

Magnuson-Stevens Act Reauthorization
“Sustaining America’s Fisheries for the Future Act of 2021”

H.R. 4690

**Introduced July 26, 2021 and referred to the
House Natural Resources Committee & House Agriculture Committee
From Rep. Jared Huffman (D-CA-2nd)**

Summary Section-By-Section

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Editor’s Note: This summary is intended to provide an overview of each section contained in the 189-page legislation. As such, it does not contain all critical details and should be viewed concurrently with the text of the introduced legislation

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**Section 1. Short Title**

**Section 2. Table of Contents**

**Section 3. References**

**Section 4. Definitions** - This section clarifies the definitions for “Administrator” and “Secretary” that are used in the bill.

**Section 5. Conforming Amendments to the Table of Contents of the Magnuson-Stevens Fishery Conservation and Management Act**

**TITLE I -- CLIMATE READY FISHERIES**

**Section 101. Findings, Purpose, and Policy** - Page 5 (*This section amends the Act*)

This section adds two new Findings, modifies two existing Findings, modifies one existing Purpose, modifies one existing Policy, and adds two new Policies – mostly adding language regarding climate change. One specific change to the Purposes section of the Act revises the language regarding the purposes of the Regional Fishery Management Councils and the preparation of fishery management plans to “address the impacts of environmental conditions

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associated with climate change on stocks of fish, marine ecosystems, fisheries management, and coastal communities...”

**Section 102. Promoting Climate Resilience in Fisheries Management – Page 8 (This section amends the Act)**

This section would add a number of new climate change-related requirements for any new FMP or FMP amendment submitted to the Secretary after January 1, 2021 and would require that any changes to fishery management plans required by this section be implemented for all FMPs within four years after the date of enactment of this bill. MSA Section 303 would be amended in numerous places to require FMPs to include the impacts of climate change, including present and anticipated future conditions, on stocks, MSY/OY, on fishery participants, and requires RFMCs to explain how management measures account for the impacts of climate change and what data were used in the analyses.

A new Section 322 is added to the Act as follows --

**SEC. 322. INCREASING RESILIENCE OF FISH STOCKS TO CLIMATE CHANGE**

(a) **VULNERABILITY ASSESSMENT** .—Within 3 years of enactment of the \_\_\_\_ Act and every 5 years thereafter, the Secretary shall assess the vulnerability to climate change of fish stocks within each Council’s geographical area of authority, notify the Councils of the vulnerability of such stocks, and recommend conservation and management measures.

(b) **COUNCIL PRIORITIZATION PLANS**.—Upon receiving notification from the Secretary in subsection (a), the Councils shall within one year, publish plans to prioritize management actions to increase resilience of the fish stocks identified as most vulnerable to climate change and begin implementing the plans. For stocks managed under section 302(a)(3), the Secretary shall publish such plan. Not later than 3 years after publishing the prioritization plans, Councils shall report to the Secretary on actions taken to implement the plans under this subsection or explain reasons for taking no action.

(c) **REPORT**.—Within 3 years of enactment of the \_\_\_\_ Act and every 5 years thereafter, the Secretary shall submit a report to Congress that—

- (1) describes the vulnerability of fish stocks;
- (2) identifies risks posed by climate change to the conservation and management of fish stocks; and
- (3) summarizes steps taken by the Secretary and the Councils to address impacts and risks of climate change to fish stocks.

(d) Add at the end of Section 305: “(n) Within 1 year of enactment of the \_\_\_\_ Act, the Secretary shall establish by regulation guidelines to assist the Councils in preparing and adapting fishery management for the impacts of climate change, including for consideration of climate change in the conservation and management of fish stocks under each Council’s geographical area of authority.

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**Section 103. Incorporating Climate Science – Page 13** (*This section amends the Act*)

This section would add two new topics to the Council Training Program - “climate change and its relevant impacts of fisheries health, range, the conservation and management of a stock” and “ecosystem-based fishery management”. MSA Section 404 (Fisheries Research) is also amended to add a new area of research “on changes in geographic range and spatial distribution, and productivity of a fishery or interrelated fisheries”.

**Section 104. Climate-Ready Fisheries Innovation Program – Page 14**

This section would require the Secretary to establish a new program (including a new grant program) to develop innovative tools and approaches to increase the adaptive capacity of fisheries management to the impacts of climate change. This section would require the Secretary to establish a process for coordination and outreach to the NMFS regional offices and science centers, the Councils, the SSCs of the Councils, as well as stakeholders, fishery participants and Tribes to identify multi-year research priorities.

**Section 105. Managing Shifting Stocks – page 17** (*This section amends the Act*)

This section would require the Secretary to review the geographical authority of the Councils at least every 5 years to determine whether a substantial portion of a fishery is located in the geographical jurisdiction of more than one Council and would require the Secretary to designate one of the Councils to prepare an FMP or FMP amendment. This action can also be requested by a Council, and creates a process/timeline for the Council(s) to submit an FMP/amendment. This section clarifies that this provision does not apply to highly migratory species currently management by the Secretary.

This section would also require the Secretary of Commerce, in coordination with the Secretary of State and the Administrator of the Agency for International Development (US AID), to develop a strategy for coordinated research and management with nations that share a fish stock with the U.S. that currently is seeing shifts in geographic range or spatial distribution or is expected to see such shifts if that shift currently des or will span international boundaries within a life stage or across life stages.

**Section 106. Emerging Fisheries – Page 23 -** (*This section amends the Act*)

Section 305 is amended by removing the authority for RFMCs to request adding new gear through the 90-day notice and removes the authority for a Council to submit changes to the list of fisheries.

This section would also require each RFMC review the fisheries and gear on the list under its authority within 18 months of the date of enactment of this legislation and at least once every five years. This section would allow the Secretary to permit - on a limited interim basis through experimental fishing permit (EFP) authorities - fishing activity that is not on the list if the EFP is

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designed and implemented to yield necessary information for analysis that is currently lacking. This section would allow the Secretary to authorize a new fishery of fishing gear that is not included on the list after receiving a proposal from a Council.

Further, Section 305 of the Act is amended in finer detail as follows --

Section 305(a) (16 U.S.C. 1855(a)) is amended—

(1) in the subsection heading, by striking “Notification of Entry” and inserting “Development of New Fisheries”;

(2) in paragraph (1), by striking all after (1) and inserting:

“The Secretary shall publish in the Federal Register, subject to the provisions of paragraph (3), and after notice and an opportunity for public comment, a list of all fisheries prosecuted entirely or in part in the U.S. Exclusive Economic Zone, as well as all U.S.-managed fisheries that take place outside the Exclusive Economic Zone. The list shall identify fisheries by region, corresponding to the eight Councils as well as the Secretary pursuant to section 302(a)(3), and for each fishery shall include the following information—

(A) the types of fishing gear authorized for use in such fishery;

(B) the jurisdiction (whether state, federal, interstate, or otherwise) exercising management authority over such fishery;

(C) whether a Fishery Management Plan or analogous management structure exists for the fishery; and

(D) the species authorized to be caught and retained in such fishery.

All list entries shall refer to specific managed fisheries. Undefined or unmanaged fishing activity shall not be included on the list.

## **TITLE II – SUPPORTING FISHING COMMUNITIES**

### **Section 201. Fishery Resource Disaster Relief – Page 29 (*This section amends the Act*)**

This section would substantially amend Section 312 of the Act (Fisheries Disaster Assistance) by adding a series of new definitions (incl. the term *natural cause* to include weather, climatic, hazard or biology-related event to include hurricane, flood, harmful algal bloom, tsunami, hypoxic zone, drought, El Nino effect on water temperature, marine heat wave, disease or ocean acidification. The term does not include normal or cyclic variations in a species distribution or stock abundance) and clarifications on timelines and data requirements for spend plan submissions/approval, metrics to estimate revenue losses, eligible uses, and requirements for allocation and disbursement of federal fishery disaster assistance funding. This section would also clarify that certain anthropogenic causes can qualify for disaster relief.

Any fishery subject to overfishing in any of the 3 years preceding the date of a determination is not eligible for a determination of whether a fishery resource disaster has occurred unless the Secretary determines that overfishing was not a contributing factor.

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This section adds a definition of “Indian Tribe” to have the same meaning as the term in the Federally Recognized Indian Tribe List Act of 1994.

The section would also repeal Section 315 of the Magnuson-Stevens Act and Section 308 of the Interjurisdictional Fisheries Act of 1986.

Editor’s note: This section mirrors recent disaster reform legislation H.R. 5548 and S.2346 (recently re-introduced in the 117<sup>th</sup> Congress by Sens. Cantwell/Wicker) titled *The Fishery Failures: Urgently Needed Disaster Declarations Act of 2021*.

**Section 202. Subsistence Fishing** – Page 57 (This section amends the Act)

A definition of “subsistence fishing” is added to the Act as follows --

SUBSISTENCE FISHING.—The term “subsistence fishing” means fishing in which the fish harvested are intended for customary and traditional uses, including—

- (i) for direct personal or family consumption as food or clothing;
- (ii) for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and
- (iii) for customary trade.

(B) In this paragraph— (i) the term “family” means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and (ii) the term “barter” means the exchange of a fish or fish part— (I) for another fish or fish part; or (II) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

**Section 203. Working Waterfront Grant Program** – Page 58 (*This section would amend the Coastal Zone Management Act*)

This section would require the Secretary to establish a new Working Waterfront Task Force. This section includes the membership, functions, and information to be considered of the Task Force. The Task Force would be required to identify and prioritize the working waterfronts in states and their critical needs in states that have an approved CZMA coastal management plan. This section would also require the Secretary to establish a new Working Waterfront Grant Program to make grants to coastal states to award to local governments/agencies, Indian Tribes, and non-governmental entities, for implementing a working waterfront plan. This section clarifies that grants may be used to acquire an approved working waterfront or an interest in one, to make improvements to a working waterfront, or be used for climate adaptation mitigation. Any state requesting a grant would first be required to develop, submit, and have a working waterfront plan approved by the Secretary to be eligible.

**Section 204. Seafood Marketing** - Page 83

This section would require the Administrator, in consultation with the Secretary of Agriculture and the seafood industry, to study the possibility of establishing education and marketing programs within NOAA. The Administrator would also be required to submit a report to Congress on the study. This section would also require the Secretary of Agriculture, in

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conjunction with the Administrator, to develop an outreach plan to expand USDA to fishing industry stakeholders to increase the awareness of and assist with the use of programs in the Agricultural Marketing Service within USDA.

**Section 205. Community Participation in Limited Access Privilege Programs – Page 84** (*This section amends the Act*)

This section would amend the Requirements for Limited Access Privileges provisions of the Act to add a requirement that the Secretary be required to consider the needs of fishing communities and provide a process for fishing communities to participate in a LAP program. This section would establish minimum requirements for a Community Sustainability Plan that may be submitted by a fishing community to a Council. The bill clarifies that a community sustainability plan submitted to a Council or approved before the date of the enactment of this legislation would not be invalidated if it did not meet the new requirements.

**Section 206. Findings – Page 87** (*This section amends the Act*).

This section amends an existing Congressional Finding to remove some outdated language and to add language clarifying that Congress finds that “ensuring sustainable use of fishery resources is essential to the economic well-being” of coastal areas.

**TITLE III – STRENGTHENING PUBLIC PROCESS AND TRANSPARENCY**

**Section 301. Tribal Representation At the Pacific Fishery Management Council – Page 88** (*This section amends the Act*)

This section deletes two elements: the requirement for tribal governments to submit “not less than 3 individuals”; and the term limit for the Tribal representative to the Pacific Council.

**Section 302. Regional fishery Management Councils – Page 88** (*This section amends the Act*)

This section would remove the requirement that no less than 3 individuals be on a list of nominees by Tribal governments for the Secretary to consider when appointing a tribal representative to the Pacific Fishery Management Council. This section would also remove the term limit for the Tribal representative to the Pacific Council – allowing the representative to serve until the Secretary appoints a new representative.

This section adds two Alaska Native Tribal seats to the NPFMC and elucidates the process by which members are selected. Term limits would not apply to these seats.

**Section 303. Atlantic Councils – Page 90** (*This section amends the Act*)

This section would add a voting seat for a Mid-Atlantic Council member to the New England Council and a voting seat for a New England Council member to the Mid-Atlantic Council. These new seats would act as a liaison to represent the interests of the fisheries under their Council’s

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jurisdictions on the neighboring Council and the Secretary shall appoint liaisons with expertise in both jurisdictions.

**Section 304. Council Procedures and Participation** – Page 92 (*This section amends the Act*)

This section would require the Councils to hold roll call votes on all nonprocedural matters; and encourage Councils to hold meetings in person, and require to the extent possible, remote participation and voting by Council members and, to the extent practicable, to make a webcast, live audio, or video broadcast of each meeting of the Council and the Council Coordination Committee meetings available on the Council’s website with certain exceptions. Each Council would also be required to post on its website audio or video recording, searchable audio recording, or written transcript of each Council meeting and each meeting of the SSC. The Secretary would be required to maintain a public archive.

**Section 305. Council Accountability and Membership** – Page 93 (*This section amends the Act*)

This is a lengthy detailed section covering among other things: Council member accountability, new membership requirements, lobbying prohibitions/communications, and council training. All Council employees are to be “deemed” to be federal employees with respect to any requirements that apply to federal employees including being subject to all laws, rules and policies regarding ethics and sexual harassment or assault that apply to federal employees. Council committee and advisory panel members would also be subject to these requirements and any Council individual a found to be in violation of the above listed laws, rules or policies would be held individually liable for their actions

This section would add two new qualifications for the Secretary to consider for voting members to the Council – that the individual be knowledgeable about the subsistence harvest or that the individual be knowledgeable about ecosystem-based fishery management or climate science.

This section would require the Secretary, in making appointments, to consider to the extent practicable several new categories when making appointments and in ensuring a balanced apportionment on each Council – participants in subsistence fisheries, members of the conservation community, scientists, non-consumptive users, and members of indigenous and tribal communities.

And this section would also require the Secretary to appoint at least one individual to each Council who does not have a financial interest in matters before the Council. This section would require the Secretary, when appointing at-large members to the Western Pacific Fishery Management Council to ensure geographic representation across all constituent states of the Council.

Finally, this section would prohibit Council members, Council advisory body members, Council employees, and Council contractors from using federal funds to attempt to influence the introduction, enactment, amendment or repeal of federal or state legislation. This prohibition

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would also apply to the issuance, advancement, modification, or overturning of an executive order, presidential proclamation, or similar presidential directive or decree. If the Secretary determines a violation of this section has occurred, the Secretary would be required to subject the individual to civil penalties which could include suspension or expulsion from the Council or from an advisory body or relate entity, or suspension or expulsion from employment.

**Section 306. Amendments to Western Pacific Sustainable Fisheries Fund – Page 103**

This section would make changes to the Western Pacific Sustainable Fisheries Fund and require the Secretary to establish a FACA-exempt Western Pacific Sustainable Fisheries Fund Advisory Panel. The Secretary would be required to consult with the AP in determining use of the Fund.

**Section 307. National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention – Page 109**

Section 3541(a) of P.L. 114-328 (i.e. National Defense Authorization Act for Fiscal Year 2017) required the Secretary of Commerce to develop a policy on the prevention of and response to sexual harassment for employees of NOAA, members of the NOAA commissioned officer corps, and individuals who work with or conduct business on behalf of the Administration by December 23, 2017. This lengthy and detailed section would among things: amend the NOAA sexual harassment policy to clarify that “individuals who work with or conduct business on behalf of the Administration” includes observers and at-sea monitors required by NMFS to be aboard commercial fishing vessels or other privately owned vessels, barges or platforms as required under the Magnuson-Stevens Act, the Marine Mammal Protection Act, or the Endangered Species Act; and observers and at-sea monitors required for platform removal observation. This section would amend the NOAA sexual harassment policy to clarify that “individuals who work with or conduct business on behalf of the Administration” includes voting members of the regional fishery management councils as well as the executive and administrative staff of the councils; and set up very detailed policy, reporting, and review requirements for incidents of sexual harassment across the agency.

**Section 308. Saltonstall-Kennedy Act (S-K) Reform - Page 120**

This section would amend the Saltonstall-Kennedy Act to require the Secretary to establish an American Fisheries Advisory Committee – including 6 regional divisions - within 90 days after the enactment of this legislation. This section establishes the membership requirements, terms, staffing, financial interest, responsibilities, operational aspects, etc. for the Committee. This section would require the Secretary to appoint at-large members of the Committee including: 1 person with experience in food distribution, marketing, retail or food service; 1 person with experience in the recreational fishing industry supply chain; 1 person with experience in the commercial fishing industry supply chain; and 1 person who is an employee of NMFS with expertise in fisheries research. The Secretary would be required to seek a balanced representation of expertise in fisheries, food production or science.



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Under current law, 30 percent of the gross receipts from *all* import duties are to be used by the Secretary of Agriculture to encourage export of agricultural goods and to encourage domestic consumption of agricultural goods. This section would require the Secretary of Agriculture to transfer 30 percent of the gross receipts from duties collected on imported *fishery* products to the Secretary. The Secretary would be prohibited from using the funds for any purpose other than fisheries research and development projects authorized under the Saltonstall-Kennedy Act. This section would also require the Secretary to make grants from those funds to carry out research and development projects regarding fisheries or to market and promote the consumption of local or domestic fishery products, environmentally-friendly and climate-friendly fishery products, or well-managed but less known species.

#### **TITLE IV – MODERNIZING FISHERIES SCIENCE AND DATA**

##### **Section 401. Data Modernization – Page 131**

This section would require the Secretary, acting through the Assistant Administrator for Fisheries, to provide Congress with an implementation plan for a Fisheries Information Management Modernization initiative within 180 days after the enactment of this legislation. The initiative would be required to include a description of the activities for the goals and objectives of the initiative, a schedule for implementation, an estimated budget, a plan for stakeholder involvement, and how the initiative will align with other NOAA data management efforts.

##### **Section 402. Expanding and Improving Electronic Technologies – Page 132 (*This section amends the Act*)**

This section includes a Sense of the Congress statement regarding the use of electronic technologies and the need of fishery managers to have timely and accurate data. The amended provision would authorize (but not require) a Council to require, as a part of a fishery management plan, electronic monitoring or other electronic technology or on-board observation for data collection purposes necessary for the conservation and management of the fishery.

This section would also amend the Information Collection provisions of the Act (section 402) to require Councils and the Secretary to consider the use of electronic monitoring, reporting or other electronic technology as a part of the information collection program. This section would also require the Comptroller General, in consultation with Congress, to conduct a review of the ability of NMFS to develop, deploy, and use electronic data collection and monitoring tools and to take into account cost and efficiency. This section would require the Secretary to establish an advisory panel (FACA applies) to inform the Administrator and Councils on developments in electronic technologies, use of innovative technologies in fishery independent data collection including on stock and habitat assessments and environmental conditions, that could be used in

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fisheries monitoring, data collection, and management; and including recommendations on collected data ownership, performance standards, policies and procedures.

Finally, the Secretary in conjunction with other Federal agencies and nongovernmental parties is required to establish at least 1 “Electronic Technologies Innovation Prize” to catalyze rapid development and deployment of the technology. There are 9 focus areas specified for this initiative.

#### **Section 403. Stock Assessments – Page 139**

This section would require the Secretary to report to Congress within one year and annually thereafter on NMFS progress to prioritize and improve stock assessments. The report would be required to include: a summary of the methods used for all stocks of fish covered by an FMP; a summary of which stocks of fish have not been assessed and why they have not been; a summary of each stock assessment or update completed during the year; a schedule of upcoming stock assessments and updates; identification of data and analysis that could reduce uncertainty and improve accuracy and whether the data and analysis could be provided by fishermen, fishing communities, universities, or research institutions; a summary of progress on autonomous surveys and opportunities for new technologies; and a summary of data gaps that may be a result of changing ocean and climate conditions and actions taken to address changing assessment needs.

#### **Section 404. Cooperative Research and Management – Page 141 (*This section amends the Act*)**

This section would clarify that fishing communities can be included in partnerships under the cooperative research and management authority in the Act. This section would require the Secretary, when making funds available, to award funding on a competitive basis and based on regional needs. The Secretary would also be required to select programs that form a part of a coherent research or cooperative management projects focused on solving the prioritized needs developed by the Councils. The Secretary would be required to give priority to projects that: collect data to improve stock assessments including the use of fishing vessels, acoustic technology or other marine technology; improve fishery dependent data collection including assessment of bycatch and post-release mortality, expanded electronic technology, and improved monitoring coverage; conservation engineering or projects to reduce bycatch and avoidance of post-release mortality including in high seas fisheries and the transfer of technology to other countries; identify habitat areas of particular concern and habitat conservation; collect and compile economic and social data; test and expand electronic technologies; use technologies that monitor changing ocean conditions and ensure climate resilient fisheries; identify anticipated impacts of changing ocean conditions; and cooperative management projects that make use of data collected through these projects. A qualifier is added that any EFP shall not allow catch in excess of an ACL or bycatch in excess of a bycatch cap/limit. Councils must publish a report on the results of all approved EFPs.

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#### **Section 405. Northeast Regional Pilot Research Trawl Survey and Study – Page 146**

This section would require the Secretary, in coordination with the relevant Councils (as selected by the Secretary) and the Northeast Area Monitoring and Assessment Program, to develop a fishing industry- based pilot research trawl survey to study and enhance the current NOAA vessel trawl surveys. In carrying out this provision, the Secretary would be authorized to select fishing industry vessels to participate in the study and to use the Northeast Area Monitoring and Assessment Program Southern New England/Mid-Atlantic Nearshore Trawl Survey as a model, or some other methodology identified by NOAA/VIMS that ensures statistically valid sampling and spatial coverage to allow comparisons. NOAA/RFMCs/VIMS would be required to collect data for 5 years. The Councils would be required to partner with NMFS Northeast Science Center and the Virginia Institute of Marine Sciences in this endeavor and a detailed report is required but no deadline is specified.

#### **Section 406. Recreational Data Consistency – Page 147**

This section would require the Secretary, within 2 years, to establish guidelines to improve recreational catch data. These guidelines would need to include the development of data standards to improve timeliness accuracy, precision, and validation of data for the use in assessments and management actions. This section would require the Secretary's new guidelines to consider the recommendations developed under the Modernizing Recreational Fisheries Management Act of 2018. This section would require the Secretary, within 1 year and at least once every 5 years after, to develop and publish a strategic plan for recreational data improvements. The strategic plan would need to improve coordination between federal recreational survey programs and data from other sources such as states or marine fisheries commissions.

The strategic plan would also need: to improve timelines, accuracy, precision and validation of data from the surveys; describe processes to calibrate data sources with historical time series prior to being used for management; develop methods to integrate recreational data collected from more than one source; create goals, objectives, and timeframes for achieving these requirements; consider the use and effectiveness of EFPs to carry out research; and describe the role of fishery participants in the program. The new version no longer requires calibration of recreational harvest data against the Council-approved recreational ACLs.

#### **Section 407. Emergency Operating Plans – Page 152**

This section would require the Administrator, within one year of the date of the enactment of this legislation (and in consultation with RFMCs, federal, state and international agencies, scientific and technical experts and other stakeholders), to develop a contingency plan for circumstances that would make fisheries monitoring and stock assessments impracticable. The Administrator would also be required to submit the plan to Congress.

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**Section 408. Zeke Grader Fisheries Conservation and Management Fund** – Page 153 (*This section amends the Act*)

This section would rename the Fisheries Conservation and Management Fund after Zeke Grader. This fund is currently available to the Secretary without appropriation or fiscal year limitation and may be funded through quota set asides and can accept donations from states or outside sources. This section would add another authorized use of the fund for conducting research and analysis to prepare for and adapt fisheries and fishing communities to the effects of climate change. This section would authorize the Secretary to apportion funds to a specific region or project identified by a Council if funds were donated for that specific purpose by an outside entity.

**Section 409. Offshore Wind Collaboration** – Page 155

This section would require the Secretary and the Secretary of the Interior (acting through BOEM) to enter into a cooperative agreement to fund additional stock assessments and fisheries and marine wildlife research which may be necessary due to actions taken by BOEM for the development of offshore wind energy.

**TITLE V – SUSTAINING FISHERIES THROUGH HEALTHY ECOSYSTEMS AND IMPROVED MANAGEMENT** - (Page 156)

The bill adds a new Section 501 Sense of Congress as follows --

SEC. 501. SENSE OF CONGRESS.

It is the sense of Congress that protecting important fish habitat ensures healthy and resilient fisheries and marine ecosystems, particularly as oceans conditions shift due to climate change, and that impacts from both fishing gear and non-fishing activities should be considered through consistent application of essential fish habitat provisions under the Magnuson-Stevens Fishery Conservation and Management Act.

**Section 502. Essential Fish Habitat Consultations** – Page 156 (*This section amends the Act*)

This section would make numerous and substantive changes to the existing provisions regarding Essential Fish Habitat (EFH) and the requirements of other agencies with regard to EFH. This section would replace the current consultation requirement between the Secretary and another federal agency and replace it with a requirement that if any action by a federal agency may have an adverse effect on EFH, that agency would be required, through consultation with the Secretary, to avoid the adverse effects. For any action by a federal agency that may have an adverse effect on HAPC, that agency would be required to minimize and mitigate any adverse effect on the HAPC and on the species for which the HAPC is designated. The agency would also be required to monitor, minimize and mitigate the adverse effect.

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This section adds a new definition of the term “*adverse effect*” to mean “any impact that reduces the quality or quantity of EFH”.

The Secretary would be required to establish regulations regarding the new consultation process which would result in the avoidance (if possible) of adverse impacts on EFH and minimization or mitigation if avoidance of adverse impacts is not possible. This section would require the Secretary to inform each Council on any consultation the Secretary undertakes with another federal agency and inform the Council of any potential adverse effects of the action. This section would allow the affected Council to comment on and make recommendations concerning the action to the Secretary and any federal or state agency. This section would require the affected Council to comment on and make recommendations concerning the action to the Secretary and any federal or state agency if the action is likely to adversely affect habitat of anadromous fisheries.

This section would also require the Secretary, if the Secretary receives information – from any source – that an action or proposed action by a federal agency or a state agency that may have an adverse impact on EFH, to recommend measures to avoid the adverse effects. If the adverse effects cannot be avoided, the Secretary would be required to recommend measures to minimize and mitigate the adverse effects. An agency receiving recommendations for conserving EFH from the Secretary would be required to provide a detailed response to the Secretary and the appropriate Council within 30 days. In the case of an agency response that is inconsistent with the Secretary’s recommendations, the agency would be required to explain how the proposed alternative measures will avoid the adverse effects on EFH to the extent that the adverse effects cannot be avoided, minimized, or mitigated.

This section would require that each fishery management plan (FMP) describe and identify habitat areas of particular concern (HAPC) based on guidelines established by the Secretary. This section would also require each Council to avoid adverse effects on HAPCs cause by fishing, monitor efficacy of actions to avoid adverse effects, and identify other actions to encourage the conservation and enhancement of HAPCs.

This section would define “habitat areas of particular concern” to mean “specific types of areas of habitat that are a part of or within essential fish habitat that (A) provide important ecological function, including for maintaining and restoring biomass, demographic, spatial and genetic characteristics of fish populations; (B) are sensitive to human-induced environmental degradation; are or will be significantly stressed by human activities; due to prevailing or anticipated future environmental conditions, are or may become important to the health of the managed species; or are rare.”

The Secretary is also required to report within 5 years and every 5 years thereafter on the effectiveness of measures to ensure the conservation and enhancement of EFH; and on partnership opportunities for increased data collection, research and monitor of EFH.

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### **Section 503. Reducing Bycatch – Page 164 (*This section amends the Act*)**

This section would amend the national standard regarding the minimization of bycatch to remove the words “to the extent practicable”. This section would require that FMPs specify the “quantification of bycatch” in the data to be supplied to the Secretary. This section would also remove “to the extent practicable” from the requirement assess the amount and type of bycatch occurring in the fishery and management measures that minimize bycatch and minimize the mortality of bycatch that cannot be avoided. This section would require that all FMPs consider full retention requirements for species with high catch mortality rates.

This section would require the Secretary to establish a national standardized reporting program to assess the amount and type of bycatch occurring in each fishery and across fisheries and to determine the contributions of bycatch to the total fishing-related mortality of each fishery. The Secretary would be required to evaluate the effects of bycatch on relevant fisheries and the ecosystem.

This section amends the a national Bycatch Reduction Engineering Program in several aspects as follows –

#### **(b) Bycatch Reduction Engineering Program –**

- (1) Section 316(a)(3) is amended to read as follows: "provide information, outreach, technical assistance, and training to Councils, Tribes, and fishery participants that will encourage adoption and use of technologies and methods developed under the program; and"
- (2) Section 316(a)(4) is amended to read as follows: "provide for routine consultation with the Councils in order to maximize opportunities to incorporate results of the program in Council actions and provide incentives for adoption of technologies and methods developed under the program in fishery management plans, actions, and other measures developed by the Councils or the Secretary"
- (3) Section 316(d) is amended to read as follows: "(d) REPORT.--Every three years, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources that—
- (4) Section 316(d) is amended by adding at the end: "(4) includes a cumulative description of all bycatch reduction technologies and methods developed, tested, or supported by the Bycatch Reduction Engineering Program, an assessment of the effectiveness of those techniques, a summary on how and in which fisheries those techniques have been fully implemented and to what degree, and, if those techniques have not been implemented into fishery management, an explanation for why those techniques have not been used and an estimate of the reduction of bycatch that could be achieved if they were implemented.

### **Section 504. Improving Rebuilding Outcomes – Page 168 (*This section amends the Act*)**

This section would rewrite section 304(e) - the Secretarial requirements for rebuilding overfished fisheries. Under the rewritten provisions, the Secretary would be required to report annually to Congress on the status of fisheries within each Council’s geographic area of authority. For stocks that lack the criteria under an FMP, the Secretary would be required to

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determine whether the stock is depleted or subject to overfishing using the best available scientific information. This section would also require that the report identify all stocks that are under a rebuilding plan or in need of a rebuilding plan and whether adequate progress has been made toward ending overfishing and rebuilding those stocks.

This section would require the Secretary, if a fishery is subject to overfishing, is depleted or approaching a depleted status -- to immediately notify the appropriate Council and request the Council end overfishing immediately; for stocks that are depleted the Councils must end overfishing immediately and implement conservation and management measures to rebuild affected stocks; and for stocks approaching a depleted condition, the Council must end overfishing immediately and prevent the stock from reaching a depleted condition. The Secretary would be required to publish each notice.

Within 2 years after identification by the Secretary as a fishery subject to overfishing, or is newly identified as or determined to be depleted or approaching a depleted condition, or a rebuilding plan has been found to have failed or a fishery reaches the end of the time period for rebuilding, the appropriate Council (or the Secretary, for HMS fisheries under section 302(a)(3)) shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) for stocks that are depleted, to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or

(B) for stocks that are approaching a depleted condition, to end overfishing immediately and prevent the stock from reaching a depleted condition.

This section would remove the 10-year limit on the time period for rebuilding a depleted stock [section 302(a)(4)(A)(ii)] and replace it with a requirement that the rebuilding timeframe “not exceed the time the stock of fish would be rebuilt without fishing occurring plus one mean generation unless management measures under an international agreement dictate otherwise.” It is also specified the rebuilding plan “contain objective and measurable criteria for evaluating rebuilding progress”.

This section would require the Secretary, in the case where a Council does not submit the required rebuilding plan to the Secretary within the 2-year time frame, to prepare an FMP or plan amendment within 6 months after the end of the 2-year period to end overfishing immediately on the depleted stock and rebuild the stock. For a stock this is approaching a condition of being depleted, the Secretary would be required to end overfishing immediately and prevent the stock from becoming depleted.

This section would require the Secretary to review any FMP or plan amendment required under the rebuilding provisions at routine intervals not to exceed every two years to determine whether such plan, amendment, or regulations have resulted in adequate progress toward

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rebuilding affected fish stocks. The Secretary shall find a lack of adequate progress toward rebuilding an affected fish stock if—

- (i) the status of the stock is not improving sufficiently such that it becomes unlikely that the stock will be rebuilt within the rebuilding time period;
- (ii) the applicable fishing mortality rate or annual catch limits are exceeded, and the causes and rebuilding consequences of such exceedances have not been corrected;
- (iii) new scientific information demonstrates that assumptions regarding the stock’s biology that formed the basis for the rebuilding plan, such as stock productivity, were fundamentally inaccurate, and such inaccuracies render the current rebuilding plan unable to address the stock’s rebuilding needs; or
- (iv) for other reasons, as appropriate.

The Secretary shall publish the results of the review in the Federal Register, including a determination of adequate progress or a lack of adequate progress, and the reasons for the determination.

If, as a result of the review, the Secretary finds that such plan, amendment, or regulations have not resulted in adequate progress toward rebuilding affected fish stocks, the Secretary shall—

- (i) in the case of a HMS fishery immediately make revisions necessary to achieve adequate progress toward rebuilding within the time period set; or
- “(ii) for all other fisheries, immediately notify the appropriate Council, which must make revisions necessary to achieve adequate progress toward rebuilding within the time period set. If the Council fails to take such action within 9 months of notification, the Secretary shall, within 15 months of notification, make such revisions as are needed to ensure adequate progress toward rebuilding within the time period set.

If, as a result of the review, the Secretary finds that revisions cannot achieve adequate progress within the rebuilding time period set, the Secretary may find that the rebuilding plan has failed. Upon such a finding, the Council (or the Secretary in the case of a HMS stock) shall prepare and implement a new rebuilding plan.

If a stock managed under a plan, amendment, or regulations pursuant to this subsection reaches the time period for rebuilding but has not rebuilt, or the Secretary determines that an existing rebuilding plan has failed the Council (or Secretary in the case of a HMS stock) shall prepare a new rebuilding plan except that such plan shall have no less than a 75 percent chance of rebuilding the fishery by the end of the new rebuilding time period. Management measures intended to rebuild the stock in as short a time period as possible must remain in effect during the development of the new plan.



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**Section 505. Depleted Fisheries and Preventing Overfishing** – Page 176 - (*This section amends the Act*)

This section would add a definition of “depleted” to mean “with respect to a stock or stock complex, that its biomass has declined below the level at which the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis is jeopardized. A depleted condition may be caused by numerous factors, alone or in combination, such as fishing effort, habitat loss, ecosystem changes or climate change, overfishing, inadequate forage, or other characteristics of or stressors on the stock or stock complex.”

The Section also adds an explanation about the use of the term as follows. The term “depleted” in this Act shall be deemed to be a reference to “overfished” as such term was defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) before the date of enactment of this Act. This section would add language clarifying that “The provisions of this Act and the amendments made by this Act are not intended to alter the legal mandate to prevent depletion of fisheries and to rebuild depleted fisheries upon determination of their depleted status, which includes among other things ending or curtailing fishing while the fishery rebuilds.”

The word “depleted” as used in this Act takes the meaning and case law previously ascribed to the term “overfished” as used in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) before the date of the enactment of this Act.”

This section would replace the current definition of “overfishing” and “overfished” with a single definition of “overfishing” to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield on a continuing basis.”

This section would amend the Act to replace the term “overfished” each place it occurs with the term “depleted”. Again, this section clarifies that replacing the term “overfished” does not alter any legal mandates to prevent fisheries from becoming depleted and to rebuild depleted fisheries.

Section 302 is also amended and expanded to require each scientific and statistical committee (SSC) provide the appropriate Council with ongoing scientific advice for fishery management decisions, including—

(i) recommendations for accounting for all sources of mortality in establishing management measures, for the acceptable biological catch levels, for preventing overfishing, for maximum sustainable yield, and for achieving rebuilding targets and promoting resilience of fish stocks to climate change;

“(ii) objective and measurable criteria for determining whether a stock is depleted or experiencing overfishing; and

“(iii) reports on stock status and health, sources of mortality, bycatch, habitat status, social, ecological, and economic impacts of management measures, and sustainability of fishing practices,

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and prevailing and anticipated future impacts of climate change on fish stocks, fishing communities, and fishery sectors.

This section would also amend an existing FMP requirement to read “specify objective and measurable criteria for identifying when the fishery to which the plan applies is **depleted** (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) **which may not be less precautionary than the recommendation of the scientific and statistical committees for that fishery...**” (ROMEIA Editor’s Note: the new language is in **bold and italics and titled “Minimum Required Precautionary Standard”**).

**Section 506. Preparation and Review of Secretarial Plans** – Page 180 (*This section amends the Act*)

This section would require (currently law only authorizes) the Secretary to prepare a fishery management plan in the case where: a Council fails to submit a plan for a fishery that requires conservation and management; the Secretary disapproves or partially disapproves a plan or amendment and the Council fails to submit a revised plan or amendment; or the Secretary is given the authority to prepare a plan under the Act. This section would require the Secretary to prepare a plan within 180 days of the failure to submit a plan or within 180 days of disapproving or partially disapproving a Council plan or amendment. This section would require the Secretary to notify a Council at least 30 days prior to issuing a Secretarial plan.

**Section 507. Councils** – Page 180 (*This section amends the Act*)

This section would require Councils to, in conjunction with the SSCs, prioritize fisheries and habitats experiencing or expected to experience a shift in geographic range, spatial distribution, or productivity within the next five-year period.

Councils would also be required to approve, for each managed stock, objective and measurable criteria for identifying whether a stock is depleted or experiencing overfishing. These criteria may not be any less precautionary than the recommendation of the SSC.

Councils would also be required to develop and implement a plan to protect EFH from adverse effects caused by fishing including quantitative and measurable targets and goals for increasing the quality, quantity, and representativeness of EFH and conservation and management measures to implement the plan. Councils would also be required - at least every 7 years and based on any new relevant information - to review the habitat protection plans, the designations of EFH, the designations of HAPCs, and amend each FMP as necessary and appropriate.

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**Section 508. Forage Fish Conservation** – Page 182 (*This section amends the Act*)

This section would add elements to the MSA contained in H.R. 2236/S.1484, the *Forage Fish Conservation Act*. This section would require the Secretary to define “forage fish” within 6 months of the date of enactment of this legislation, and amend the definition of “optimum yield” to clarify that OY would be reduced to provide for the diet needs of fish species and other marine wildlife including marine mammals and birds for those marine species for which forage fish are a significant component. This section would require each Council, in developing its research priorities, include forage fish populations and distributions; and to develop a list of unmanaged forage fish and prohibit the development of any new directed forage fish fishery until the Council has conducted a review of conservation needs.

This section would require each SSC to make recommendations regarding “maintaining a sufficient abundance, diversity, and localized distribution of forage fish populations to support the role of such populations in marine ecosystems.”

This section would also require each FMP to assess, specify, and reduce annual catch limits for forage fish fisheries by the diet needs of fish species and other marine wildlife including marine mammals and birds for those marine species for which forage fish are a significant part of their diet. This requirement for FMPs would be effective 5 years after the date of enactment of this legislation and be based on guidelines and regulations developed by the Secretary within 18 month of the date of enactment of this legislation.

Finally, this section would require the Secretary to amend the Atlantic Herring FMP (New England Council) and the Atlantic Mackerel, Squid, and Butterfish FMP (Mid-Atlantic Council) to add shad and river herring to the list of managed stocks. The Secretary would also be required to initiate plan amendments to develop and implement all required conservation and management measures for those species. This section would require the Secretary to reallocate existing resources to provide for at-sea observation (of at least one on-board observer or on-board electronic monitoring) for at least 60 percent of the fishing trips of mid-water trawl gear or paired mid-water trawl gear in the Atlantic herring and Atlantic mackerel fisheries.

**Section 509. Funding for Monitoring Implementation of Northeast Multispecies Fishery Management Plan** – Page 189 (*This section amends the Act*)

Current law authorizes the Secretary to use fines and penalties from violations of the Northeast Multispecies FMP to enforce the plan. This section would authorize the Secretary to enforce and monitor implementation of the plan including electronic monitoring.

**Section 510. Authorization of Appropriations** – Page 189 (*This section amends the Act*)

This section would authorize appropriations to carry out the Act from Fiscal Year 2022 through 2027.