



# Gulf of Mexico Fishery Management Council

*Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico*

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The Honorable Jared Huffman  
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Washington, D.C. 20515  
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The Honorable Ed Case  
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Washington, D.C. 20515  
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Dear Representatives Huffman and Case:

Thank you for holding listening sessions and reaching out to the Gulf of Mexico Fishery Management Council (Gulf Council) to provide comments on the *Sustaining America's Fisheries for the Future Act of 2021*. We appreciate these efforts and understand it took additional time and coordination with stakeholders across the Councils' jurisdictions. Unfortunately, due to the timing of this request, the Gulf Council, as a body, did not have an opportunity to review and comment on the bill. With the assistance of staff, I have provided comments on behalf of the Gulf Council. The Council Coordinating Committee meets in October 2021 and will continue to deliberate and provide feedback on this bill and others in the future.

Overall, the Gulf Council thinks that the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) is working well to provide science-based data and management approaches that promote sustainable fisheries and communities via an open and transparent public process. Any bills to reauthorize the Magnuson-Stevens Act should be carefully considered to ensure practicability and applicability for implementation with current resources, while not diminishing transparency of the Council processes, or compromising the flexibility that the Magnuson-Stevens Act intended for the regional management Councils.

Please find specific comments on important issues by section from the Gulf Council below:

## **Section 102: "Promoting Climate Resilience in Fisheries Management"**

*The current draft of the bill would add multiple requirements for climate – change related requirements for any new Fishery Management Plans or Amendments to those plans to contain conservation and management measures which "promote the resilience of fish stocks to cumulative stressors, including cumulative stressors associated with climate change".*

Although the Gulf Council understands the intent of this text, there are already efforts at work for inclusion of this type of information in Gulf Council Fishery Management Plans. For example, there are already sections on climate change and environmental covariates such as red tide and hypoxia information in the Fishery Management Plans. At this time, the Gulf Council does not think this section is necessary or that it can practically be applied with the current resources in the Southeast. Specifically, the Gulf Council shares one NMFS Southeast Fisheries Science Center with two other regional management Councils and the NMFS Highly Migratory Species division. The completion of single stock assessments and process for implementing changes through the regulatory process is operating at maximum capacity; thus, taking any resources away from these efforts would slow management down. Further, we think there are such limited data sources available at this time to monitor and track climate related changes, that we do not anticipate that these efforts would result in any additional quantitative analysis that could be clearly identified as climate related impacts. For example, the Southeast needs robust indices for a baseline of habitat, coral, and fisheries with an assessment of health for more stocks before being able to assess if changes to these resources are a result of climate related impacts.

#### **Section 105: “Managing Shifting Stocks”**

*The current draft of the bill requires “the Secretary to review the geographic authority of the Councils every five years or at the request of the Councils”. This review should determine whether “a substantial proportion of any fishery within such area is within the authority of another Council”. If deemed as such, the bill also requires the Secretary to “designate one of the Councils concerned to prepare the fishery management plan or amendment.*

*The section of the bill also establishes requirements for the Secretary to coordinate with the State Department and the Agency for International Development to address the research and management of species or stocks which presently, or may in the future, span international boundaries, including within the same species life stage or across life stages.*

The Regional Management Councils are close cooperators with the academic institutions, state and federal agencies, and in many cases, international institutions and agencies by way of Council participation in international conferences. Thus, the Regional Management Councils are acutely cognizant of the requirements for coordinating both research and management domestically and with other partners. As an example, specific to the Gulf Council’s jurisdiction, collaboration between the Southeast Data, Assessment, and Review program with the Mexican government for Gulf of Mexico migratory group king mackerel has been an ongoing effort since as early as 2005. The last benchmark stock assessment of Gulf migratory group king mackerel sought to include life history, landings, and fishing effort data from recreational and commercial fleets in Mexico to create a more holistic view of the condition of the Gulf migratory group king mackerel stock. However, persistent gaps in available data by the Mexican state, and data availability in general, resulted in those efforts yielding results insufficient for use in the last benchmark stock assessment for this species. The research and management needs are easily identifiable; however, the funding

and coordination to conduct the research necessary to know more about the linkages between the U.S. and Mexican components of the Gulf migratory group king mackerel stock are insufficient for such an undertaking to be expected to succeed within a five-year timeline.

Further, to conduct the research necessary at an appropriate temporal scale to be useful in a stock assessment (at a minimum, three years of data), and to have that research vetted through peer-review, would be expected to take more than five years to complete from applying for funding, coordinating the research, processing the data, and completing the peer review process in an ideal scenario. Therefore, the Gulf Council does not expect the five-year requirement for conducting and completing research to be tenable. Implementing management measures within the current draft of the bill's 10-year timeline would also be unlikely, since it would be unknown whether the research commissioned would be completed in time to meet such a requirement. Also, many factors could confound both the pace of the research (e.g., funding, physical and human resources, weather, variations in the physical/biological/ecological environments) and management processes (e.g., international agreements and treaties, changes in administrations, differences in agency priorities).

#### **Section 304: “Council Procedures and Participation”**

*The current draft of the bill requires Councils to hold roll call votes on all nonprocedural matters.*

The Gulf Council takes a roll call vote on all final action fishery management plans and amendments; thus, the Gulf Council does not think it necessary to conduct roll call votes on all nonprocedural matters, as the tally of the final votes are included in the meeting record. Further, any Council member can request a roll call vote at any time during a meeting. Thus, the Gulf Council thinks this would add additional burden to the Council and take up additional valuable meeting time without a consequential outcome.

#### **Section 305: “Council Accountability and Membership”**

*The current draft of the bill would “deem” all Council employees to be Federal employees and apply the same requirements to Council employees as Federal staff. The Council, committees, and Advisory Panel Members would be subject to all laws, rules and policies regarding ethics and sexual harassment or assault that apply to Federal employees.*

The Gulf Council concurs with the application of sexual harassment and ethics policies applying to the Council and various advisory panels and committees. However, the Gulf Council and its staff are concerned about deeming all Council employees Federal. Although there will likely be inherit benefits to being a Federal employee, the autonomy and delineation that the regional Councils currently have should continue by keeping Council employees separate from Federal employees. This is especially imperative to the progress of the Magnuson-Stevens Act objectives during periods of federal government shut downs. It is unclear what administrative and legal burdens this change would place on the Regional Management Councils based on the current text.

*Section 305(d)(3) amends MSA Section 302(b)(2)(C) (appointments by Governor) to remove the requirement that the governor consult with representatives of the commercial and recreational fishing interests of the state when making appointments to the Council.*

The purpose of this deletion is unclear, unless it relates to the inclusion of non-consumptive users on the Council. Not consulting with fishing interests about the people that will be responsible for managing their fisheries is counter to the precepts of the Magnuson-Stevens Act, which is intended to be an open, science-based, stakeholder-driven process. The Gulf Council thinks this vetting process is an important step for transparency and a valued step in the appointment process. The requirement to consult with commercial and recreational fishing interests could be broadened to include other interested stakeholder groups.

*305(d)(3) requires the Secretary to appoint at least one individual to each Council who does not have a financial interest in matters before the Council.*

The Gulf Council is unclear what this new section means regarding “no financial interest”. The Gulf Council currently has four members that sit on the Council in the “Other / At-large seat” categories that are academicians, or individuals with expertise and career experience in marine resource management. Is the intent that Council seats would be reserved for specific interests such as environmental non-governmental organizations?

#### **Section 402: “Expanding and Improving Electronic Technologies”**

*The current draft of the bill would amend the Magnuson-Stevens Act to allow the regional management Councils to require electronic monitoring or similar technology for data collection purposes.*

Although many Gulf Council fisheries may not be applicable to electronic technologies at this time, it is in support of the language as long as it remains flexible (i.e., “allows the Councils to require” versus “requiring”). It should be left up to the regional management Council to assess the needs of the various fisheries and determine the best process with fishermen for “expanding and improving electronic technologies”. There may be some cases when observers need to be maintained, or the technology may be too burdensome to the industry to apply.

#### **Section 403: “Stock Assessments”**

*The current draft of the bill requires the Secretary to report to Congress within one year and annually thereafter on NMFS progress to prioritize and improve stock assessments.*

Although the Secretary has the primary responsibility, this would require significant effort on the part of the regional management Councils on an annual basis and there are unlikely to be large scale changes on an annual basis to prioritization and stock assessment

improvements. The Gulf Council suggests consideration of a less frequent reporting requirement.

#### **Section 404: “Cooperative Research and Management”**

*The current draft of the bill clarifies that fishing communities can be included in partnerships under the cooperative research and management authority. It requires the Secretary to award funding on a competitive basis based on regional needs and selected programs that are prioritized from the Council.*

The Gulf Council thinks cooperative data collection can be valuable to the management process and scientific understanding, but studies and results should be subjected to an adequate peer review process. However, forcing Regional Management Councils through its stock assessment processes to include data because it was gathered through cooperative data collection may not be useful or beneficial to reaching the conclusion of best scientific information available (BSIA). Often, stakeholders are quite eager to share their knowledge with the Gulf Council and stock assessment analysts. This information can be offered as contrast during the stock assessment process to serve as a sort of “check” against the trends in the data for a given species. Many regional Councils also have mechanisms to collect data from stakeholders which are used to inform the stock assessment and management processes. For example, the Council’s Something’s Fishy tool has been utilized before stock assessments to ascertain stakeholder observations and provide context for the information ultimately used in each assessment.

*Section 404(a) of the bill requires the Councils to provide a critical list of research needs to the Secretary on an annual basis.*

The Gulf Council currently maintains an Updated List of Fishery Monitoring and Research Priorities on its website<sup>1</sup>. These research and monitoring priorities are updated every 5-years in coordination with a new grant cycle. The Gulf Council could certainly provide a list of annual research needs to the Secretary, yet many of these would require multi-year projects to fulfill, so it is unclear if an annual list is necessary, particularly without a clear feedback loop of how the previous year research and data needs were achieved. The Gulf Council suggests a longer time period for Council research requests and granting years of funding to fulfill the research or data need of the regional management Council.

#### **Section 406: “Recreational Data Consistency”**

*The current draft of the bill requires the Secretary within two years of implementation to establish guidelines for recreational catch data, such as “data standards to improve timeliness, accuracy, precision, and validation of data produced by recreational surveys in order to facilitate the use of such data in assessments, for use in management actions, and for other uses”. It also states that if “recreational data come from more than one source*

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<sup>1</sup> <https://gulfcouncil.org/wp-content/uploads/GMFMC-Updated-List-of-Fishery-Research-and-Monitoring-Priorities-2020-2024-091819.pdf>

*the Secretary shall implement measures which may include the use of calibration methods, as needed for the timely integration of such data...*

The Gulf Council supports the continued collaboration and ongoing effort with Office of Science and Technology and the Gulf States Marine Fisheries Commission to improve recreational landings and effort data in the Gulf. It is unclear if the Secretary were to provide a recommendation for calibration methods, if it would be any different than the NMFS Regional Administrator. The Gulf Council agrees that there are still numerous issues to work through regarding calibration of MRIP-Coastal Household Telephone Survey and MRIP-Fishing Effort Survey, and the supplemental state surveys for many species in the States of Mississippi, Alabama, and Florida who have supplemental surveys to the MRIP-FES surveys. Since the eastern Gulf states have already established supplemental data collection programs for many species and NOAA Office of Science and Technology provided certification of fishery survey methods for LA Creel, Tails N Scales, Snapper Check, and the State Reef Fish Survey,<sup>2</sup> it is unclear why the Secretary would need to go through this process again.

A better approach would be to ask the Secretary to work with NOAA Office of Science and Technology to address the survey discrepancies and report back to the Gulf Council and its Scientific and Statistical Committee with their findings. Specifically, investigate the survey methods used to generate catch rates and effort estimates by development of a pilot program (or other appropriate method) to discern whether current shore-based survey methods can be improved to inform the full effort estimate. Second, the Secretary could work with NOAA Office of Science and Technology to prioritize the development of a protocol to detect extreme or unusual values (i.e., outliers) in MRIP-FES catch estimates and determine their source (i.e. input data or calibration procedures).

#### **Section 406: “Recreational Data Improvement Program”**

*The current draft of the bill requires the Secretary within one year of enactment to establish a strategic plan for recreational data improvements. The plan shall improve coordination between Federal programs that implement recreational fishing surveys and other data from non-Federal sources, including data from States or Marine Fisheries Commissions; Including improve the timeliness, accuracy, precision, and validation of data produced by surveys.”*

The Gulf Council thinks this new requirement could provide benefits to the recreational fishery sampling programs. However, one year may not be enough time to develop a rigorous strategic plan, with input from stakeholders. Second the Gulf Council thinks the plan also needs to include suggestions or resources for implementation of improvements highlighted within the Secretary’s plan. Further, the bill suggest that the Secretary’s strategic plan should include “research” on several issues, but it is unclear how that research and improvements could be operationalized with the current resources by the Councils and

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<sup>2</sup> <https://www.fisheries.noaa.gov/recreational-fishing-data/certified-recreational-fishing-survey-designs>

supporting Federal and State agencies, with the exception of the use of tag and endorsement measures to fund these improvements.

#### **Section 407: “Emergency Operating Plans”**

*The current draft of the bill requires the “Administrator within in one year of enactment, in consultation with the Fishery Management Councils, to develop a plan for circumstances that would make fisheries monitoring, including human observation, and stock assessments impracticable.”*

The Gulf Council thinks this is an important exercise based on the recent history of the events with the COVID-19 pandemic. However, the 1-year timeframe may be not be realistic for inclusion of stakeholders and outreach via the Fishery Management Councils.

#### **Section 409: “Offshore Wind Collaboration”**

*The current draft of the bill requires the “Secretary and the Secretary of the Interior, acting through the Bureau of Ocean Energy Management, shall enter into a cooperative agreement to fund such additional stock assessments and fisheries and marine wildlife research as may be necessary as a result of actions by such Bureau related to the development of offshore wind energy.”*

The Gulf Council thinks that this is relevant for the best fisheries science and any impacts resulting from the development of offshore wind energy.

#### **Section 502: “Essential Fish Habitat Consultation”**

*This section modifies provisions regarding essential fish habitat (EFH) and habitat areas of particular concern (HAPCs). The proposed modifications to the consultation processes are anticipated to increase the communication between the Council and the agency by requiring the agency to “inform each Council that the authority over an affected fishery of any consultation carried out under paragraph (2), including information on the proposed action and any potential adverse effects.”*

The Gulf Council encourages collaboration with the NMFS regarding the EFH process but recommends more specific language as to what proposed updates would be presented. The Gulf Council recognizes that the NMFS Southeast Regional Office handles numerous consultations, many of which may determine “potential adverse effects”, but may not have direct interest to the Council. Perhaps consultation updates could be focused on those that result in recommendations for substantial changes to fishing activity and are deemed of interest by the Council and/or the southeast regional office.

While the proposed modifications are specific to the consultation process, the Gulf Council recommends consideration of modifications to the process of updating identifications and descriptions of EFH. Climate change affects are likely influencing habitat selection, especially for pelagic species, and requiring a plan amendment slows the ability to rapidly

update descriptions of EFH. The Gulf Council suggests additionally modifying Magnuson-Stevens Act provisions to allow for the option of updating descriptions of EFH through a framework action if no major federal action is identified.

### **Section 503: “Reducing Bycatch”**

*This section amends National Standard 9 wording by removing the words “to the extent practicable”. This section also removes the term “to the extent practicable” from the requirement to assess the amount and type of bycatch occurring in the fishery and management measure that minimize bycatch and minimize mortality of bycatch that cannot be avoided”. This section also establishes a new nationwide standardized bycatch methodology and reporting system.*

All recreational and commercial fisheries will have discards due to size or species preference or simply due to regulations. The deletion of the words “to the extent practicable” could tie the Gulf Council’s hands and result in unnecessary closures of recreational and commercial fisheries if the national standards cannot be balanced. The word “practicable” allows the Gulf Council to weigh the biological impacts of discarded fish with the social and economic impacts and tradeoffs in management decisions. The Gulf Council thinks more clarity is needed to better understand the impacts of these changes on catch and release fisheries.

The Gulf Council is supportive of programs aimed at improving data collection and quantification of bycatch, including a national standardized program, as long as it still allows for regional flexibility. However, the two-year timeline is unlikely to be sufficient to develop and implement such a program. The variety of fisheries, number of bycatch species, and the resources available to manage varies greatly among regions and will likely require an iterative approach to develop a national program. In some cases, the requirement to implement consistent data reporting may require the development of new data reporting tools and systems to receive and store the data. Again, these requirements are laudable but unlikely to be developed and implemented within the two-year timeline.

### **Section 504: “Improving Rebuilding Plan Outcomes”**

*The current draft of the bill details the process by which the Secretary is to ensure that rebuilding plans are effective in meeting the rebuilding requirements. If not, it sets up provisions for when multiple failures of rebuilding have occurred. Current draft of the bill: “(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”*

The Gulf Council notes that there may be circumstances where the data available for a species are too poor to properly understand the true dynamics of a stock, and that contemporary corrective measures may not yield the predicted results. An example in the Gulf Council’s jurisdiction for this point is greater amberjack which, despite being in its second modified rebuilding plan, continues to be depleted and undergoing overfishing. In this example, the NMFS lacks the data to accurately predict when to close the recreational



fishery, resulting in several historical overages of established catch limits despite near annual modifications (reductions or constraints) to fishing effort for both the recreational and commercial fishery. Further, despite these management modifications, the latest stock assessment of Gulf greater amberjack, using data through 2018, found the stock to be more depleted than the previous stock assessment and still undergoing overfishing, indicating that the stock has not responded to management modifications based on the best scientific information available. This example demonstrates that the data available may be “inaccurate, and such inaccuracies render the current rebuilding plan unable to address the stock’s rebuilding needs.” In this circumstance, given that the best scientific information available may not be adequate, it is unclear what measures may be available to the Secretary to “immediately make revisions necessary to achieve adequate progress toward rebuilding by the deadline established” beyond a fishery closure, which would likely result in substantial negative social and economic effects in the Gulf region. Further, it is unclear, under this circumstance, what alternative rebuilding plan having “no less than a 75 percent chance of rebuilding the fishery by the end of the new time period” could be established if the best scientific information available has proven insufficient to adequately inform appropriate fisheries management measures to correct the depleted condition of the stock.

## **Section 505: “Depleted Fisheries and Preventing Overfishing”**

### **Section 505(a)**

*The current draft of the bill adds a definition for ‘depleted’ and replaces the word ‘overfished’ It defines “depleted” as 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 stressors on the stock or stock complex. The current definition of “overfishing” is replaced with a single definition combining both “overfishing and overfished.”*

The Gulf Council thinks it is important to distinguish between “overfishing” and “overfished.” However, the “depleted definition” may be problematic in practice for many of our unassessed stocks, as the best scientific information available may be insufficient to calculate maximum sustainable yield. Without adequate data, determining an appropriate proxy for maximum sustainable yield may also prove problematic

### **Section 505(b)**

*The current draft of the bill outlines several new recommendation requirements for the Council’s Scientific and Statistic Committee; they “shall provide the appropriate Council with ongoing scientific advice for fishery management decisions that include not only stock status but 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, and prevailing and anticipated future impacts of climate change on fish stocks, fishing communities, and fishery sectors.”*

The Gulf Council’s Scientific and Statistical Committee typically provides recommendations on stock status and management advice; however, the numerous other new responsibilities of the Scientific and Statistical Committee are largely outside its knowledge and charge. Presently, the full scope of the required recommendations detailed in the current version of the bill are provided to the Gulf Council from a variety of sources, including the Scientific and Statistical Committee, Council staff, the NMFS Southeast Regional Office, the Southeast Fisheries Science Center, and the NOAA Office of Science and Technology. For example, many of the reports listed in the proposed bill such as the “bycatch and sources of mortality” are generated by the NMFS Science Center in cooperation with supporting State and Federal agencies. The Gulf Council thinks some of the requirements for the Scientific and Statistical Committee should be softened to providing “knowledgeable guidance and feedback on these various reports” versus “the Scientific and Statistical Committee generating the reports”. Further, there may be numerous data limitations to some of the reports in the Southeast such as the “future impacts of climate change on fish stocks, fishing communities, and fishery sectors” which could result in greater uncertainty and may violate National Standards 1 and 2.

#### **Section 507: “Councils”**

*This section amends the Magnuson-Stevens Act to require Councils, with Scientific and Statistical Committees within the next 5-years to “prioritize fisheries and habitats experiencing or expected to experience shifts in geographic range, spatial distribution, or productivity. It would require Councils to “develop and implement a plan to protect essential fish habitat in the region of the Council from adverse effects caused by fishing.”*

The Gulf Council is concerned about workload for this proposed amendment to the Magnuson-Stevens Act and overall, the various data limitations we currently have in the Southeast. The Gulf Council currently conducts a 5-year review of the various EFH for FMPs and is currently working on an amendment to implement modifications to its FMPs from the last review.

#### **Section 508: “Forage Fish Provisions”**

*This section proposes adding major elements, mandates, and requirements of the Council’s Scientific and Statistical Committee for managing forage fish. These range from: defining forage fish to requiring the Scientific and Statistical Committee to make recommendations on sufficient abundance, diversity, and population distribution as well as research needs. Requires the development of Fishery Management Plans to quantify and specify the dietary needs of forage fish and other marine wildlife including marine mammals and birds.*

The Gulf Council is concerned about these mandates. The NMFS Science Center is completing stock assessments at maximum capacity and we do not currently have the resources or data at hand in the Southeast to implement many of these requirements. As

written, these new mandates would significantly increase workload for not only the Councils and NOAA supporting agencies, but State partners who collect and conduct the assessments on many of the forage fish species in the Gulf of Mexico. Forage fish in the Gulf, with the exception of penaeid shrimp, are managed or at least monitored by the five Gulf states and Commission.

In the Southeast region, resources to conduct stock assessments for targeted species with consistency are limited, let alone forage species for which even less life history and abundance information is available. Further, requiring the Councils to utilize limited resources for establishing catch limits for species of which little is documented may be non-productive. Most forage fish are short-lived, and vulnerable to environmental perturbations. Continuing the practice of not monitoring landings of short-lived species, the flexibility requested by the Councils in that manner is further requested if the active management of forage species becomes a responsibility of the Councils. For this reason, forage fish should be exempt from management under an ACL. Finally, the Gulf Council is working to develop its first Ecosystem Fishery Plan. It will likely consider and incorporate information and interactions of forage fish and its prey as data and information becomes available.

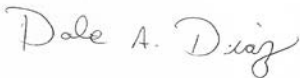
**Section 510: “Authorization of Appropriations”**

*The bill proposes funds on an annual basis starting in 2022 to be appropriated to the Secretary.*

The Gulf Council thinks the increase in funding tied to the bill is imperative considering the additional mandates proposed in this bill. This is especially crucial when considering the tremendous amount of work tasked to the southeast regional office and science center as these offices are responsible for supporting three different regional Councils; more than any other region in the country.

In closing do not hesitate to reach out to me or Dr. Carrie Simmons, Executive Director should you have any additional questions.

Sincerely,



Dale Diaz  
Council Chair

Cc: Gulf Council / Council staff / RMC Executive Directors / Dave Whaley / Janet Coit