

NPFMC Legislative Committee

10/2/24 Draft Agenda

- 1. Review and Approve Terms of Reference for Committee**
 - Draft TOR attached to eAgenda
- 2. Receive update on Legislative Issues from Dave Whaley** (RFMC consultant)
- 3. Review Draft Legislation and develop draft comments on bills** (in case comments are requested by a member of Congress or Congressional staff).
 - Text of the 7 bills, and section-by-section summaries, are attached to eAgenda
 - Draft potential comments (my initial responses) attached to eAgenda

Note: Because we are shorthanded Administrative staff, no oral testimony will be taken at the Legislative Committee meeting. Those persons wishing to provide the Council with verbal testimony on legislation can do so at the Council meeting under the “B-reports” or E-1 “staff tasking.”



REVIEW OF RECENT LEGISLATION

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 Reduction and Mitigation Act (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)

NOAA GC has previously provided legal guidance for making Council comments on draft legislation, summarized as follows:

The Council must receive a specific request on legislation from Congress (member or staff) to provide comments. Any comments the Council submits should be tied to the Council's performance of its grant as specifically as possible. Therefore, comments should explain how the council believes specific provisions of the bills (or provisions missing from the bills) could have harmful or beneficial impacts on the Council's ability to fulfill its responsibilities under the MSA, or affect the Council's ability to conserve and manage marine resources and resource users. Comments should not express general support or disfavor with the bill or with a particular provision without description of the impairment.



Supporting Healthy Interstate Fisheries In Transition Act (S. 3672)

Sec 3. Action by the Secretary - If a substantial portion of a fishery extends beyond the geographical authority of one Council, a council can request the SOC to designate a lead council, or agree to manage jointly, or SOC will manage.

Comment – Could impact the Council’s ability to manage sablefish. Suggest revising to limit application to east coast councils (e.g., add “councils that share EEZ borders”). 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 – Requires councils to regularly review list of authorized fisheries and gear types, and to analyze impacts of new fishing gear or fisheries prior to authorization.

Comment – These requirements would enhance what the Council already does, including preparation of impact analyses prior to authorization of new gear types.



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

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Sec 3 & 4. Recreational Fisheries Data – Requires formation of National Academies standing committee to provide advice on MRIP. Authorizes the use of state data for federal management; requires development of data standards; establishes a grant program for states to start or improve data collection.

Comment – Limited impacts to Council, as ADF&G uses a mail response survey for recreational data collection rather than just fishermen intercept surveys. States should be consulted directly, in addition to commissions, regarding data standards.

Sec 5. Healthy Fisheries Through Better Science – Defines stock assessment to include, among other components, stock boundaries, feeding habits, and habitat preferences. SOC to establish a schedule for stock assessments for priority stocks.

Comment – The definition is unclear and problematic and would cause unnecessary confusion among the scientists; may cause delays in completing assessments. Suggest that NMFS define stock assessment.



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

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Sec 6. Fishery Independent Surveys – Requires NMFS to establish a fisheries independent data collection program through contracts with independent entities. These entities would conduct fishery independent surveys designed to estimate absolute abundance of stocks included in the FSSI on behalf of Administrator.

Comment – As written, it appears that the surveys currently done by NOAA vessels would be privatized, which could greatly impact the standardized collection of critical data. Should the intent of the legislation be to add additional surveys rather than replace the NOAA surveys, then we would suggest the bill include the phrase “to enhance existing NOAA fishery independent surveys.”

Sec 8. Transparency and the Public Process – Requires CCC meetings to be live broadcast to the extent practicable and requires audio or video recordings of Council and SSC meetings.

Comment – We appreciate “to the extent practicable”, since bandwidth for broadcasting may not be available in some Alaska coastal communities.



Domestic Seafood Production Act (H.R. 9226)

Sec 2. Domestic Seafood Production – Requires the Secretary of Agriculture to develop an action plan to facilitate increased domestic processing of seafood and mariculture, and make competitive grants (\$45 M/yr) for new seafood processing infrastructure in eligible communities to sell a substantial quantity of seafood to local and domestic markets. Eligible communities have no processing, are coastal/ocean dependent, or are relatively poor. Seafood is defined as only wild caught fish and shellfish.

Comment – This bill is unlikely to greatly impact the Council’s ability to meet its goals. We do note that processors in remote Alaska face high operating costs that may not be met when processors are constrained to domestic markets. Additionally, it may not substantially increase local markets for seafood in remote Alaska communities given the high level of participation in subsistence, personal use, and sport fishing activities for people in coastal areas. The seafood definition would prohibit some aquaculture/mariculture products from being called seafood.



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

Sec 2. Resilient Fisheries – Requires NMFS to establish a Fisheries and Ecological Resistance Program to advance ecosystem understanding, to assess vulnerability and impacts to communities, etc. Adds EBFM and environmental change to council training course, and climate change impacts to MSA Section 404 research topics

Comment – NMFS has already initiated most of the provisions described for the Program, as well as topics for council member training, all of which assist the Council in meeting its goals and objectives.

Sec 4. Ecological and Environmental Considerations – Requires FMPs/amendments to account for the effects of changing ecological and environmental conditions and describe how management measures in FMP address changing conditions.

Comment – This section is an unfunded mandate for the Councils to address. It 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 – provides for an appropriation of \$10 million per year for the bycatch reduction engineering program.

Sec 2. Bycatch Mitigation and Assistance Fund – 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.

Comment – Additional funding for research, gear, and technology to reduce bycatch in fisheries is consistent with MSA National Standard 9, as well as 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)

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Sec 2. Defining Sustainable Bottom Contact - Each council that authorizes the use of bottom trawl gear must define “substantial bottom contact” versus “limited bottom contact” when used to describe how often the fishing gear contacts the seafloor, for SOC approval. Councils must list each fishing gear that has substantial bottom contact. A monitoring and enforcement plan is required to ensure that pelagic trawling (specifically) has only limited bottom contact.

Comment – “Substantial bottom contact” fishing gear in AK 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”. “Limited bottom contact” could be defined 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, 3) some other indicator of limited seafloor contact. 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 for pelagic trawls.



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

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Sec 3. Designation of Bottom Trawl Zones (BTZ) – Councils must list of each area where bottom trawling has occurred during the last 7 years, and designate all or a portion of these areas as BTZ. Bottom trawl fishing could only occur within BTZs. BTZ 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 other existing protected areas for fish. SOC gets final decision on location of BTZs. Extremely tight deadlines specified.

Comment – 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. Over 61% of the EEZ is already closed to bottom trawling year-round and adding Savings Areas to this total would increase the percentage closed. Adding in areas with sponges and corals, which are widely distributed throughout the EEZ, the result would be very small BTZs (or potentially none). The bill give broad authority to SOC to substitute judgement for Council recommendations. Litigation on BTZ locations is likely.



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

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Sec 4. Definitions - “Bottom trawl” defined to include any trawl or dredge gear that makes substantial bottom contact the seafloor. “Deep sea corals” means species of corals 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.

Comment – Bottom trawls and dredges are very different gears in terms of design, size, operations, benthic impacts, target species, bycatch etc. Deep sea coral and sponge ecosystems is a misnomer; corals and sponges provide habitat structure that enhances biological diversity of deepwater ecosystems. Because a BTZ cannot include areas where there is evidence of the presence of deep sea coral or sponge ecosystems, the SOC would likely determine that the so-called “ecosystems” are where any of these organisms are located, which may be most everywhere (albeit some areas having lower density) deeper than 50 m. Periodic evaluation of EFH protections has shown time and again that fishing activities (including bottom trawling) in the EEZ off Alaska has only temporary and minimal impacts on essential fish habitat (including deep sea corals and sponges).



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

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Sec 102. Promoting Climate Resilience in Fisheries Management (p. 11) - requires FMPs 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. FMPs must describe and identify the current range and distribution of, and fishing patterns on, each stock.

Comment – The requirement that FMPs describe and identify the current range and distribution of, and the fishing patterns on, each stock of fish managed will require substantial staff resources to continually update FMPs. Increasing climate resiliency and changing harvest specifications & management process to incorporate ecosystem and environmental data is already a priority of the Council.

Sec 103. Incorporating Climate Science (p. 16) - Includes climate change and ecosystem-based management as topics for new council member training and adds spatial distribution to MSA list of research priorities.

Comment – These changes could be beneficial to the Council in that appointed members will have a deeper understanding of the issues important for sustainable fisheries and EBFM.



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

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Sec 104. Climate Ready Fisheries Innovation Program (p. 17) - Establishes a program to develop innovative tools and approaches to increase the adaptive capacity of fishery management to the impacts of climate change

Comment – This section is consistent with direction of science and management in the North Pacific, including AFSC developing advanced models of climate and ecosystem responses. The Council has been actively working towards climate ready fishery management and resilience.

Sec 106. Emerging Fisheries (p. 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. Requires list of all species authorized to be caught and retained in each fishery.

Comment –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). The North Pacific Council already completes an impact analysis prior to allowing new gear types and new fisheries.



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

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Sec 201. Subsistence Fishing (p. 29) - Acknowledges and defines subsistence fishing.

Comment – The definition appears consistent with both Alaska state law (AS 16.05.940[32]) and federal law (Title VIII of ANILCA, section 803).

Sec 204. Community Participation in LAPPs (p. 68) - Adds provisions to identify eligible fishing communities and adds a requirement and process for fishing communities to participate in LAPP programs. Establishes minimum requirements for a Community Sustainability Plan that may be submitted by a community to a council.

Comment – The language is unclear (what is 'participation'?, is a community allocation a requirement of a LAPP?, is a CSP needed before approval?). For North Pacific fisheries, the fishing community provisions of 303A(c)(1)(L) 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 somewhat 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.



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

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Sec 206. Findings (p.74) - Adds sentence to findings: “Many coastal areas are dependent on fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources; ensuring sustainable use of fishery resources is essential to the well-being of these areas.”

Comment – 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 resources can be adversely affected by more than just overfishing.

Sec 302. Tribal Representation on the NPFMC (p.75) - Adds 2 Alaska Native Tribal seats to the NPFMC and establishes a process by which members are selected.

Comment – There are differences in appointment process, term limits, and alternates for these members (like Tribal representative on PFMC per 302(b)(5)). Results in 7 of the 9 appointed seats from Alaska. Like the Tribal representative on the AP, 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 LKTKS Taskforce, and assist the Council with finding best practices for engaging and working with these knowledge systems.



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

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Sec 304. Council Procedures and Participation (p. 80) - Requires roll call votes on every motion; meetings held in person to extent possible (w/remote voting allowed); CCC/Council meetings live broadcast to extent possible; SSC and council meetings recorded and posted.

Comment – Roll call votes on every motion would be disruptive. In-person meetings with members remote voting seems to be at odds (an in-person meeting with only the ED at the table doing the roll call = a virtual meeting). “To the extent *practicable*” would better provide flexibility to meet in remote coastal communities with less internet bandwidth and take into account budgetary and operational constraints (e.g., Covid).

Sec 305. Council Accountability and Membership (p. 82) - Establishes ethics/lobbying restrictions of Council members; expands criteria/expertise for Council members; 1 member must have no financial interest; requires harassment training members/staff.

Comment – The Council would benefit from expertise by expanding the criteria for nominations to include subsistence, EBFM, and climate science. The no financial interest requirement reduces fishermen representation. Suggest clarifying who will host and pay for harassment training.



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

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Sec 307. Council Staff (p. 98) - 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.

Comment – Council members, employees, and advisors already abide by Rules of Conduct prepared by DOC GC. Under this bill, disciplinary action is not dependent upon the rule of conduct. 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 ensures that staff are hired/fired based on qualifications and performance in accordance with established personnel rules and other applicable laws.

Sec 308. Sexual Harassment and Assault Prevention (p. 99) - Expands NOAA's sexual harassment policies to include coverage for fishery observers, Council members, and staff, and strengthens resources and reporting.

Comment – All of the councils have adopted a sexual harassment and assault policy, based off of NOAA's policy and guidance. Assault and sexual harassment of observers is already illegal under the MSA and implementing regulations. Reporting is required by law.



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

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Sec 402. Expanding Electronic Technologies (p. 112) - Facilitates implementation of electronic technologies (ET) for monitoring/reporting, requires a review of existing ET capabilities, establishes an ET innovation prize, and establishes an AP on ET. It also adds EM monitoring (in addition to onboard observers) to the discretionary provisions of FMPs.

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 Onboard observers are critical to accurately determine the amount and species composition of the total catch and discards at sea, interactions with protected species, and collection of biological data necessary for sustainable fisheries, all of which cannot be measured by electronic technologies alone.

Sec 403. Stock Assessments (p. 120) - Requires the Secretary to report to Congress on NMFS progress on prioritizing and improving stock assessments.

Comment –An annual report on NMFS progress to prioritize and improve stock assessments, data collection and analysis would be useful.



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

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Sec 404. Cooperative Research (p. 121) - Clarifies authorities for cooperative research & requires public reports of project results; updates priorities for research; requires SOC to issue guidance on cooperative management agreements, oversight, and enforcement; SSCs should consider outside sources of information for BSIA.

Comment – While cooperative research can provide useful information, basing management decisions on poorly designed studies and questionable information can be highly detrimental.

Sec 407. Emergency Operating Plans (p. 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..

Comment – With the loss of critically important stock surveys in 2020 due to the pandemic, Council pressed the agency to have contingency plans for 2021 surveys, which were successfully completed.



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

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Sec 502. Essential Fish Habitat (p. 139) - Requires federal agency actions to avoid adverse effects to EFH or if not, minimize and mitigate the adverse effects. “Minimize to the extent practicable” in current regs is replaced with just “minimize.” Defines “adverse effect” as any impact that reduces quality or quantity of EFH and requires monitoring of impacts to EFH. New criteria are established for HAPC, including spatial/genetic characteristics. Requires Councils to identify 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.

Comment – Because EFH is everywhere (for some species/life stage), and all fishing gear has adverse effects on EFH to some degree, one can ‘minimize’ impacts by prohibiting all fishing with no consideration of what is practicable. Potential for new litigation and guidelines regarding interpretation of ‘minimize’. HAPC will need to be re-evaluated to 1) include the importance of its ecological function in maintaining and restoring spatial and genetic characteristics of fish populations and 2) ensure that regulations avoid adverse effects on HAPC. Litigation likely.



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

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Sec 503. Reducing Bycatch (p. 147) - Modifies the language of National Standard 9 by eliminating the phrase “to the extent practicable”; creates a nationwide standardized bycatch reporting system; updates the Bycatch Reduction Engineering Program to expand outreach, technical assistance, and adoption of bycatch reduction methods.

Comment – All fisheries in the U.S. have bycatch. The phrase “to the extent practicable” requires the Council 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. Existing regulations 50 CFR 600.1600-1610 already requires that each FMP 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 may not be possible given the differences between recreational and commercial fisheries, and the types of gear used in the fisheries.



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

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Sec 504. Improving Rebuilding Outcomes (p. 151) - Requires details to identify stocks subject to overfishing and in need of rebuilding plans; specifies that conservation and management measures are required for stocks approaching an overfished condition; amends the rebuilding timeline; requires measurable criteria/progress in rebuilding plans; and strengthens requirements for responding to rebuilding failures (e.g., 75% probability).

Comment – Changing rebuilding time requirements provides councils flexibility to avoid negative impacts on communities. The bill doesn't consider environmental conditions limiting rebuilding – e.g., even for PIBKC, the Council would be required to develop new rebuilding plan to meet an impossible rebuilding goal, which wastes limited Council time and resources.

Sec 505. Overfished Fisheries and Preventing Overfishing (p. 163) - Requires SSCs to provide advice on accounting for all sources of mortality, promoting resilience to climate change, and objective/measurable criteria for overfishing and depleted stocks.

Comment – Requirements would add to the duties of SSCs, which are already overburdened with meeting existing ACL requirements. Overburdening SSC members increases the risk that Councils will be unable to retain qualified SSC members.



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

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Sec 507. Councils (p. 166) – Fisheries/habitats experiencing shifts in range, spatial distribution or productivity are research priorities. Councils required to develop objective and measurable criteria for identifying overfishing and depleted fisheries, develop a plan to protect EFH from adverse effects caused by fishing, including quantitative and measurable targets for increasing the quantity, quality, and representativeness of EFH and update habitat protection plans no less than once every 7 years.

Comment – SSCs and Councils should retain the ability to establish priorities for research. Existing EFH regulations require the Councils to review EFH and conservation at least once every 5 years, so the bill's language for review of habitat plans every 7 years seems unnecessary and duplicative.



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

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Sec 508. Forage Fish Conservation (p. 168) – Directs SOC to define forage fish based on factors. Requires councils to develop a list of unmanaged forage fish and prohibit any new fishery until criteria are met. Requires FMPs that authorize the establishment of catch limits for forage fish to provide for diet needs of other fish and wildlife. 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.

Comment –No directed fisheries for forage fish in NP -- fishing for forage fish is prohibited. This proposed bill may invite litigation regarding what species are identified as forage species. The term "forage fish" implies special importance of the species as prey, however nearly all fish species are prey to larger predators, and nearly all species of fish (including salmon) consume plankton and are "forage fish" at some point in their lives.

Add substantially to the duties of SSCs, which are already overburdened.

