

Huffman Discussion Draft to Reauthorize MSA
DRAFT NPFMC Staff notes
January 2021

Title I: Climate-Ready Fisheries

Sec. 101. Findings, purpose, and policy. (page 5) Amendments to incorporate climate change.

Staff notes: This section expands the purposes of the MSA to specify the threat and impacts of climate change and increased concerns about fish habitat. This section (page 7) also revises the language regarding the purposes of the Regional Fishery Management Councils and the fishery management plans.

Sec. 102. Promoting climate resilience in fisheries management. (page 8) 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.

Staff notes: This section adds several new requirements for the contents of 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 fishery distribution for the fish stocks managed under the plan. All existing FMPs would need to be amended accordingly.

Section 303(a) of the MSA would be amended to require, in addition to a suite of other requirements, the Councils to “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...” This would seem to be a speculative exercise and could require determination of multiple status determination criteria. How would Councils/SSCs establish OY from anticipated future environmental conditions, and which OY do we try to achieve right now?

Sec. 103. Incorporating climate science. (page 10) 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).

Staff notes: NMFS has already started to include scientific training on climate change and fisheries as part of its new council member training for appointed members. Vice-chair Bill Tweit provided a presentation at the training session in November. I am not sure how this requirement could or would apply to non-voting members, or agency members and their designees.

Sec. 104. Climate-ready fisheries innovation program. (page 11) 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.

Staff Notes: The legislation appears consistent with direction of science and management in the North Pacific. Alaska Fisheries Science Center has been developing advanced models of climate

and ecosystem responses. The Council has been actively working towards climate ready fishery management and resilience through its Climate Change Taskforce.

Sec. 105. Managing shifting stocks. (page 14) Establishes a framework for designating Council jurisdiction for cross-jurisdictional stocks, establishes a task force to review allocation challenges for shifting stocks, and requires developing a strategy for coordinated research and management for international stocks impacted by climate change.

Staff notes: The Shifting Stocks Task Force would be composed of one member with scientific background from each council jurisdiction (but cannot be council members). The Task Force is charged with developing science-based decision-making criteria to make allocation determinations for shifting stocks that minimize the risk of overfishing and minimize stock and ecosystem resilience to the effects of climate change. Once the criteria are developed, the Task Force shall make recommendations to the SOC and Council for the allocation and distribution of fishing privileges based on these criteria. The public can petition the Task Force to add a shifting stock to the list.

It appears that the Task Force is not specific to cross council jurisdictions, and thus their recommendations could be applied to shifting stocks under a single council's authority. Having an outside body advise the Council on the allocation and distribution of fishing privileges would be of little help to address social/allocation issues that are local and regional in nature, and are best addressed through the regional fishery management council process.

Sec. 106. Emerging fisheries. (page 25) 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.

Staff notes: This requires the Council to review its fisheries and gear on the list of fisheries (50 600.725), and make them more specific including geographic range to ensure only active fisheries are included on the list. The idea is to restrict the development of a new fishery or use of a new gear type without first having gone through a thorough impact analysis and receive Council approval.

The North Pacific fisheries and authorized gear on the list are outdated (who knew Alaska had a squid longline fishery?), and not geographically detailed. Analysis of gear types and fisheries would help the councils and public understand potential impacts before they were authorized, which is consistent with the Council's approach. For example, the Council prepared an analysis of the potential impacts of allowing pots as a legal gear type for a BSAI directed halibut fishery, and longline pots for the GOA sablefish fishery before they were authorized.

Title II: Supporting Fishing Communities (Page 30)

Sec. 201. Fishery resource disaster relief (H.R.5548/S.2346). Sets a timeline for the federal government to respond to a fishery disaster request and for disbursement of appropriated funds and clarifies the disaster request process, including by allowing direct payments to be made to affected members of fishing communities as an eligible use of relief funds.

Sec. 202. Subsistence fishing. Acknowledges and defines subsistence fishing.

Staff notes: We may want to check and see if this is consistent with the State of Alaska definition.

Sec. 203. Working Waterfronts Grant Program. Establishes a Working Waterfront Grant Program to provide matching grants to coastal states to preserve and expand access to coastal waters for dependent businesses; creates a 5-year pilot loan fund for waterfront preservation; and establishes a Working Waterfront Task Force at the Department of Commerce to identify and prioritize critical needs for working waterfronts.

Sec. 204. Seafood marketing. Re-establishes the National Seafood Council to support education, research, promotion, and marketing. Directs USDA and NOAA to work together to increase and support seafood industry participation in USDA Agricultural Marketing Service programs and directs NOAA to study the possibility of establishing similar marketing support programs housed within the agency.

Staff notes: In November 2020, the CCC recommended that NMFS evaluation NOAA FishWatch criteria for the purpose of serving as an equivalent to third-party certification deeming U.S. fishery products as sustainable.

Sec. 205. Community participation in limited access privilege programs. (page 85) Adds the participation of fishing communities as a requirement for limited access privilege programs; updates requirements for community sustainability plans; and adds provisions for Councils to identify eligible fishing communities and provide a process for communities to participate in new programs.

Staff notes: The first change is to Section 303A(c)(1), where language is inserted to identify *fishing community participation in LAPPs* as an objective that should be “promoted” and that the provision of a process for fishing community participation in the LAPP should be “provided”. The second change is to reframe Section 303A(c)(3), which defines how a community could be eligible to “participate in a LAPP to harvest fish”. The key modification, in the reading of Council staff, is the removal of two references to “criteria developed by the [Council].” There is no change to the regional fishery associations.

Council staff has two main takeaways from the draft bill, based on our own assumptions. First, the Council no longer has the burden of developing criteria for community eligibility to participate in a LAPP and criteria for a “community sustainability plan,” as currently exists. Second, the fishing community provisions only apply to LAPPs that are not yet implemented. For Alaska, the latter assumption greatly curtails the potential impact of these changes.

The existing fishing communities provisions have not been utilized. One reason for that could be a “first-mover” problem. Councils do not want to be overly prescriptive, nor do they want to expend efforts crafting criteria for a LAPP mechanism that might not be utilized. Fishing communities do not want to invest the expense and make the hard choices to craft an internally allocative scheme that may or may not come to fruition and may or may not meet Council criteria that are not yet defined. The draft bill appears to clarify the process by placing the onus on fishing communities to draft a Community Sustainability Plan and bring it to the Council for approval to be eligible to receive quota as part of a LAPP that is in development.

Council staff’s rationale for assuming that these provisions are applicable only to future LAPPs that are not yet implemented stem from paragraph (3)(B)(i)(VI) in the draft bill defining the

Community Sustainability Plan. The language specifically references “*projected* economic and social impacts *associated with the implementation* of [a LAPP], including the *potential* for strengthening economic conditions...” (emphasis added). This assumption is also bolstered by the fact that the Regional Fishery Association (RFA) section of 303A is not amended. RFAs are presumably the point of access for a community or group of communities to access an existing LAPP, as they are “not eligible to receive an initial allocation” (303A(c)(4)(A)(v)). While the RFA section of the Act has also been unutilized, it would seem that RFAs are positioned similarly to the Community Quota Entity (CQE) program in the Gulf of Alaska and Adak where an entity must purchase fishing quota. Staff concludes that the fishing communities section is defining a process for how an entity could receive initial quota allocations in a new LAPP.

In summary, the changes proposed under Section 205 of the draft bill elevate community participation in future LAPPs as something that “shall” be considered and promoted, and clarifies the location of the responsibility to develop and submit to the Council a Community Sustainability Plan as resting with the eligible communities.

Sec. 206. Miscellaneous amendments. (page 89) Clarifies the definition of “fishing” and a technical amendment to findings.

Staff notes: The definition just specifically excludes aquaculture as a type of fishing. This section also revises one of the MSA “findings” by eliminating the sentence mentioning “massive foreign fishing fleets...caused destruction...”. However, this finding still 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.” Because the Huffman draft bill acknowledges that fish stocks overfishing is not necessarily the cause of a stock being in low abundance, and thus replaces the term “overfished” with the term “depleted”, perhaps the wording in this finding could be further modified by inserting “or stock declines caused by environmental change” after “the overfishing of resources”.

Title III. Strengthening Public Process and Transparency

Sec. 301. 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.

Sec. 302. Atlantic Councils. Adds a seat for a Mid-Atlantic Council member on the New England Council, a seat for a New England Council member and a South Atlantic Council member on the MidAtlantic Council, and a seat for a Mid-Atlantic Council member on the South 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.

Sec. 303. Council procedures and participation. (page 92) Requires greater access to Council meetings, recorded Council votes, and directs Councils to allow for remote participation in meetings.

Staff notes: This section would require roll call votes for every motion (except for procedural matters). This section would require that council meetings must ensure remote participation (of members?), including voting. Additionally, 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 recording and any transcripts and make them available to the public. Executive Session portions of the meeting would not be recorded and posted.

The Council may wish to note that roll call votes can disrupt the flow of the meeting and generating consensus of the group. Additionally, under Roberts Rules – the process which the Councils already operate -- any council member can request a roll call vote on any motion.

The Council may also wish to note that the CCC and the NPFMC have previously commented on the requirement for live broadcast of meetings. We have noted that a transparent public process is critical to maintaining public trust, so decisions of the Council and the SSC are clearly documented. However, remote participation by web platform and live broadcasts generally require strong Internet connections to be effective. In the context of Council meetings, which are often held in remote locations near fishing ports, the Councils have little ability to predict or 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.

The COVID 19 pandemic provided the Council with experience in hosting remote meetings. While remote meetings (only) may be lower in cost – in terms of dollars- much of the value of meeting in person is lost. Communication among members, staff, and public is much reduced, and personal relationships and trust in the process is eroded with each additional remote meeting. Over time, these issues will result in reduced efficiency, less informed, and potentially worse policy decisions. Hence, the NPFMC intends to meet in-person again post-Covid. A hybrid meeting, with both in-person and remote participation, appears to offer no benefits in terms of cost, efficiency, or improved decision-making.

Sec. 304. Council accountability and membership. (Page 94) Establishes stricter ethics, lobbying, and financial recusal requirements for Council members. Expands the criteria for Council member nominations to ensure a balance of viewpoints and stakeholders are represented. Extends the statute of limitations on agency actions to 60 days.

Staff notes: This section states that council employees shall be deemed Federal employees with respect to any requirement that applies to Federal employees. Councils are not Federal employees; this was established in the MSA specifically for councils to provide flexibility in the hiring and employment of council employees. There are requirements of Federal employees that have no bearing or relationship to council employees. Since this section is about ethics, the wording could be fixed by simply inserting the word "ethics" before the word "requirement".

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.

This section completely reinvents the conflict of interest and recusal provisions, which were just revised. 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 would be no significance threshold other than if it is likely to have any effect

someone's financial interest relative to the financial interest of other participants in the same sector (e.g., the longline sector). Members that are recused "may not participate in Council deliberations relating to such decision except to provide technical and factual information based on such individual's knowledge of the fishery." Currently a recusal only prohibits a member from voting, but not from deliberating or participating in any other way. Note that those with the most interest and expertise in the fishery often add most to deliberations. The bills approach is inconsistent with the original purpose of the MSA regionally-driven process and reliance on fishery participants/experts in decision-making, and could greatly reduce the number of appointed council members allowed to deliberate and vote on many issues. For example, an issue that affected the longline sector (say, the small sablefish release action) could potentially require recusal of appointed council members who represented longline interests, even if they didn't own any sablefish IFQ. A member that owned even a single share of sablefish IFQ would be prohibited from the deliberations and vote.

This change will require development of a whole new conflict of interest and recusal process.

Also, note that there is no recourse for a recusal determination once made, even if based on a faulty assumption, bad information, or a mistake by NOAA GC.

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 office relevant to the lobby 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. This new language on lobbying would create some major issues and administrative challenges:

- Council staff (time is paid with federal funds) would no longer be able to discuss issues by phone or in person with any legislator or their staff, even if the legislator calls them directly and asks for comment or information;
- NOAA GC represents the Council and thus should be subject to attorney client privilege;
- All communication (emails and texts) from employees, members of the Council and advisory bodies, and contractors to anyone in the Federal executive branch – e.g., NMFS -- not involving "routine fishery management issues" would need to be posted on the website. This seems excessively restrictive and intrusive, and I wonder how I am supposed to monitor and track everyone's emails and texts (e.g., "Congratulations on your Promotion!", "Hey Chris, would you please share your moose chili recipe?"). We would also have to document all phone calls or in-person discussions with anyone in the agency that didn't involve routine fishery management.

This section adds subsistence and expertise in ecosystem-based fishery management or climate science to the required expertise for Council membership. It also expands the Secretary requirement to ensuring a balanced apportionment of council membership (currently specified as commercial and recreational fishing interests) to include "the conservation community, scientists, non-consumptive users, and indigenous and tribal communities as applicable, and of the active participants (or their representatives) in the commercial, recreational, and subsistence fisheries under the jurisdiction of the Council." This takes away authority of the

State Governors ability to nominate representatives that might be most qualified to address the fisheries or issues being addressed, and puts this authority to the SOC to determine if a council is 'balanced' among the 7 different interests mentioned.

This section also requires the Secretary to appoint to each Council at least two individuals who do not have any financial interest in matters before the Council. It might be worth noting that every Regional Fishery Management Council already has members without any financial interest. A majority of North Pacific Council members do not have financial interest, including voting members (NMFS, WA, AK, OR representatives) and non-voting members (PSMFC, USFWS, USCG, and State). There are 7 appointed members (2 from WA, 5 from AK). Additionally, it is may be worth noting that the whole Regional Council system was designed to give fishermen a direct say in the management of fisheries. Requiring that the Secretary ensure at least 2 appointed members have no financial interest reduces the ability for fishermen (and fishermen representation) – those members who are the most knowledgeable about fishery operations -- to directly participate in the decision-making.

Sec. 305. Amendments to the Western Pacific Sustainable Fisheries Fund. Adds public notice requirements for marine conservation plans. Establishes an advisory panel for the Fund, directs the panel to provide public notice and minutes of meetings, requires the Secretary to submit an annual report to Congress on funded projects, and requires the Secretary to provide written explanation for funded projects that are not ranked by the advisory panel.

Sec. 306. NOAA Sexual Harassment and Assault Prevention. Expands coverage of NOAA's sexual assault and sexual harassment policies, including for fishery observers and Council staff, and strengthens resources and reporting.

Staff notes: Observers, voting Council members, and staff of the Council would be covered by the expanded policies. While not mentioned, mandatory training likely would be required.

Sec. 307. Saltonstall-Kennedy Act reform. (page 125) Creates an Advisory Committee to assist in the awarding of fisheries marketing, research, and development grants through Saltonstall-Kennedy funding. Returns funding intended for the Saltonstall-Kennedy Act grants, which has been used to backfill NOAA's budget, to its original purpose.

Staff notes: In our comments to Senator Sullivan on S. 1322 in November 2017, the Council noted that 1) the S-K proposal review process has been subject to 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, and making the evaluation criteria more explicit; 2) under the legislation, representation of Alaska fisheries on the American Fisheries Advisory Committee may be very limited (possibly only one or two members); 3) the committee would not have the requisite technical capabilities to evaluate the project methodology, so we recommended that a scientific peer review body be formed.

This proposed bill adds a scientific review component by requiring the Secretary to obtain technical evaluations from 3 or more independent scientists for each review.

The Council may wish to note that Alaska could have its own regional representation because as proposed, Alaska is grouped with Hawaii, Guam and American Samoa that have completely different fisheries and types of research and marketing needs. Alaska generates more than 50% of U.S. Seafood production, and thus lumping in the North Pacific with other regions with relatively low production and disparate research issues may not provide the optimal allocation of grant funds.

Sec. 308. Sport Fishing and Boating Partnership Council. Makes the Sport Fishing and Boating Partnership Council a federal advisory committee of the Department of Commerce, in addition to its current role advising the Department of the Interior.

Title IV: Modernizing Fisheries Science and Data (Page 137)

Sec. 401. Data modernization. Requires NOAA to provide to Congress an implementation plan for its Fisheries Information Management Modernization initiative to ensure continued progress in the modernization of NMFS fisheries data management systems to facilitate improvements in the collection, intake, use, storage, and access to data from federal and non-federal sources.

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. Facilitates implementation of electronic technologies for monitoring and reporting, requires a review of existing electronic technology capabilities in NMFS, establishes an electronic technologies innovation prize, and establishes an advisory panel on electronic technologies.

Staff notes: We may wish to raise concerns about developing national level performance standards or requirements for EM, and note that the use, objectives, and operationalizing of EM may be best achieved at the regional level. Standardizing EM data collection requirements across all fisheries, and all regions, may not provide optimal solutions for EM in different North Pacific fisheries, and could undermine the programs that were cooperatively developed with the Alaska fishing industry.

There will be at least one electronic technologies innovation prize to catalyze the rapid development and deployment of electronic technology-based data collection.

Sec. 403. Stock assessments. (page 144) Requires the Secretary to report to Congress on NMFS' progress on prioritizing and improving stock assessments.

Staff notes: Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. The Council may wish to note that an annual report on NMFS progress to prioritize and improve stock assessments, and concomitant data collection and analysis would be useful. Improving stock assessment methods, collecting additional data and evaluating data gaps will reduce the uncertainty in setting harvest limits. Maintaining or expanding fish abundance surveys should remain the first priority.

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 should consider outside sources of information when seeking the best scientific information available.

Sec. 405. Northeast regional pilot research trawl survey and study. Sets up a pilot study to develop a fishing industry-based Northeast regional research trawl survey and study to enhance and provide improvements to current vessel trawl surveys, in coordination with the relevant councils and the Northeast Area Monitoring and Assessment Program.

Sec. 406. Recreational data consistency. Requires the Secretary to establish guidelines to improve recreational data and requires calibration of data from multiple sources. Creates a program to research and improve recreational data survey methods.

Sec. 407. Emergency operating plans. (page 156) 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.

Staff comments: The Council has been very concerned about the loss of critically important stock surveys in 2020 due to the pandemic, and has been pressing the agency to have contingency plans for 2021 surveys.

Sec. 408. Zeke Grader Fisheries Conservation and Management Fund. Renames the Fisheries Conservation and Management Fund to the Zeke Grader Fisheries Conservation and Management Fund, allows climate change research to be an eligible use of funds, and allows funds to be used in the region in which they were generated.

Staff notes: Zeke Grader was a fisherman and seafood advocate on the Pacific Coast; he passed away in 2015. The bill refers to Section 208 of the 2006 MSA reauthorization act (Sustainable Fisheries Act), which amended MSA (see page 162 of MSA blue book). I am not aware of any appropriation or other monies ever being deposited into this fund, or projects funded through this section. Of concern is the change to allow a contributor to the fund to determine where and how the money is used for research. The Council may wish to note that NOAA Fisheries, with input from the councils through their research priorities, would be in the best position to determine how the money is used and what projects should be funded, rather than allow an outside interest group (for example) make these decisions.

Sec. 409. Offshore wind collaboration. Requires the Departments of Commerce and Interior to enter into a cooperative agreement to fund additional stock assessments and fisheries research if traditional survey areas are inaccessible due to offshore wind energy development.

Title V: Sustaining Fisheries Through Healthy Ecosystems and Improved Management (page 160)

Sec. 501. Essential fish habitat consultation. (page 160) Strengthens requirements for 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). Requires Councils to identify HAPC, develop plans to protect EFH, and periodically review habitat protection plans and EFH and HAPC designations.

Staff notes: See staff comments on H.R. 8632 that was introduced in the last Congress, as well as Bill Tweit’s testimony to Representative Huffman on HAPC. https://www.npfmc.org/wp-content/PDFdocuments/CM/2020/010920/112219_TweitTestimonyHuffman.pdf

The MSA currently includes the words “to the extent practicable”, which is eliminated from the language in this bill. The EFH regulations define practicability as: (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. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.

Sec. 502. Atlantic Highly Migratory Species. Establishes a science and statistical committee for Atlantic Highly Migratory Species.

Sec. 503. Reducing bycatch. (Page 166) Clarifies the definition of bycatch, removes loopholes that prevent effective bycatch management, and creates a nation-wide standardized bycatch reporting system.

Staff notes: The definition expands what is considered bycatch to include not only fish, but also “other living marine resources” (as such term is defined in section 206) which are caught in a fishery but which are not sold or kept for personal or subsistence use. Note that section 206 of the MSA is on high seas driftnetting and doesn’t define living marine resources, and section 206 of the bill only defines the term fishing not living marine resources. I thought that MSA defined “other living marine resources” as fish, marine mammals, sea turtles, seabirds, and other waterfowl, but I couldn’t locate the reference. We may need to expand how we evaluate bycatch with respect to the national standards in the analysis. Also note that subsistence use is added as an exemption to bycatch.

This section also revises National Standard 9 by eliminating the words “to the extent practicable”. The word “practicable” includes social and economic tradeoffs in making a decision how much conservation and management measures reduce bycatch. One could make an argument that to minimize bycatch, no fishing effort should be allowed in any fishery as all fisheries have bycatch. Section 303 (contents of fishery management plans) (11) is also revised to remove the phrase “to the extent practicable”. A new required content of FMP is added “Consider full retention requirements for species with high catch mortality rates”.

This section also amends MSA Section 304, and would require the Secretary to establish a national standardized reporting program to assess the amount and type of bycatch occurring in each fishery, and determine the contribution of bycatch to the total fishing-related mortality of each fishery, and evaluate the effects of bycatch on relevant fisheries and the ecosystem. To generate this reporting program, the Secretary shall identify standards for collecting and producing statistically accurate and precise information regarding bycatch, and require consistent data collection and reporting for all fisheries managed under FMPs (presumably across the entire U.S.). This would appear to be an extremely expensive and potentially unproductive endeavor. Standardizing methodologies are impracticable when every region has

different catch accounting methods, data sources, and fisheries. MSA already includes requirements for SBRM on a regional level.

Sec. 504. Improving rebuilding outcomes. (Page 169) 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.

Staff notes: 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 provides the Councils with management flexibility so as to avoid negative economic impacts from overly constraining measures that may have little or no conservation gain. It is worth noting that the bill eliminates the exceptions for cases where the biology of the stock of fish or other environmental conditions dictate a different rebuilding time period. This would be a serious issue for developing/revising a rebuilding plan for the Pribilof Islands Blue King Crab stock, for example, where the stock status is entirely dependent upon environmental conditions and not fishing mortality. Additionally, it is worth noting that the draft bill retains the requirement that rebuilding be "as short as possible." Allowing for rebuilding to occur in as short a time as "practicable", as opposed to as short a time as "possible", appears to be an appropriate mechanism that would be beneficial to the conservation and management goals of the Councils.

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, require Councils to take appropriate action within 9 months. If the stock is not rebuilt under the original time period for rebuilding, 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. It is interesting to note that there is no mention or provision of ecosystem change potentially affecting a rebuilding time period.

Sec. 505. Depleted fisheries and preventing overfishing. (page 176) 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.

Staff notes: The Council has previously supported draft legislation with the wording change to 'depleted', noting that stocks can be at low population levels for other reasons than overfishing. The NPFMC FMPs all include objective and measurable criteria for overfished and overfishing. It is worth noting that this bill would add to duties of SSCs.

Sec. 506. Preparation and review of secretarial plans. Requires the Secretary to develop fishery management plans when Councils do not complete plans within a reasonable amount of time.

Sec. 507. Councils. (page 180) Requires Councils to include climate change in research priorities, to develop objective and measurable criteria for identifying overfishing and depleted fisheries, and to develop measurable targets for essential fish habitat and regularly update habitat protection plans.

Staff notes: This section would add “developing the best available climate science” to the required topics for Council and SSC research priorities. It might be difficult for the Councils to develop research priorities for climate science, as this is outside the expertise of the SSC and Council.

This section would also prioritize research on fisheries or stocks expected to experience a geographic range, spatial distribution, or productivity in the 5-year period of research priorities. This section further adds that research should prioritize fisheries and habitats experiencing or expected to experience shifts in geographic range, spatial distribution or productivity.

This section adds three new listed functions of the Council:

- First, the Council would need to approve objective and measurable criteria for identifying whether the stock is depleted or experiencing overfishing, which may not be less precautionary than the SSC recommendation. Note that criteria for determining if a stock is ‘overfished’ is already a required provision of FMPs (Section 303(a)(10)). It would seem that this proposed requirement of a Council would be better included as a required provision of FMPs.
- Second, the Councils would be required to develop and implement a plan to protect EFH from adverse effects caused by fishing that include quantitative and measurable targets and goals for increasing quality, quantity, and representativeness of EFH, and conservation measures to implement the plan. Again, minimizing adverse effects of fishing on EFH is already a required provision of FMPs. Also note that “to the extent practicable” is removed from this provision under the bill.
- Lastly, the Council would be required to review, and amend as appropriate, habitat protection plans described above, at routine intervals no less frequently than every 7 years. The existing EFH regulations require the Councils to review EFH and take action as needed to conserve and enhance EFH at least once every 5 years, so this proposed revision seems unnecessary; however, it is worth noting that a 7-year periodic review may better align with the time period necessary for substantial advancements in scientific understanding of fish habitat.

Sec. 508. Forage Fish Conservation (H.R.2236). (page 182) 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.

Staff notes: The language is significantly revised from a previous Huffman bill on forage fish, and has addressed many of the concerns we previously raised. The definition of forage fish is left up to the Secretary, and the identification of forage fish species is left up to the Councils to list in the FMPs. We may wish to comment that the Councils should be fully consulted on the SOC’s proposed definition of forage fish so that it doesn’t inadvertently include language that could limit the councils with respect to species included or not included as forage fish in their region.

Sec. 509. Direct Enhancement of Snapper Conservation and the Economy through Novel Devices.

Requires commercial and recreational fishers in the Gulf of Mexico EEZ to possess a venting tool or descending device while fishing. Requires the Secretary of Commerce and National Academy of Sciences to study and report on discard mortality in Gulf of Mexico reef fish fisheries, develop guidance for reporting discards and associated mortality, and develop a plan to assess the effectiveness and usage of barotrauma-reducing devices.

Sec. 510. Funding for monitoring implementation of Northeast Multispecies fishery management plan. Amends the use of fines and penalties related to violations of the Northeast Multispecies Fishery Management plan to fund monitoring implementation.

Sec. 511. Authorization of appropriations. (page 194) Reauthorization with a stepwise funding increase through FY26.

Staff notes: The bill adds substantial new requirements for Councils with associated costs, establishes new grant programs, and adds new and expansive scientific data collection and analysis costs. Proposed appropriations may not cover these costs, and actual appropriations could be significantly less than listed. These mandates fall on the Councils and an agency (NOAA Fisheries) that is already underfunded relative to its ability to meet critical and basic needs of survey data collection and stock assessments.

The bill also raises a number of issues that have the potential to generate litigation, which can hamper timely and effective fishery management actions. For example, on page 8 of the bill, the MSA would be amended to “(9) to ensure that the research, resource management, and expenditures to prepare fisheries for climate change promote racial and socioeconomic equity with respect to environmental and economic outcomes across fisheries and regions.”