



To: Subcommittee on Water, Oceans and Wildlife Republican Members
From: Subcommittee on Water, Oceans and Wildlife Republican Staff; Kiel Weaver (Kiel.Weaver@mail.house.gov), Annick Miller (Annick.Miller@mail.house.gov), and Rob MacGregor (Robert.MacGregor@mail.house.gov)
Date: November 12, 2021
Subject: Legislative Hearing on H.R.59, H.R. 4690, and H.R 5770

On Tuesday, November 16, 2021, at 2:00 p.m. EST, in room 1324 Longworth House Office Building and via Cisco Webex, the Subcommittee on Water, Oceans and Wildlife will hold a hybrid legislative hearing on three proposals that reauthorize the Magnuson-Stevens Act and the Forage Fish Conservation Act.

Member offices are requested to notify Annick Miller no later than Monday, November 15, at 4:30 p.m. EST, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- The Magnuson-Stevens Act is the primary law governing fisheries resources and fishing activities in federal waters, which support millions of fisheries-related jobs and billions of dollars of commercial and recreational fishing activities.
- The law has not been reauthorized since 2006.
- One bill, sponsored by the Dean of the House and one of the original authors of the law, Congressman Don Young (R-AK), continues the successes of the law and maintains a regional-based fisheries approach while offering flexibilities.
- The other bill, sponsored by Rep. Jared Huffman (D-CA), makes the law more inflexible and prescriptive and provides more authority to the Secretary of Commerce at the potential expense of the regions.

II. WITNESSES

Panel I – Federal

- **Ms. Janet Coit**, Assistant Administrator, National Marine Fisheries Service & Acting Assistant Secretary of Commerce for Oceans and Atmosphere, and Deputy NOAA Administrator, Washington, DC
- **Mr. Marc Gorelnik**, Chair of Council Coordination Committee, Chair of Pacific Fishery Management Council, San Francisco, California

Panel II – Non-Federal

- **Mr. Shannon Carroll**, Associate Director of Public Policy, Trident Seafoods, Girdwood, Alaska (Republican witness)
- **Dr. Sean Powers**, School of Marine & Environmental Sciences, Dauphin Island Sea Lab, University of South Alabama, Mobile, Alabama (Republican witness)
- **Ms. Meredith Moore**, Director-Fish Conservation Program, Ocean Conservancy, Washington, DC
- **Mr. John Pappalardo**, CEO, Cape Cod Commercial Fishermen’s Alliance, Inc., Chatham, Massachusetts
- **Dr. Willy Goldsmith**, Executive Director, American Saltwater Guide Association, Washington, DC
- **Dr. William J. Aila**, Chairman, Hawaiian Homes Commission, Honolulu, Hawaii
- **Ms. Mary Peltola**, Executive Director, Kuskokwim River Inter-Tribal Fish Commission, Anchorage, Alaska

III. BACKGROUND

Commercial and recreational saltwater fisheries support 1.74 million U.S. jobs.¹ Commercial and recreational fisheries combined generated upwards of \$244.1 billion in sales impact, and nearly \$110.7 billion in value-added impacts to the U.S. economy.² The Magnuson-Stevens Fishery and Conservation Management Act of 1976 (MSA, 16 U.S.C. 1801 et seq.) is the primary law governing fisheries resources and fishing activities in federal waters. While the MSA was named for Senators Warren Magnuson of Washington and Ted Stevens of Alaska, Congressman Don Young (R-AK) sponsored the original bill when it passed the House of Representatives in 1976. The Secretary of Commerce, working through the National Oceanic and Atmospheric Administration (NOAA), enforces the MSA. Initially passed in 1976, the MSA set out to prevent overfishing, rebuild over fished stocks, increase long-term social and economic benefits, and ensure a safe sustainable seafood supply. To accomplish these goals, the law extended U.S. jurisdiction from the then 12 nautical miles offshore to 200 nautical miles offshore, as well as established eight Regional Fishery Management Councils (Councils) that include representation from coastal states and various fishery stakeholders.³

¹ [Department of Commerce: Fisheries Economics of the United States 2017.](#)

² *Id.*

³ “About the MSA.” U.S. Regional Fishery Management Councils, <http://www.fisherycouncils.org/about-the-msa>.



The Councils are tasked with implementing the goals of MSA, in coordination with NOAA. This process of managing fisheries is accomplished through Council-based Fisheries Management Plans (FMPs) for each fishery. FMPs require scientific stock assessments of the fishery. Following the Council’s development of an FMP, the Council forwards the plan to the Commerce Secretary for approval. If the plan is approved, the National Marine Fisheries Service (NMFS) within NOAA must then issue regulations to implement a plan.⁴

Congress reauthorized MSA in 1996 and most recently in 2006 with the passage of the MSA Reauthorization Act (P.L. 109-479), which established Annual Catch Limits (ACLs).⁵ It also amended the High Seas Driftnet Fisheries Enforcement Act (P.L. 102-582) which provided the U.S. the ability to strengthen international fishery management practices by addressing illegal, unreported, and unregulated (IUU) fishing and bycatch of protected living marine resources.⁶

In 2018, Congress amended the MSA with the Modernizing Recreational Fisheries Management Act (P.L. 115-405) that aimed to improve recreational fishing data and management of mixed-use fisheries through requirements to conduct new reports, studies, and guidance in the sector.⁷ Although the MSA’s authorization of appropriations expired in Fiscal Year 2013, its requirements remain in effect and Congress has continued to appropriate funds to administer the law.

IV. SECTION BY SECTION

H.R.59 (Rep. Don Young, R-AK) – Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.

H.R. 59 is similar to a bill (H.R. 200 in the 115th Congress), that Congressman Don Young (R–AK) introduced in 2017, which passed the House of Representatives by a 222 to 193 vote on July 11, 2018, after being favorably reported by the Natural Resources Committee.⁸ T In the 115th Congress, the Water, Power and Oceans Subcommittee also held oversight and legislative hearings on the successes and challenges of implementing MSA and the 2006 amendments to the law.⁹ The committee report for the bill can be found [HERE](#).

TITLE I - MAGNUSON-STEVENS ACT FINDINGS AND DEFINITIONS AMENDMENTS AND REAUTHORIZATION

Amendments to Definitions.

Modifies the existing definitions of “overfishing” and “overfished” to clarify that the definition for the term “overfishing” means “a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield on a continuing basis.” In addition, it provides a definition of “depleted” and “subsistence fishing.”

⁴ <http://www.fisherycouncils.org/>

⁵ The Sustainable Fisheries Act (P.L. 104-297)

⁶ “Magnuson-Stevens Act.” NOAA, <https://www.fisheries.noaa.gov/topic/laws-policies>

⁷ Id.

⁸ <https://www.congress.gov/115/crpt/hrpt758/CRPT-115hrpt758.pdf>

⁹ July 19, 2017

Authorization of Appropriations.

Extends the \$396.87 million in annual authorization currently provided under the Magnuson-Stevens Act for five years (Fiscal Years 2021-2025).

TITLE II – FISHERIES MANAGEMENT FLEXIBILITY AND MODERNIZATION**South Atlantic and Gulf of Mexico Mixed-Use Fisheries.**

Requires the Secretary of Commerce (Secretary), through the National Oceanic and Atmospheric Administration (NOAA), to work with the National Academy of Sciences (NAS) to conduct a study of the South Atlantic and Gulf of Mexico mixed-use fisheries. The study, and report to Congress, is required to include the following:

- guidance to the South Atlantic and Gulf of Mexico Councils on criteria that could be used for allocating fishing privileges in a fishery management plan;
- identify sources of information that could support the use of such criteria in allocation decisions;
- develop procedures for allocation reviews and potential adjustments in allocations; and
- require that the NAS to consider the ecological, economic, and social factors relevant to each sector of the mixed-use fishery.

The South Atlantic and Gulf of Mexico Councils are required to perform a review of allocations among the commercial and recreational sectors in all mixed-use fisheries within their jurisdiction and perform a similar review every five years thereafter.

Alternative Fishery Management Measures.

Allows the Regional Fishery Management Councils (Councils) to use alternative fishery management measures in a recreational fishery or for the recreational component of a mixed-use fishery, as long as they remain consistent with the requirements under MSA.

Modifications to the Annual Catch Limit Requirement.

Authorizes the Councils to consider changes in the ecosystem and the economic needs of the fishing communities when setting Annual Catch Limits (ACLs). This will allow flexibility but not allow Councils to set ACLs at a level that allows overfishing. It adds a new exception to the requirement that Councils set an ACL for “ecosystem component species”—those species of fish that are not targeted and are caught incidentally if that stock of fish is not subject to overfishing and is not likely to become subject to overfishing. It provides an exemption for those short-lived stocks of fish for which a single year class will complete their lifecycle in less than eighteen months if fishing mortality will have little impact on the stock.

Limitation on Future Catch Share Programs.

Creates a pilot project prohibiting the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Fishery Management Councils from implementing any new catch share program unless it has been approved by an industry referendum vote. Any federal permit holder who has fished in at least three of the five years preceding the referendum—unless sickness, injury or other unavoidable hardship prevented the permit holder from fishing— would be eligible to vote in the referendum.

Prior to a referendum, the Secretary must provide all eligible permit holders with a copy of the proposed program, an estimate of the costs of the program, an estimate of the number of fish or percentage of the quota each permit holder would be allocated, and information on the schedule, procedures, and eligibility criteria for the referendum.

Study of Limited Access Privilege Programs for Mixed-Use Fisheries.

Requires the Secretary to enter into an agreement with the Ocean Studies Board of the National Academies of Sciences, Engineering, and Medicine to study the use of limited access privilege programs in mixed-use fisheries. The study, and report to Congress, must identify any inequities caused by a limited access privilege program, recommend policies to address any identified inequities, and identify and recommend different factors and information to mitigate any identified inequities that should be considered when designing, establishing, or maintaining a limited access privilege program in a mixed-use fishery.

Cooperative Data Collection.

Requires the Secretary to develop, in consultation with the Councils and the Marine Fisheries Commissions, a report to Congress on facilitating greater incorporation of data, analysis, stock assessments and surveys from State agencies and non-governmental sources into fishery management decisions.

In developing the report, the Secretary must identify types of data and analysis, especially concerning recreational fishing, that could be reliably used as a basis for conservation and management measures and provide specific recommendations for collecting data and performing analyses identified as necessary to reduce uncertainty and improve the accuracy of future stock assessments and including whether such data and analyses could be provided by non-governmental sources.

The Secretary is also required to evaluate whether the design of the Marine Recreational Information Program (MRIP) for the purposes of stock assessments and determination of stock management reference points is compatible with the needs of in-season management of annual catch limits. If MRIP is incompatible with the needs of in-season management of annual catch limits, the Secretary must determine an alternative method for in-season management.

Recreational Fishing Data.

Establishes partnerships with States to develop best practices for implementing State recreational fisheries programs.

Miscellaneous Amendments.

- Establishes a “liaison” for each of the New England and Mid-Atlantic Councils to ensure continuity of management between the Councils on shared stocks.
- Prohibits the Secretary from counting red snapper mortality that is a result of the removal of offshore oil rigs against the total allowable catch.
- Prohibits the Secretary from counting any fish seized from a foreign vessel engaging in illegal fishing in the U.S. exclusive economic zone (EEZ) against the total allowable catch for U.S. fishermen.

Northeast Regional Pilot Research Trawl Survey and Study.

Requires the Secretary, in consultation with the Councils and the Northeast Area Monitoring and Assessment Program (NEAMAP), develop a fishing industry-based Northeast regional pilot research trawl survey and study to enhance and provide improvement to current vessel trawl survey.

TITLE III – HEALTHY FISHERIES THROUGH BETTER SCIENCE

Healthy Fisheries Through Better Science.

Requires the Secretary to develop and publish in the Federal Register a plan to conduct stock assessments for all stocks of fish under a fishery management plan. The plan must establish a schedule for updating stock assessments for each stock of fish for which a stock assessment has already been conducted that is reasonable, based on the biology and characteristics of the stock.

Transparency and Public Process.

Requires each Council, to the extent practicable, to provide a webcast, audio recording, or live broadcast of each Council meeting. Requires Councils to provide audio, video, searchable audio or written transcripts for each Council and SSC meeting on the Council's website not more than 30 days after the conclusion of the meeting.

Flexibility in Rebuilding Fish Stocks.

Removes the requirement of a ten-year time frame for rebuilding overfished/depleted fisheries and replaces it with a requirement that the rebuilding timeframe be the time it would take for the fishery to rebuild "without any fishing occurring plus one mean generation". Provides specific exemptions to this requirement for cases that are under international agreement, the cause of the depletion is outside its jurisdiction or other listed exemptions.

Allows a fishery management plan for any fishery that is considered overfished/depleted to use alternative rebuilding strategies including harvest control rules and fishing mortality rate targets. In addition, Councils can terminate any rebuilding plan for a fishery that was initially determined to be overfished/depleted and then found not to be overfished/depleted within two years or within 90 days after the completion of the next stock assessment.

Exempted Fishing Permits.

Directs the Secretary to review Exempted Fishing Permit (EFP) and determine whether any unintended negative impacts have occurred that would warrant the discontinuation of the permit.

Cooperative Research and Management Program.

Requires the Secretary to publish a plan for implementing and conducting a cooperative research and management program that identifies critical regional fishery management and research needs, possible projects to address the identified needs, and the estimated costs for such projects.

Gulf of Mexico Fisheries Cooperative Research and Red Snapper Management.

Requires NOAA to include Gulf State recreational surveys certified by the Secretary and include other data related to red snapper gathered by the Gulf States Marine Fisheries Commission, non-

governmental organizations, and other non-governmental sources in establishing the acceptable biological catch and total allowable catch for Gulf of Mexico red snapper.

Requires NOAA to develop a schedule of stock surveys and stock assessments for the Gulf of Mexico region and the Southeast region for the five-year period beginning on the date of enactment and for every five-year period thereafter giving priority to those stocks that are commercially or recreationally important and ensuring that each important stock is surveyed at least once every five years.

TITLE IV—STRENGTHENING FISHING COMMUNITIES

Estimation of Cost of Recovery from Fishery Resource Disaster.

Requires the Secretary to publish the estimated cost of recovery from a fishery resource disaster within 30 days from the time the Secretary makes the disaster determination.

Deadline for Action on Request by Governor for Determination Regarding Fishery Resource Disaster.

Sets a 90-day deadline for the Secretary to decide regarding a disaster assistance request.

Limitation on Harvest in North Pacific Directed Pollock Fishery.

Allows the North Pacific Council to change the harvest limitation for entities engaged in the directed pollock fishery if that percentage does not exceed 24 percent.

Arctic Community Development Quota.

Requires the North Pacific Fishery Management Council to set aside no less than ten percent of the total allowable catch for a community development quota for coastal villages located north and east of the Bering Strait, if the Council issues a fishery management plan for the EEZ in the Arctic Ocean or an amendment to the Fishery Management Plan for Fish Resources of the Arctic Management Area that makes fish available to commercial fishing and establishes a sustainable harvest level for any part of that zone.

Reallocation of Certain Unused Harvest Allocation.

Authorizes the reallocation of unused harvest allocation to the Aleut Corporation for the purposes of economic development in Adak, Alaska.

Prohibition on Shark Feeding Off Coast of Florida.

Makes it unlawful for any diver or diving operation (for hire vessel transporting divers) to engage in shark feeding or observing shark feeding in Federal waters off the coast of Florida. This provision does not apply to research institutions, universities, or government agencies for research purposes or for the purpose of harvesting sharks.

Restoration of Historically Freshwater Environment.

Amends the definition of “essential fish habitat” by including certain exemptions to the definition. This includes that “essential fish habitats” do not include any area previously covered by land or a freshwater environment in a State where the average annual land loss of such State during the 20 years before the date of enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act exceeds 10 square miles.

TITLE V—MISCELLANEOUS PROVISIONS

Mitigation for Impacts to Submerged Aquatic Vegetation.

Exempts the maintenance dredging of authorized Federal navigation projects in North Carolina, South Carolina, Georgia, or Florida from requirements to conserve or to provide compensatory mitigation for impacts to submerged aquatic vegetation.

Plan for Electronic Monitoring and Reporting Procedures for the North East Multispecies Fishery.

Requires NOAA to submit a plan to Congress by September 30, 2023 to establish fully operational electronic monitoring and reporting procedures for the Northeast Multispecies Fishery.

Study of Fees Charged to Lobster Fishing Industry.

Requires NOAA to report to Congress on all the fees imposed by NOAA on the lobster fishing industry.

Limitation on Application of Prohibition of Atlantic Striped Bass Fishing in Block Island Sound Transit Zone.

Exempts the Block Island Sound transit zone from any prohibition on fishing for Atlantic striped bass.

TITLE VI—REEF ASSASSIN ACT

Directs the Secretary to issue regulations under which a participating state may allow individuals to exchange 100 lionfish for one tag that authorizes recreational or commercial fishing for covered species. Covered species are defined as red snapper, gag grouper, triggerfish, and amberjack.

[H.R. 4690](#) (Rep. Jared Huffman, D-CA) – Sustaining America’s Fisheries for the Future Act of 2021.

Unlike previous MSA reauthorizations, the Committee has not held a single oversight hearing on what improvements can be made to MSA in this or last Congress. While Congressman Huffman held a “MSA listening tour” last Congress, those events were not part of official committee business or the bill’s legislative history. Congressman Huffman asked Regional Fishery Management Councils to comment on H.R. 4690. Their comments are available below:

- [North Pacific Council Letter](#)
- [Pacific Council Letter](#)
- [Mid-Atlantic Council Letter](#)
- [New England Council Letter](#)
- [South Atlantic Council Letter](#)

- [Gulf Council Letter](#)
- [Western Pacific Council](#)

TITLE I – CLIMATE-READY FISHERIES

Findings, purpose, and policy.

Makes several changes to the MSA’s findings, purpose, and policy statements to include more language regarding climate change. Specifically, it modifies the purpose of the Regional Fishery Management Councils to include the impacts of climate change on fish stocks, marine ecosystem, and coastal communities as part of fishery management plans.

Promoting climate resilience in fisheries management.

Adds new requirements for fishery management plans and amendments, submitted after January 1, 2021, to incorporate several climate change requirements. These include the “prevailing anticipated future environmental conditions.”

Requires the Secretary to periodically assess the vulnerability of fish stocks within each Council’s geographic area and make recommendations on measures to conserve and protect such stocks. Requires Councils to publish and plan to implement these recommendations.

Incorporating climate science.

Includes climate change and ecosystem-based management to the list of training topics for new council members.

Climate-ready fisheries innovation program.

Establishes a program, to include grants, in order to develop innovative tools and approaches to increase the adaptive capacity of fishery management to the impacts of climate change. This language is from H.R. 3764, Ocean-Based Climate Solutions Act, introduced by Rep. Raul Grijalva (D-AZ) and was favorably reported by the Committee in July 2021.

Managing shifting stocks.

Requires the Secretary to determine whether a substantial portion of any fishery is within the area of authority of another Council. If the Secretary determines that a substantial portion of a fishery is within more than one Council, the Secretary must notify the relevant Councils within six months. Those Councils must then vote to designate a Council to prepare the fishery management plan (FMP) or agree to jointly prepare an FMP. Should the Councils not be able to reach an agreement, the Secretary can designate a Council.

Emerging fisheries.

Requires the Secretary to report a list of all fisheries within each Council’s jurisdiction, the types of authorized gear for each fishery. In addition, each Council is required to periodically review the fisheries and gear on the list and propose changes. These changes are subject to public comment.

TITLE II – SUPPORTING FISHING COMMUNITIES

Fishery Resource Disaster Relief.

This section makes significant changes to the current fishery disaster relief provisions. These changes include:

- Clarifying redundancies in fishery resource disaster legislation;
- Providing a more efficient process for requesters seeking disaster assistance when the fishery disaster is a result of a Federal response to a natural disaster;
- Expediting disaster review process by requiring NOAA to notify requesters of positive fishery disaster declarations sooner;
- Providing opportunities for employment for fishery employees displaced by a fishery disaster by prioritizing hiring to undertake restoration, conservation, and other fishery rebuilding activities funded by disaster relief funds;
- Making information available to requesters to clarify fishery disaster request process; and
- Clarifying the eligibility of charter, recreational, and Tribal fishermen to have access to disaster funds.

Subsistence fishing.

Defines subsistence fishing. This section is similar to the definition of “subsistence fishing” included in H.R. 59. It remains unclear if recreational fishing is also considered to be subsistence fishing.

Working Waterfronts Grant Program.

Establishes a Working Waterfront Grant Program that provides matching, competitive grants to coastal states. The grants would go toward preserving and expanding access to coastal waters for commercial fishing, recreational guiding, aquaculture, boat building, and other water-dependent businesses. Of note, this is not a program within MSA, but would be a program within the Coastal Zone Management Act (16 U.S.C. ch. 33 § 1451 et seq). This language is from H.R. 3160, sponsored by Rep. Chellie Pingree (D-ME). It was also included in H.R. 3764, Ocean-Based Climate Solutions Act, introduced by Rep. Raul Grijalva (D-AZ) and was favorably reported by the Committee in July 2021.

Seafood marketing.

Directs NOAA to develop an outreach plan to expand fishing industry awareness and use of the Department of Agriculture’s Agricultural Marketing Service. Requires NOAA to study the possibility of establishing similar marketing support program.

Community participation in limited access privilege programs.

Includes the participation of fishing communities as a requirement for limited access privilege programs. It also establishes minimum requirements for a community sustainability plans.

TITLE III – STRENGTHENING PUBLIC PROCESS AND TRANSPARENCY

Tribal representation at the Pacific Fishery Management Council.

Removes the limit on the number of Tribal representatives that must be nominated for the Tribal seat on the Pacific Council and removes term limits for the Tribal seat. Currently, the

requirement is that the Secretary choose “from a list of not less than three individuals submitted by the tribal government.”

Tribal representation at the North Pacific Fishery Management Council.

Adds two seats on the North Pacific Council to represent Indian Tribes in Alaska.

Atlantic Councils.

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 be appointed by the Secretary.

Council procedures and participation.

Mandates roll call votes for nonprocedural Council matters and directs Councils to allow for remote participation in meetings. Current law requires a voting member to request a roll call vote.

Council accountability and membership.

Classifies all Council employees as federal employees with respect to any requirement that applies to federal employees. Requires Council members to follow stricter requirements related to ethics and lobbying. Modifies the criteria for Council member nominations. Extends the statute of limitations on agency actions to 60 days. Requires geographic representation for at-large seats on the Western Pacific Council.

Amendments to the Western Pacific Sustainable Fisheries Fund.

Adds Hawaii to the list of entities required to develop a marine conservation plan. Requires the issuance of public notice for marine conservation plans. Establishes an advisory panel for the Fund and requires an annual report to Congress on funded projects.

NOAA Sexual Harassment and Assault Prevention.

Clarifies NOAA’s sexual assault and sexual harassment policies to include fishery observers and Council staff.

Saltonstall-Kennedy Act reform.

The Saltonstall-Kennedy (S-K) Act of 1954 (15 U.S.C. §713c-3) established a grant program funded by customs receipts for duties on U.S. seafood imports. These grants are distributed to entities to promote U.S. seafood. The S-K grant projects were originally chosen by a committee consisting of an array of stakeholders from the fishing industry that advised on commercial fishing issues. The committee was eliminated under the Federal Advisory Committee Act in 1972 and the responsibility of project selection fell to the National Marine Fisheries Service. This bill reinstates the board of experts, with members chosen regionally and across all sectors of the fishing industry, to identify the research needs and priorities of the commercial fishing industry. Reestablishing the American Fisheries Advisory Committee allows for industry input into the process of identifying needs and funding priorities. Overall, this language is similar to Congressman Don Young’s (R-AK) H.R.3128, the American Fisheries Advisory Committee Act of 2021.

TITLE IV – MODERNIZING FISHERIES SCIENCE AND DATA

Data modernization.

Requires NOAA to provide to Congress an implementation plan for its Fisheries Information Management Modernization initiative within 180 days of enactment.

Expanding and improving electronic technologies.

Authorizes the Councils to require electronic monitoring or on-board observation for data collection purposes necessary for the conservation and management of a fishery. Maintains exemptions for on-board observers due to health or safety. Requires the Secretary to periodically review the policies and procedures on the collection of information.

Stock assessments.

Requires the Secretary to report to Congress on NOAA's progress on stock assessments.

Cooperative research and management.

Clarifies that "fishing communities" can be included. Requires that Councils provide an annual list of projects that address "critical needs." Modifies the 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.

Northeast Regional Pilot Research Trawl Survey and Study.

Requires the Secretary, in consultation with the Councils and the Northeast Area Monitoring and Assessment Program (NEAMAP), develop a fishing industry-based Northeast regional pilot research trawl survey and study to enhance and provide improvement to current vessel trawl survey. This language is also included in H.R. 59.

Recreational data consistency.

Requires the Secretary to establish guidelines for recreational catch data. Requires the Secretary to calibrate data methods "to ensure consistent methods and approaches are used for monitoring of catch against the relevant annual catch limits." Creates a program to improve recreational data survey methods.

Emergency operating plans.

Requires NOAA to develop and report to Congress a contingency plan for emergencies that make it impractical to use human observers and conduct stock assessments.

Zeke Grader Fisheries Conservation and Management Fund.

Renames the Fisheries Conservation and Management Fund to the Zeke Grader Fisheries Conservation and Management Fund. Includes climate change research as an eligible use of funds.

Offshore wind collaboration.

Requires the Secretary to enter into a cooperative agreement with the Bureau of Ocean Energy Management (BOEM) to fund additional stock assessments and fisheries and marine wildlife

research if impacted by offshore wind energy development. NOAA and BOEM are already working on an offshore wind agreement.

TITLE V – SUSTAINING FISHERIES THROUGH HEALTHY ECOSYSTEMS AND IMPROVED MANAGEMENT

Essential fish habitat consultation.

Significantly changes MSA’s essential fish habitat (EFH) consultation requirements. Currently, each federal agency that may authorize, fund, or undertake an action that might adversely affect an EFH is required to consult with the Secretary. The agency receiving EFH conservation recommendations is required to provide a detailed response which includes a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact. If the response is inconsistent with the recommendations, the agency must explain why it is not following the recommendations.

Removes all flexibility within EFH consultations by making all EFH conservation or mitigation requirements mandatory. Includes new consultation requirements for a habitat area of particular concern (HAPC). HAPC encompass subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area.¹⁰ Generally, the HAPC designation does not provide additional restrictions or protections. The bill requires the monitoring for possible adverse effects (there are no time limits) and follow any actions required by the Secretary to minimize or mitigate any action that may adversely affect an HAPC. The bill adds a new definition of “adverse effect” to mean “any impact that reduces the quality or quantity of EFH.”

Committee staff has heard concerns from the U.S. Navy regarding the expansive nature of these new requirements and their potential impact to readiness and operations.

Reducing bycatch.

Removes “to the extent practicable” from the national standard regarding bycatch and the reporting methodology to assess the amount and type of bycatch occurring in the fishery. Requires that FMP include the “quantification of bycatch” in the data provided to the Secretary. Requires the Secretary to create a nation-wide standardized bycatch reporting system.

Improving rebuilding outcomes.

Similar to H.R. 59, the bill removes the ten-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.” However, it also includes new requirements for information in NOAA’s annual status of stocks report to identify stocks subject to overfishing and in need of rebuilding plans.

Depleted fisheries and preventing overfishing.

Replaces “overfished” with “depleted” throughout the Act. While H.R. 59 makes these replacements, the definition of “depleted” is different in both bills. Requires the SCC to provide the Councils new information including recommendations for accounting for all sources of

¹⁰ 50 CFR § 600.815

mortality in establishing management measures. Changes to the development of FMP requirements to prohibit using “less precautionary” recommendations than those provided by the SSC.

Preparation and review of secretarial plans.

Mandates the Secretary to develop fishery management plans if Councils do not complete plans or amendments within 180 days.

Councils.

Requires the Councils to include climate change in research priorities.

Forage Fish Conservation.

Requires the Secretary to define “forage fish” within six months of enactment. When defining “forage fish”, the Secretary is required to consider several listed factors including if a species “contributes significantly to the diets of other fish, marine mammals, or birds”. The bill also amends the term “optimum yield”, requiring that the optimum yield for forage fish be reduced “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.” Requires Councils to develop a list of “unmanaged forage fish” and prohibit the development of any new directed forage fish fishery until the Council considers several factors including the best scientific information available and evaluating the potential impacts of forage fish harvest on existing fisheries.

Funding for monitoring implementation of Northeast Multispecies fishery management plan.

Includes monitoring, and electronic monitoring, as an approved use of funds related to implementation of the plan.

Authorization of appropriations.

Authorizes total of \$4.34 billion for fiscal years 2022 through 2027. Breakdown of authorizations below:

- FY 2022: \$682.45 million.
- FY 2023: \$698.14 million.
- FY 2024: \$714.2 million.
- FY 2025: \$730.62 million.
- FY 2026: \$747.43 million.
- FY 2027: \$764.62 million.

[H.R. 5770](#) (Rep. Debbie Dingell, D-MI), Forage Fish Conservation Act of 2021.

Similar to the Forage provision included in H.R. 4690, the bill requires the Secretary to define “forage fish” within six months of enactment. When defining forage fish, the Secretary is required to consider several listed factors including if a species “contributes significantly to the diets of other fish, marine mammals, or birds”. In contrast to H.R. 4690, this bill also includes a definition for “low trophic level”. H.R 5770 also amends the term “optimum yield”, requiring that the optimum yield for forage fish be reduced “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.”

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 considered several factors including the best scientific information available and evaluating the potential impacts of forage fish harvest on existing fisheries.

Lastly, the bill requires the Secretary, within 180 days, to 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. This provision is not supported by either Council.

The Mid-Atlantic Council specifically addressed this issue in its comment letter to Congressman Huffman by stating “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 documents, 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 ASMFC [Atlantic States Marine Fisheries Commission], (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.”¹¹

V. COST

The bills have not received a Congressional Budget Office cost analysis.

VI. ADMINISTRATION POSITION

Unknown at this time.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 4690 \(Rep. Jared Huffman, D-CA\)](#)

[H.R. 5770 \(Rep. Debbie Dingell, D-MI\)](#)

[H.R.59 \(Rep. Don Young, R-AK\)](#)

¹¹ [Mid-Atlantic Council Letter to Representatives Huffman and Case \(9/30/21\)](#)