

## H.R. 8507, the “Bottom Trawl Clarity Act of 2024”

Congresswoman Peltola (D-Alaska)

Introduced on May 22, 2024

A bill to provide for the designation of areas within which fishing activities carried out using bottom trawls may be carried out.

Referred to the House Natural Resources Committee.

This legislation would not amend the Magnuson-Stevens Act; however, the legislation does include new requirements for the Regional Fishery Management Councils.

### Section 1. Short Title

**Section 2. Defining Substantial Bottom Contact** – This section would require every Council that manages a fishery that allows the use of bottom trawl gear to submit to the Secretary (after public comment and within 18 months): a definition of “substantial bottom contact” as compared to “limited bottom contact”; a monitoring and enforcement plan to ensure that any pelagic trawl fishing activity carried out within a fishery managed by such Council has limited bottom contact; and a list of each gear type that has “substantial bottom contact” based on the definition.

**Section 3. Designation of Bottom Trawl Zones** – This section would require that each Council that meets the above requirement then submit to the Secretary (after public comment and within 1 year): a list of each area within the jurisdiction of such Council within which fishing activities using bottom trawls were carried out during the 7-year period ending on December 31, 2024; and a recommendation regarding each area identified under subparagraph (A) that is not ineligible for designation under subsection (c) and should be designated as a Bottom Trawl Zone.

This section would require the Secretary to publish (in the Federal Register) a proposed rule to designate a Bottom Trawl Zone in each Council area for designation by each Council (as determined to be appropriate by the Secretary). The Secretary would be required to publish the proposed rule with 9 months after the Council recommendations are submitted. The Secretary would be required to accept comments on the proposed rule for 60 days.

If a Council does not submit a recommendation, the Secretary would be required to publish a proposed rule that would list of each area within the jurisdiction of that Council within which fishing activities using bottom trawls were carried out during the 7-year period ending on December 31, 2024, and indicate each area identified that is not ineligible for designation and should be designated as a Bottom Trawl Zone. The Secretary would be required to accept comments on the proposed rule for 60 days.

This section would require the Secretary to designate the Bottom Trawl Zones for each region as identified in the proposed rule within 30 days after the close of the comment period. The Secretary would be required to publish each designation in the Federal Register.

This section would authorize the Secretary, in consultation with the relevant Council, to designate additional Bottom Trawl Zones if the area was not already designated, if fishing activities using bottom

trawls were carried out within the area during the preceding 7-year period, and if the area was not ineligible for designation. The Secretary would be required to use the same designation process as the previously designated areas. The Secretary would be required to accept comments on the subsequent designation proposed rules for 60 days. The Secretary would be required to designate subsequent Bottom Trawl Areas within 30 days of the close of the public comment period. The Secretary would be required to publish each subsequent designation in the Federal Register.

The legislation would prohibit the designation as a Bottom Trawl Zone if the Secretary determines that there is evidence of the presence of a deep sea coral and sponge ecosystem in the area or if the area is already designated under MSA as a Savings Area or is otherwise protected for a stock of fish.

The legislation would only allow the use of bottom trawls in designated Bottom Trawl Zones once the Zones have been designated.

**Section 4. Definitions** – This section defines “bottom trawl”, “Bottom Trawl Zone”, “Council”, “deep sea corals”, “deep sea coral and sponge ecosystem”, deep sea sponges”, and “Secretary”.

Notes:

- While the legislation gives the authority to determine what constitutes “substantial bottom contact” to each Council, the legislation gives no guidance on how Councils will make this determination nor does it give the Secretary the authority to provide guidance prior to the Councils being required to make this determination.
- The legislation would require each Council to create a monitoring and enforcement plan for all fisheries that have a gear type that has substantial bottom contact within 18 months. Would this require an amendment to each appropriate FMP? Or would this be a free-standing program?
- The legislation would require each Council to identify areas where bottom trawling has taken place within the last 7 years. Is this possible? Is this geospatial information available to Councils?
- This legislation would close any area in which bottom trawling had never taken place to any future bottom trawl activity. With changing ocean conditions that may be unworkable for some fisheries.
- In creating the final Bottom Trawl Zones, it appears the Secretary could override the submissions of the Councils if the Secretary determines it is appropriate.
- If the information does not exist for a Council to make the appropriate proposals to the Secretary within the specified time period, the Secretary would be required to act. In addition, the time period for the Councils to act is tight.
- The legislation appears to give a significant amount of authority for final actions by the Secretary – possibly at the expense of the Councils.
- The issue of bottom-tending gear is a hot-button topic for many ENGOs. If those groups do not like the outcome of the Council actions or the Secretary’s final decisions, this is likely to result in litigation in each Council region.

- In the determination whether additional areas can be designated as Bottom Trawl Zones, the Secretary has discretion on whether to act to designate these areas even if a Council proposes them. There is no appeal authorized.
- The legislation would prohibit the use of any bottom trawl gear in an area that a Council has designated as a “savings area or protection area for another stock of fish” even if the protection is seasonal or was not put in place to protect the species from bottom trawl gear.
- Previous versions had defined “bottom trawl” to include “pelagic trawls, otter trawls, and scallop dredges”. The introduced version defines “bottom trawl” to mean “any trawl or dredge fishing gear that makes substantial bottom contact with the seafloor while in use, as defined by the Council or as determined by the Secretary...” I am not sure if there is a difference.
- The legislation prohibits the use of bottom trawl gear in any area if the Secretary determines “there is evidence of the presence of a deep sea coral and sponge ecosystem within the area”. This appears to give the Secretary wide latitude in determining whether areas should be closed to bottom trawling. In addition, the definition of “deep sea coral and sponge ecosystem” does not require the presence of either corals or sponges, but merely the components that constitute habitat for those species. This also could become a litigation hook.