due to overfishing as a primary cause, the Councils are still charged with developing a rebuilding plan that makes adequate progress - something that may be beyond its ability to do if the cause of the depletion is ecosystem changes or habitat loss, for example. No allowance is made for such a situation when the agency evaluates adequate progress, or when establishing a rebuilding period. It is theoretically possible that a depleted status that is not caused by overfishing could not be addressed even if fishing mortality is eliminated, yet this section does not address that possibility.

The MSA would be amended to revise the time period for rebuilding to be based on the time to rebuild in the absence of fishing plus one mean generation. This revision addresses a

discontinuity in the rebuilding period that exists at present because of the ten-year maximum period. It is possible that in the case of a fast-growing stock, this change will result in a rebuilding period of less than ten years. It also prevents the Council from explicitly considering the needs of fishing communities and interactions within the ecosystem when establishing a rebuilding plan. This effectively removes consideration of National Standard 8 when rebuilding plans are developed. This will remove the flexibility Councils currently have to design rebuilding plans that balance the needs of communities with the requirement to rebuild. By removing the consideration of interactions within the ecosystem, this change inhibits the use of Ecosystem-Based Fisheries Management Approaches when developing a rebuilding plan.

The MSA would be further revised to clarify Council actions if there is a determination that adequate progress is not being made. This section is unclear. It states that a Council must make revisions necessary to “achieve adequate progress toward rebuilding by the established rebuilding deadline.” Does this mean that measures must be designed to achieve the rebuilding target by the original end date? This may be impossible – particularly if the lack of progress is due to new scientific information that is received late in the original period. In this case, the plan may have been on track and may not have failed, but will now not reach the rebuilding target. Or does the proposed language mean that by the end date, adequate progress must be demonstrated?

In the case of a failed rebuilding plan, requiring the Council to take action within nine months of notification will create a very short timeline. If the new plan requires an EIS, this is insufficient time to comply with NEPA requirements for scoping and other hearings and still take Council action within the nine month period. If an EIS is not required, this is still an aggressive timeline for developing a new rebuilding plan, given the requirement for the Councils to conduct an open and transparent process as the plan is developed.

Section 505. Depleted Fisheries and Preventing Overfishing

This section would amend the MSA by adding a definition for “depleted.” As previously mentioned, this would align the statute with the National Standard guidelines by making it clear that depleted refers to a biomass level, while overfishing refers to a rate of removals. Confusion is caused by the reference that the term “depleted” has the meaning previously given by the statute to the term “overfished.” The MSA at present says that “The terms “overfishing” and “overfished” mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.” It is unclear how the term depleted can refer to a biomass level and a rate of level of fishing mortality at the same time.

Section 302(g)(1) of the MSA would be amended to expand the duties of the scientific and statistical committee (SSC). Of most concern is the requirement for the SSC to provide the Council “...reports on stock status and health, sources of mortality, bycatch, habitat status, social, ecological, and economic impacts of management measures, and sustainability of fishing practices, and prevailing and anticipated impacts of climate change on fish stocks, fishing communities, and fishing sectors.” The SSC is not staffed or funded to provide this extensive series of reports. SSC members are essentially volunteers who provide advice on the interpretation of work prepared by others. The SSC is not a research body and does not routinely

perform analyses. This tasking would require a significant reorganization of the SSC, including dedicated staff and funding, if they are to meet these requirements.

Section 303(a)(1) of the MSA would be amended to require that objective and measurable criteria for determining when a fishery is depleted¹ may not be less precautionary than the recommendations of the SSC. This text is confusing, as the definition of depleted that would be adopted by H.R. 4690 does not refer to fisheries, but stocks or stock complexes; there is no definition of when a fishery (which may consist of more than one stock) is overfished. This section also puts the SSC in a policy role, as opposed to an advisory role. The setting of reference points involves a balancing of risks and benefits, which is the purview of the Council. These elements have both a biological and social/economic component.

Section 302(h) of the MSA would be amended to (among other things) require Councils to develop a plan to protect EFH in the region from adverse effects caused by fishing. As previously noted, the elimination of a requirement that measures such measures be practicable will open the door to litigation over any measure that allows fishing. In addition, while a Council can regulate fishing, there is no authority to regulate other activities that may adversely affect EFH. This severely limits the Councils ability to implement a plan to increase the quality, quantity, or representativeness of EFH. It is also not clear that data are available to measure changes in EFH over a short time scale in order to measure the effectiveness of any plan. Collecting such data is expensive, and the agency would probably need additional funding in order to meet these requirements.

Section 508. Forage Fish Conservation

The requirement to assess, specify and reduce catch limits for forage fish by the diet needs of other species will be difficult, if not impossible, to accomplish. In most instances, accurate estimates of the amount of forage fish needed by predators is not known. Such estimates are limited by available data, and complicated by the opportunistic feeding habits of most predators. The NEFMC established an ABC control rule for Atlantic herring that considered the needs of predators, but even this effort was hampered by a lack of data and difficulty understanding the impact of predators on forage species.

The proposed statutory language on the management of river herring and shad is confusing. The language directs the Secretary of Commerce to amend two fishery management plans, presumably through a Secretarial Amendment, and then to follow with additional amendments to adopt measures needed for their conservation and management. How this will be coordinated with Council management of these two FMPs is unclear.

The requirement to reallocate existing resources to provide a minimum observer or electronic coverage of 60 percent of mid-water trawl trips will reduce coverage in other fisheries unless additional funding is provided. It is not clear how this requirement will interface with the industry-funded monitoring program implemented for vessels in the Atlantic herring fishery. Does this requirement reduce the requirement for industry funding?

¹ The current text uses the term overfished, which would presumably be replaced by the term depleted if H.R. 4690 is adopted.



Mid-Atlantic Fishery Management Council

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September 30, 2021

The Honorable Jared Huffman
1527 Longworth House Office Building
Washington, DC 20515
c/o Casey MacLean, legislative assistant
Casey.MacLean@mail.house.gov

The Honorable Ed Case
2210 Rayburn House Office Building
Washington, DC, 20515

Dear Representatives Huffman and Case:

Pursuant to your letter requesting Council comments on H.R. 4690, the Sustaining America's Fisheries for the Future Act, I am responding on behalf of the Mid-Atlantic Fishery Management Council (Council or Mid-Atlantic Council). The following comments will not address all topics addressed in the bill and will instead focus on high-priority issues of particular relevance to the Mid-Atlantic Council. We are working in collaboration with the other regional fishery management councils to develop additional comments which will be submitted after the next meeting of the Council Coordination Committee (CCC) on October 19-21, 2021.

In general, the Mid-Atlantic Council believes that the current Magnuson Stevens Fishery Conservation and Management Act (MSA) provides a strong framework for sustainable fisheries management through a science-based, transparent, and participatory management process. While we recognize the need to respond and adapt to new challenges and changing environmental conditions, we do not believe that large-scale changes are needed. We also believe that any changes to the Act should be national in scope with reasonable flexibility to address region-specific issues. Mandates specific to one region should be carefully considered, especially with respect to how these modifications might affect operations in other regions.

Section 102. Promoting climate resilience in fisheries management

This section adds a number of new climate change-related requirements for any new fishery management plan (FMP) or FMP amendment submitted to the Secretary after January 1, 2021 and would require that any changes to fishery management plans required by this section be implemented for all FMPs within four years.

While the Council does not object to the intention of this section, we have concerns about the increased workload and the lack of information available to support some of the additional requirements such as "assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery under prevailing and anticipated future environmental conditions" or "assess and describe the anticipated impacts of climate change and other environmental and ecological changes on the fishery."

Section 102(c) requires the Secretary, within three years and every five years thereafter, to assess the vulnerability to climate change of fish stocks within each Council's geographical area of authority, notify the Councils of such vulnerability, and recommend conservation and management measures.

The information provided through such an assessment would be valuable to the management process. However, we believe that the Councils are best equipped to develop conservation and management measures through our existing management process.

Section 105. Managing Shifting Stocks

This section adds a number of administrative requirements to address jurisdictional issues that may arise as fish stocks are affected by climate change. Chief among these is a required Secretarial review of each Council's geographical area of authority to determine if "a substantial portion" of any fishery is within the area of another Council. If this criterion is met, the Secretary must notify the Councils concerned, which triggers a formal process to either designate one of the Councils to prepare an FMP or establish joint management by the Councils.

While the administrative steps outlined in Section 105 do formalize a process for revising Council authority as a result of changes in fishery distribution, many of these issues are already addressed by the Councils themselves. This has been a particular area of focus on the Atlantic coast, where fisheries management authority in federal waters is divided between the New England, Mid-Atlantic, and South Atlantic Councils. These Councils have recognized this challenge and are working closely with each other to adapt to changing conditions. For example, the three East coast Councils are currently collaborating with the Atlantic States Marine Fisheries Commission and NOAA Fisheries on a climate change scenario planning initiative. Through this structured process, fishery scientists and managers are exploring how to best adapt and respond to jurisdictional and governance issues related to shifting fishery stocks.

It is important to note that a number of fishery management plans already account for overlap between Council management areas. For example, the New England Fishery Management Council and Mid-Atlantic Fishery Management Council manage two fisheries under joint fishery management plans and cooperate on the management of several other fisheries that overlap the geographic areas of both Councils. Similar arrangements exist between the Mid-Atlantic and South Atlantic Councils and the South Atlantic and Gulf Councils.

It is difficult to predict or comment on the specific impacts of Section 105 without specific details regarding how "substantial portion" will be defined. However, there appears to be potential for these provisions to create a "musical chairs" scenario with our managed fisheries. Frequent reassignments of management authority could cause disruptions in Council operations, duplications of effort, and losses of institutional knowledge among the staff, Council and SSC members, and others who have acquired specialized knowledge about the management or biology of a stock through years of involvement with the fishery. While major changes in management regimes may be warranted in certain cases, the Council believes that less disruptive methods of adapting to climate change should be pursued first.

Section 303. Atlantic Councils.

This section adds a voting seat for a Mid-Atlantic Council member on the New England Council and a voting seat for a New England Council member on the Mid-Atlantic Council. These liaisons would represent the interests of the fisheries under their jurisdictions on neighboring Councils, which is particularly important as stocks shift with climate change.

This change is consistent with previous recommendations offered by the Mid-Council on previous reauthorization bills. Southern New England states have an important interest in fisheries managed by the Mid-Atlantic Council, and conversely, the Mid-Atlantic states have an interest in a number of important New England-managed fisheries. We believe that vesting liaisons with voting and motion-making rights will allow these interests to be more effectively represented across Councils.

Section 303 (a)(4) states that the Secretary may only appoint an individual to be a liaison between 2 Councils under this subsection if such individual has expertise in a fishery that spans the geographical areas of both such Councils.

The Mid-Atlantic and New England Council's (non-voting) liaisons have traditionally been designated by each Council's Chair. It is within the self-interest of the Councils to designate liaisons with expertise in both geographical areas. We believe that the Councils are best equipped to select their own liaisons.

Section 304. Council procedures and participation

Section 304 (a)(1) requires the Councils to hold roll call votes on all nonprocedural matters.

Requiring roll call votes would be time consuming and disruptive to the Council process. On major amendments the Council often votes on each set of alternatives before voting on whether to approve a final amendment for submission to the Secretary of Commerce. For example, when the Council took final action on the Bluefish Allocation and Rebuilding Amendment during our June 2021 meeting, the Council voted on eleven separate motions before voting to approve the amendment. With 21 voting members, the Mid-Atlantic Council is the largest of the eight regional Councils, and conducting a roll call vote for each of eleven motions would have been incredibly time consuming and would have substantially slowed the process.

The MSA already requires the Councils to hold roll call votes at the request of any voting Council member (a much lower threshold than the one fifth of a quorum required for roll call votes in the U.S. House or Senate). While we do not believe that changes to voting requirements are warranted, a less disruptive alternative would be to require roll call votes only on final approval of any fishery management plan or amendment to be submitted to the Secretary.

Section 304 (a)(2) requires the Councils to seek to hold meetings in person and ensure the availability of remote meeting participation and voting.

The requirements described in this section could hinder the Council's ability to conduct business in an efficient and cost-effective manner. We believe it is important for Councils to

have some flexibility to adapt meeting practices to meet the needs of our members and constituents.

Providing a transparent and open public process is of utmost importance to the Mid-Atlantic Council. Prior to COVID-19, we held all full Council meetings in person with remote access provided via a listen-only webinar. Advisory body and committee meetings used a mix of in-person and webinar formats, depending on factors such as the length of the meeting, number of participants, and ability of meeting participants to travel. This flexibility enables a more efficient process and allows some individuals to participate who might not otherwise be able to if they had to take additional days off for travel to an in-person meeting.

The ongoing pandemic has forced us, like many organizations, to adapt our procedures and find new ways of conducting business in an all-virtual format. A positive outcome of this is that we have created a smoother, more user-friendly webinar experience. As we plan for the resumption of in-person meetings we will likely need to incorporate virtual participation options for some time to come. However, we are concerned about the requirement to ensure the availability of remote voting on a permanent basis. Council meetings are an invaluable opportunity for stakeholders to interact with Council members face-to-face. Requiring the Councils to allow remote voting would mean that members of the public may not have opportunities to see or speak to members. It is unclear how this would benefit the process or the public.

Finally, the Council notes that any new meeting-related requirements should specify exactly which types of meetings any such requirements apply to. In addition to full Council meetings, we hold meetings our advisory panels, Council committees, Scientific and Statistical Committee, monitoring committees, fishery management action teams, working groups, and various other ad-hoc groups. Many of these bodies routinely meet via webinar. It would be costly and disruptive to shift to all in-person meetings, and we often get comments from constituents that they appreciate the convenience of remote meetings.

Section 304 (b) requires the Council to make a webcast, live audio, or video broadcast of each meeting of the Council and the Council Coordination Committee meetings available on the Council's website with certain exceptions. This section also directs the Council to post on its website audio or video recording, searchable audio recording, or written transcript of each Council meeting and each meeting of the SSC. The Secretary would be required to maintain a public archive.

The MSA provides for a very transparent and participatory regulatory process, and the Mid-Atlantic Council already fulfills most of the requirements described in this section. We provide live webinar access to all Council and SSC meetings. Council meeting recordings are available on the website shortly after the meeting, and SSC meeting recordings are available upon request. We are concerned about the additional staff workload associated with the proposed requirement to post SSC recordings on the Council website. Given the fact that the SSC is an advisory body and we prepare detailed meeting reports for review by the Council, this provision seems unnecessary.

Additionally, we are concerned that in the absence of a specified timeframe, this mandate could be interpreted to mean that meeting recordings must be maintained online indefinitely. This could present significant technological challenges, as audio and video files for multi-day

Council and SSC meetings are generally quite large. We recommend that these requirements specify a time period the recordings must be available (e.g., 6 months from the date of recording) or that they be broadened to allow Councils to make recordings available upon request. We would also note that requiring the Councils and the Secretary to both maintain public archives of all meeting recordings seems like an unnecessary duplication of effort and resources.

Section 305. Council accountability and membership

Section 305 (a) deems all Council employees to be Federal employees with respect to any requirements that apply to Federal employees.

The purpose and potential implications of this provision are unclear. Additional detail and explanation in this section would be appreciated.

This section states that all Council, committee, and advisory panel members shall be subject to all law, rules, and policies regarding ethics and sexual harassment and assault that apply to Federal employees.

The Council is committed to maintaining a safe, ethical environment that is free of any form of harassment. We believe this section would benefit from additional clarification regarding the specific laws, rules, and policies that would apply to Council members and advisors. We are not aware of a universal policy for all federal employees. Council members, staff, and advisors are already subject to the rules of conduct prepared by the DOC Office of General Counsel.¹ To ensure coherence and consistency of policies, it may be more appropriate to direct the Secretary to ensure that these rules of conduct address ethics and sexual harassment concerns. The Council also requests clarification on whether Council members and advisors would receive ethics training similar to the training provided to Federal employees.

Section 403. Stock Assessments

This section requires the Secretary to report to Congress within one year and annually thereafter on NMFS progress to prioritize and improve stock assessments.

The Council believes that a comprehensive plan to prioritize and improve stock assessments would be beneficial. However, this requirement represents a substantial workload, and the Council believes that similar benefits could be achieved with a less frequent reporting cycle (e.g., every 3 years).

Section 406. Recreational Data Consistency and Recreational Data Improvement Program

This section would require the Secretary, within 2 years, to establish guidelines to improve recreational catch data. This section would also require the Secretary, within 1 year and at least once every 5 years after, to develop and publish a strategic plan for recreational data improvements.

Effective fisheries management is dependent on the availability of accurate and timely catch and effort data. Recreational fisheries are inherently uncertain in that catches are estimated

¹ [Rules of Conduct for Employees and Advisors of Regional Fishery Management Councils 2021](#); [Rules of Conduct for Members of Regional Fishery Management Councils 2021](#)

through a statistical methodology rather than tallied under a mandatory reporting framework as occurs in federally managed commercial fisheries. These challenges have been amplified since the 2006 MSA reauthorization introduced the requirement to manage fisheries with Annual Catch Limits (ACLs). Recreational stakeholders have expressed frustration with the frequent changes in management measures and harvest limits from year to year, which they often attribute to perceived inaccuracies in the recreational catch estimates. There have been concerted efforts to address recreational data issues in recent years, and the Council has simultaneously worked to develop management approaches that better account for uncertainty in catch estimates. However, there is still much work to be done, and the Council welcomes any efforts to improve the accuracy and timeliness of recreational catch estimates. Development of guidelines and calibration methods, as proposed in Section 406, could facilitate the incorporation of recreational data sources that may currently be underutilized. While the Marine Recreational Information Program (MRIP) is not explicitly addressed in this section, the Council believes increasing funding for MRIP could enable states to collect more intercepts and thus improve the precision of catch estimates.

Section 409. Offshore wind collaboration.

This section requires the Secretary of Commerce and the Secretary of the Interior (acting through BOEM) to enter into a cooperative agreement to fund additional stock assessments and fisheries and marine wildlife research which may be necessary due to actions taken by BOEM for the development of offshore wind energy.

The Council appreciates the inclusion of provisions to fund additional stock assessments and other research necessary due to offshore energy development. This was identified as a priority in the Council's response to E.O. 13921.

Section 502. Essential Fish Habitat Consultation

Section 502 (a) modifies the procedure for consultation on Federal agency actions that may have adverse effects on EFH.

This will strengthen the ability of the Secretary to ensure that Federal agency actions do not adversely affect EFH and will provide additional protection to EFH identified by the Council. This could be particularly important in the Mid-Atlantic region where offshore wind and aquaculture development may have impacts on habitat. The Council appreciates the requirement that Federal agencies respond to the Council comments and expects that this will facilitate improved dialogue between the Council and Federal agencies.

The MSA currently requires the Councils to minimize, to the extent practicable, adverse effects on EFH caused by fishing. Section 502 (b) revises this language to remove the phrase "to the extent practicable." This section also adds a new definition of the term "*adverse effect*" to mean "any impact that reduces the quality or quantity of EFH."

The practicability clause provides the flexibility necessary to consider social and economic tradeoffs in the decision-making process. The Council is concerned that this change could essentially require the elimination of any fishing that has, or could have, any impact on EFH.

The significance of the phrase “to the extent practicable” was discussed in *Conservation Law Foundation v. Evans*². The court stated:

Moreover, the plaintiffs essentially call for an interpretation of the statute that equates "practicability" with "possibility," requiring NMFS to implement virtually any measure that addresses EFH and bycatch concerns so long as it is feasible. Although the distinction between the two may sometimes be fine, there is indeed a distinction. The closer one gets to the plaintiffs' interpretation, the less weighing and balancing is permitted. We think by using the term "practicable" Congress intended rather to allow for the application of agency expertise and discretion in determining how best to manage fishery resources.

This interpretation suggests that removal of the practicability clause could open the door to litigation (or re-litigation) on any fishery management action that allows for any degree of adverse impacts to habitat.

The Council also notes that the new definition of “Adverse Effect” is quite broad and, in combination with the removal of the practicability clause, would significantly increase the Council’s responsibility to restrict fishing activities that have any adverse effect (even temporary) on EFH. The Council believes that the EFH and HAPC provisions in the MSA are vitally important to protecting fish habitat. However, we are concerned that the proposed changes leave little flexibility to balance habitat protection with the other management objectives identified in the MSA, such as the requirements to achieve optimum yield, minimize adverse economic impacts, or consider efficiency in the utilization of fishery resources.

Section 503. Reducing Bycatch

This section modifies National Standard 9 (NS 9) regarding the minimization of bycatch to remove the words “to the extent practicable.” A similar change is made in the section describing required elements of fishery management plans.

The phrase “to the extent practicable” is used widely throughout the MSA. This language appropriately reflects the imperfect nature of fisheries management and the challenges of balancing many, often conflicting, objectives. Selective removal of the practicability clause for NS 9 while leaving other standards (such as the requirement to promote the safety of human life at sea) unchanged, raises questions about whether Congress intends for bycatch minimization to take precedence above all others.

Similar to our comments on Section 502, we are concerned about the potential for litigation that could arise from the proposed change. In *Legacy Fishing Co. v. Gutierrez*³, the Court found that NS 9 cannot be viewed in a vacuum but is a component of a larger balancing scheme that NMFS must consider. In *Ocean Conservancy and Oceana v. Gutierrez*⁴, the Court wrote that “bycatch could only be entirely avoided by eliminating all commercial activity in the fishery” and that “National Standard 9 only made sense within the larger context of the Magnuson-

² *Conservation Law Foundation v. Evans*, 360 F.3d 21 (1st Cir. 2004)

³ *Legacy Fishing Company v. Gutierrez*, Civil Action No. 06-0835 (JR) (D.D.C. Mar. 20, 2007)

⁴ *The Ocean Conservancy v. Gutierrez*, 394 F. Supp. 2d 148 (D.D.C. 2005)

Stevens Act if it was interpreted as requiring the NMFS to find the combination of regulations that would best meet the statute's various objectives.”

Although some level of bycatch is inherent in fishing operations, the Councils have been leaders in promoting bycatch reductions through actions such as time/area closures, gear modifications/prohibitions, bycatch caps, participation in take-reduction groups, and modifications to rules to address regulatory bycatch. As monitoring and technology improves, almost every fishery will have opportunities to examine and reduce bycatch in the future, and the Council welcomes opportunities to participate in those efforts.

Section 504. Improving Rebuilding Outcomes

This section removes the 10-year limit on the time period for rebuilding a depleted stock and replaces it with a requirement that the rebuilding timeframe “not exceed the time the stock of fish would be rebuilt without fishing occurring plus one mean generation unless management measures under an international agreement dictate otherwise.”

The Council believes that replacing the 10-year rebuilding timeframe with a biologically-derived timeframe will result in a more consistent application of rebuilding requirements across fisheries. For certain longer-lived species, we expect that this additional management flexibility will allow for the mitigation of some adverse socioeconomic impacts while still achieving rebuilding objectives.

We feel it is important to emphasize that over the long term, statutory deadlines and rebuilding requirements have benefitted Mid-Atlantic stocks, as well as many of the communities that rely on those fisheries for jobs, income, subsistence, and recreation. While these successes have often come at significant social and economic costs, we recognize that some adverse impacts are unavoidable during rebuilding periods. However, we feel that the 10-year rebuilding requirement has often exacerbated adverse impacts by limiting the Council’s ability to fully incorporate social, economic, biological, ecological considerations into the development of rebuilding plans. We believe that basing rebuilding time requirements on the biological characteristics of the stocks will result in a more even application of the law across fisheries.

Section 505. Depleted fisheries and preventing overfishing

Section 505 (a) replaces the term “overfished” with “depleted” throughout the Act. This change in terminology does not alter the definition itself or any legal mandates to prevent fisheries from becoming depleted and to rebuild depleted fisheries.

We believe this change in terminology more appropriately reflects the fact that a fishery's status is typically influenced by multiple factors. The Council has previously noted that the use of the term “overfished” can unfairly implicate fishermen in cases where deterioration of a stock may result from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other factors unrelated to fishing.

Section 505 (b) expands the responsibilities of the SSC. Specifically, this section requires SSC to provide (i) recommendations for accounting for all sources of mortality in establishing management measures, for the acceptable biological catch levels, for preventing overfishing, for maximum

sustainable yield, and for achieving rebuilding targets and promoting resilience of fish stocks to climate change; (ii) objective and measurable criteria for determining whether a stock is depleted or experiencing overfishing; and (iii) reports on stock status and health, sources of mortality, bycatch, habitat status, social, ecological, and economic impacts of management measures, and sustainability of fishing practices, and prevailing and anticipated future impacts of climate change on fish stocks, fishing communities, and fishery sectors.

In general, the Council agrees that this level of detailed information for each of our managed fisheries would be valuable. However, we have some concerns about the feasibility and workload associated with this section.

(i) Regarding the requirement to “provide recommendations for accounting for all sources of mortality,” the Council notes that management measures are designed to control *fishing* mortality, but management doesn’t have the ability to control other sources of mortality (e.g., natural mortality due to old age, disease, or predation). These other sources of mortality, outside of fishing mortality, are also very hard to estimate, and it is not clear how the SSC would provide this advice. It is not clear what “promoting resilience of fish stocks to climate change” means and what type of advice the SSCs would be expected to provide. The words “supporting” or “enhancing” may be more appropriate. Similarly, we are concerned about the feasibility of, and lack of data to support, the requirement to report on the “prevailing and anticipated future impacts of climate change on fish stocks, fishing communities, and fishing sectors.”

(ii) The Council would appreciate clarification on the purpose or need for the SSC to provide objective and measurable criteria for determining whether a stock is depleted or experiencing overfishing. These reference points are already defined for every managed stock, as required already under the MSA and National Standard 1 guidelines (50 CFR § 600.310). It is not clear what additional guidance the SSCs would be expected to provide on this topic. This addition, along with the similar language proposed in Section 507, seems redundant with existing requirements and could create potential for confusion.

(iii) The list of reports the SSC would be required to provide is quite extensive. We feel it is important to highlight the fact that the SSC is not a research body and their work largely involves reviewing, and developing advice based on, existing scientific information. The majority of the science used in the management process, including stock assessments, socioeconomic data, climate and ecosystem reports, and much more, is provided by the Northeast Fisheries Science Center. Adding new SSC responsibilities is unlikely to have any meaningful impact without measures to ensure the availability of the science needed to support those mandates. Consideration should also be given to the additional resources (staff support, meeting costs, etc.) that would be needed to fulfill these requirements.

Section 506. Preparation and Review of Secretarial Plans

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. It generally takes 2.5-4.5 years to complete a new FMP or major amendment. The proposed 180-day timeframe may only encompass three Council meetings, which would does not allow nearly enough time to initiate an amendment, conduct scoping hearings, form a fishery management action team (FMAT), collect and analyze data, develop and refine alternatives, solicit input from the SSC and other advisory bodies, draft decision documents, conduct public hearings, review public comments, take final action, and prepare the required documents for submission to NMFS.

The MSA already provides the Secretary appropriate discretion to assess whether a Council is making reasonable progress toward development of the required FMP or amendment. This flexibility is necessary to account for the variability in time needed to complete a management action, which can vary significantly depending on the complexity of the issue, availability of scientific information, Council workload on competing priorities, and other factors. Any specific time requirements for completion of Council actions should be crafted carefully and based on a detailed understanding of the Councils’ responsibilities and procedural requirements under the MSA, NEPA, and other applicable laws. A detailed description of the Council process and phases of FMP/amendment development can be found in NMFS Procedure 01-101-03: Operational Guidelines for the MSA Process.⁵

If the intent of Section 506 is to improve the timeliness of Council actions, this could be accomplished by improving alignment between NEPA and the MSA. Compliance with NEPA requirements is often the most time-consuming aspect of FMP or amendment development. The CCC’s white paper on “Integrating National Environmental Policy Act Compliance into a Reauthorized Magnuson-Stevens Act”⁶ explores this issue and discusses potential areas for improvement.

Section 507. Councils

This section amends the Section 302(h) of the MSA to include the following in the list of Council functions: “(8) approve, for each of its managed stocks, objective and measurable criteria for identifying whether the stock is depleted or experiencing overfishing, which may not be less precautionary than the recommendation of its scientific and statistical committee.”

This requirement is already addressed in Section 303 of the MSA (Contents of Fishery Management Plans). Given that Councils are required to prepare FMPs for each managed stock, it seems redundant to include this as both a Council function and an FMP requirement.

⁵ [NMFS Procedure 01-101-03: Operational Guidelines for the Magnuson-Stevens Fishery Conservation and Management Act Fishery Management Process](#)

⁶ [Integrating National Environmental Policy Act Compliance into a Reauthorized Magnuson-Stevens Act – A Council Coordination Committee Concept White Paper](#) (February 2015)

Section 508. Forage Fish Provisions

This section directs the Secretary to define forage fish, requires an assessment of the potential impacts of a new commercial forage fish fishery, and requires consideration of predator needs in existing fishery management plans.

The Council believes that forage fish play an important role in the structure and function of marine ecosystems. As such, we have taken a proactive approach to conserving unmanaged forage species and the ecosystem services they provide in the Mid-Atlantic region. During previous MSA reauthorization discussions we have been vocal in our support for the inclusion of a requirement to consider the ecological role of forage fish in the quota-setting process. However, we have also recommended avoiding overly prescriptive mandates for forage species. We believe the MSA language regarding Optimum Yield considerations already provides the Councils with adequate authority to address forage concerns. Greater specificity is unlikely to be appropriate given the rapid evolution of ecosystem science and the high degree of uncertainty that remains regarding interactions among species. Additionally, we believe forage fish cannot be defined with a one-size-fits-all description or criteria and that Councils should have the authority to determine which species should be considered and managed as forage fish.

Section 508 (c) requires each SSC to make recommendations regarding “maintaining a sufficient abundance, diversity, and localized distribution of forage fish populations to support the role of such populations in marine ecosystems.”

The Council requests clarification on whether this pertains to managed or unmanaged forage populations. As a general comment, the Council notes that there is very little information available to address certain components of this section. The Council also requests clarification regarding the meaning and intent of the term "localized distribution.”

Section 508 (d) would require the Council, in developing its 5-year research priorities, to “prioritize fisheries and habitats experiencing or expected to experience shifts in geographic range, spatial distribution, or productivity.”

The Council acknowledges the importance of understanding and collecting information on fisheries and habitats experiencing distribution and productivity changes. However, we have concerns about a statutory requirement to prioritize this specific area of research over other habitats/stocks which may be high priorities for other reasons. In general, we believe the Councils and SSCs should have full autonomy to determine how research needs are prioritized. Our concern with this section could be addressed by revising the wording to say “(B) identify priorities related to fisheries and habitats experiencing, or expected to experience, shifts in geographic range, spatial distribution, or productivity;”

Section 508 (g) requires the Secretary to, within 180 days, amend the Mid-Atlantic Council’s Atlantic Mackerel, Squid, and Butterfish FMP and the New England Council’s Atlantic Herring FMP to add shad and river herring to the list of managed stocks. Within one year from the date of the addition of the species to the FMPs, the Secretary would be required to complete plan amendments to develop and implement all required conservation and management measures for those species.

As a general principle, we believe the Councils should retain the authority to determine species requiring conservation and management through FMPs. Any legislation that directs the Secretary to prepare or amend fishery management plans (e.g., recent legislation to add shad and river herring as managed species) creates conflicts with current management under other existing authorities.

While the importance of river herring and shad (RH/S) from a fishery, cultural, or ecological perspective has never been in dispute, the Council has previously voted twice that an FMP would not be appropriate. The rationale, detailed in related supporting documents⁷, has been that (1) there is no evidence that RH/S are targeted in federal fisheries (despite spending the majority of their lives in the ocean), (2) RH/S are already being managed by the ASMFC⁸, (3) a Council FMP would not substantially improve the condition of RH/S stocks, and (4) the Council limits the catch of RH/S in federally-managed fisheries and reviews its approach annually.⁹

Because RH/S are caught in fisheries targeting other species that are managed by the Council, the Council works closely with its management partners, including the NOAA/ASMFC Technical Expert Working Group to promote the conservation of RH/S. The Council limits the incidental catch of RH/S in the Atlantic mackerel fishery through a catch cap that can and has closed the directed mackerel fishery when the cap is reached. The New England Council has similar provisions for the Atlantic Herring fishery. The combined caps in all federal fisheries since implementation of the RH/S caps has averaged less than 300 metric tons (2014-2019), which represents only a few percent of directed historic RH/S landings (20,000-35,000 metric tons in the 1950s and 1960s).

As we have noted in response to similar legislation introduced in previous Congresses, the timeline and process proposed in this section are unrealistic and problematic for several reasons. First, RH/S could not be added to an FMP without simultaneously establishing management measures for those stocks; the management measures are what makes an FMP. The MSA specifies that any FMP must contain the measures which are necessary and appropriate for the conservation of the fishery, to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery (16 U.S.C. §1853(a)(15)). Adding RH/S to the FMP and establishing management measures would need to occur within a single amendment. Therefore, it does not make sense to include two separate timelines in the bill.

Additionally, and as we noted in relation to Section 506 above, the time requirements proposed in this section could not be met while following the procedures described in the MSA and the National Environmental Policy Act (NEPA). It generally takes 2.5-4.5 years to complete a new FMP or major amendment, from the time action is initiated to implementation of new regulations. For example, when the Council established management of blueline tilefish through an amendment to the Tilefish FMP, it took about 2.5 years from initiation to final rule.

⁷ River Herring and Shad - Potential Management by the Mid-Atlantic Fishery Management Council, October 2016 Discussion Document (http://www.mafmc.org/s/MAFMC-RHS-Decision-Documents_2016-10.pdf).

⁸ See <http://www.asmfc.org/species/shad-river-herring> for details on ASMFC management.

⁹ It is important to note that contrary to the majority conclusion described above, some Council members believed, and continue to believe, that Council management would add substantially to RH/S conservation.

Blueline tilefish is a single species that only resides in offshore federal waters with few stakeholders, narrow habitat requirements, and a clear need for federal management. If Congress did decide to require Council FMP management of RH/S, the upper range of FMP implementation timing may be more appropriate, especially considering that our previous work on this issue indicated that a Council FMP would not substantially improve the condition of RH/S stocks.

Thank you again for the opportunity to provide these comments on behalf of the Mid-Atlantic Fishery Management Council. Please do not hesitate to contact me if you have any questions or would like clarification on any of the comments above. We appreciate your continued interest in our perspective and look forward to future involvement in MSA reauthorization discussions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Luisi", written in a cursive style.

Michael P. Luisi
Chairman

Cc: Mid-Atlantic Council Members and Staff
RFMC Executive Directors
Ms. Janet Coit
Mr. Dave Whaley



SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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Melvin Bell, Chair | Carolyn N. Belcher, Ph.D., Vice Chair
John Carmichael, Executive Director

September 30, 2021

The Honorable Jared Huffman
1527 Longworth House Office Building
Washington, DC 20515
c/o Casey MacLean, legislative assistant
Casey.MacLean@mail.house.gov

The Honorable Ed Case
2210 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Huffman and Case:

The South Atlantic Fishery Management Council appreciates this opportunity to provide comment on H.R. 4690, the Sustaining America's Fisheries for the Future Act (Act). The South Atlantic Fishery Management Council (SAFMC) is one of the eight fishery management councils in the US. Our jurisdiction extends along the Atlantic Coast from Monroe County, Florida, to the North Carolina – Virginia Border, placing us between the Gulf of Mexico and Mid-Atlantic Fishery Management Councils. Our portion of the Atlantic coast exhibits great diversity in habitats, fishery resources and fisheries. In recent years, the Exclusive Economic Zone in our area has been home to the highest number of recreational fishing trips in the nation. This area has also experienced phenomenal population growth and development in the 40 years since the Magnuson-Stevens Act was initially approved. As a result, we experience first-hand the challenges of climate change, council jurisdictional issues, waterfront development, and recreational fisheries management.

Our comments on H.R. 4690 are to some degree predicated on our ongoing efforts to fulfill the vision of the Sustainable Fishery Act of 1996 (SFA). While we have taken necessary actions to end overfishing and rebuild overfished stocks, for many stocks we have adopted fishing level recommendations that are based on minimal scientific information and often rely upon assumptions and precautionary principles. For example, only 17 of the 67 stock units we manage are managed under fishing levels based on accepted, peer-reviewed stock assessments. While the risks associated with establishing SFA-required Annual Catch Limit (ACLs) solely based on historic landings information are well known, due to the lack of information necessary to support more robust approaches, 41 of our stocks have ACLs based solely on landings. Our Scientific and Statistical Committee (SSC) has stated that the available catch estimates are not reliable for 17 stocks in our Snapper-Grouper Fishery Management Unit. Our constituents and fishery

advisors have made it clear for many years that they don't object to management by science, they object to management by assumption.

We share the Act's stated concerns about the impacts of climate change on fish stocks and fishery management systems as expressed in Title I. However, lacking adequate data to assess most of our managed stocks under current conditions, it could be difficult to reliably provide much of the requested information, such as how fishery productivity and yield will change in a dynamic environment. One counter-intuitive lesson we have already learned in dealing with data limited species is that it can be more difficult and time consuming to prepare analyses when data are scant as opposed to when data are abundant. This is because of the effort required to find useful data for comparison, evaluate information from similar species or from other areas, explore multiple possibilities and account for the added uncertainty that arises when dealing with inadequate data. Because our Fishery Management Plans (FMP) must comply with the MSA and National Standards requirements for ensuring the use of Best Scientific Information (BSIA) and Peer Reviews, information we use must meet a high standard and there is little flexibility for relaxing those standards when data simply do not exist. Additional data and research will likely be required to determine the impacts of climate change and the vulnerability of individual stocks while ensuring those determinations meet BSIA standards.

The lack of information currently available to adequately conduct the analyses to support requirements described in Title I will create additional uncertainties and likely result in reiteration of existing advice to simply be precautionary in the face of uncertainty. This could conflict with the needs of constituents and their communities as well as efforts to achieve Optimum Yield from fisheries. As managers, we cannot impact fish growth, recruitment, or natural mortality. This leaves fishing mortality as the only population factor under our influence, and therefore being precautionary means lowering fishing mortality and harvesting less. Our communities and constituents most certainly require and deserve sustainable management that ensures the long-term viability of the resources on which they depend, but they also require access to and use of those resources for their day-to-day enjoyment and even economic survival. It will be difficult to achieve the proper balance between these competing demands without adequate scientific information.

Thanks to our location between the Gulf of Mexico and Mid-Atlantic Fishery Management Councils, we are well versed in the current challenges presented by interjurisdictional fisheries and the potential for shifting stocks. It is difficult to determine how more frequent evaluations of Council jurisdictions will impact Council operations without more information on how terms such as 'substantial portion' are defined. Stocks need to be managed as functional biological units and defining those units requires consideration of much more than the geographic range of landings. Adults of some stocks may rapidly shift from historic seasonal ranges while it could take many years for spawning and nursery areas to change. Additionally, there can be differences between where fish are harvested and landed, and between where adults and juveniles live and where spawning occurs. Nonetheless, we can note that the time and effort required to develop a new FMP is measured in years, not months, so meeting some of the desired deadlines will be difficult. For example, meeting the current 2-year statutory deadline to develop a solution to overfishing can be challenging when that solution imposes significant negative impacts on fishing communities. Pursuing new FMPs that impact new resource users and impose new

monitoring requirements could take much longer in our open, public and transparent process. Given these realities, changing jurisdictions on a 5-year basis could result in scenarios where one Council barely completes, and the Agency perhaps does not even implement, an FMP before another change in jurisdiction is considered. At this point we simply do not know how most stocks will respond to climate changes that are yet to occur, and whether such changes will be permanent or ephemeral. Frequent or back and forth changes in jurisdiction could undermine confidence in managers and result in lost time and effort.

Our fisheries infrastructure is under continual threat from coastal development, population growth, and now climate change. Efforts to sustain, preserve, and support working waterfronts will benefit our constituents and help ensure access to the resources we work so hard to maintain. One of the explanations we hear from constituents regarding objections to catch reductions, even when they recognize that reductions are necessary for long-term stock sustainability, is that they operate on very narrow economic margins. Stronger support for the infrastructure they need to maintain viable businesses could help lower their costs and provide much needed relief.

The SAFMC recognizes the importance of transparency in a public process. One of the ways we promote clarity and transparency for those observing our deliberations is by liberal use of motions. Motions are routinely used for determining Actions and Alternatives and then modifying them throughout FMP development. We have had meetings where over 100 motions of this type were made, all of which were displayed in writing and stated verbally. Due to the time required to conduct a roll call vote, it would be impractical for us to continue with such liberal use of motions if roll call votes were required of every motion. This could ultimately result in an unintentional loss of transparency and clarity. SAFMC webcasts all Council and Advisory Panel meetings and provides transcripts from all meetings on our website as soon as possible. It can sometimes take up to 6 weeks to obtain transcripts when we have extensive back-to-back meetings. Efforts to shorten the deadline for posting such information would increase workload and possibly expenses.

It is difficult for us to determine the impacts of treating SAFMC employees as Federal employees for any requirements applying to Federal employees since we are not currently aware of the full scope of such requirements. It is likely that, at the very least, administrative costs will increase to ensure compliance with such requirements. Additional administrative staff may also be required, which, without additional resources to offset the added expense, will diminish resources currently devoted to developing fishery management actions. Recruitment and retention of staff could also become more challenging if the added requirements are not offset by equivalent benefits.

Clearly applying federal harassment and assault prevention standards to those already encompassed in the SAFMC process may improve working conditions for staff and ensure safe spaces for constituents. Current operations will benefit if these provisions increase our access to federal resources that are typically available to prevent issues or manage and address incidents that occur. Such provisions may help provide support if SAFMC leadership must address harassment or assault incidences in the future.

Provisions that expand electronic technologies, cooperative research opportunities, and improve programs such as Saltonstall-Kennedy may help address the abundant and long-standing data needs we reference throughout this letter. Success is contingent upon ensuring adequate resources to support these programs are provided to all Council regions. The proposed creation of regional advisory committees for the American Fisheries Advisory Committee could enhance consideration of regional needs. However, the South Atlantic is divided amongst these committees in ways that could adversely affect efforts to meet our needs. Including NC, SC, and GA in a regional committee with the mid-Atlantic states, and Florida in a different region with the Gulf states and US Caribbean, will be divisive and could create logistical challenges for our participation. The regions as proposed divide the SAFMC across two committees, separate most of our area from the NMFS' Southeast Region, in which we are also located (and with whom we share many challenges), and place part of our region with states located in the NMFS' Greater Atlantic Region. Current efforts to define potential climate change impacts, including a recent Atlantic Science Coordination Workshop convened by NMFS, underscore the need for consistent and coordinated scientific approaches throughout a stock's range. Dividing our member states and the range of most of our managed stocks across two regions could hinder efforts to coordinate scientific research and data collection.

The SAFMC has directly experienced constituent's frustration when the term 'Overfished' is used when stock decline is not simply due to excessive fishing. However, terminology changes typically increase confusion and sometimes redirect, rather than resolve, semantics problems. Fisherman object to "Overfished" because it seems to carry a cause-and-effect implication that is not always accurate. On the other hand, "depleted" might carry negative connotations concerning stock status and inferred fishing impacts that could possibly exacerbate unfounded fears of imminent extinction. This could result in even greater negative assumptions about fishery resource users that will increase outreach and communication demands and slow FMP development. Changing terminology does not address the desire expressed by our constituents to receive increased flexibility, relief, and accommodations for their needs when faced with a non-fishing-caused overfishing situation.

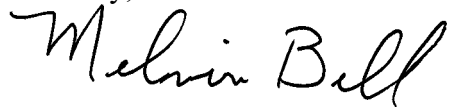
The SAFMC has previously raised concerns with the arbitrary 10-year rebuilding requirement because it is not biologically based and does not treat all stocks equally. For example, 10 years is a vastly different time period to a short-lived species than to a long-lived species. Striking the 10-year requirement and retaining the minimum rebuilding time defined as the time to rebuild in the absence of fishing plus a generation time for all stocks will simplify estimation of the minimum allowed rebuilding time, reduce the number of scenarios to be analyzed in developing rebuilding alternatives, and ensure all stocks are treated fairly, regardless of their life span.

In closing, the South Atlantic Council believes that management based on Maximum Sustained Yield with the goal of achieving Optimum Yield for our fisheries under the principles of the MSA and National Standards provides an effective foundation for ensuring stock, fishery, and community viability and resilience. Many of the issues we face are due to a chronic lack of essential information about the stocks we manage rather than deficiencies in the MSA. This forces us to rely on incomplete and imprecise information which in turn leads to operational delays and increased constituent challenges at every step. We face challenges fully achieving the vision of the 1996 Sustainable Fishery Act because we lack much of the basic information on

stocks, essential habitats and environments, economics, and fishing communities that scientists, managers, and fisherman all agree is critical for sound management. In many instances, our fishermen, fisheries, and supporting communities have borne the costs of management decisions made in the face of substantial yet often preventable uncertainties. Getting to the next level of predicting and responding to climate change impacts poses a considerable challenge given our lack of a historic baseline and data-limited starting point. Without adequate scientific information, the result will likely be increased precaution to address increased uncertainty which then leads to negative impacts in our communities. Therefore, we believe that ensuring resilient fisheries, habitats and communities for a sustainable future begins with ensuring adequate resources within our region to meet the MSA's science-based management obligations that will form the foundation of future climate change responses.

We are available to answer any questions you may have about the fisheries in the Southeastern U.S. as well as our specific comments on this bill. Thank you again for the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink that reads "Melvin Bell". The signature is written in a cursive, flowing style.

Melvin Bel
Chair

cc: Council Members and Staff
Monica Smit-Brunello
Council Coordination Committee
Mr. Dave Whaley

LN# 202113



Gulf of Mexico Fishery Management Council

Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico

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October 1, 2021

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006972OCT2021

The Honorable Ed Case
2210 Rayburn House Office Building
Washington, D.C. 20515
Wisdom.Matsuzaki@mail.house.gov

Dear Representatives Huffman and Case:

Thank you for holding listening sessions and reaching out to the Gulf of Mexico Fishery Management Council (Gulf Council) to provide comments on the *Sustaining America's Fisheries for the Future Act of 2021*. We appreciate these efforts and understand it took additional time and coordination with stakeholders across the Councils' jurisdictions. Unfortunately, due to the timing of this request, the Gulf Council, as a body, did not have an opportunity to review and comment on the bill. With the assistance of staff, I have provided comments on behalf of the Gulf Council. The Council Coordinating Committee meets in October 2021 and will continue to deliberate and provide feedback on this bill and others in the future.

Overall, the Gulf Council thinks that the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) is working well to provide science-based data and management approaches that promote sustainable fisheries and communities via an open and transparent public process. Any bills to reauthorize the Magnuson-Stevens Act should be carefully considered to ensure practicability and applicability for implementation with current resources, while not diminishing transparency of the Council processes, or compromising the flexibility that the Magnuson-Stevens Act intended for the regional management Councils.

Please find specific comments on important issues by section from the Gulf Council below:

Section 102: "Promoting Climate Resilience in Fisheries Management"

The current draft of the bill would add multiple requirements for climate – change related requirements for any new Fishery Management Plans or Amendments to those plans to contain conservation and management measures which "promote the resilience of fish stocks to cumulative stressors, including cumulative stressors associated with climate change".

Although the Gulf Council understands the intent of this text, there are already efforts at work for inclusion of this type of information in Gulf Council Fishery Management Plans. For example, there are already sections on climate change and environmental covariates such as red tide and hypoxia information in the Fishery Management Plans. At this time, the Gulf Council does not think this section is necessary or that it can practically be applied with the current resources in the Southeast. Specifically, the Gulf Council shares one NMFS Southeast Fisheries Science Center with two other regional management Councils and the NMFS Highly Migratory Species division. The completion of single stock assessments and process for implementing changes through the regulatory process is operating at maximum capacity; thus, taking any resources away from these efforts would slow management down. Further, we think there are such limited data sources available at this time to monitor and track climate related changes, that we do not anticipate that these efforts would result in any additional quantitative analysis that could be clearly identified as climate related impacts. For example, the Southeast needs robust indices for a baseline of habitat, coral, and fisheries with an assessment of health for more stocks before being able to assess if changes to these resources are a result of climate related impacts.

Section 105: “Managing Shifting Stocks”

The current draft of the bill requires “the Secretary to review the geographic authority of the Councils every five years or at the request of the Councils”. This review should determine whether “a substantial proportion of any fishery within such area is within the authority of another Council”. If deemed as such, the bill also requires the Secretary to “designate one of the Councils concerned to prepare the fishery management plan or amendment.

The section of the bill also establishes requirements for the Secretary to coordinate with the State Department and the Agency for International Development to address the research and management of species or stocks which presently, or may in the future, span international boundaries, including within the same species life stage or across life stages.

The Regional Management Councils are close cooperators with the academic institutions, state and federal agencies, and in many cases, international institutions and agencies by way of Council participation in international conferences. Thus, the Regional Management Councils are acutely cognizant of the requirements for coordinating both research and management domestically and with other partners. As an example, specific to the Gulf Council’s jurisdiction, collaboration between the Southeast Data, Assessment, and Review program with the Mexican government for Gulf of Mexico migratory group king mackerel has been an ongoing effort since as early as 2005. The last benchmark stock assessment of Gulf migratory group king mackerel sought to include life history, landings, and fishing effort data from recreational and commercial fleets in Mexico to create a more holistic view of the condition of the Gulf migratory group king mackerel stock. However, persistent gaps in available data by the Mexican state, and data availability in general, resulted in those efforts yielding results insufficient for use in the last benchmark stock assessment for this species. The research and management needs are easily identifiable; however, the funding

and coordination to conduct the research necessary to know more about the linkages between the U.S. and Mexican components of the Gulf migratory group king mackerel stock are insufficient for such an undertaking to be expected to succeed within a five-year timeline.

Further, to conduct the research necessary at an appropriate temporal scale to be useful in a stock assessment (at a minimum, three years of data), and to have that research vetted through peer-review, would be expected to take more than five years to complete from applying for funding, coordinating the research, processing the data, and completing the peer review process in an ideal scenario. Therefore, the Gulf Council does not expect the five-year requirement for conducting and completing research to be tenable. Implementing management measures within the current draft of the bill's 10-year timeline would also be unlikely, since it would be unknown whether the research commissioned would be completed in time to meet such a requirement. Also, many factors could confound both the pace of the research (e.g., funding, physical and human resources, weather, variations in the physical/biological/ecological environments) and management processes (e.g., international agreements and treaties, changes in administrations, differences in agency priorities).

Section 304: “Council Procedures and Participation”

The current draft of the bill requires Councils to hold roll call votes on all nonprocedural matters.

The Gulf Council takes a roll call vote on all final action fishery management plans and amendments; thus, the Gulf Council does not think it necessary to conduct roll call votes on all nonprocedural matters, as the tally of the final votes are included in the meeting record. Further, any Council member can request a roll call vote at any time during a meeting. Thus, the Gulf Council thinks this would add additional burden to the Council and take up additional valuable meeting time without a consequential outcome.

Section 305: “Council Accountability and Membership”

The current draft of the bill would “deem” all Council employees to be Federal employees and apply the same requirements to Council employees as Federal staff. The Council, committees, and Advisory Panel Members would be subject to all laws, rules and policies regarding ethics and sexual harassment or assault that apply to Federal employees.

The Gulf Council concurs with the application of sexual harassment and ethics policies applying to the Council and various advisory panels and committees. However, the Gulf Council and its staff are concerned about deeming all Council employees Federal. Although there will likely be inherit benefits to being a Federal employee, the autonomy and delineation that the regional Councils currently have should continue by keeping Council employees separate from Federal employees. This is especially imperative to the progress of the Magnuson-Stevens Act objectives during periods of federal government shut downs. It is unclear what administrative and legal burdens this change would place on the Regional Management Councils based on the current text.

Section 305(d)(3) amends MSA Section 302(b)(2)(C) (appointments by Governor) to remove the requirement that the governor consult with representatives of the commercial and recreational fishing interests of the state when making appointments to the Council.

The purpose of this deletion is unclear, unless it relates to the inclusion of non-consumptive users on the Council. Not consulting with fishing interests about the people that will be responsible for managing their fisheries is counter to the precepts of the Magnuson-Stevens Act, which is intended to be an open, science-based, stakeholder-driven process. The Gulf Council thinks this vetting process is an important step for transparency and a valued step in the appointment process. The requirement to consult with commercial and recreational fishing interests could be broadened to include other interested stakeholder groups.

305(d)(3) requires the Secretary to appoint at least one individual to each Council who does not have a financial interest in matters before the Council.

The Gulf Council is unclear what this new section means regarding “no financial interest”. The Gulf Council currently has four members that sit on the Council in the “Other / At-large seat” categories that are academicians, or individuals with expertise and career experience in marine resource management. Is the intent that Council seats would be reserved for specific interests such as environmental non-governmental organizations?

Section 402: “Expanding and Improving Electronic Technologies”

The current draft of the bill would amend the Magnuson-Stevens Act to allow the regional management Councils to require electronic monitoring or similar technology for data collection purposes.

Although many Gulf Council fisheries may not be applicable to electronic technologies at this time, it is in support of the language as long as it remains flexible (i.e., “allows the Councils to require” versus “requiring”). It should be left up to the regional management Council to assess the needs of the various fisheries and determine the best process with fishermen for “expanding and improving electronic technologies”. There may be some cases when observers need to be maintained, or the technology may be too burdensome to the industry to apply.

Section 403: “Stock Assessments”

The current draft of the bill requires the Secretary to report to Congress within one year and annually thereafter on NMFS progress to prioritize and improve stock assessments.

Although the Secretary has the primary responsibility, this would require significant effort on the part of the regional management Councils on an annual basis and there are unlikely to be large scale changes on an annual basis to prioritization and stock assessment

improvements. The Gulf Council suggests consideration of a less frequent reporting requirement.

Section 404: “Cooperative Research and Management”

The current draft of the bill clarifies that fishing communities can be included in partnerships under the cooperative research and management authority. It requires the Secretary to award funding on a competitive basis based on regional needs and selected programs that are prioritized from the Council.

The Gulf Council thinks cooperative data collection can be valuable to the management process and scientific understanding, but studies and results should be subjected to an adequate peer review process. However, forcing Regional Management Councils through its stock assessment processes to include data because it was gathered through cooperative data collection may not be useful or beneficial to reaching the conclusion of best scientific information available (BSIA). Often, stakeholders are quite eager to share their knowledge with the Gulf Council and stock assessment analysts. This information can be offered as contrast during the stock assessment process to serve as a sort of “check” against the trends in the data for a given species. Many regional Councils also have mechanisms to collect data from stakeholders which are used to inform the stock assessment and management processes. For example, the Council’s Something’s Fishy tool has been utilized before stock assessments to ascertain stakeholder observations and provide context for the information ultimately used in each assessment.

Section 404(a) of the bill requires the Councils to provide a critical list of research needs to the Secretary on an annual basis.

The Gulf Council currently maintains an Updated List of Fishery Monitoring and Research Priorities on its website¹. These research and monitoring priorities are updated every 5-years in coordination with a new grant cycle. The Gulf Council could certainly provide a list of annual research needs to the Secretary, yet many of these would require multi-year projects to fulfill, so it is unclear if an annual list is necessary, particularly without a clear feedback loop of how the previous year research and data needs were achieved. The Gulf Council suggests a longer time period for Council research requests and granting years of funding to fulfill the research or data need of the regional management Council.

Section 406: “Recreational Data Consistency”

The current draft of the bill requires the Secretary within two years of implementation to establish guidelines for recreational catch data, such as “data standards to improve timeliness, accuracy, precision, and validation of data produced by recreational surveys in order to facilitate the use of such data in assessments, for use in management actions, and for other uses”. It also states that if “recreational data come from more than one source

¹ <https://gulfcouncil.org/wp-content/uploads/GMFMC-Updated-List-of-Fishery-Research-and-Monitoring-Priorities-2020-2024-091819.pdf>

the Secretary shall implement measures which may include the use of calibration methods, as needed for the timely integration of such data...

The Gulf Council supports the continued collaboration and ongoing effort with Office of Science and Technology and the Gulf States Marine Fisheries Commission to improve recreational landings and effort data in the Gulf. It is unclear if the Secretary were to provide a recommendation for calibration methods, if it would be any different than the NMFS Regional Administrator. The Gulf Council agrees that there are still numerous issues to work through regarding calibration of MRIP-Coastal Household Telephone Survey and MRIP-Fishing Effort Survey, and the supplemental state surveys for many species in the States of Mississippi, Alabama, and Florida who have supplemental surveys to the MRIP-FES surveys. Since the eastern Gulf states have already established supplemental data collection programs for many species and NOAA Office of Science and Technology provided certification of fishery survey methods for LA Creel, Tails N Scales, Snapper Check, and the State Reef Fish Survey,² it is unclear why the Secretary would need to go through this process again.

A better approach would be to ask the Secretary to work with NOAA Office of Science and Technology to address the survey discrepancies and report back to the Gulf Council and its Scientific and Statistical Committee with their findings. Specifically, investigate the survey methods used to generate catch rates and effort estimates by development of a pilot program (or other appropriate method) to discern whether current shore-based survey methods can be improved to inform the full effort estimate. Second, the Secretary could work with NOAA Office of Science and Technology to prioritize the development of a protocol to detect extreme or unusual values (i.e., outliers) in MRIP-FES catch estimates and determine their source (i.e. input data or calibration procedures).

Section 406: “Recreational Data Improvement Program”

The current draft of the bill requires the Secretary within one year of enactment to establish a strategic plan for recreational data improvements. The plan shall improve coordination between Federal programs that implement recreational fishing surveys and other data from non-Federal sources, including data from States or Marine Fisheries Commissions; Including improve the timeliness, accuracy, precision, and validation of data produced by surveys.”

The Gulf Council thinks this new requirement could provide benefits to the recreational fishery sampling programs. However, one year may not be enough time to develop a rigorous strategic plan, with input from stakeholders. Second the Gulf Council thinks the plan also needs to include suggestions or resources for implementation of improvements highlighted within the Secretary’s plan. Further, the bill suggest that the Secretary’s strategic plan should include “research” on several issues, but it is unclear how that research and improvements could be operationalized with the current resources by the Councils and

² <https://www.fisheries.noaa.gov/recreational-fishing-data/certified-recreational-fishing-survey-designs>

supporting Federal and State agencies, with the exception of the use of tag and endorsement measures to fund these improvements.

Section 407: “Emergency Operating Plans”

The current draft of the bill requires the “Administrator within in one year of enactment, in consultation with the Fishery Management Councils, to develop a plan for circumstances that would make fisheries monitoring, including human observation, and stock assessments impracticable.”

The Gulf Council thinks this is an important exercise based on the recent history of the events with the COVID-19 pandemic. However, the 1-year timeframe may be not be realistic for inclusion of stakeholders and outreach via the Fishery Management Councils.

Section 409: “Offshore Wind Collaboration”

The current draft of the bill requires the “Secretary and the Secretary of the Interior, acting through the Bureau of Ocean Energy Management, shall enter into a cooperative agreement to fund such additional stock assessments and fisheries and marine wildlife research as may be necessary as a result of actions by such Bureau related to the development of offshore wind energy.”

The Gulf Council thinks that this is relevant for the best fisheries science and any impacts resulting from the development of offshore wind energy.

Section 502: “Essential Fish Habitat Consultation”

This section modifies provisions regarding essential fish habitat (EFH) and habitat areas of particular concern (HAPCs). The proposed modifications to the consultation processes are anticipated to increase the communication between the Council and the agency by requiring the agency to “inform each Council that the authority over an affected fishery of any consultation carried out under paragraph (2), including information on the proposed action and any potential adverse effects.”

The Gulf Council encourages collaboration with the NMFS regarding the EFH process but recommends more specific language as to what proposed updates would be presented. The Gulf Council recognizes that the NMFS Southeast Regional Office handles numerous consultations, many of which may determine “potential adverse effects”, but may not have direct interest to the Council. Perhaps consultation updates could be focused on those that result in recommendations for substantial changes to fishing activity and are deemed of interest by the Council and/or the southeast regional office.

While the proposed modifications are specific to the consultation process, the Gulf Council recommends consideration of modifications to the process of updating identifications and descriptions of EFH. Climate change affects are likely influencing habitat selection, especially for pelagic species, and requiring a plan amendment slows the ability to rapidly

update descriptions of EFH. The Gulf Council suggests additionally modifying Magnuson-Stevens Act provisions to allow for the option of updating descriptions of EFH through a framework action if no major federal action is identified.

Section 503: “Reducing Bycatch”

This section amends National Standard 9 wording by removing the words “to the extent practicable”. This section also removes the term “to the extent practicable” from the requirement to assess the amount and type of bycatch occurring in the fishery and management measure that minimize bycatch and minimize mortality of bycatch that cannot be avoided”. This section also establishes a new nationwide standardized bycatch methodology and reporting system.

All recreational and commercial fisheries will have discards due to size or species preference or simply due to regulations. The deletion of the words “to the extent practicable” could tie the Gulf Council’s hands and result in unnecessary closures of recreational and commercial fisheries if the national standards cannot be balanced. The word “practicable” allows the Gulf Council to weigh the biological impacts of discarded fish with the social and economic impacts and tradeoffs in management decisions. The Gulf Council thinks more clarity is needed to better understand the impacts of these changes on catch and release fisheries.

The Gulf Council is supportive of programs aimed at improving data collection and quantification of bycatch, including a national standardized program, as long as it still allows for regional flexibility. However, the two-year timeline is unlikely to be sufficient to develop and implement such a program. The variety of fisheries, number of bycatch species, and the resources available to manage varies greatly among regions and will likely require an iterative approach to develop a national program. In some cases, the requirement to implement consistent data reporting may require the development of new data reporting tools and systems to receive and store the data. Again, these requirements are laudable but unlikely to be developed and implemented within the two-year timeline.

Section 504: “Improving Rebuilding Plan Outcomes”

The current draft of the bill details the process by which the Secretary is to ensure that rebuilding plans are effective in meeting the rebuilding requirements. If not, it sets up provisions for when multiple failures of rebuilding have occurred. Current draft of the bill: “(i) the status of the stock is not improving sufficiently such that it becomes unlikely that the stock will be rebuilt within the rebuilding time period”

The Gulf Council notes that there may be circumstances where the data available for a species are too poor to properly understand the true dynamics of a stock, and that contemporary corrective measures may not yield the predicted results. An example in the Gulf Council’s jurisdiction for this point is greater amberjack which, despite being in its second modified rebuilding plan, continues to be depleted and undergoing overfishing. In this example, the NMFS lacks the data to accurately predict when to close the recreational

fishery, resulting in several historical overages of established catch limits despite near annual modifications (reductions or constraints) to fishing effort for both the recreational and commercial fishery. Further, despite these management modifications, the latest stock assessment of Gulf greater amberjack, using data through 2018, found the stock to be more depleted than the previous stock assessment and still undergoing overfishing, indicating that the stock has not responded to management modifications based on the best scientific information available. This example demonstrates that the data available may be “inaccurate, and such inaccuracies render the current rebuilding plan unable to address the stock’s rebuilding needs.” In this circumstance, given that the best scientific information available may not be adequate, it is unclear what measures may be available to the Secretary to “immediately make revisions necessary to achieve adequate progress toward rebuilding by the deadline established” beyond a fishery closure, which would likely result in substantial negative social and economic effects in the Gulf region. Further, it is unclear, under this circumstance, what alternative rebuilding plan having “no less than a 75 percent chance of rebuilding the fishery by the end of the new time period” could be established if the best scientific information available has proven insufficient to adequately inform appropriate fisheries management measures to correct the depleted condition of the stock.

Section 505: “Depleted Fisheries and Preventing Overfishing”

Section 505(a)

The current draft of the bill adds a definition for ‘depleted’ and replaces the word “overfished.” It defines “depleted” as with respect to a stock or stock complex, that its biomass has declined below the level at which the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis is jeopardized. A depleted condition may be caused by numerous factors, alone or in combination, such as fishing effort, habitat loss, ecosystem changes or climate change, overfishing, inadequate forage, or other characteristics of stressors on the stock or stock complex. The current definition of “overfishing” is replaced with a single definition combining both “overfishing and overfished.”

The Gulf Council thinks it is important to distinguish between “overfishing” and “overfished.” However, the “depleted definition” may be problematic in practice for many of our unassessed stocks, as the best scientific information available may be insufficient to calculate maximum sustainable yield. Without adequate data, determining an appropriate proxy for maximum sustainable yield may also prove problematic

Section 505(b)

The current draft of the bill outlines several new recommendation requirements for the Council’s Scientific and Statistic Committee; they “shall provide the appropriate Council with ongoing scientific advice for fishery management decisions that include not only stock status but reports on stock status and health, sources of mortality, bycatch, habitat status, social, ecological, and economic impacts of management measures, and sustainability of

fishing practices, and prevailing and anticipated future impacts of climate change on fish stocks, fishing communities, and fishery sectors.”

The Gulf Council’s Scientific and Statistical Committee typically provides recommendations on stock status and management advice; however, the numerous other new responsibilities of the Scientific and Statistical Committee are largely outside its knowledge and charge. Presently, the full scope of the required recommendations detailed in the current version of the bill are provided to the Gulf Council from a variety of sources, including the Scientific and Statistical Committee, Council staff, the NMFS Southeast Regional Office, the Southeast Fisheries Science Center, and the NOAA Office of Science and Technology. For example, many of the reports listed in the proposed bill such as the “bycatch and sources of mortality” are generated by the NMFS Science Center in cooperation with supporting State and Federal agencies. The Gulf Council thinks some of the requirements for the Scientific and Statistical Committee should be softened to providing “knowledgeable guidance and feedback on these various reports” versus “the Scientific and Statistical Committee generating the reports”. Further, there may be numerous data limitations to some of the reports in the Southeast such as the “future impacts of climate change on fish stocks, fishing communities, and fishery sectors” which could result in greater uncertainty and may violate National Standards 1 and 2.

Section 507: “Councils”

This section amends the Magnuson-Stevens Act to require Councils, with Scientific and Statistical Committees within the next 5-years to “prioritize fisheries and habitats experiencing or expected to experience shifts in geographic range, spatial distribution, or productivity. It would require Councils to “develop and implement a plan to protect essential fish habitat in the region of the Council from adverse effects caused by fishing.”

The Gulf Council is concerned about workload for this proposed amendment to the Magnuson-Stevens Act and overall, the various data limitations we currently have in the Southeast. The Gulf Council currently conducts a 5-year review of the various EFH for FMPs and is currently working on an amendment to implement modifications to its FMPs from the last review.

Section 508: “Forage Fish Provisions”

This section proposes adding major elements, mandates, and requirements of the Council’s Scientific and Statistical Committee for managing forage fish. These range from: defining forage fish to requiring the Scientific and Statistical Committee to make recommendations on sufficient abundance, diversity, and population distribution as well as research needs. Requires the development of Fishery Management Plans to quantify and specify the dietary needs of forage fish and other marine wildlife including marine mammals and birds.

The Gulf Council is concerned about these mandates. The NMFS Science Center is completing stock assessments at maximum capacity and we do not currently have the resources or data at hand in the Southeast to implement many of these requirements. As

written, these new mandates would significantly increase workload for not only the Councils and NOAA supporting agencies, but State partners who collect and conduct the assessments on many of the forage fish species in the Gulf of Mexico. Forage fish in the Gulf, with the exception of penaeid shrimp, are managed or at least monitored by the five Gulf states and Commission.

In the Southeast region, resources to conduct stock assessments for targeted species with consistency are limited, let alone forage species for which even less life history and abundance information is available. Further, requiring the Councils to utilize limited resources for establishing catch limits for species of which little is documented maybe non-productive. Most forage fish are short-lived, and vulnerable to environmental perturbations. Continuing the practice of not monitoring landings of short-lived species, the flexibility requested by the Councils in that manner is further requested if the active management of forage species becomes a responsibility of the Councils. For this reason, forage fish should be exempt from management under an ACL. Finally, the Gulf Council is working to develop its first Ecosystem Fishery Plan. It will likely consider and incorporate information and interactions of forage fish and its prey as data and information becomes available.


Section 510: “Authorization of Appropriations”

The bill proposes funds on an annual basis starting in 2022 to be appropriated to the Secretary.

The Gulf Council thinks the increase in funding tied to the bill is imperative considering the additional mandates proposed in this bill. This is especially crucial when considering the tremendous amount of work tasked to the southeast regional office and science center as these offices are responsible for supporting three different regional Councils; more than any other region in the country.

In closing do not hesitate to reach out to me or Dr. Carrie Simmons, Executive Director should you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Dale A. Diaz".

Dale Diaz
Council Chair

Cc: Gulf Council / Council staff / RMC Executive Directors / Dave Whaley / Janet Coit