

## 9/12 DRAFT - Potential NPFMC comments on Draft Fisheries Legislation

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- [Supporting Healthy Interstate Fisheries in Transition Act \(S. 3672\)](#)
- [Fisheries Data Modernization and Accuracy Act of 2024 \(H.R.8705\)](#)
- [Domestic Seafood Production Act \(H.R. 9226\)](#)
- [Fisheries Improvement and Seafood Health Act of 2024 \(H.R. 8788\)](#)
- [Bycatch Mitigation Assistance Fund \(H.R. 8508\)](#)
- [Bottom Trawl Clarity Act of 2024 \(H.R. 8507\)](#)
- [Sustaining America’s Fisheries for the Future Act of 2024 \(H.R. 8862\)](#)

Council Baseline Status – possible comment: 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 Council believes that the current MSA provides a proven framework for sustainable fisheries management, including improving climate resiliency, and major changes are not necessary at this time.

The following draft comments are not intended to provide support for or against the legislation, as Councils are prohibited from such recommendations. 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 and activities specified in its 5-year NOAA Grant. Comments must be specific; focus on how the legislation affects the Council’s work under the MSA in performance of the Council’s grant; and should avoid high-level policy discussions or phrases like “we support, recommend, and/or oppose.” As these bills go through the legislative process, we can provide formal comments if requested from a U.S. Legislator or their staff (as the Council is allowed to respond only to a documented request for technical or factual feedback related to the Council’s work under the MSA in performance of the Council’s grant).

### Supporting Healthy Interstate Fisheries in Transition Act (S. 3672)

#### Sec. 2. Shifting Stocks

This section amends the Atlantic Coast Fisheries Cooperative Management Act to require the SOC to encourage the Commission to include and account for climate change impacts (including shifting stock distributions) in its coastal fishery management plans and amendments.

#### Sec. 3. Action by the Secretary

This section amends the MSA to authorize a council to request the SOC to determine whether a substantial portion of a fishery extends beyond the geographical authority of any one Council, and if so, notify the Councils that they must designate a lead Council or agree to jointly prepare an FMP and/or amendments as necessary. If the Councils are unable to do this within a year, the SOC makes the decision. A process is defined for determinations and actions if a fishery no longer has a substantial

portion outside of any one Council's authority, whereby the SOC shall determine which Council's geographical area of authority where the fishery is predominant.

Possible comment: Relative to Section 3, the Council notes that the wording could greatly impact the Council's ability to effectively manage the sablefish stock or the fisheries. Sablefish are genetically one single stock that ranges along the continental slope from Mexico north to Alaska and west to Japan. A substantial portion of the stock thus falls outside of the authorities of both the Pacific Council and the North Pacific Council. Because the jurisdictions of the two Councils are separated by the EEZ of Canada (that has their own sablefish fishery), and for the most part prosecuted by two separate fleets operating under two separate Limited Access Privilege Programs, it seems unworkable for one Council, or the two councils jointly, to effectively manage the stock or the fishery as a whole. None of the 3 Councils on the West Coast have adjacent EEZ jurisdictions. As this legislation appears to be developed to address management challenges on the East Coast, we suggest that the legislation add language along the lines of "Councils that share EEZ borders" or "adjacent jurisdiction with any Council" or simply identify the specific Councils for which the provision would apply.

This section may no longer be needed, as NOAA Fisheries recently released a procedural directive (PD 01-101-12) to clarify the process NOAA will use for determining responsibility for preparation of fishery management plans in anticipation of an increasing number of stocks shifting geographic distribution beyond the boundary of one council.

#### Sec. 4. Fishery Authorization

This section revises MSA Section 305(a) to require the Secretary to work with the Councils to analyze impacts of a new fishing gear or fishery prior to authorization. Within 18 months of enactment and every 5 years thereafter, the Council must review the fisheries and fishing gear under its authority and submit to the SOC any proposed changes to the list.

Possible comment: The North Pacific Council already completes an impact analysis and approval process in order to authorize new gear types and new fisheries. The North Pacific Council most recently authorized 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 sablefish fishery.

## Fisheries Data Modernization and Accuracy Act of 2024 (H.R.8705)

### Sec. 3. Recreational Fishing Data Collection Reform

This section requires NOAA Fisheries to reform the Marine Recreational Information Program (MRIP), through establishment of a National Academies standing committee consisting of recreational data experts, to provide ongoing advice on MRIP data, particularly for those stocks where the percent standard error is high.

Possible comment: While all coastal states participate in the MRIP program, Alaska relies on a mail in survey or anglers rather than just data on catch and effort collected dockside through intercept surveys, so this section may not have much of an impact to the North Pacific region.

### Sec. 4. State Recreational Fishery Catch and Effort Data

This section authorizes the use of State data for management of federal managed species. The administrator, in consultation with the regional state fisheries commissions, shall establish data requirements and standards for data collected through a recreational fishery catch and effort data collection program conducted by a state. A grant program is established under this section to provide states with funding to develop a new data collection program, or improve an existing one.

Possible comment: The Council and NMFS currently consider state data for management actions, consistent with the requirements of National Standard 2 under the MSA. The Council notes that since the bill would authorize data collections by a state, then states could be consulted directly, in addition to the marine fisheries commissions. Because the State of Alaska data are used by the Council for management of fisheries in the entire EEZ off Alaska, the Council would benefit from having the State be consulted on data collection to ensure that data collection requirements and standards are suitable for Council use.

### **Sec. 5. Healthy Fisheries Through Better Science**

This section defines the term ‘stock assessment’ as an evaluation of past, present, and future status of a stock of fish, including -- a range of life history characteristics for such stock of fish, including to the extent practicable the geographic boundaries of the stocks of fish; and information regarding age, growth, natural mortality, sexual maturity and reproduction, feeding habits, and habitat preferences of such stock of fish; and fishing for the stock of fish. This section also includes a requirement for the SOC to develop a schedule of stock assessments and updates and for conducting initial stock assessments for those stocks for which an assessment has not previously been conducted.

Possible comment: The purpose of a stock assessment – as it relates to the Council’s conservation and management objectives -- is to 1) estimate how many fish there are currently and projected for the coming year(s), and 2) predict how fish populations will respond to harvesting, so as to inform the SSC and Council on the science-based establishment of sustainable annual catch limits. Assessment scientists use survey and fishery information in mathematical calculations to estimate abundance or biomass. Information about life history (growth, maturity, and mortality) of fish species is used to estimate what proportion of the fish stock can be caught without impacting future production of young fish.

The proposed description of a stock assessment does not reflect the purpose or use of stock assessments for Council management in the North Pacific region, and includes requirements for ancillary information that are unnecessary in a stock assessment (e.g., feeding habits, habitat preferences), problematic for management in a changing environment (e.g., geographical boundaries of such stock of fish), and confusing as to its intent (e.g., fishing for the stock of fish). These requirements for stock assessment are proscriptive and would reduce the flexibility of the councils to address regional and stock specific issues. The definition really seems to impose a one-size fits all definition, without regard to variations, also supplanting the inclusion of pertinent information in the stock assessments, which is determined by the scientists and reviewed by the SSC.

The stock assessment definition would cause unnecessary work and potential confusion among assessment scientists, which cause burdens and potential delays in completing assessments on schedule. We would recommend that NMFS provide a more accurate and workable definition for this legislation.

## **Sec. 6. Fishery Independent Surveys by Independent Entities**

This section requires NOAA Fisheries to establish a fisheries independent data collection program through competitive contracts with independent entities. These are the surveys designed to estimate absolute abundance of stocks of fishing included in the Fish Stock Sustainability Index.

Possible comment: As written, it appears that this section would privatize the stock abundance surveys currently done by the NOAA research vessels, and that these data shall be incorporated into the stock assessments. Should the intent of this legislation be to add additional fishery independent surveys, the Council suggests that that the bill include the phrase “to enhance existing NOAA fishery independent surveys”.

## **Sec. 7. Report**

This section requires the National Academies to prepare a report on incorporating a study on absolute abundance or red snapper.

## **Sec. 8. Transparency and the Public Process**

This section requires that the CCC meetings be live-broadcast to the extent practicable. Additionally, an audio or video recordings of Council and SSC meetings must be made available to the public.

Possible comment: The Council appreciates inclusion of the term “to the extent practicable” in that bandwidth may not be available to livestream meeting in some Alaska coastal communities where CCC, Council, and SSC meetings are sometimes held.

# **Domestic Seafood Production Act (H.R. 9226)**

## **Sec. 2. Domestic Seafood Production**

This section provides a definition of eligible community as being historically dependent on the coast, has no processing, and relatively poor. It also defines offshore aquaculture as propagation of finfish in the EEZ.

This section also requires the Secretary of Agriculture, in consultation with the Secretary of Commerce, to develop an action plan, in consultation with Tribes and Alaska Native Corporations, to facilitate increased domestic processing of U.S. caught seafood and mariculture. This action plan shall include an allocation of funds for community development projects in eligible communities. The action plan is to be developed with a meaningful stakeholder engagement process, defined as one that prioritizes engagement with eligible communities and provides an opportunity for public comments on the draft action plan.

The Secretary of Agriculture shall make competitive grants or enter into cooperative agreements for new seafood processing infrastructure in eligible communities, repair of existing processing infrastructure, to host local training in eligible communities, and to provide preference for members of these communities to startup of pilot seafood or mariculture processing facilities. There are eligibility limitations on participation, direction to the secretary on priorities for these grants/cooperative agreements, and evaluation criteria. The bill would authorize an appropriation of \$45 million per year for FY 25 and FY26.

Part (e) would prohibit a Federal agency from authorizing or permitting offshore aquaculture in the EEZ.

Possible comment: It is difficult to understand what exactly is required in this section. Are eligible communities defined under (a), the same as eligible communities defined under (b)2, and discussed under (b)3 and (c)1(c)? Are the funds distributed under (b)4(c) limited by the allocation of funds described by the action plan? Does the 5% limitation on grant administrative expenses described in f (3) also apply to the \$200K allocated to the SOC and SOA?

The stated intent of the legislation is to incentivize domestic seafood processing capacity and strengthen local seafood supply chains. Seafood processing may already at or above capacity to process seafood harvested in the EEZ, so it appears that the intent of this bill is to subsidize the development and rejuvenation of processing capacity in poorer communities within a state to compete with existing processors for domestic markets. It is not clear how local seafood supply chains in Alaska communities would be strengthened, given the level of participation of coastal residents in subsistence, personal use, and sport fishing.

## **Fisheries Improvement and Seafood Health Act of 2024 (H.R. 8788)**

This bill would amend the Magnuson-Stevens Fishery Conservation and Management Act to establish the Fisheries and Ecological Resilience Program and to direct the Comptroller General of the United States to submit to Congress a report on the competitiveness of domestic seafood producers in domestic and global seafood trade.

### **Sec. 2. Resilient Fisheries**

This section would amend the MSA to require that NMFS establish a Fisheries and Ecological Resilience Program, that would be directed by a senior official at NMFS. The mission of the program would be to advance ecosystem understanding, assess the vulnerability of stocks to changing conditions, assess impacts to communities and traditional ways of life due to changing conditions, develop science-based tools, engage with the public, provide tools and training for Councils, and coordinate across agencies. Direction is given as to how the director is to achieve the program mission. The director shall appoint employees, establish a regional modeling and prediction coordination team and establish management and decision support teams that will support fishery management councils. Within 2 years, and every 2 years thereafter, the program director shall submit a report to congress on actions taken. The bill would authorize an appropriation of \$30 million per year for FY 25 and FY30.

The bill would add topics for the MSA 302(k)(1) training course for new council members: relevant impacts from changing environmental conditions, and ecosystem-based fishery management. The bill would also add to the MSA Sec 404 list of fisheries research to include changes in geographic range, spatial distribution and productivity of a fishery or interrelated fisheries.

Possible comment: NMFS has already initiated most of the provisions described for the proposed Fisheries and Ecological Resilience Program mission, as well as the topics identified for council member training and fisheries research.

### **Sec. 3. Report on Competitiveness of Seafood**

This section would require the Comptroller General of the United States to submit to Congress a report on the competitiveness of domestic seafood producers in domestic and global seafood trade within 180 days. The required content of the report is provided in detail, including recommendations for a new National Seafood Trade Policy.

Possible comment: The deadline seems unrealistic given the enormous amount of information to be analyzed and reported. The Comptroller may need to work with the Councils to obtain this information, which would require more staff time and resources from Council staff. Prioritizing Council resources to meet this requirement would reduce the availability of Council staff to work on more pressing conservation and management priorities.

#### **Sec. 4. Ecological and Environmental Considerations**

This section would add to the MSA 303(1) required provisions of fishery management plans by requiring the FMPs to consider and account for the effects of changing ecological and environmental conditions on the fishery, and describe how the management measures contained in the plan or plan amendment address such changing conditions.

Possible comment: This would be an additional, yet unfunded, mandate for the Councils to address. The Council notes that most management measures contained in an FMP or amendment would not address changing conditions. The bill is also likely to generate litigation, which would slow development of climate-resilient fisheries management.

## **Bycatch Mitigation Assistance Fund (H.R. 8508)**

### **Sec. 1. Bycatch Reduction and Mitigation**

This section provides for an appropriation of \$10 million per year for the bycatch reduction engineering program.

### **Sec. 2. Bycatch Mitigation and Assistance Fund**

This section establishes a “Bycatch Mitigation Assistance Fund”, which will be administered by the National Fish and Wildlife Foundation, a congressionally established non-profit. The purpose of the Fund is to reduce or mitigate bycatch by providing financial assistance to fishermen and vessel owners to purchase fishing gear, equipment, or technology. The Foundation will solicit and accept financial donations to the Fund. NFWF shall consult with NMFS and the Council to ensure that the funds are used in an efficient and costs-effective manner. After 3 years, and every two years thereafter, the Foundation shall publish information regarding the use of the Fund.

Possible comment: Additional funding for research, gear, and technology to reduce bycatch in fisheries is consistent with the Council’s goals and objectives for sustainable fisheries. We have no comment on the agency or organization administering the fund.

## **Bottom Trawl Clarity Act of 2024 (H.R. 8507)**

### **Sec. 2. Defining Sustainable Bottom Contact**

This section requires each council that authorizes the use of bottom trawl gear to submit to the Secretary for approval within 18 months of bill enactment definitions of “substantial bottom contact”

versus “limited bottom contact” when used to describe how often the fishing gear contacts the seafloor. Councils must list each fishing gear that has substantial bottom contact. This section also requires a monitoring and enforcement plan to ensure that pelagic trawling (specifically) has only limited bottom contact.

Possible comment: “Substantial bottom contact” fishing gear used in the Alaska EEZ could include crab and groundfish pots, longlines, dinglebars, bottom trawls, and scallop dredges. Depending on species targeted and location fished and other factors under the status quo, pelagic trawls may have “substantial bottom contact” or “limited bottom contact”. The bill would require that all pelagic trawls be regulated to have only “limited bottom contact”. “Limited bottom contact” could be defined by the Council to mean that 1) a trawl touches the bottom only some limited percentage of the tow time, or 2) only a limited portion of the trawl touches the seafloor during a tow, and/or 3) some other indicator of limited seafloor contact, or 4) only specific gear determined to have limited bottom contact is authorized. Relative to the Council’s ability to meet its conservation and management goals, impacts of this section include the additional time and resources needed to field test and define “limited bottom contact” and development of a monitoring and enforcement plan to ensure that pelagic trawling (specifically) has only limited bottom contact.

### **Sec. 3. Designation of Bottom Trawl Zones**

This section requires each council to submit to the Secretary for approval within one year of completion of section 2 requirements a list of each area where bottom trawling has occurred during the last 7 years. It also requires the Councils to initially designate all or a portion of these areas as Bottom Trawl Zones, and the bill outlines a process for subsequent designations of Bottom Trawl Zones. Fishing with bottom trawl gear could only occur within an area designated as a Bottom Trawl Zone. Bottom Trawl Zone designations must exclude any area where 1) there is evidence of the presence of a deep sea coral and sponge ecosystem within the area, 2) the area is already designated as a “Savings Area”, or 3) and areas already protected for a stock of fish. All of these steps would be required to be completed on short deadlines and a council’s failure to meet a deadline requires the Secretary to take these actions.

Possible comment: Over 60% of the EEZ off Alaska is already closed to bottom trawling year-round for specific objectives outlined in each of the analyses and regulations governing these actions. These purposes include protecting vulnerable benthic habitat features (e.g., deep sea corals and sponges), biodiversity, vulnerable species (e.g., crabs, walrus, sea lions), and to support coastal communities.<sup>1</sup> Areas that have been designated as “Savings Areas” (i.e., Chinook Salmon Savings Area, Chum Salmon Savings Area, Herring Savings Areas, Bristol Bay Red King Crab Savings Area) were primarily designated to reduce and minimize bycatch of particular species. However, in some cases, these areas have proven to be ineffective at minimizing bycatch, as species distributions have changed over time, and the Council has evaluated the need to modify some of these areas. The SSC and Council have also been evaluating approaches and tools to increase climate resiliency, and fixed closure areas are not considered an effective tool in that context. Requiring the use of fixed closure areas by legislation seems inconsistent with current scientific and policy advice that councils need the flexibility to use fixed and

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<https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/6489c43523c0b1595a5b8d54/168675028097/Evaluation-of-Conservation-Areas-Report-2023.pdf>

dynamic management measures to accomplish conservation and management objectives consistent with MSA requirements under changing climate conditions.

Establishing closures to specific fishing activities essentially displaces the fleet to fish in less optimum areas for their individual vessel operations, and may limit the ability to respond to the Council's multiple objectives, including minimizing bycatch to the extent practicable (NS9). Implementation of new area closures typically reduces the catch rates of target species, thus requiring more fishing time (and fuel) to catch the quota, which potentially results in increased bycatch, increased impacts to benthic habitat, and other impacts.

This section will impact the Council's time and resources, as the Council will need to prioritize a new determination of areas where evidence of deep sea coral and sponge ecosystems occur (and do not occur) in contrast to the existing coral protections, in order to meet deadlines that are likely unachievable. Additionally, given the wide distribution of corals and sponges in the Alaska EEZ, and the extensive array of existing area closures to bottom trawling, it may be challenging to find remaining areas that are sufficiently large enough to allow bottom trawl fishing activities.

Trawls harvest over 90% of the groundfish harvested from the North Pacific Exclusive Economic Zone (EEZ), and a vast majority of this harvest is from species that cannot be taken in commercial quantities by any other fishing gear (e.g., pollock, flatfish, mackerel). Greatly limiting this gear would impact the nation's food security, as well as be detrimental to many fishermen, processors, support industries, and coastal communities in the North Pacific. Some Alaska coastal communities (such as Sand Point, King Cove, Unalaska, and Kodiak) rely on trawl groundfish fisheries as a main source of tax revenue and employment. The 65 western Alaska CDQ communities also rely on the trawl groundfish fisheries as the primary means of benefits through CDQ investments, royalties, employment, scholarships, training programs, and a host of services provided to these communities through the CDQ groups.

Overall, the Council finds that the bill would prioritize protection of corals and sponges over all other requirements of the Magnuson-Stevens Act, including the National Standards. The Council has already identified and implemented extensive area closures to bottom trawling to conserve corals and sponges, consistent with the MSA. Under the provisions of this bill, providing optimum yield from the fisheries, minimizing bycatch, and maintaining viable coastal communities as required by the MSA National Standards may no longer be achievable. The optimum yields specified for groundfish in the BSAI and GOA, already accounts for ecological factors. The provisions in this bill would make it unlikely that the fisheries could meet OY on a continuing basis because there would be too few areas that the Council and NMFS could leave open for trawl fishing, particularly when trawls harvest over 90% of the groundfish harvested from the North Pacific Exclusive Economic Zone (EEZ).

Although the draft bill does not appear to be an amendment to the MSA, all actions recommended by councils and approved by NMFS (including those needed to meet the requirements in this bill) would be taken under authority of the MSA and therefore need to be consistent with all MSA requirements. As discussed in the preceding paragraphs, the MSA goals of providing optimum yield from the fisheries, minimizing bycatch, and maintaining viable coastal communities may not be achievable.



#### Sec. 4. Definitions

This section defines “bottom trawl” to include any trawl or dredge gear that makes substantial bottom contact with the seafloor. “Deep sea corals” means species of corals that lack symbiotic algae in defined orders, and occur at depths > 50 m. “Deep sea sponges” is defined to mean any species of Porifera that occur at depths > 50 m. “Deep sea coral and sponge ecosystems” are defined as an ecosystem composed of deep sea corals or sponges and associated biological and geological components that constitute habitat for corals or sponges.

Possible comment: Although NOAA issued a report entitled “The State of Deep-Sea Coral and Sponge Ecosystems of the United States” (Hourigan et al. 2017)<sup>2</sup>, these organisms are not ecosystems, nor do they form or function as an ecosystem. Rather, the report more correctly notes “The three-dimensional features formed by many deep-sea corals and sponges provide habitat for numerous fish and invertebrate species and thereby enhance the biological diversity of many deepwater ecosystems.” Nevertheless, the report and the draft legislation disregards this important information and describes “deep sea coral and sponge ecosystems” as simply where any of these organisms are located.

Deep sea corals are widely distributed and have been found throughout the North Pacific EEZ. As the NOAA report notes, “Deep corals are widespread throughout Alaska, including the continental shelf and upper slope of the Gulf of Alaska, the Aleutian Islands, the eastern Bering Sea, and extending as far north as the Beaufort Sea.” While typically at low densities, there are a few locations at fishable depths in the Aleutian Islands where corals or sponges are likely to be concentrated based on predictive modeling of their distributions.<sup>3</sup> A comprehensive guide to deep sea corals off Alaska is provided by Stone et al. (2023)<sup>4</sup>.

Regardless of this wide distribution and over 60 years of bottom trawling off Alaska, it appears that the impacts of fishing on deep sea corals and sponges are limited. Stone and Rooper (in the 2017 NOAA Report) noted that at 250 randomly selected sites along the eastern Bering Sea shelf and outer slope where bottom trawling is concentrated, direct evidence of fishing was observed at 12.8% of the sample sites. Yet in total, only 2.9% of the corals and 0.3% of the sponges observed were damaged from human-induced or natural causes. There were very few places where both clear evidence of fishing activity (e.g., trawl tracks or fishing gear) and the occurrence of damaged coral, sponges, or sea whips. Periodic evaluation of essential fish habitat protections has shown time and again that fishing activities (including bottom trawling) in the EEZ off Alaska has only temporary and less than minimal impacts on essential fish habitat (including deep sea corals and sponges).

It is not clear why the legislation focuses on mitigating the impacts on corals and sponges from only trawl and dredge gear. If the concern is protecting any and all corals and sponges wherever they are found, then it would be reasonable to consider and address the impacts of other gears.

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<sup>2</sup> <https://swfsc-publications.fisheries.noaa.gov/publications/CR/2017/2017Clarke.pdf>

<sup>3</sup> <https://www.int-res.com/articles/meps2014/503/m503p157.pdf>

<sup>4</sup> <https://spo.nmfs.noaa.gov/sites/default/files/ProfPaper23.pdf>

In terms of impacting the ability of the Council to meet its conservation and management goals of the MSA, time and resources will need to be reprioritized to determine areas where deep sea coral and sponges don't occur, based on all of the data available from scientific surveys, fishery data, direct scientific observations, and predictive modelling.

Lastly, the Council notes that bottom trawls and scallop dredges are very different gears (in terms of design, size, operations, benthic impacts, target species, bycatch etc.), and should not be lumped together as "bottom trawls". The Council would need to spend time and resources to amend the Scallop FMP and regulations to authorize scallop fishing with "bottom trawls".

## Sustaining America's Fisheries for the Future Act of 2024 (H.R. 8862)

### TITLE I – Climate-Ready Fisheries

**Sec. 102. Promoting climate resilience in fisheries management.** (Page 11). This section requires fishery management plans to incorporate climate change by promoting stock resilience, identifying data needs, examining the vulnerability of a fishery and its participants to climate change, and assessing the anticipated impacts of climate change.

Possible comment: The Council is already working closely with NMFS to incorporate climate science into annual stock assessment processes and fisheries management, so adding this information to FMPs seems superfluous. The requirement in proposed paragraph (17) to "describe and identify the current range and distribution of, and the fishing patterns on, each stock of fish managed under an FMP..." will require substantial staff resources to continually update the FMPs with new information. Increasing climate resiliency and changing the harvest specifications and management process to better incorporate ecosystem and environmental data is already a priority of the Council and the Council, NMFS, and AFSC have spent years responding to this need. Several projects have been completed and several are ongoing.

**Sec. 103. Incorporating climate science.** (Page 16). Includes climate change and ecosystem-based management as possible training topics for new council members. Adds changes in spatial distribution and productivity of the fisheries to the list of research topics that can be considered for research priorities under MSA section 404.

Possible comment: NMFS has already started to include scientific training on climate change and ecosystem-based management as part of its new council member training. This section will be beneficial to the Council achieving its goals and objectives, as new members will have a deeper understanding of these issues that are of central importance to sustainable fisheries management in the North Pacific. Because the existing MSA language says "including but not limited to..." a list of various scientific topics, changes in fisheries distribution are already considered in the Council's research priorities.

**Sec. 104. Climate-ready fisheries innovation program.** (Page 17). 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.

Possible comment: The legislation appears consistent with direction of science and management in the North Pacific. The 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 and Inflation Reduction Act initiatives.

**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. This section requires the Council to review its fisheries and gear on the list of fisheries (50 600.725), which are fairly generic, and make them more specific (including identifying geographic distribution of the fishery, jurisdiction, 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. The idea is to restrict the development of a new fishery or use of a new gear type without having gone through a thorough impact analysis and receive Council approval. The list would be reviewed after 2 years, and then every 5 years thereafter.

Possible comment: The list of North Pacific fisheries and authorized gear is indeed somewhat outdated, not geographically detailed, and not species specific. The North Pacific Council already completes an impact analysis and approval process in order to authorize new gear types and new fisheries. The North Pacific Council most recently authorized 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 sablefish fishery.

The list of North Pacific fisheries includes federal and state managed fisheries. Adding dozens of species authorized to be retained for each gear and fishery combination would generate extensive lists because NS 9 seeks to minimize discarding (i.e., encourage retention).

Hard-wiring things like geographic distribution into the regulations and FMPs is also problematic because fish and therefore fisheries distribution are changing with the climate/environmental changes. As noted for section 102 above, the requirement in that section to “describe and identify the current range and distribution of, and the fishing patterns on, each stock of fish managed under an FMP...” will require substantial staff resources to continually update the FMPs with new information. Additionally, other changes to the stocks and fisheries brought about by climate change will require the Council to recommend updates to the regulations that will require staff resources and time.

## TITLE II – Supporting Fishing Communities

**Sec. 201. Subsistence fishing.** (Page 29). Acknowledges and defines subsistence fishing.

Possible comment: The definition appears consistent with both Alaska state law (AS 16.05.940[32]) and federal law (Title VIII of ANILCA, section 803) that defines subsistence uses as the “customary and traditional” uses of wild resources for various uses including food, shelter, fuel, clothing, tools, transportation, handicrafts, sharing, barter, and customary trade.

**Sec. 204. Community participation in limited access privilege programs.** (Page 68). Adds provisions for Councils to identify eligible fishing communities and adds a requirement and process for fishing communities to participate in LAPP program. Establishes minimum requirements for a Community Sustainability Plan that may be submitted by a community to a council.

Possible comment: The Council is concerned the language is unclear in 303A(c)(1)(L) regarding the requirement to ‘provide a process for fishing communities to participate...’ which could cause confusion and further limit the ability of Councils and communities to use these provisions. Further clarity on what ‘participation’ entails is needed. Additionally, it is not clear if the provisions would require the LAPP to have a community allocation, or required to have some other community provisions, or required to have a process different from the normal council process, or require submission and approval of a community sustainability plan before a LAPP can be approved?

Under 303A(c)(3)(A), the Council appreciates the establishment of criteria for community eligibility to participate in a LAPP and criteria for a “community sustainability plan.” In developing LAPPs for North Pacific fisheries, the fishing community provisions have not been utilized to date, in part because the criteria were not clearly established and the timing of actions such as a community sustainability plan relative to the development of the Council analysis for the LAPP and regulatory process were unclear. The bill clarifies 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 LAPP. However, it is not clear if the Council needs to have already approved a LAPP in which a community allocation is approved before they see a sustainability plan. The Council notes that the Regional Fishery Association (RFA) section of 303A provides 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)).

**Sec. 206. Findings.** (Page 74). 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.”

Possible comment: Overfishing is not always the cause of a stock being in low abundance, as evidenced by numerous examples, including the recent crash of the Bering Sea snow crab stock resulting from starvation due to a prolonged marine heatwave. In the North Pacific, no groundfish stocks are in an overfished status, and the major driver in productivity is due to ecosystem/climate impacts. The wording in this finding could be improved 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.

### Title III – Strengthening Public Process and Transparency

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

Possible comment: The Council notes that 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 on the NPFMC. This proposed appointment process mirrors what the MSA currently requires for appointment of a Tribal representative on the Pacific Council.

The Council notes 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. The 7 appointed members from Alaska would compose a majority of the 13 voting council members.

The Council currently has a designated seat for an Alaska Tribal representative on its Advisory Panel. Tribal representation on the Council itself could potentially assist the Council with implementation of the protocols and onramps for inclusion of indigenous knowledge as developed through a collaborative, multi-year effort of our Local Knowledge, Traditional Knowledge, and Subsistence Taskforce (LGTK protocol), and assist the Council with finding best practices for engaging and working with these knowledge systems.

**Sec. 304. Council procedures and participation.** This section would require 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 recording and any transcripts and make them available to the public.

Possible comment: The Council notes that roll call votes can disrupt the flow of the meeting and inhibit consensus building. Additionally, under the existing MSA language, any Council member can request a roll call vote on any motion. Why would roll call votes be necessary for the Councils?

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 and vote remotely, and just a staff person is in the meeting room?

In addition, these types of decisions on how to hold a meeting seem best to be left to Councils dependent on the situation and budgets. There may be times when the Council would prefer to meeting entirely online or allow all or a majority of voting members to participate and vote virtually (e.g., due to COVID, natural disasters such as earthquakes, hotel/airline labor strikes, etc.), or in cases of limited Council funding (virtual meetings are less expensive than in-person meetings in the North Pacific due to the extensive airline travel necessary to host an in-person meeting). The Council can best fulfill its functions under the MSA if the decision to host a meeting with some or all members voting virtually is left the discretion of the Council based on the circumstances. Details on how each Council will proceed with meeting processes can be developed and detailed in the required Statement of Organization, Practices, and Procedures (SOPPs).

It may also be helpful to provide some more context for budgets. I am guessing there is an assumption virtual meetings are way less expensive than in person.

The Council appreciates the “to the extent possible” language in the requirement for webcast or live audio and video broadcast of Council and CCC meetings on its website. The “to the extent possible” provides 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 some remote locations near fishing ports in Alaska where the North Pacific Council has held meetings. While it is ‘possible’ to have live broadcast by meeting only in major population centers with strong internet, this runs counter to the goal of the Council to provide more direct outreach to potentially affected stakeholders by meeting in coastal communities. The Council has little ability to control the quality and cost of the internet connection. Consequently, the bill could be improved by requiring the use of webcasts “to the extent practicable” to allow Councils to achieve greater transparency within budget and operational constraints, and provide the flexibility that allows the Council to meet in coastal communities, which may lack the necessary internet bandwidth for webcast or live broadcast of meetings.

**Sec. 305. Council accountability and membership.** (Page 82) Establishes stricter requirements related to ethics and lobbying by Council members, including a 1-year lobbying restriction for ex-voting members. Expands the criteria for Council member nominations to ensure a balance of viewpoints and stakeholders are represented. Extends the judicial review on agency actions from 30 days to 60 days after the start date on which regulations are promulgated or the action is published in the Federal Register.

This section expands the types of expertise that Governors should consider for Council member nominations to include subsistence, expertise in ecosystem-based fishery management and climate science. It also adds new criteria for achieving balanced apportionment of council membership, to include members of the conservation community, non-consumptive users, and members of indigenous and tribal communities, as applicable. This section requires the Governor to submit 3 names of qualified people for each applicable vacancy. 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 requires Council members and staff, as a condition of employment, to complete 2 hours of workplace harassment prevention training within 1 year, and at least once every two years.

Possible response: A ban on former Council members from lobbying the Council for 1 year after they leave may keep some industry leaders from wanting to serve on a Council. Council members that are representatives of trade associations might think twice about wanting to serve on a Council if this were to become law.

The Council appreciates expanding the required expertise criteria for Council member nominations to include subsistence, expertise in ecosystem-based fishery management and climate science, and the experience these members bring would assist the council in addressing these issues.

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 government representatives) and non-voting members (PSMFC, USFWS, USCG, and State). 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, 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 does not appear to have any practical effect on the current Council composition but it reduces the ability generally for fishery participants (and representation) to directly participate in the decision-making. Further, in Councils with multiple state representation, it is a question how to determine which State governor must nominate a member without a financial interest.

Relative to workplace harassment prevention training for Council members and staff, it would be helpful if the bill provided clear direction as to who pays for and organizes the training.

**Sec. 307. Council Staff and Administration.** Requires each Council to develop a code of conduct and ethics for members and employees. It allows the Secretary to take disciplinary action, including termination, against an executive director. It allows the Council to take disciplinary action, including termination, on any council employee.

Possible comment: The Council notes that there is already a national code of conduct for council members, employees, and advisors to which all Councils adhere. 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.

The Council notes that language in this section on disciplinary action is not dependent upon whether the executive director or other employees fail to follow the rule of conduct. Thus, it provides the ability for the Secretary to fire an executive director for any reason (in accordance with public law) and allows a majority of Council members to fire any employees.

Currently, the Executive Director is hired and employed by the Council, who conducts annual performance reviews and can fire the Executive Director as specified in the SOPP. This system allows the Executive Director to directly assist the Council in the Council's day to day functioning. As proposed, the changes could impact the ability of the Council to meet its goals and objectives. The current system has worked well in our region, whereby the Council has the authority to hire and fire its executive director - and allowing the executive director to hire and fire other employees, acting on behalf of the Council. Providing the Executive Director with the authority to hire and fire employees helps the Council discharge its responsibilities by ensuring that staff are hired/fired based on qualifications and performance in accordance with established personnel rules and other applicable laws.

**Sec. 308. NOAA sexual harassment and assault prevention** (Page 99). Expands NOAA's sexual assault and sexual harassment policies to include coverage for fishery observers and Council members and staff, and strengthens resources and reporting.

Possible comment: While it is not clear exactly what this language means relative to application and expansion of this policy, the Council and fishing industry benefit from efforts to prevent sexual harassment and assault and reporting on incidents that involve Council members, staff, and fishery observers. However, under the MSA and its implementing regulations, sexual assault

and harassment of observers (among other things) is already explicitly prohibited. Like all of the regional fishery management councils, the North Pacific Council also adopted a sexual harassment and assault policy, based off of NOAA's policy.

#### Title IV – Modernizing Fisheries Science and Data

**Sec. 402. Expanding and improving electronic technologies.** (Page 112). Sense of Congress that expresses the importance of electronic technologies and adapting to management needs, especially in the context of climate change, and includes consideration of technologies in fishery independent data collection. 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. It also adds electronic monitoring (in addition to the current provision for onboard observers) to the discretionary provisions of FMPs.

Possible comment: The Council has developed 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. Electronic technology (ET) is used either as a supplement or alternative to human observers. The Council and the fishing industry have been working diligently to expand and improve the use of ET for monitoring catch in different sectors of the fleet, including longline, pot, and trawl catcher vessel fisheries. Electronic monitoring (EM) has been used in the catcher processor fleets for decades as supplemental monitoring used in tandem with human observers. Our two fishery monitoring advisory committees, SSC, and Advisory Panel serve as advisors on electronic technologies that may be appropriate and effective in specific North Pacific fisheries, in partnership with the Alaska Fishery Science Center and NMFS AK Region. Because EM and ET must be tailored to the specific fishery and data needs, the value in a national level advisory panel on electronic technologies is not clear.

It is not clear who has the authority to collect fees for EM when applicable, and expansion of EM/ET is unlikely to be feasible unless industry is paying for the technology. Additionally, the ability of the Council to conserve and manage will continue to rely on requirements for on board observers. On board observers are critical for many fisheries to accurately determine the amount and species composition of the total catch, the amount and composition of the discarded catch, interactions with protected species, collection of otoliths for age data, and other biological data necessary for sustainable fisheries and ecosystem-based fishery management, and which cannot be measured by electronic technologies alone.

**Sec. 403. Stock assessments.** (Page 120). Requires the Secretary to report to Congress on NMFS' progress on prioritizing and improving stock assessments.

Possible comment: Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. The Council believes 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.

**Sec. 404. Cooperative research and management.** (Page 121). Clarifies authorities for cooperative research and management projects to make the use of these more consistent and requires public



reports of project results. 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.

Possible 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. Basing management decisions on poorly designed studies and questionable information can be highly detrimental to the conservation of our stocks and management of the fisheries.

**Sec. 407. Emergency operating plans.** (Page 134). 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.

Possible comment: The 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. Not having the surveys in 2020 impeded the ability of the Council to effectively conserve and manage the snow crab stock in the Bering Sea, as no information was available to observe the rapid decline in stock abundance and reduce annual catch limits accordingly. Although NMFS successfully planned and conducted the research in 2021 as planned, the results indicated that the snow crab stock had already fully crashed to an overfished level, and the fishery was closed and a rebuilding plan was required.

#### Title V – Sustaining Fisheries Through Healthy Ecosystems and Improved Management

**Sec. 502. Essential fish habitat consultation.** (Page 139). Strengthens essential fish habitat (EFH) consultation and requires federal agency actions to avoid adverse effects to EFH or minimize and mitigate the adverse effects. Adds a definition of “adverse effect” and requires monitoring of impacts to EFH. Requires Councils to identify Habitat Areas of Particular Concern (HAPC), develop plans to protect EFH, and periodically review habitat protection plans and EFH and HAPC designations. Provides a process for federal agencies to respond to recommendations and streamlines consultation.

Possible comment: Under the existing 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.

The bill eliminates the phrase “*to the extent practicable*”. This means that NMFS would have to ensure that the authorized activity (e.g., fishing) minimizes adverse effects to EFH regardless of the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation. Additionally, the bill defines “adverse effect” as any impact that reduces the quality or quantity of essential fish habitat.

The Council notes that 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. All

commercial fishing gear types would likely be considered to have adverse impacts on EFH (at least localized, short-term impacts). Thus, fishing may not be authorized under this provision unless effects can be minimized (or mitigated, which may not be possible for fisheries). Without the term “to the extent practicable”, or other reasonable threshold, one could argue that effects could be minimized if there was no fishing effort, and thus no fishing gears would be allowed.

The Council has a strong record of protecting Essential Fish Habitat (EFH) and identifying Habitat Areas of Particular Concern (HAPC). Over 666,000 nm<sup>2</sup> (~61% of the EEZ) has been closed to fishing with bottom trawls (and in many 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 Aleutian Islands coral gardens, the Sitka pinnacles, all Alaska seamounts, Bowers Ridge, and Ulm Plateau in Aleutian Islands.

The Council is further concerned about modifying the HAPC definition and required measures. The bill 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 may invite litigation with respect to the scientific basis for assessing the performance or achievement of this objective.

Lastly, the Council is concerned that the bill’s provision to ‘avoid adverse effects on HAPC’ may be interpreted by some as meaning that the Council must prohibit any fishing impact on HAPC. The Council’s approach with HAPC has been to minimize adverse impacts but not eliminate or prevent all adverse impacts at HAPC sites unless warranted by scientific information. Language requiring Councils to prevent/avoid all adverse effects 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 based on submersible research observation. These areas are also important fishing grounds. An ‘all-or-nothing’ requirement limits management flexibility and may create unnecessary adverse economic impacts on the fisheries, without concomitant benefits to habitat.

**Sec. 503. Reducing bycatch.** (Page 147). This section modifies the language of National Standard 9 by eliminating the phrase “to the extent practicable”. It creates a nationwide standardized bycatch reporting system. Updates the Bycatch Reduction Engineering Program to expand outreach, technical assistance, and adoption of bycatch reduction methods.

Possible 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, in part to disincentivize encounters.

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, any level of bycatch could be considered to be minimized, with the acceptable level being in the eye of the beholder. The phrase “to the extent practicable”

requires the Council and NMFS to provide specific rationale for the determination that bycatch is minimized as much as possible when considering other relevant factors; removing this requirement makes the standard much less clear and opens the process to more subjectivity and litigation. 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 only if all fishing was prohibited or all fish were required to be retained. Requiring retention of non-marketable species would simply result in wasted resources, rather than continuing to function in the marine ecosystem. Inclusion of the phrase “to the extent practicable” provides an appropriate threshold for the Council to recommend management actions for fisheries under its authority while also achieving the optimal degree of bycatch minimization, which must be balanced with other national standards to be consistent with the MSA.

The amount and type of bycatch in each fishery is currently monitored and assessed using a standardized bycatch methodology established within each region of the U.S. in compliance with 50 CFR 600.1600-1610 (82 FR 6317). The regulation 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. Consistent data reporting, collection and assessment across all U.S. fisheries is not possible given the differences between recreational and commercial fisheries, and 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. Thus, flexibility should be maintained in the implementation of a standardized bycatch reporting methodology for each fishery, as well as across fisheries and regions of the country. The current MSA does this.

**Sec. 504. Improving rebuilding outcomes.** (Page 151). 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.

Possible comment: The proposed 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 is positive and better aligns the rebuilding timeline with the biology of each species. It also 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. However, 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.

The status of many stocks is dictated by non-fishing factors like environmental conditions and climate change. The term “overfished” does not accurately describe a stock that has been significantly impacted by environmental factors. Additionally, the bill provides no exemptions from the requirement to implement additional conservation and management measures to rebuild the affected stock, even if fishing was not the cause of the overfished condition and changes to management measures would have no or negligible effect.

It is interesting to note that there is no mention or provision of ecosystem change potentially affecting a rebuilding time period, even though this seems to be one of the primary purposes of the bill, to recognize and support management adaptation to, climate changes. Some stocks are not likely to rebuild, regardless of how tightly fisheries are regulated, unless and until there are environmental conditions favorable to recruitment. In the case of Pribilof Islands Blue King Crab stock, for example, where the stock status is entirely dependent upon environmental conditions and not affected by fishing mortality, no additional rebuilding plan requirements have been identified that are likely to have an impact. 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.

The proposed language does not sufficiently address how the Council and NMFS would develop rebuilding plans for stocks when stock status is due to prevailing environmental conditions, rather than fishing. If required to continually develop new or revised rebuilding plans for these stocks, it would take Council time and resources away from addressing other more pressing fishery management needs. To some extent, reviewing rebuilding progress is already required. If NMFS makes a determination of inadequate progress, then NMFS “shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.” 16 U.S.C. 1854(e)(7).

**Sec. 505. Overfished fisheries and preventing overfishing.** (Page 163). Requires that objective and measurable criteria are used to identify overfished stocks and stocks experiencing overfishing, which 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.

Possible comment: The bill adds a new mandatory provision for FMPS; in addition to specifying criteria for when a stock is overfished, the FMPS would also need to specify objective criteria for identifying when a stock is subject to overfishing. It also requires the SSCs to provide recommendations on accounting for all sources of mortality, and providing advice on climate resilience. These new requirements would add to the duties of SSCs, which are already overburdened with meeting existing annual catch limit requirements. Overburdening SSC members increases the risk that Councils will be unable to retain qualified SSC members.

**Sec. 507. Councils.** (Page 166). This section requires that research should prioritize fisheries and habitats experiencing or expected to experience shifts in geographic range, spatial distribution or productivity. This section also 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.

Possible comment: The SSCs and Councils should retain the ability to prioritize research as they determine necessary to respond to the most pressing conservation and management needs.

The Council notes that the existing EFH 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 the bill’s language requiring review of habitat protection plans every 7 years seems unnecessary and duplicative.

**Sec. 508. Forage Fish Conservation.** (Page 168). Directs the Secretary to define forage fish, requires an assessment of the potential impacts of a new commercial forage fish fishery, and -- by adding to the definition of optimum yield -- requires a reduction in OY 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 the Council to develop a list of unmanaged forage fish and prohibit development of any new fishery until criteria are met. Adds a new required content for fishery management plans that authorize the establishment of catch limits for forage fish, to provide for diet needs of other fish and wildlife.

Possible comment: The Council does not have any directed fisheries for forage fish. Fishing is prohibited for forage fish by regulation, consistent with the intent of the proposed bill.

Nevertheless, the Council remains concerned that the Secretary's definition of forage fish may unintentionally invite litigation regarding what species are identified as forage species in in a FMPs. The Council 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. Congress should recognize that, in our marine ecosystems, nearly all species of fish (including salmon) are "forage fish" at some point in their lives.

It would be challenging for the Council to recommend catch limits for forage fish species to account for the diet needs of marine mammals, birds, and other marine life because it 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 survey target stocks, let alone prepare stocks assessments for individual forage species that 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 restricted to account for this largely incalculable uncertainty. Prey needs for upper trophic predators are already accounted for as natural mortality removals in most stock assessment models.

The bill also requires the SSCs to provide recommendations on ABCs; preventing overfishing; determining MSY; achieving rebuilding targets; maintaining a sufficient abundance, diversity and localized distribution of forage fish populations; and reporting on stock status, health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. These new requirements would add substantially to the duties of SSCs, which are already overburdened.